

Thesis

ETHNIC NATION-STATES AT THE CROSSROADS
Institutions, Political Coalitions, and Immigration Policies
in Germany and Japan

Submitted by

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Table of contents

ACKNOWLEDGEMENTS.....	II
ABBREVIATION INDEX.....	1
ABSTRACT.....	5
INTRODUCTION.....	5
1. THEORIES OF IMMIGRATION POLICY-MAKING AND THE CASES OF GERMANY AND JAPAN.....	12
1.1 Theoretical and methodological considerations	12
1.1.1 Three theory streams of immigration and integration policy-making ..	12
1.1.2 Theorizing the interactions between political coalitions and institutions in immigration policy-making	17
1.2 Convergence and divergence in Germany and Japan’s immigration and integration policies.....	21
1.2.1 Late policy divergence.....	21
1.2.1.1 Citizenship laws	21
1.2.1.2 Immigrant incorporation.....	21
1.2.1.3 Asylum policies.....	22
1.2.2 Early policy divergence and late convergence: Labor immigration policies.....	23
2. GERMANY AT THE CROSS-ROADS: INSTITUTIONAL TRANSFORMATION AND INERTIA OF A RELUCTANT COUNTRY OF IMMIGRATION.....	26
2.1 Institutional and political antecedents in Germany’s contemporary immigration and integration policies.....	26
2.1.1 Nation-building and pre-war immigration policies	26
2.1.1.1 Immigration policies between agrarian interests and nationalism: The institutionalization of the first national recruitment system.....	26
2.1.1.2 The assertion of conservative interests during the reform of the Nationality Act	29
2.1.1.3 Immigration policies during the World Wars: Continuity and rupture	30
2.1.2 The guest worker program as a critical antecedent: Germany’s immigration policies from 1945 to 1998	33
2.1.2.1 Immigration policies under Allied occupation: Processing the migratory consequences in the aftermath of the war	33
2.1.2.2 Executive dominance and the primacy of foreign policy: The initiation of the guest worker program	34

2.1.2.3 Policy stagnation, party polarization and interest alignment: Germany's consolidation as a "de facto country of immigration"	36
2.1.2.4 Germany as a country of asylum? New immigration streams and post-unification immigration policies	42
2.2 The reform of the Immigration Act 2000/2004: Critical juncture or incremental change?	46
2.2.1 The structure of institutions and political coalitions in immigration policy-making before the reform period.....	46
2.2.1.1 Institutions: Administration, legislation and judicial review	46
2.2.1.2 Party positions	51
2.2.1.3 Societal coalitions and interest groups	60
2.2.1.3.1 Immigrant associations	60
2.2.1.3.2 Employer organizations	68
2.2.1.3.3 Churches and welfare organizations	69
2.2.1.3.4 Civil society groups and NGOs	72
2.2.2 Analyzing the reform period from 1999 to 2004: Elite consensus and regional dissent.....	73
2.2.2.1 Legislative changes	73
2.2.2.2 Political coalitions and institutions of the Citizenship Act and the Immigration Act.....	78
2.3 Critical antecedents and critical juncture? The aftermath of the Immigration Act	101
3. JAPAN'S IMMIGRATION POLICY-MAKING IN A COMPARATIVE PERSPECTIVE ...	105
3.1 Institutional and political antecedents in Japan's contemporary immigration and integration policies.....	105
3.1.1 The Japanese nation-state and ethnic nationalism	105
3.1.2 History of Japan's immigration policy-making.....	106
3.1.2.1 Between emigration and colonialism: Japan's pre-war migration and citizenship policies.....	106
3.1.2.2 Restricting entry and preventing settlement: Japan's post-war immigration policies until 1990	109
3.1.3 The history of immigration policy-making of Japan and Germany in comparison	114
3.2 Immigration reform in Japan: Similarities and differences with Germany.....	117
3.2.1 The structure of institutions and political coalitions in immigration policy-making before the reform period.....	117

3.2.1.1 Institutions: Administration, legislation and judicial review	117
3.2.1.2 Party positions	121
3.2.1.3 Societal coalitions and interest groups	123
3.2.1.3.1 Immigrant associations	123
3.2.1.3.2 Trade unions	127
3.2.1.3.3 Employer organizations	130
3.2.1.3.4 Civil society groups and NGO	132
3.2.2 Analyzing immigration reform and inertia from 1980 to today: Elite dissent and political fragmentation	134
3.2.2.1 The immigration situation in the 1980s and 1990s.....	134
3.2.2.2 Immigration reforms from 1982 until today.....	135
3.2.2.3 The 1990 immigration reform: Repeating Germany's mistakes? 141	
3.2.2.3.1 Political coalitions in comparison.....	141
3.2.2.3.2 Institutions in comparison	143
3.2.2.4 The immigration reforms during the 2000s.....	146
3.2.2.4.1 Political coalitions in comparison.....	146
3.2.2.4.2 Institutions in comparison	150
4. CONCLUSION: INSTITUTIONS AND POLITICAL COALITIONS IN ETHNIC NATION- STATES	155
SOURCES AND REFERENCES.....	162

Abbreviation index

AA	Ministry of Foreign Affairs (Germany) <i>Auswärtiges Amt</i>
AfD	Alternative for Germany <i>Alternative für Deutschland</i>
AFG	Work Promotion Law <i>Arbeitsförderungsgesetz</i>
APVO	1938 Foreigner Police Regulation <i>Ausländerpolizeiverordnung</i>
AsylVFG	1982 Asylum Process Law <i>Asylverfahrensgesetz</i>
AuslG	1965 Alien Act (Germany)
AWO	Workers' Welfare (Germany) <i>Arbeiterwohlfahrt</i>
BA	Employment Agency <i>Arbeitsamt</i>
BAA	Federal Agency for Employment Services and Unemployment Insurance/ Federal Agency for Employment <i>Bundesanstalt für Arbeitsvermittlung und Arbeitslosenversicherung/ Bundesagentur für Arbeit</i>
BAMF	Federal Agency for Migration and Refugees <i>Bundesamt für Migration und Flüchtlinge</i>
BMAS	Federal Ministry of Labor and Social Affairs (Germany) <i>Bundesministerium für Arbeit und Sozialordnung</i>
BDA	Federation of German Employers <i>Bund Deutscher Arbeitgeber</i>
BDI	Federation of the German Industry <i>Bundesverband der Deutschen Industrie</i>
BMF	Federal Ministry of Finance <i>Bundesministerium der Finanzen</i>
BIG	Federation for Innovation and Justice <i>Bündnis für Innovation und Gerechtigkeit</i>
BITKOM	Federal Association of Information Technology, Telecommunications and New Media <i>Bundesverband für Informationswirtschaft, Telekommunikation und neue Medien</i>
BMI	Federal Ministry of the Interior (Germany) <i>Bundesministerium des Innern</i>
BMJ	Federal Ministry of Justice (Germany) <i>Bundesjustizministerium</i>
BMBF	Federal Ministry for Education and Research <i>Bundesministerium für Bildung und Forschung</i>
BMW	Federal Ministry of Economic Affairs (Germany) <i>Bundesministerium für Wirtschaft</i>
BVerfG	German Federal Court <i>Bundesverfassungsgericht</i>
BfV	Federal Office for the Protection of the Constitution <i>Bundesamt für Verfassungsschutz</i>
BZI	Federal Immigration and Integration Council <i>Bundeszuwanderungs- und Integrationerrat</i>
CDA	Christian-Democratic Employees

Ethnic nation-states at the crossroads

CDU	<i>Christlich-Demokratische Arbeitnehmerschaft</i> Christian Democratic Union of Germany <i>Christlich Demokratische Union Deutschlands</i>
CSU	Christian Social Union <i>Christlich-Soziale Union</i>
DAG	German Employees Union <i>Deutsche Angestellten-Gewerkschaft</i>
DAZ	German Workers Agency <i>Deutsche Arbeiterzentrale</i>
DIHK	Association of German Chambers of Industry and Commerce <i>Deutscher Industrie- und Handelskammertag</i>
DITIB	Turkish-Islamic Union of the Religious Institutions <i>Diyanet İşleri Türk İslam Birliği</i>
DM	Deutsche Mark
DP	Displaced Person/s <i>Deutsche Arbeiter Zentrale</i>
DPJ	Democratic Party of Japan 民主党
DGB	German Trade Union Federation <i>Deutscher Gewerkschaftsbund</i>
DTU	German-Turkish Union <i>Deutsch-Türkische Union</i>
DPWV	German Paritatic Welfare Organization <i>Deutscher Paritätischer Wohlfahrtsverband</i>
DVU	German People's Union <i>Deutsche Volksunion</i>
EC	European Community
ECSC	European Coal and Steel Community
EKD	Evangelical Church in Germany <i>Evangelische Kirche in Deutschland</i>
EPA	Economic Partnership Agreement
EU	European Union
FDP	Free Democratic Party (Germany) <i>Freie Demokratische Partei</i>
FRG	Federal Republic of Germany <i>Bundesrepublik Deutschland</i>
FTA	Free Trade Agreement
GDR	German Democratic Republic <i>Deutsche Demokratische Republik</i>
GG	Basic Law <i>Grundgesetz</i>
ICCB	Organization of Islamic Associations and Communities Cologne <i>Islami Cemiyetve Cemaatleri Birliği</i>
ICO	Immigration Control Order 出入国管理令
ICARRA	Immigration Control and Refugee Recognition Act

	出入国管理及び難民認定法
IT-ArGV	Regulation on residence permits for highly qualified foreign specialists in information- and communication technologies <i>Verordnung über die Arbeitsgenehmigung für hoch qualifizierte ausländische Fachkräfte der Informations- und Kommunikationstechnologie</i>
LDP	Liberal Democratic Party (Japan) 自由民主党
LTD	Liberal-Turkish-German Association <i>Liberal Türkisch-Deutsche Vereinigung</i>
JCP	Japanese Communist Party 日本共産党
JET	Japan Exchange and Teaching
JITCO	Japan International Training Cooperation Organization 国際研修協力機構
JSP	Japanese Socialist Party 日本社会党
METI	Ministry of Economy, Trade and Industry 経済産業省
MHLW	Ministry of Health, Labour, and Welfare (Japan) 厚生労働省
MOFA	Ministry of Foreign Affairs (Japan) 外務省
MOJ	Ministry of Justice (Japan) 法務省
NGO	Non-Governmental Organization
NPD	National-democratic Party of Germany <i>National-demokratische Partei Deutschlands</i>
ÖTV	Union for Public Services, Transportation and Traffic <i>Gewerkschaft öffentliche Dienste, Transport und Verkehr</i>
PDS	Party of Democratic Socialism (Germany) <i>Partei des Demokratischen Sozialismus</i>
PEGIDA	Patriotic Europeans against the Islamization of the Occident <i>Patriotische Europäer gegen die Islamisierung des Abendlandes</i>
RFA	Federal Agency for Employment Services <i>Reichsamt für Arbeitsvermittlung</i>
RuStAG	1913 Nationality Act (Germany) <i>Reichs- and Staatsangehörigkeitsgesetz</i>
SCAP	Supreme Commander of the Allied Powers
SDP	Social Democratic Party (Japan) 社会民主党
SED	Socialist Unity Party of Germany (GDR) <i>Sozialistische Einheitspartei Deutschlands</i>
SME	Small- and medium-sized enterprises
SPD	Social-democratic Party of Germany <i>Sozialdemokratische Partei Deutschlands</i>
StAG	Citizenship Law (Germany) <i>Staatsangehörigkeitsgesetz</i>

Ethnic nation-states at the crossroads

UNHCR

United Nations Commissioner for Refugees

USA

United States of America

WWII

Second World War

ZuwandG

2004 Immigration Act (Germany)

2004 Zuwanderungsgesetz

Abstract

Both Germany and Japan share similar historical conceptions of a nation-state defined by ethnicity and *ius sanguinis* nationality rules. Accordingly, both countries were traditionally skeptical of admitting immigrants and proactively accepting ethnic minorities. However, Germany opened up its labor market for low-skilled labor in the early post-war period and significantly reformed its immigration and citizenship policies in the late 1990s and early 2000s by including immigrant integration measures into an inclusive political and societal strategy while Japan did not make any substantial changes. Low-skilled labor is instead admitted informally through various “side-doors”. Neither have there been serious attempts to facilitate immigrant integration or alter citizenship policies at the national level in order to facilitate the naturalization and inclusion of immigrants. Hence, given the existing pressures towards liberalizing immigration policy, what explains resistance to change in Japan? And given the pervasive resistance to reform in Germany in the past, what explains the recent shift to immigration reform? How and why were changes limited in the end? In this paper, I hypothesize that change in immigration policies is related to the structure of institutions and political coalitions as well as to the different historical experiences after the end of the Second World War in each country. I analyze the differences in these structures and histories in detail by using a framework of historical institutionalism considering both long-term antecedents and short-term shifts in political coalitions and institutions before and during a significant legal juncture. I will offer a case study of the paradigm change in Germany for the new Immigration Act (*Zuwanderungsgesetz*) and Citizenship Act (*Staatsangehörigkeitsgesetz*) versus the more incremental changes in Japan and study the different legislative approaches and political processes from a comparative perspective. I find that the outcomes in Germany are generally related to foreign policy concerns after the Second World War that led to the unexpected settlement of immigrants. More recently, the inability to create a more thorough paradigm change in immigration and integration policies is related to an adverse combination of party competition and federal veto players in Germany’s consensual political system. In Japan, the fragmentation of interest groups and ministerial interests only led to policies that were highly “reactive” and related to foreign policy, without a proactive vision of immigration or integration. Due to the substantial fragmentation of interests, political coalitions in favor of immigration reform were often only strong enough when immigration issues received an “international” dimension.

Introduction

“It’s not an immigration policy. We’d like [foreign workers] to work and raise incomes for a limited period of time, and then return home.” (Shinzō Abe, 2014)¹

“Within the next four years, it will be necessary to reduce the number of Turks by 50 percent, but I cannot say this publicly. It is impossible for Germany to assimilate the current number of Turks.” (Helmut Kohl, 1982)²

When Otto von Bismarck talked to representatives of the Japanese Meiji state, he noticed the lack of industrialization in the modernizing country that seemed surprisingly similar to the situation in Prussia before 1830: *“The conditions in your country, gentlemen, are just as they were in Prussia several years ago. I can understand the circumstances quite well, because I have been born in a small*

¹ Jonathan Soble, “Japan stands by immigration controls despite shrinking population,” *The Financial Times*, 6th February 2014, <http://www.ft.com/cms/s/0/32788ff0-ea00-11e3-99ed-00144feabdc0.html>.

² Der Spiegel, “Kohl verteidigt seine Äußerungen über Türken,” 2nd August 2013, <http://www.spiegel.de/politik/deutschland/kohl-verteidigt-seine-aeusserungen-ueber-tuerken-a-914528.html>.

and weak country that has slowly raised itself to the status that it enjoys today.”³ Indeed, the development of two “small and weak countries” towards two economic powerhouses has followed surprisingly similar phases even though Japan often lagged behind Germany: Both countries were “belated nation-states” developing a centralized government only in the 19th century, both became allies during the Second World War (WWII) and both were closely allied to the United States (US) and saw strong export-led growth rates in the post-war period.

When it comes to migration, Japan and Germany were countries of *emigration* for the most part of their long histories and created a significant diaspora of German and Japanese ethnics in other countries. But here, too, Japan received immigrants on a significant scale much later than Germany in which economic interests could exploit the porous Eastern borders in the 19th century in order to match labor scarcities in agriculture and the industries while Japan still faced typical problems of labor-exporting countries such as the discrimination of its citizens in host countries. Both states relied on a self-conception of “ethnic” and culturally homogeneous nation-states for which immigration was primarily a security issue that threatened the stability of the young state and, in the case of Germany, even the national borders. Japan’s Nationality Act was thus drafted in analogy to the German version and defined citizenship in terms of *ius sanguinis* rules. Even though the volume of immigration was consistently higher in Germany,⁴ the lack of a political concept of immigration was evident in both countries’ exclusionary treatment of immigrants with respect to societal integration. Even after the recruitment program for foreign labor was halted and family reunification and settlement tendencies became clearly visible in Germany, the government still only saw immigrants as temporary “guest” workers while unskilled immigrants in Japan faced the exploitation of employers through various illegal and “backdoor” immigration channels.

However, in contrast to Japan, a comprehensive new Immigration Act was ratified in Germany in 2004 that officially consolidated Germany’s status as a “country of immigration” after decades of official neglect even though it fell short of more substantial proposals. Japan, on the other hand, adopted a scheme for the acceptance of ethnic Japanese from Latin America (*nikkeijin*) in 1990 including the possibility of their long-term settlement without altering the framework of immigrant

³ Dietrich Thränhardt, “Japan und Deutschland in der Welt nach dem Kalten Krieg,” in *Japan und Deutschland in der Welt nach dem Kalten Krieg*, ed. Dietrich Thränhardt, Studien zur Politikwissenschaft 85 (Münster: Lit Verlag, 1996), 15–58, 23f.

⁴ David Bertram, “Japan and Labor Migration: Theoretical and Methodological Implications of Negative Cases,” *International Migration Review* 34, no. 1 (2000): 5–32, 6.

incorporation and socio-political effects comparable to the guest worker program in post-war Germany. It thus seems as if Japan would again follow the pattern of a late-comer in adapting immigration policies while having largely followed restrictive policies in its post-war history, even under the condition of labor scarcities.

In this paper I want to answer two main questions: *First*, why has the conceptualization of immigration and integration changed in Germany relative to Japan? And how can we explain phases of convergence and divergence in different areas of immigration policy-making? In order to clarify the divergence in immigration policies, I will compare how Germany changed from a “country of emigration” to a “country of immigration”, why it instituted a guest worker program after the end of WWII and how it developed a concept of permanent settlement in the 2004 Immigration Act. I will contrast this development with the evolution of immigration policies in Japan that have been characterized by selective opening and the general rejection of permanent settlement despite growing immigrant communities. *Second*, even though comprehensive immigration reform was ultimately realized in Germany, why was this change only limited? Today, labor immigration possibilities continue to be restrictive for third country nationals, especially if they are not skilled. Moreover, new parties and social movements criticizing the current policies have developed in reaction to the high influx of EU immigrants and the surging number of asylum applications. In Japan, a thorough discussion of admitting more immigrants has taken place as well, but had only limited effects on the political level. Thus, what were the institutional, societal and political constraints in reforming immigration in both countries?

This analysis is written with a central focus on the changes in political coalitions and institutions relating to the immigration and integration of foreigners in Germany and Japan. As immigration policies are still a national prerogative of nation-states in most aspects even in the context of the EU, I will focus particularly on the national and sub-national level. My methodology that is described more closely in the next chapter is based upon the theory of historical institutionalism and the recent additions by Thelen⁵ and Slater & Simmons⁶. Interest groups, parties and political actors can form coalitions and are embedded in a framework of changing political institutions. Depending on the configuration of coalitions and institutional constraints, I hypothesize that policies and institutions can change

⁵ Kathleen Thelen, “Historical Institutionalism in Comparative Politics,” *Annual Review of Political Science* 2 (1999): 369–404.

⁶ Dan Slater and Erica Simmons, “Informative Regress: Critical Antecedents in Comparative Politics,” *Comparative Political Studies* 47, no. 7 (2010): 886–917.

and adapt over time. Coalitions represent a complex set of interests that can be inconsistent and heterogeneous and is seldom reflected by simple class-coalitions in the Marxian sense. While it is debatable if the changes in Germany can be described as a “paradigm change” or a “critical juncture”, the concept of “critical antecedents” by Slater and Simmons is useful for our purposes because it teaches us to focus not only on the structure of coalitions and institutions during a significant policy reform period, but also analyze relevant historical aspects that might have led to a diverging development within a country-pair.

I will thus concentrate both on the post-war divergence in immigration policies and the later divergence in integration policies. After sketching out the story of historical antecedents, I will unfold the structure of immigration politics and the positions of interest groups before the immigration reform in Germany. I will then disentangle the political processes during the reform of the Citizenship Act (1999), the Green Card Initiative (2000) and the reform of the Immigration Act (2000–2004) by analyzing the interactions *between* and *within* political coalitions and institutions. I will then interpret the policy-making processes in Japan by following the same methodology and especially focus on the 1990s/2000s in which several incremental policy reforms took place. I hope to find key elements that help to explain why and how countries with a similar understanding of citizenship and immigration adapt and change their policies over time. On the flip side, it will be necessary to grasp the institutional and political factors that inhibit a more consequential change and ultimately prevent “ethnic nation-states” from becoming countries of immigration such as the USA or Canada.

My findings reveal that Germany has initially reacted to foreign pressure from countries on the European periphery that persuaded the German government to initiate a guest worker program under the assumption of its temporariness – an assumption that was reinforced due to the successful rotation of foreign workers in the 19th century. A second stream of immigration was opened with the foundation of the European Coal and Steel Community (ECSC) adhering to the principle of the free movement of people that, until today, opens up almost unlimited immigration possibilities for citizens of its member countries. After the suspension of the recruitment program, the period from the mid-1970s to the late 1990s was characterized by the proliferation of positions on immigration by parties and interest groups. The institutional responsibility for immigration policies shifted from the Federal Ministry of Labor and Social Affairs (BMAS) to the Federal Ministry of the Interior (BMI) and the post of the Commissioner for Foreigners was created as an innovative political institution but without any decision-making power. While the liberal Free Democratic Party (FDP) and moderate elements within the Christian Democratic Union (CDU) could prevent a further tightening of immigration and

integration policies by using their influence in the government coalition, a significant change only happened after the progressive Green Party joined a coalition with the Social-democratic Party of Germany (SPD). The proactive establishment of a political commission by the BMI representing all societal interests forged an elite consensus among unions, employer organizations, immigrant associations, Non-Governmental Organizations (NGOs), public welfare organizations and churches to establish a liberalized immigration regime with far-reaching integrative measures. Change, however, was limited due to the institutional structure of law-making that depended on the agreement of CDU- and CSU-led conservative regional governments who held more conservative positions than the federal CDU and could utilize a skeptical public opinion in order to influence both the processes of drafting and ratifying the act.

In Japan, on the other hand, neither an elite nor an institutional consensus could yet be produced on immigration and integration policies. After WWII and the end of the Japanese colonial empire, colonial Korean and Taiwanese immigrants were deprived of their Japanese citizenship in order to enforce their repatriation. The lack of normalization and reconciliation with South Korea and China closed down further immigration possibilities until 1965 and 1972, respectively, unlike in Germany where both the guest worker program and the German consent to the principle of free movement within the EU were important foreign policy measures to regain the trust of other countries. Interest groups were not only fragmented among each other, but also within themselves as in the case of employer organizations, unions and immigrant associations. NGOs have largely operated on a local level without a significant role in national advocacy. Up until the mid-1990s, all parties besides the Japanese Communist Party (JCP) did not formulate a clear position on issues of immigration and integration. The Liberal Democratic Party (LDP) continues to be internally fragmented until today. Similarly, the ministries have strongly competed with each other for proposals of immigration reform while also suffering from internal fragmentation. Although political coalitions have formed on topics of immigration, they have remained loose and fluid. Even though public opinion has not been consistently negative towards immigration, the lack of not only an elite consensus, but a consensus within coalitions and within interest groups themselves has narrowed the possibilities for immigration reform. When reforms took place, they were usually based upon foreign pressure (reform of the trainee and entertainer visa system), the creation of an ad hoc consensus between the Ministry of Justice (MOJ) and the governing LDP (*nikkeijin* visa system) or the strong leadership by the Prime Minister and centralized councils (labor chapter in Free Trade Agreements (FTAs) with labor-exporting countries).

Thus, in the immediate post-war years, historical pressures to reconcile and integrate with neighboring countries and follow the demands of peripheral countries to accept guest workers have clearly worked in favor of creating a different baseline of immigration in Germany compared to Japan where the geographical and historical conditions have not led to the establishment of such a program. The different baseline has been conditional for the later transformation of Germany's political institutions and the significant leap forward in the 2000s while no such urgency existed in Japan. It still seems puzzling though why Germany was not able to reach a more thorough transformation of its institutions and why Japan continued to remain restrictive on both aspects of immigration and immigrant incorporation even though it was faced with labor scarcities and a growing number of illegal and "backdoor" immigrants. This difference can be explained more appropriately by the short-term interactions between political coalitions and institutions that will be analyzed in detail.

A variety of studies of Germany's immigration history and the structure of immigration and integration policies have been written from various academic perspectives (e.g. socio-economic, party politics).⁷ The book from Jan Schneider⁸ analyzing the role of commissions during the most recent immigration reform period was especially helpful in following the political process of policy-making from 1999 to 2004. Various publications that focus on aspects of Japan's immigration and integration regime can be found as well although the emphasis is often put more on historical aspects rather than

⁷ See (selection) Thomas K. Bauer, *Arbeitsmarkteffekte der Migration und Einwanderungspolitik. Eine Analyse für die Bundesrepublik Deutschland*, Wirtschaftswissenschaftliche Beiträge 158 (Berlin/Heidelberg: Springer, 1998). Simon Green, *The politics of exclusion. Institutions and immigration policy in contemporary Germany* (Manchester/New York: Manchester University Press, 2004). Mathias Hell, *Einwanderungsland Deutschland? Die Zuwanderungsdiskussion 1998–2002* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2005). James F. Hollifield, "Immigration Policy in France and Germany: Outputs versus Outcomes," *Annals of the American Academy of Political and Social Science* 485 (1986): 113–128. Douglas B. Klusmeyer and Demetrios P. Papademetriou, *Immigration Policy in the Federal Republic of Germany. Negotiating Membership and Remaking the Nation* (New York: Berghahn, 2009). Christina Catherine Krause, *Neue Zuwanderungspolitik? Entwicklungen in der 14. Legislaturperiode in Deutschland*, Dissertation (University of Kiel, 2004). Holger Kolb, *Einwanderung zwischen wohlverstandener Eigeninteresse und symbolischer Politik. Das Beispiel der deutschen „Green Card“*, Studien zu Migration und Minderheiten 12 (Münster: Lit Verlag, 2004). Dietrich Thränhardt (Ed.), *Einwanderung und Einbürgerung in Deutschland: Jahrbuch Migration* (Münster: Lit Verlag, 1998). Hermann Kurthen, "Germany at the Crossroads: National Identity and the Challenges of Immigration," *International Migration Review* 29, no. 4 (1995), 914–938. Klaudia Tietze, *Einwanderung und die deutschen Parteien: Akzeptanz und Abwehr von Migranten im Widerstreit in der Programmatik von SPD, FDP, den Grünen und CDU/CSU*, Studien zu Migration und Minderheiten 19 (Münster: Lit Verlag, 2008).

⁸ Jan Schneider, *Modernes Regieren und Konsens. Kommissionen und Beratungsregime in der deutschen Migrationspolitik* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2010).

on policy analysis.⁹ David Chiavacci has published a comprehensive book in addition to several articles¹⁰ on the political process of immigration policies in Japan that could be used for this paper. While academic comparisons of immigration policies exist for Japan and Korea¹¹, Germany and the USA¹², Germany and Great Britain¹³, Germany and France¹⁴ or Germany and Canada¹⁵, there has not yet been a comprehensive publication systematically comparing Japan and Germany. Moreover, while the theory of historical institutionalism has selectively been adapted to the field of immigration policies,¹⁶ my approach combines a historical analysis of the very long-term developments of German and Japanese immigration and integration policies with a detailed, short-term view on periods of immigration reform under the perspective of interacting institutions and political coalitions.

⁹ See (selection) 依光正哲「日本の移民政策を考える: 人口減少社会の課題」東京.明石書店, 2008. 井口泰「外国人労働者新時代」東京.筑摩書房, 2001. 移民研究会 (編集)「日本の移民研究: 動向と文献目録」東京.明石書店, 2007. Erin Aeran Chung, *Immigration and Citizenship in Japan* (Cambridge et al.: Cambridge University Press, 2010). David Green and Yoshihiko Kadoya, “English as Gateway? Immigration and Public Opinion in Japan,” *The Institute of Social and Economic Research (Osaka University) Discussion Paper* 883 (2013). Yasushi Iguchi, “What Role Do Low-Skilled Migrants Play in the Japanese Labor Market?” *American Behavioral Scientist* 56, no. 8 (2012): 1029–1057. Hiromi Mori, *Immigration Policy and Foreign Workers in Japan* (Basingstoke: Palgrave Macmillan, 1997). Deborah J. Milly, *New Policies for New Residents. Immigrants, Advocacy, and Governance in Japan and Beyond* (Ithaca: Cornell University Press, 2014). Apichai W. Shipper, *Fighting for Foreigners. Immigration and Its Impact on Japanese Democracy* (Ithaca: Cornell University Press, 2008). Keiko Yamanaka, “New Immigration Policy and Unskilled Foreign Workers in Japan,” *Pacific Affairs* 66, no. 1 (1993): 72–90.

¹⁰ David Chiavacci, *Japans neue Immigrationspolitik. Ostasiatisches Umfeld, ideelle Diversität und institutionelle Fragmentierung* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2011). David Chiavacci, “Immigrations- und Ausländerpolitik: Japan auf dem Weg zu einer aktiven Zuwanderungspolitik?” in *Japan nach Koizumi: Wandel in Politik, Wirtschaft und Gesellschaft*, ed. Michael Behrens and Jochen Legewie (Nomos: Baden-Baden, 2007): 75–86. David Chiavacci, “Japan als starker und schwacher Immigrationsstaat: Die Diskrepanz zwischen Anspruch und Realität der Migrationspolitik,” in *Japan 2004. Politik und Wirtschaft*, ed. Manfred Pohl and Iris Wiczorek (Institut für Asienkunde/Hamburg, 2004): 47–84.

¹¹ Erin Aeran Chung, “Diverging Patterns of Immigrant Incorporation in Korea and Japan,” *Pacific Affairs* 83, no. 4 (2010): 675–696.

¹² Doris Dickel, *Einwanderungs- und Asylpolitik der Vereinigten Staaten von Amerika, Frankreich und der Bundesrepublik Deutschland. Eine vergleichende Studie der 1980er und 1990er Jahre* (Wiesbaden: Springer, 2002).

¹³ Helen Marie Williams, *Examining the Nature of Policy Change: A New Institutional Explanation of Citizenship and Naturalisation Policy in the UK and Germany, 2000–2010*, Dissertation (University of Birmingham, 2011).

¹⁴ Sebastian Kuschel, *Integrationspolitik in Deutschland und Frankreich. Der politische Umgang mit Migranten im Vergleich* (Hamburg: Diplomica, 2012).

¹⁵ Ellen Hofmann, *Contemporary Immigration Policy in Canada and Germany. A Comparison* (Norderstedt: Grin Verlag, 2007).

¹⁶ Daniel J. Tichenor, *Dividing Lines. The Politics of Immigration Control in America* (Princeton: Princeton University Press, 2002). Georg Menz, “Changing Patterns and Parameters in EU Immigration Policy,” Paper presented at EUSA Eight Biennial International Conference, 27th to 29th March 2003, Nashville, Tennessee, USA. André Lecours, “Theorizing Cultural Identities: Historical Institutionalism as a Challenge to the Culturalists,” *Canadian Journal of Political Science* 33, no. 3 (2000): 499–522.

1. Theories of immigration policy-making and the cases of Germany and Japan

1.1 Theoretical and methodological considerations

1.1.1 Three theory streams of immigration and integration policy-making

While economic and historical immigration theories studying the pull- and push-factors of immigration have been well-developed and systematized, the conceptualization of immigration *policies* is a rather recent stream with most studies written in the 1990s and 2000s. In general, the theories can be divided into border control and immigrant integration theories. The former encompasses various analyses of labor migration, refugee policies, national security implications, welfare politics, the economic interests of disaggregated groups, governmental and legislative politics, the role of courts, international relations and other relevant aspects that explain why immigration policies would be either relatively open or restricted. The latter comprises theories related to citizenship and naturalization, the human and civil rights of immigrants in their host country, their integration into the labor market, the education system and other societal structures, their spatial distribution, and other issues that concern the inclusive or exclusive treatment of immigrants in host societies.¹⁷

Within these two different groups, three different methodologies can be distinguished: the first group contains *economic* or *political economic theories*. A number of neo-classical theories are based upon the assumed relationship between the openness of immigration regimes and macroeconomic variables such as the unemployment rate, economic growth or labor demand in different industries. Other theories consider specific economic interests, especially those of low-skilled workers and unions that are concerned about an increase in unemployment and a negative influence on wages, and those of employers that lobby for liberalized immigration policies to match labor scarcities. Freeman argues that employers should be expected to prevail in this conflict due to their higher grade of concentrated interests and political influence.¹⁸

¹⁷ For a more comprehensive literature review, see Eytan Meyers, “Theories of International Immigration Policy – A Comparative Analysis,” *International Migration Review* 34, no. 4 (2000): 1245–1282. Jeannette Money, “Comparative Immigration Politics,” Unpublished paper, http://www.isacomps.com/info/samples/comparativeimmigrationpolicy_sample.pdf. Gary Freeman, “Political Science and Comparative Immigration Politics,” in *International Migration Research: Constructions, Omissions and the Promises of Interdisciplinarity*, ed. Virginie Guiraudon and Christian Joppke (London: Routledge, 2001).

¹⁸ Gary Freeman, “Modes of Immigration Politics in Liberal Democratic States,” *International Migration Review* 29, no. 4 (1995): 881–902.

Marxist theories analyze the political economy of immigration and see migration policies in connection with government-supported capitalism that creates a labor force which is easily exploitable and highly flexible ultimately leading to a dual labor market – one consisting of unionized and protected natives and the other consisting of exploited foreign workers and illegal immigrants. Immigration is depicted as a means to divide the working class and keep wages from rising. Marxism predicts that immigration policies become restrictive in times of recession as a means to prevent overproduction that would lead to the predicted crisis of capitalism.¹⁹

While these effects might be observable indeed, the theories do not explain the endogenous political processes that work in favor of or against changing immigration policies under the influence of interest groups. By excluding governmental and party politics from their analyses, economic or Marxist analyses do not explain *why* exactly the government chooses a specific lobby over others in implementing a specific policy or why it prioritizes, for example, economic growth before protecting the jobs of low-skilled labor. Moreover, the theories suggest that all interest groups are necessarily homogeneous and consistent actors. Neither neo-classical nor Marxist theories can be applied without contradictions to the cases of Germany and Japan. In Germany, the guest worker program that led to a high influx of foreign workers was stopped just when the unemployment rate was at a record low.²⁰ Neither did unions consistently oppose immigration. Instead, they tacitly agreed to the guest worker program in the 1950s and developed a moderate perspective on immigration until the 2000s. The creation of a dual labor market was prevented by proactive government policies under union involvement. In Japan, the contradictions to orthodox economic theory are even clearer: even in times of economic growth and labor scarcities, Tokyo did not reform immigration. A moderate program to admit foreign labor was instead ratified in 1990 when labor demand was not particularly high. Moreover, major interest groups such as employer organizations and unions were split within themselves which complicated their advocacy role. Under both non-Marxist and Marxist theories, we would also generally expect a convergence of immigration policies under similar economic conditions which is

¹⁹ Manuel Castells, “Immigrant Workers and Class Struggles in Advanced Capitalism: The Western European Experience,” *Politics and Society* 5, no. 1 (1975): 33–66. Elizabeth M. Petras, “The Global Labor Market in the Modern World-Economy,” in *Global Trends in Migration*, ed. Mary Kritz, Charles Keely and Silvano Tomasi (New York: The Center for Migration Studies of New York): 44–63. Alejandro Portes, “Modes of Structural Incorporation and Present Theories of Liberal Immigration,” in *Global Trends in Migration*, 279–297. Stephen Castles and Godula Kosack, *Immigrant Workers and Class Structure in Western Europe* (London: Oxford University Press). Michael J. Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (Cambridge: Cambridge University Press, 1979).

²⁰ Trading Economics, “Germany Unemployment Rate 1950–2015,” <http://www.tradingeconomics.com/germany/unemployment-rate>.

highly debatable in Germany and Japan. They also do not offer a suitable explanation for the preference of ethnic Germans and Japanese as immigrants or the evolution of refugee and asylum policies.

A second group of theories could be defined as *historical* or *socio-cultural* theories which often use the assumption that long historical processes and abstract models of citizenship and nationality determine the immigration and integration policies in specific countries. Huntington, for instance, applies his “clash of civilization“ theory to domestic politics in the US stating that the long-term immigration of Latin Americans would eventually lead to conflicts between immigrants and US-American citizens thus triggering more restrictive immigration policies.²¹ Leitner or Meissner similarly stress the importance of national ideologies and concepts of citizenship that determine a state’s immigration policies.²² Germany’s and Japan’s identities as “belated” nations have influenced theories on the relation between national identity and immigration policies that traced these identities back until the very foundations of the nation-states in the 19th century.²³ Both countries share the same characteristics as ethnic states with (ideally) homogeneous societies and *ius sanguinis* citizenship policies. Nativist reactions to immigration in these “ethnic nation-states” are often seen as proof for these theories.²⁴ Japanese scholars especially sometimes reinforce the image of Japan as a culturally homogeneous nation-state by focusing, for instance, on the difficulties of integrating other nationalities into the Japanese culture.²⁵ Contemporary political science theories are especially developed when it comes to the conceptualization of citizenship and “denizenship” regimes as well as immigrant incorporation measures that are deemed to be dependent on the national self-conception to either exclude, assimilate

²¹ Samuel P. Huntington, *Who Are We? The Challenges to America’s National Identity* (New York: Simon & Schuster, 2004).

²² Helga Leitner, “International migration and the politics of admission and exclusion in postwar Europe,” *Political Geography* 14, no. 3 (1995): 259–278. Doris Meissner, “Managing Migrations,” *Foreign Policy* 86 (1992): 66–83.

²³ Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge: Harvard University Press, 1992). James F. Hollifield, “Migration, Trade, and the Nation-State: The Myth of Globalization,” *UCLA Journal of International Law and Foreign Affairs* 3, no. 2 (1998): 595–636. Hermann Kurthen, “Germany at the Crossroads: National Identity and the Challenges of Immigration,” *International Migration Review* 29, no. 4 (1995): 914–938.

²⁴ Meyers, “Theories of International Immigration Policies,” 1523.

²⁵ Takashi Kibe and Dietrich Thränhardt, “Japan: A Non-Immigration Country Discusses Migration,” in *National Paradigms of Migration Research*, ed. Dietrich Thränhardt and Michael Bommers (Göttingen: V&R unipress, 2010): 233–258, 244.

or accept and embrace immigrants.²⁶ Joppke's theory of the process of "de-ethnicization" and "re-ethnicization" in ethnic nation-states is one example for this theory stream.²⁷

While this paper agrees with the basic assumption that Germany and Japan have similar self-conceptions of themselves as "ethnic nation-states", this conception itself does not answer the question why both countries – and especially Germany – have changed their immigration and integration policies over time. According to socio-cultural theories, Germany and Japan should be expected to maintain the same policies or at least revert to restrictive policies again after the influx of immigrants has caused the opposition of nativist elements in society. The theories also have difficulties recognizing that there have always been competing concepts of national identity that differ across parties, groups and individuals. They do not explain very well how an abstract concept of national or cultural identity plays out on the micro-level. Germany's polity has changed from an exclusionary concept of national identity defining immigrants as temporary "guests" to notions of inclusiveness that have been expressed, for instance, with former Federal President Wulff's statement that "Islam is also part of Germany."²⁸ Japan might be a more significant case for the ethno-cultural theories of immigration, but here, too, we have seen an extensive debate on admitting more immigrants and making Japan a more diverse society in the 2000s.

Finally, there are *institutionalist* theories that analyze the influence and role of political or judicial institutions at the supra-national, national, regional or local level on immigration and integration policies. While there is a variety of topics, one important stream concentrates on the relation between international or regional regimes and immigration policies with the European Union (EU) as the most far-reaching example of a union of states that has enabled the free movement of people within its borders.²⁹ Other aspects at the supra-national level include the emergence of global human rights

²⁶ See (selection) Stephen Castles and Mark Miller, *The Age of Migration* (New York: Guilford Press, 2003). Ruud Koopmans et al., *Contested Citizenship: Immigration and Cultural Diversity in Europe* (Minneapolis: University of Minnesota Press, 2005). Tomas Hammer, *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration* (Aldershot: Avebury, 1990). Robert Miles and Dietrich Thränhardt, *Migration and European Integration: The Dynamics of Inclusion and Exclusion* (Madison: Fairleigh Dickinson University Press, 1995).

²⁷ Christian Joppke, "Citizenship between De- and Re-Ethnicization," *European Journal of Sociology* 44, no. 3 (2003): 429–458.

²⁸ Christian Wulff, Excerpts from the speech at the celebrations for the 20th anniversary of German reunification in Bremen, in *Handelsblatt*, 3rd October 2010, <http://www.handelsblatt.com/politik/deutschland/wulff-rede-im-wortlaut-der-islam-gehört-zu-deutschland/3553232.html>.

²⁹ Andrew Geddes, *The Politics of Migration and Immigration in Europe* (New York: SAGE, 2003). Elspeth Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law* (The Hague: Kluwer Law International, 2004). Andrew Convey and Marek Kupiszewski, "Keeping Up with Schengen: Migration and Policy in the European Union," *International Migration Review* 29, no. 4 (1995): 939–963. Rey Koslowski, "EU Migration Regimes: Established and Emergent," in *Challenge to the Nation-State: Immigration in Western Europe and the United States*, ed. Christian Joppke (London: Oxford University Press, 1998).

Ethnic nation-states at the crossroads

regimes³⁰ and the effects of globalization restricting the sovereignty of states to autonomously determine immigration and citizenship policies.³¹ At the state level, Joppke analyzes the role of the constitutional order in liberal democracies and argues that an independent judiciary has a conducive effect on integration since the civic and political rights of immigrants are often recognized by courts.³² Other factors assumed to influence the openness of immigration policies include the autonomy of state institutions,³³ the design of the welfare state,³⁴ the geographic concentration of immigrants,³⁵ the role of the executive³⁶ or considerations of national security.³⁷

A different approach focuses on domestic politics, the party system and interest group dynamics. Rather than an autonomous bureaucracy, the pressure of interest groups determines the policies of the government – sometimes even against the will of the majority. Depending on the structure and relative pressure of lobbies, immigration policies can change over time.³⁸

Finally, there are analyses of the local level of immigration policies, especially with respect to Japan. Amongst other topics, they deal with the integration efforts of local communities and NGOs in improving the circumstances for foreigners with respect to education, political participation and the protection of human rights.³⁹

³⁰ Yasemin N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994).

³¹ Saskia Sassen, “Beyond Sovereignty: Immigration Policy Making Today,” *Social Justice* 23, no. 3 (1996): 9–20. Stephen Castles, “Globalization and Migration: Some Pressing Contradictions,” *International Social Science Journal* 50, no. 2 (1998): 179–186.

³² Joppke, “Citizenship between De- and Re-Ethnicization.”

³³ Douglas S. Massey, “International Migration at the Dawn of the Twenty First Century: The Role of the State,” *Population and Development Review* 25, no. 2: 202–322.

³⁴ Michael Bommes and Andrew Geddes, *Immigration and Welfare: Challenging the Borders of the Welfare State* (Abingdon et al.: Taylor & Francis, 2002).

³⁵ Jeannette Money, “No Vacancy: The Political Geography of Immigration Control in Advanced Industrial Countries,” *International Organization* 51, no. 4 (1997): 685–720. Jeannette Money, *Fences and Neighbors: The Political Geography of Immigration Control* (Ithaca: Cornell University Press, 1999).

³⁶ Marc R. Rosenblum, “The Political Determinants of Migration Control: A Quantitative Analysis,” *Migraciones Internacionales* 2, no. 1: 161–170. Reginald Whitaker, *Double Standard: The Secret History of Canadian Immigration* (Toronto: Lester and Orpen, 1987).

³⁷ Myron Weine (ed.), *International Migration and Security* (Westview: Boulder, 1993).

³⁸ Hartmut Esser and Hermann Korte, “Federal Republic of Germany,” in *European Immigration Policy: A Comparative Study*, ed. Tomas Hammar (Cambridge: Cambridge University Press, 1985): 165–205. Vernon M. Briggs, *Immigration Policy and the American Labor Force* (Baltimore: John Hopkins University Press, 1984). Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy* (Austin/London: University of Texas Press, 1971).

³⁹ Kibe and Thränhardt, “Japan: A Non-Immigration Country Discusses Migration,” 247ff.

Next to these main categories, there are a variety of case studies and inter-disciplinary studies.⁴⁰ In addition, empirical studies and typologies have been created that can be used as a basis for the comparative analysis of immigration and integration policies over a range of countries.⁴¹

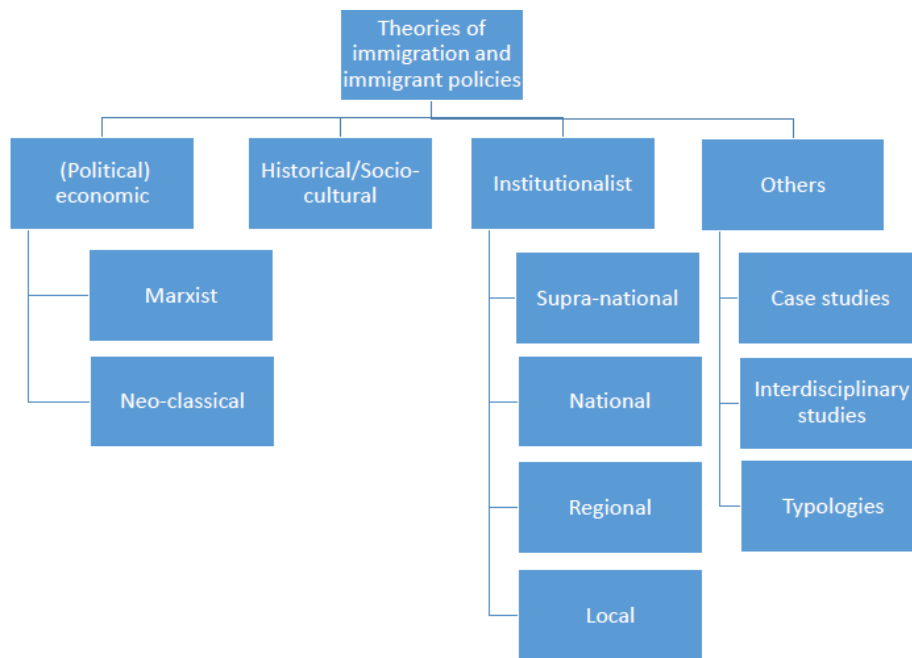


Figure 1. Theories of immigration and integration policies (by author)

1.1.2 Theorizing the interactions between political coalitions and institutions in immigration policy-making

In this analysis, I intend to determine which factors determine change and resistance to change in countries that have been termed “ethnic nation-states” by scholars of the second stream of immigration policy theories. In order to achieve this goal, it will be necessary to synthesize the various findings and theoretical considerations into a more comprehensive theory. This theory at least needs to fulfill the following requirements. *First*, it should be based upon the *political process* of policy-making instead of assuming abstract principles under which policies are designed. Societal and political interests are channelized in institutional processes that need to be analyzed in greater detail. *Second*, it is necessary to bridge the artificial distinction between immigration and integration policies. Both aspects are usually given the same weight in actual political debates while integration measures are

⁴⁰ See Meyers, “Theories of International Immigration Policy.” Money, “Comparative Immigration Politics.”

⁴¹ Han Entzinger, “The dynamics of Integration Policies: A Multidimensional Model,” in *Challenging Immigration and Ethnic Relations Politics*, ed. Ruud Koopmans and Paul Statham (Oxford: Oxford University Press, 2000). Marc M. Howard, *The Politics of Citizenship in Europe* (Cambridge et al.: Cambridge University Press, 2009), Andrew Geddes et al., *European Civic Citizenship and Inclusion Index* (Brussels: British Council Brussels, 2005). Migrant Integration Policy Index (MIPEX), <http://www.mipex.eu>.

often directly included into immigration laws as it was the case in Germany. *Third*, the theory should recognize long-term historical processes and external conditions, but not take an overly deterministic perspective. Similar to domestic interests, both factors, too, are processed through domestic institutions.

This paper will try to bridge some of the theoretical differences between all three approaches by considering both long-term historical and short-term economic and political factors. The historical constraints in Germany and Japan after WWII and the incidental evolution of institutions and interest groups are key components in understanding the trajectories of immigration and integration regimes. Interest groups and institutions did not always have the same positions, but often shifted and adapted over time. For instance, there was no involvement of parties and only limited debate between interest groups when the German government adopted the guest worker program in the 1950s. It took more than 20 years until first concepts of integration arose and another 25 years until all parties developed a comprehensive position on immigration. Even though classical Marxism is right in claiming that there are fundamentally different interests between unions and employers when it comes to immigration, this neither means that the means to realize these interests are always the same nor does it mean that there is no possibility of a political compromise.

The paper will thus focus on the interactions between political institutions (ministries, parliament, courts, commissions, etc.) and political coalitions in both Germany and Japan in order to explain phases of convergence and divergence in immigration policies and study the constraints that limit “ethnic nation-states” from achieving a paradigm change. “Political coalitions” can be defined as loose or tight alliances of interest groups, social movements, individual politicians, political parties and/or ministries that form in order to advocate for political change in correspondence with their respective political interests. Depending on the openness of institutional structures within a specific political system, interest groups can be either more or less successful in pressing for their objectives.⁴² Such institutional integration can be present in corporatist institutions, advisory and policy commissions or (in-)formal connections between parties, individual politicians, ministries and/or interest groups. Political coalitions might shift or form newly due to specific institutional decisions that were made. Immigration dynamics, for instance, can lead to the establishment of immigrant associations and NGOs that potentially have influence at the level of political decision-making. We can assume in general that strong political coalitions are at least dependent on the size of the coalition, the support

⁴² David S. Meyer and Douglas R. Imig, “Political Opportunity and the Rise and Decline of Interest Group Sectors,” *The Social Science Journal* 30, no. 3 (1993): 253–170, 256.

of public opinion, the internal cohesion both within and between each coalition group, the level of their institutional embedment and the autonomy of state institutions. The study of immigration policies offers an interesting case that follows their strategic interactions under different political, historical and institutional conditions.

My approach is also close to the theory of *historical institutionalism* due to its comparative focus on the political processes of immigration policy-making and a methodology that aspires “to sort out the causal mechanisms behind observed empirical patterns”⁴³ as Thelen stated. I will mainly study the legislative frameworks, policy processes and policy documents of interest groups and parties in order to give a detailed picture of policy positions among political coalitions. Unlike rational choice theory claims, I will assume that interests are not exogenously given, but rather created and modified within a specific historical and institutional context. Neither Germany’s nor Japan’s immigration-related institutions have unambiguously corresponded to the assumption that institutions follow a logic of rational choice. Up until the late 1980s, Germany’s immigration and integration policies were designed under the assumption that the recruited foreign workers would eventually return to their home country even though the trend of family reunification in Germany was already clearly noticeable. The ratification of a comprehensive immigration law has taken five years and was still beyond expectations. In Japan, institutional deficiencies were even more pronounced: instead of legally regulating low-skilled labor immigration, many immigrants could only work in Japan by exploiting several legal loopholes that remained largely unchanged until foreign (and limited domestic) pressure advocated for change in accordance with the related issues of human trafficking and illegal immigration. The admission of ethnic Japanese from Latin America then led to the immigration of several hundred thousand immigrants without any national plan for integration in place. While these institutions might follow a particular logic, it is difficult to argue that they would be “rational”. Instead, they might reflect the power distribution between political coalitions that becomes the basis for a structure to which parties and interest groups align themselves to.⁴⁴ Hence, rather than assuming the rationality of the immigration system in Germany and Japan, I will also consider the contingencies and unintended consequences of policies that were often designed ad hoc under the conditions of fragmented institutions and/or political coalitions.

Moreover, Slater and Simmons argued that analyzing the causalities long before a “critical juncture” took place – the “critical antecedents” – are at least as important as scrutinizing the period of the

⁴³ Thelen, “Historical Institutionalism in Comparative Politics,” 372.

⁴⁴ Ibid., 392ff.

junction itself in order to explain a long-term divergence between two countries.⁴⁵ Convergence and divergence in immigration policies has first been studied by Cornelius and Tsuda who hypothesized that immigration policies are converging for countries with a similar history and/or close geographical proximity while they are diverging due to contradictory state policies that attempt to solve labor scarcities while simultaneously trying to maintain social homogeneity.⁴⁶ The case of immigration policies in Germany and Japan seems more complex since we have to differentiate between various areas of convergence and divergence and it has yet to be seen if the divergence in legislative outcomes will necessarily lead to different long-term trajectories. In this paper I will analyze both the *sequence* of historical events and political processes⁴⁷ and the *structure* of political coalitions and institutions in the periods before notable changes took place in both countries (1999–2004 in Germany and 1990 in Japan). By analyzing both aspects, I hope to find the institutional and political causalities that either conserve a specific set of institutions or lead to its revision in the areas of immigration and immigrant policies. For that purpose, both the long-term trajectories (“critical antecedents”) and the short-term, oftentimes ad hoc formation of political coalitions before a significant juncture have to be investigated.

After outlining the phases of convergence and divergence between Germany and Japan, I will first analyze the history of immigration policies in Germany up until the late 1990s in order to sketch the development and continuity of policies until the ratification of the new immigration law. I will particularly focus on the genesis of immigration policies after the founding of the German nation-state in 1871, the introduction of the guest worker program and the ensuing unintended effects of this program on the political landscape (parties, interest groups and institutions). How did parties and interest groups adapt to the permanent settlement of immigrants? And how did this development influence the new understanding of Germany as a country of immigration and the ratification of a new Immigration Act? I will then sketch the development of policies in all parties and relevant interest groups (immigrant associations, employer organizations, unions, churches, public welfare organizations, NGOs) in order to analyze which political coalitions were formed in preparation for the ratification of the 2004 Immigration Act and how these interests were processed or ignored in legislative and executive institutions. By conducting a detailed qualitative analysis, I will attempt to explain both

⁴⁵ Slater and Simmons, “Informative Regress,” 889.

⁴⁶ Wayne Cornelius and Takeyuki Tsuda, “Controlling Immigration: The Limits of Government Intervention,” in *Controlling Immigration: A Global Perspective*, ed. Wayne A. Cornelius, Philip L. Martin and James F. Hollifield (Stanford: Stanford University Press, 2004): 3–50. Keiko Yamanaka, “Civil Society and Social Movements for Immigrant Rights in Japan and South Korea: Convergence and Divergence in Unskilled Immigration Policy,” *Korea Observer* 41, no. 4 (2010): 615–647.

⁴⁷ See Thelen, “Historical Institutionalism in Comparative Politics,” 390.

why a significant change happened and why this change cannot be considered a “paradigm change.” Using the same approach, I will then analyze Japan’s immigration and integration policies from a comparative perspective in order to receive an additional illuminating perspective on how immigration-averse countries react to immigration pressures and which societal and political factors contribute to or limit change.

1.2 Convergence and divergence in Germany and Japan’s immigration and integration policies

The classification of convergence and divergence in immigration policies depends on the specific aspect that we focus on. In general, Germany and Japan have seen a similar historical development of the nation-states and were faced with similar critical junctures. Due to their particular late nation-formation, both countries have also relied on strong ethnic notions of political culture and citizenship laws defined by blood right. Moreover, they have routinely rejected the assumption that they are “countries of immigration” even when faced with actual immigration and permanent settlement tendencies. While there is no linear trend of convergence or divergence, a more complex pattern can be observed indeed.

1.2.1 Late policy divergence

1.2.1.1 Citizenship laws

Germany’s and Japan’s citizenship and nationality laws were based upon a patrilinear, *ius sanguinis* blood right tradition. Japan’s Nationality Act in 1899 has been drafted on the basis of studying Germany’s Citizenship Act (StAG). However, Germany’s citizenship law has diverged with the ratification of a new law in 1999 that granted *ius soli* rights for children of foreigners under specific circumstances and introduced the possibility to opt for the respective citizenship when the child reaches the age of 23. No such reform has taken place in Japan where only children of bi-national marriages received the opportunity to opt for citizenship at the same age. However, a reform of the patrilinear system of citizenship acquisition has taken place in Japan in accordance with international pressure.

1.2.1.2 Immigrant incorporation

The introduction of legislation targeting the integration of immigrants into society strongly depended on the national government’s perspective on immigration as either temporary or permanent. In case of Germany, the former view was shared by the government until the early 1980s when a debate around the need to secure the legal status of immigrants and incorporate them into the German

society was triggered. But the introduction of concrete measures was slow and only the new Immigration Act in 2004 defined a new, comprehensive concept of integration that introduced mandatory integration classes as well as measures to facilitate naturalization and the integration of the second immigrant integration in addition to various institutional changes. In Japan, the policies taken towards first generation Korean and Taiwanese residents after the end of WWII were directed solely at their repatriation, similar to Germany's initial policy design incentivizing foreign workers to return to their home country. But while these efforts proved illusionary in both countries, Japan continued to be passive in integration policies even after the normalization of relations with South Korea. Until today, only local governments reacted proactively to the exclusion of immigrants from various areas of the Japanese society supported by localized NGOs and immigrant associations. The only significant measure that was taken by the national government – the abolishment of fingerprinting requirements for foreign residents – merely removed a restriction instead of improving the living circumstances of foreigners who continue to face discrimination in the labor market, housing market and education system. Instead, their grievances are heard by courts rather than politics. Policies are still created under the assumption that immigrants only stay temporarily in Japan even though the experience with first generation immigrants from the colonial era has already proven the Japanese government wrong.

1.2.1.3 Asylum policies

Both Japan and Germany were reluctant to take refugees and asylum-seekers and have adapted their policies in accordance with the pressure from refugees and the international community. In Germany where the number of asylum-seekers was constantly higher than in Japan, the number of asylum-seekers peaked in 1992 before it again declined after a political solution to the asylum issue was found and the war in Yugoslavia ended. From 1990 to 2010, roughly 2.36 million people have sought political asylum in Germany, a majority of them fleeing from European and later from Middle Eastern and Central Asian countries.⁴⁸ Immigration policies have restricted the immigration possibilities of asylum-seekers from the 1980s to the 2000s and the rate of admission ranged from 4 to 9 percent in the 1990s declining to a low point of 0.8 percent in 2006.⁴⁹ The number has climbed up again to 202,834 asylum-seekers in 2014.⁵⁰

⁴⁸ BPB, "Zahlen und Fakten: Die soziale Situation in Deutschland – Asyl," 28th November 2012, <http://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/61634/asyl>.

⁴⁹ Bundesamt für Migration und Flüchtlinge, *Migrationsbericht 2013*, 108.

⁵⁰ Bundesamt für Migration und Flüchtlinge, *Schlüsselzahlen Asyl 2014*, <http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Flyer/flyer-schluesselzahlen-asyl-jahr-2014.pdf?blob=publicationFile>.

The new Immigration Act of 2004 has increased the possibilities for refugees and asylum-seekers to immigrate to Germany and their joint admission rate has accordingly grown from 5.1 percent in 2005 to 25.9 percent in 2014, without considering cases of temporary and “tolerated” refugees.⁵¹ Japan’s asylum and refugee policies have been restrictive from the beginning of their strikingly late formulation in 1982. The status quo remains unchanged until today. Although the number of asylum-seekers is strikingly lower than in Germany (3,300 new applications in 2013 compared to more than 100,000 in Germany), the approval rate remains minuscule with 0.1 percent in 2013 and even follows a decreasing trend. The refugee population currently living in Japan stands at 2,584 persons compared to 187,567 in Germany.⁵² While these policies follow the pattern of immigration policies in East Asia (with the exception of Australia), they are not in line with the policies of other developed countries that have the capacity to accept refugees. Japan continues to have the lowest recognition rate among all developed countries.⁵³

1.2.2 Early policy divergence and late convergence: Labor immigration policies

Germany and Japan were initially countries of *emigration* rather than of immigration. This is the reason why they have a diaspora in other countries and later implemented immigration policies with preferential treatment for emigrants. However, the timing of major emigration periods differed significantly. Japan remained a country of emigration for the most part of its pre-war and post-war history while Germany’s main emigration movements happened much earlier, starting from the middle-ages until the foundation of the German nation-state in 1871. After that, a significant number of labor immigrants came from neighboring countries and especially from Poland due to the porosity of German borders to the East matching the labor demand in agriculture and the industries even though the German state did not have an official immigration policy yet. Immigration policies developed as a *reaction* to these movements and were initially based upon a centralized, highly restrictive and discriminatory recruitment regime that mostly excluded the possibility of permanent settlement, in particular for Polish immigrants. The Japanese government of the Meiji era faced exactly the opposite problem of having to protect its emigrants from discrimination in other countries. Today, it cannot look back on an institutional history of immigration unlike Germany whose post-war guest worker

⁵¹ Ibid.

⁵² The World Bank, Refugee population by country or territory of asylum, <http://data.worldbank.org/indicator/-SM.POP.REFG>.

⁵³ Gabriel Dominguez, “No country for Refugees? Japan and South Korea’s tough asylum policies,” *Deutsche Welle*, 4th November 2014, <http://www.dw.de/no-country-for-refugees-japan-and-south-koreas-tough-asylum-policies/a-18037765>.

program later mirrored the recruitment system of the pre-war era. However, Germany did not recognize itself as a “country of immigration” in the 19th century, but quite the contrary saw immigration as a threat to the development of its national identity and to public security. In times of war, evidently, both countries engaged in the recruitment of forced labor, but especially Germany was later overburdened with processing the millions of displaced persons and refugees in the immediate aftermath of WWII. Thus, even though both states had a similar concept of ethnic identity, a comparable political history and a generally negative outlook on immigration, Germany reluctantly took up a higher number of immigrants assuming that they would only stay for a limited time.

After the war, the divergence continued as Germany enacted a guest worker program in order to import low-skilled labor while Japan admitted mainly different categories of skilled and high-skilled immigrants. Unlike in Germany, however, the settlement of foreign workers was strictly ruled out. Despite the official rejection of low-skilled immigrants, unqualified labor immigrants could enter Japan as trainees, entertainers or students. Moreover, a substantial number of colonial *zainichi* Koreans and Taiwanese had already settled in Japan even though their Japanese citizenship was revoked after WWII. The most significant change in Japan’s immigration policies happened in 1990 with the reform of the Immigration Control Order that led to the immigration of Latin American *nikkeijin*. Its outcomes were structurally similar to those of the guest worker program as the labor demand for low-skilled workers could be matched and an unexpected number of immigrants decided to stay permanently in Japan. By giving immigrants with Japanese ethnicity priority, Japan has also repeated the scheme for German repatriates, although for different reasons and at a much later point in time. Moreover, Japan enacted a small-scale guest worker program for skilled labor within bilateral agreements with labor-exporting countries that is structurally similar to Germany’s current selective immigration policies. Thus, similar to Germany, Japan has legislated policies that question its status as a “country of no immigration” and almost inevitably lead to an increasing gap between the de facto settlement of immigrant communities and a polity that regards immigrants only as temporary guests. Japan tried to counter this development by instituting exactly the same monetary incentives to incentivize the repatriation of *nikkeijin* in 2009 after the economic crisis⁵⁴ that Germany used in the 1980s in order to decrease the population of guest workers. Germany, however, has recognized itself as a country of immigration in the last reform period even though the actual change on the policy level was somewhat limited. Due to the free movement of people within the EU, the extensive legal possibilities of family

⁵⁴ Jeff Kingston, *Contemporary Japan. History, Politics, and Social Change since the 1980s*, 2nd edition (John Wiley & Sons, Chichester, 2011), 170.

reunification and the preferential treatment of high-skilled migrants, it seems that the German government was pushed to prioritize the integration of foreigners into the German society rather than further expanding immigration possibilities. While immigration policies have been diverging for a long time, Japan could currently be seen on a path of convergence with Germany due to its similar implementation of “selective immigration policies.”⁵⁵

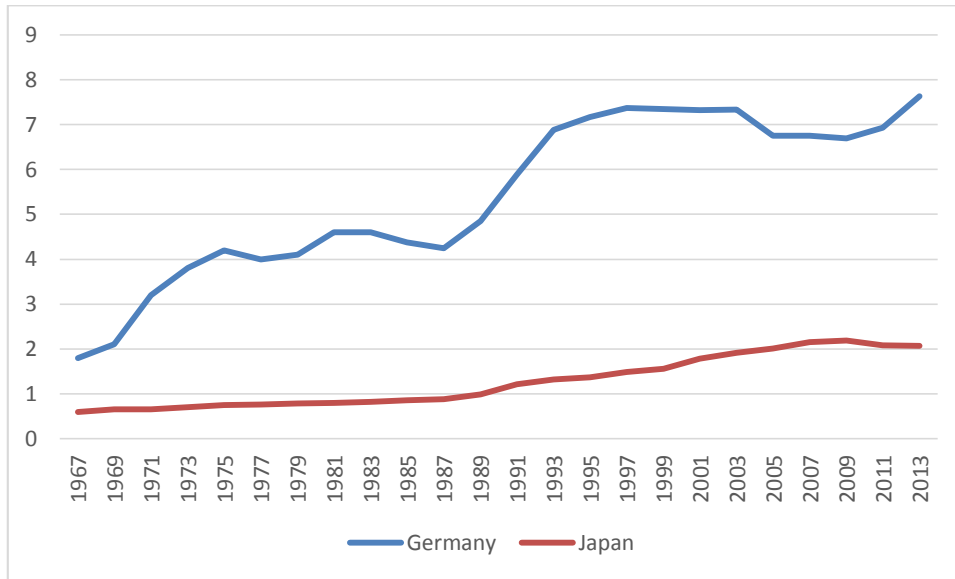


Figure 2. Number of foreigners in Germany and Japan. Both countries have historically followed an increasing trend, but Germany’s stock of immigrants is significantly higher (by author)⁵⁶

⁵⁵ Ryo Kuboyama, “The Transformation from Restrictive to Selective Immigration Policy in Emerging National Competition State: Case of Japan in Asia-Pacific Region,” *Center on Migration, Citizenship and Development Working Papers* 61 (2008), 4.

⁵⁶ Data compiled from Veysel Özcan, “Deutschland. Entwicklung seit dem Zweiten Weltkrieg,” in *Länderprofile Migration: Daten – Geschichte – Politik* (Bundeszentrale für politische Bildung), 1st May 2007, <http://www.bpb.-de/gesellschaft/migration/laenderprofile/57543/entwicklung>. 社会実情データ図録 「在留外国人(登録外国人)数の推移(毎年未現在)」 <http://www2.ttcn.ne.jp/honkawa/1180.html>. Organisation for Economic Co-Operation and Development (OECD), “International Migration Database,” in *OECD.StatExtracts*, <https://stats.oecd.org/Index.-aspx?DataSetCode=MIG#>.

2. Germany at the cross-roads: Institutional transformation and inertia of a reluctant country of immigration

2.1 Institutional and political antecedents in Germany's contemporary immigration and integration policies

2.1.1 Nation-building and pre-war immigration policies

2.1.1.1 Immigration policies between agrarian interests and nationalism: The institutionalization of the first national recruitment system

"[T]his lack of unity across time, in space, and in the mind is in fact the central problem – or if one wishes, the central secret – of German history."⁵⁷

"We could not concede that the need for manpower in the border regions was of greater importance than the political dangers and threat to the state posed by a Polonization of a large segment of the Prussian population. Though recognizing agriculture as the most important of all trades, we deem it as a lesser evil for the individual regions to suffer from a shortage of manpower than for the state ... to suffer any impairment." (Otto von Bismarck)⁵⁸

The process of nation-building in Germany happened particularly late in history compared to other countries in Western Europe although the abstraction of a pre-political, cultural concept of a German nation can be traced back as far as to the medieval *Holy Roman Empire of the German Nation*.⁵⁹ The notion of the *nation-state* was born among different factions of bourgeois liberals and democrats who rejected the monarchical order and the fragmented confederation of Prussia, Austria and smaller kingdoms, principalities and cities during the *Vormärz* era when revolutionary movements in other Western European countries were proliferating. *Deutschtum* ("Germanness") and the concept of a *Volks-gemeinschaft* ("people's community") emerged and defined an imagined cultural community whose existence did not correspond to the diffuse political realities.⁶⁰ The actual *political* construction of the German Empire as a nation-state was the outcome of Bismarck's authoritarian and hierarchical "blood and iron" politics after the failure of the German Confederation and the defeat of the French army in the Franco-Prussian War of 1871. Southern German states allied with Prussia against France and thus

⁵⁷ Robert Löwenthal, cited in: Dirk Verheyen, *The German Question: A Cultural, Historical, and Geopolitical Exploration*, 2nd edition (Boulder: Westview Press, 1999), 14.

⁵⁸ Cited in: Triadafilos Triadafilopoulos, *Becoming Multicultural: Immigration and the Politics of Membership in Canada and Germany* (Vancouver: The University of British Columbia Press, 2012), 38.

⁵⁹ Ute Planert, "Nation und Nationalismus in der deutschen Geschichte," *Aus Politik und Zeitgeschichte* 39 (2004), 11–18, 12. Brubaker, *Citizenship and Nationhood in France and Germany*, 45.

⁶⁰ Verheyen, *The German Question*, 17.

prepared the political preconditions for unification. As Emperor Wilhelm's proclamation of the German Empire in Versailles demonstrated, the nation-state was first and foremost born out of a favorable military position and the necessity to "defend against renewed attacks of France."⁶¹ But the idea of nationhood still remained apolitical and continued to stay disengaged from Germany's national territory.⁶² Bismarck concentrated on the task to establish internal stability in the newly created German nation-state that incorporated a variety of ethnic divisions (e.g. in Elsaß-Lothringen, Schleswig-Holstein and East Prussia) and the religious fault line between Catholics and Protestants.⁶³ Accordingly, the *Kulturkampf* of the 1870s entailed the broad repression of Catholics, Social-democrats and non-German minorities as "enemies of the Empire" to protect Germany's internal stability.⁶⁴

In effect, a highly politicized amalgamation of a pre-political, ethno-cultural *Volksgemeinschaft*, an authoritarian political culture and an incomplete national unification have shaped the polity of Germany and were ultimately reflected in immigration policies as well.⁶⁵ Germany was often seen as one of the prime examples of an "ethno-national community" with a pre-political formation of a cultural identity that is distinguished from "immigration countries" such as Canada or the US.⁶⁶ Even though Prussia and Austria were in fact multi-ethnic states, the emergence of the German nation-state added a new unifying dimension to this complex reality.

After the establishment of the German Empire, pre-war German immigration were characterized by high levels of *de facto in-migration* and *de jure immigration-averse policies*. While the period before 1871 was still characterized by net emigration and high labor surpluses, the number of foreigners grew from 206,775 (0.5 percent of the population) in 1871 to roughly 1.259 million in 1910 (1.9 percent). The most important pull factor in the industrializing and urbanizing Germany of the late 19th century was an acute labor shortage in mining, heavy industry and agriculture. A majority of foreign workers worked in industrial occupations (60 percent) while the remaining 40 percent worked in agriculture.⁶⁷

⁶¹ Translated by author. Source: Kaiserproklamation, 1871, in *Deutschland im 19. Jahrhundert: Entwicklungslinien*, ed. Manfred Görtemaker (Leverkusen: Leske & Budrich, 1989), 253.

⁶² Brubaker, *Citizenship and Nationhood*, 46f.

⁶³ Klusmeyer and Papademetriou, *Immigration Policy in the Federal Republic of Germany*, 40.

⁶⁴ *Ibid.*, 41.

⁶⁵ Verheyen, *The German Question*, 24f.

⁶⁶ Klusmeyer and Papademetriou, *Immigration Policy in the Federal Republic of Germany*, 32f.

⁶⁷ Jochen Oltmer, *Migration im 19. und 20. Jahrhundert*, *Enzyklopädie deutscher Geschichte* 86 (Munich: Oldenbourg Wissenschaftsverlag, 2013), 32.

Ethnic nation-states at the crossroads

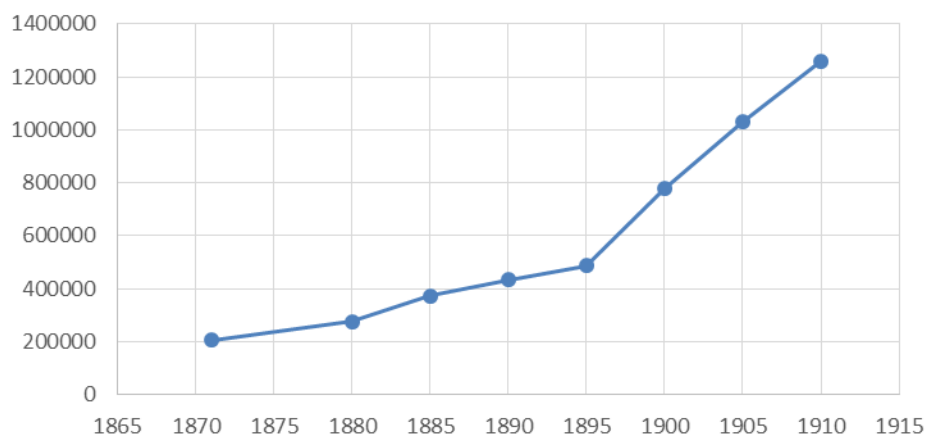


Figure 3. Number of foreigners in Germany 1871–1910 (by author)⁶⁸

Immigration was the result of *seasonal* business hiring activities that were initially not accompanied by proactive immigration policies. Quite the contrary, immigration was linked to *ethnic* notions of a threatening “polonization (*Polanisierung*) of the East”⁶⁹ that is indicative of the sense of vulnerability of Germany’s early national identity and the lingering territorial fears of a newly forming Polish nation-state after its quasi-integration into Russia during the Congress of Vienna.⁷⁰ Polish labor migration dominated the rural Eastern Prussian provinces such as Posen and was the consequence of the internal migration of German natives from the East to industrial centers in the West. It was restricted both spatially to Eastern Prussia and seasonally with a legal employment period that excluded the winter months in which workers were forced to leave the country.⁷¹ Migrants from other countries, however, were often tolerated and used as cheap labor. In essence, the Prussian government tried to balance the economic interests of politically powerful agrarian interests with national security concerns and the ethno-cultural endeavor to prevent the concentration of a minority within its borders. The regulations were aimed at circumventing the permanent settlement of those foreigners that were perceived as the most threatening for the national unity of the newly founded nation-state. Anti-foreigner rhetoric within the German civil society thus often had expressly nationalistic and racist undercurrents.⁷²

⁶⁸ Data: Ulrich Herbert, *Geschichte der Ausländerpolitik in Deutschland. Saisonarbeiter, Zwangsarbeiter, Gastarbeiter, Flüchtlinge* (Munich: C.H. Beck, 2001), 23.

⁶⁹ *Ibid.*, 16.

⁷⁰ *Ibid.*

⁷¹ Jochen Oltmer, “Ausländerbeschäftigung und restriktive Integrationspolitik. Spätes 19. Jahrhundert bis Ende des Ersten Weltkrieges,” in *Grundlagendossier Migration* (Bundeszentrale für politische Bildung), 15th March 2005, <http://www.bpb.de/gesellschaft/migration/dossier-migration/56356/1871-1918>.

⁷² Herbert, *Geschichte der Ausländerpolitik in Deutschland*, 30.

The national “shock” of an early influx of foreigners just after the establishment of the nation-state resulted in the first formalization and institutionalization of immigration policies. Powerful landowners were confronted with a mass of labor immigrants who were surprisingly adept in changing their workplace when they were not satisfied with the working conditions. Therefore, in 1907 a *state monopoly of recruitment* and a system of “compulsory domestic legitimization” were established with the creation of the Prussian Farm Workers Agency⁷³ which was renamed the German Workers Agency (DAZ) in 1911. From then on, foreign workers had to register directly with the DAZ who was in charge of mediating between migrant workers and *one* specific legal place of occupation. These measures aligned the interests of the Ministry of the Interior and the Ministry of Agriculture to control and monopolize the recruitment of foreigners with the interests of the agrarian lobby to reduce the labor power of foreign workers. The DAZ cooperated with local police authorities in order to enforce discipline. Social democrats and unions strongly rejected this structure and objected against it in the parliament, but did not have the political power to enforce changes.⁷⁴

The system was based upon a selective regime discriminating among foreigners according to both their *nationality/ethnicity* and their *social status*. For example, an Italian immigrant who worked in a white-collar job in Germany did not have to go through any of these procedures that Polish migrant workers from Russia and Austria-Hungary had to endure.⁷⁵ In effect, a dual labor market emerged not only between ethnic Germans and foreigners, but also amongst foreigners themselves, in particular between Polish agricultural workers and other foreigners who benefited from relatively higher wages in the industry.⁷⁶

2.1.1.2 The assertion of conservative interests during the reform of the Nationality Act

In 1913, a new nationality law replaced the former act of 1870 (“Gesetz über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit”) with the “Reichs- und Staatsangehörigkeitsgesetz” (RuStAG) which remained largely unchanged until 1999/2000. German nationality was mainly defined by *patrimonial* lineage for children of married couples and *matrimonial* lineage for children of unmarried couples as the rather exceptional case (art. 4). Naturalization was made legally possible for wives of German nationals (art. 6) and foreigners that had accommodation and full-time occupation in Germany (art. 8) under the premise that federal, state and municipal representatives agree (art.

⁷³ Ibid, 35.

⁷⁴ Ibid, 37.

⁷⁵ Ibid.

⁷⁶ Oltmer, *Migration im 19. und 20. Jahrhundert*, 38.

8–9). The wife and children of the naturalized person were automatically naturalized as well after the husband was granted this legal status.⁷⁷

The RuStAG was initiated by a group of parliamentarians of the National-Liberal Party, the governing party and the Conservative Party and supported by nationalistic interest groups, most importantly the Pan-German League.⁷⁸ One of the initiators, Ernst Hasse, reasoned that there is a necessity to defend the homogeneity of the German people against the mixing with other nationalities (especially from Eastern Europe).⁷⁹ The state secretary of the Ministry of the Interior Delbrück also stated the purpose of the law in ensuring “[...] that we do not lose our qualities as Germans that were given to us by birth, no matter where we were born.”⁸⁰ The law was aimed at privileging ethnically Germans in foreign countries, thereby increasing the administrative control of the German state over its citizens on a global scale while limiting the settlement of non-ethnic Germans. It made it more difficult for Germans to lose their citizenship when living abroad – which was the case after a residence period abroad of ten years – and facilitated their re-naturalization.⁸¹ Social-democrats and left-liberals opposed most patriarchal, ethnic and racial undertones of the law supporting instead a “right of naturalization” for foreign nationals after a residence period of two years.⁸² Regional interests also diverged strongly from each other, with the Elsaß-Lothringen region speaking out in favor of *ius soli* nationality rules in order to increase the number of ethnically French conscripts in the army and Eastern Prussian provinces claiming adverse effects due to the presence of allegedly disloyal Polish (and Jewish) immigrants.⁸³

2.1.1.3 Immigration policies during the World Wars: Continuity and rupture

During the First World War, the DAZ was elevated to a public agency and assisted in the recruitment of forced labor among prisoners of war and laborers in occupied countries which raised the total

⁷⁷ Das Reichs- und Staatsangehörigkeitsgesetz für das Deutsche Reich vom 22. Juli 1913, <http://justitia-deutschland.org/R/RuStAG-1913.htm>.

⁷⁸ Dieter Gosewinkel, *Einbürgern und Ausschließen. Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik* (Göttingen: Vandenhoeck & Ruprecht, 2001), 278.

⁷⁹ *Ibid.*, 280.

⁸⁰ Georg Hansen, *Die Deutschmachung. Ethnizität und Ethnisierung im Prozess von Ein- und Ausgrenzung*, *Lernen für Europa* 7 (Münster et al.: Waxmann, 2001), 97f.

⁸¹ Gosewinkel, *Einbürgern und Ausschließen*. 281. Karl Thedieck, *Deutsche Staatsangehörigkeit im Bund und in den Ländern. Genese und Grundlagen der Staatsangehörigkeit in deutschlandrechtlicher Perspektive* (Berlin: Duncker & Humblot, 1989), 23, 43.

⁸² Ingo von Münch, *Die deutsche Staatsangehörigkeit: Vergangenheit – Gegenwart – Zukunft* (Hamburg: De Gruyter: Hamburg, 2007), 29f.

⁸³ Gosewinkel, *Einbürgern und Ausschließen*. 289ff.

number of foreign workers to roughly 2.5 million people by 1918.⁸⁴ The trend of relatively high immigration reversed after the war with the number of employed foreigners shrinking to roughly 300,000 in the 1920s and further down to 100,000 during the world economic crisis in the 1930s after a ban on immigration was enforced in 1932. Less favorable economic times and the growing political voice of the German labor movement during the Weimar Republic gave rise to more protectionist labor policies in which jobs were allocated to German nationals before foreigners could be considered.⁸⁵ This development happened in conjunction with the evolution of the welfare state in Germany. The labor movement also contributed to the dismantlement of the dual labor market by lobbying for the harmonization of wages between nationals and foreigners, even against the interests of the strong agricultural lobby.⁸⁶ The recruitment system was reformed and further centralized in the 1920s dividing the labor between the DAZ and the Federal Agency for Employment Services (RFA) that had regional branches authorized to distribute work permits.⁸⁷ Immigrants with German ethnicity received special treatment: they were exempt from quota allocations and were accommodated in a more cooperative way by the RFA.⁸⁸

Migration during the period of the Third Reich was mainly characterized by the large-scale emigration of Jews and other persecuted strata of society, in addition to migration movements of war refugees, forced labor and displaced persons.⁸⁹ Immigration policies were discretely remodeled in order to fulfill Adolf Hitler's plans of an Eastern Expansion of the German territory and almost exclusively aimed towards the establishment of an unprecedented system of forced labor, especially in agriculture and mining in which the share of foreign labor reached shares of 46 and 34 percent, respectively, in 1944. As a radicalization of the ethnic model of the German nation-state, the Nazi state encouraged or forced the displacement of German nationals into newly conquered territories of the Reich.⁹⁰

The *Reichsbürgergesetz* of 1935 granted only those Germans who were ethnically and "racially" German full citizenship rights, discriminating between ordinary state residents (*Staatsbürger*) and

⁸⁴ Ulrich Herbert, "Zwangsarbeit als Lernprozess. Zur Beschäftigung ausländischer Arbeiter in der westdeutschen Industrie im ersten Weltkrieg," *Archiv für Sozialgeschichte* 24 (1984): 286–304, 288ff.

⁸⁵ Jochen Oltmer, "Flucht- und Zwangswanderungen in der Zwischenkriegszeit," *Grundlegendossier Migration* (Bundeszentrale für politische Bildung), 15th March 2005, <http://www.bpb.de/gesellschaft/migration/dossier-migration/56357/zwischenkriegszeit?p=all>.

⁸⁶ Jochen Oltmer, *Migration und Politik in der Weimarer Republik* (Göttingen: Vandenhoeck & Ruprecht, 2005), 86.

⁸⁷ *Ibid.*, 345ff., 360.

⁸⁸ *Ibid.*, 386.

⁸⁹ Jochen Oltmer, "Migration und Zwangsbewegungen im Nationalsozialismus," *Grundlegendossier Migration* (Bundeszentrale für politische Bildung), 15th March 2005, <http://www.bpb.de/gesellschaft/migration/dossier-migration/56358/nationalsozialismus>.

⁹⁰ *Ibid.*

Reich citizens (*Reichsbürger*) with “German or racially related blood.”⁹¹ The law formalized a system of racial segregation and persecution in which citizenship could be granted and deprived arbitrarily.⁹² In the twelfth revision of 1943, citizenship was fragmented into four categories including “state residents until revoked” and “state residents under protection”, but neither Jewish nor Sinti people were included into any of these categories.⁹³ Furthermore, the Foreigner Policy Regulation (APVO) of 1938 gave the bureaucracy the right to judge on the admission of immigrants according to the immigrants’ “personality and purpose of their stay” (art. 1).⁹⁴

While the emergence of the Third Reich was indeed a historical rupture of the democratic practices of the Weimar Republic and the constitutional monarchy under Emperor Wilhelm I, the transformation of Germany’s immigration policy can also be interpreted as an adaption of the previous institutional environment and migration experiences to the new demands of a war economy and a racial ideology. They were in line with pan-German ethnic notions that characterized German nationalism after the failure of the 1848 revolution and the German defeat in the First World War.⁹⁵ The Weimar government also actively supported the German diaspora.⁹⁶ In the NS era, however, German citizenship was now based on both *subjective* elements in the form of an almost religious commitment to the German nation and the *objective* necessity of being of German descent.

In sum, pre-war immigration policies were characterized by early attempts to regulate and monopolize the various streams of immigrants. There was considerable tension between business interests faced with labor shortages and the state interest of securing Germany’s volatile borders and asserting nationalism. A compromise was found by the development of a set of centralized and restrictive recruitment institutions that bound foreign workers to one specific place of occupation. Immigration policies became more complex with the growth of the labor movement and the two World Wars that were both based on the acute recruitment of forced labor. There was yet no concept of actively integrating immigrants into society who were essentially expected to assimilate or remain a separate en-

⁹¹ Reichsbürgergesetz und Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre (“Nürnberger Gesetze”), 15. September 1935, und die beiden ersten Ausführungsbestimmungen, 14 November 1935, http://www.1000dokumente.de/index.html?c=dokument_de&dokument=0007_nue&object=translation&st=&l=d.

⁹² Münch, *Die deutsche Staatsangehörigkeit*, 68.

⁹³ *Ibid.*, 73.

⁹⁴ Ausländerpolizeiverordnung vom 22. August 1938, http://www.zaoerv.de/08_1938/8_1938_1_b_793_799_1.pdf.

⁹⁵ Anthony Komjathy and Rebecca Stockwell, *German Minorities and the Third Reich: Ethnic Germans of East Central Europe between the Wars* (New York: Holmes & Meier, 1980), 1f.

⁹⁶ *Ibid.*, 5.

tity. Under the NS regime, ethnic notions of nationality were radicalized, but the defeat of NS Germany also meant that there would be a new opportunity for a fresh start in redefining the German nation-state and its immigration regime.

2.1.2 The guest worker program as a critical antecedent: Germany's immigration policies from 1945 to 1998

2.1.2.1 Immigration policies under Allied occupation: Processing the migratory consequences in the aftermath of the war

The immediate post-war policies were mainly aimed at processing the consequences of the war, especially the repatriation of millions of Displaced Persons (DPs) into their home countries and the intake of German refugees from former German settlements in Eastern Europe who became a welcome source of labor in the fast-growing economy.⁹⁷ The Allied Control Council abolished the discriminatory citizenship laws enacted under the Nazi regime and was responsible for managing the urgent migration issues after the war.⁹⁸ At the “hour zero”, the German government evidently could not autonomously enact immigration policies that were instead drafted by the Allied powers and managed by the UN Relief and Rehabilitation Administration. As DPs within German borders were handled in a demeaning and objectifying way by both the Allied power's administration and the German population, Germany's first post-war experiences in managing a large number of foreigners within its own borders were quite catastrophic.⁹⁹

Germany's partition into four occupation zones that ultimately led to the division into West and East Germany further complicated notions of German citizenship and was one of the reasons why no law could immediately replace the obsolete RuStAG of 1913. Immigration policies differed between the Federal Republic of Germany (FRG) and the socialist German Democratic Republic (GDR). There was limited immigration of low-skilled foreign laborers to East Germany that added up to roughly one percent of the working population.¹⁰⁰

⁹⁷ Oltmer, *Migration im 19. und 20. Jahrhundert*, 48–51.

⁹⁸ Jochen Oltmer, “Zwangswanderungen nach dem Zweiten Weltkrieg,” *Grundlagendossier Migration* (Bundeszentrale für politische Bildung), 15th March 2005, <http://www.bpb.de/gesellschaft/migration/dossier-migration/56359/nach-dem-2-weltkrieg>.

⁹⁹ Der Spiegel, “Behandelt wie ein drittklassiges Pack,” 8th August 1983, <http://www.spiegel.de/spiegel/print/d-14019660.html>. Wolfgang Jacobmeyer, *Vom Zwangsarbeiter zum heimatlosen Ausländer: Die Displaced Persons in Westdeutschland, 1945-1951*, Kritische Studien zur Geschichtswissenschaft 65 (Göttingen: Vandenhoeck und Ruprecht, 1985).

¹⁰⁰ Klaus Bade and Jochen Oltmer, “Migration, Ausländerbeschäftigung und Asylpolitik in der DDR,” *Grundlagendossier Migration* (Bundeszentrale für politische Bildung), 15th March 2005. <http://www.bpb.de/gesellschaft/migration/dossier-migration/56368/migrationspolitik-in-der-ddr?p=all>. Rita Chin, *The Guest Worker Question in Postwar Germany* (Cambridge: Cambridge University Press, 2007), 34.

The basis of West Germany's post-war immigration and citizenship policies is defined in the *Basic Law* (GG). While article 16 defines the right of asylum as a basic right, article 116 states that being a German is equal to having the German citizenship. In line with the *ius sanguinis* principle and Germany's responsibility for WWII, it automatically grants all ethnically Germans who were expelled from the former Reich territory German citizenship.

2.1.2.2 Executive dominance and the primacy of foreign policy: The initiation of the guest worker program

Similar to other Western and Northern European countries, the German government designed a guest worker program by recruiting temporary labor from Italy (1955), Spain and Greece (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968) to alleviate labor shortages in construction, mining and the metal industries. The impulse for the initiation of the program originally came from the Italian government that suffered from high unemployment and a foreign trade deficit. The German government concluded the first recruitment agreement with Italy in December 1955 as a result of a successful alliance between the Ministry of the Economy (BMW), the Ministry of Foreign Affairs (AA) and the Minister for Special Tasks against the BMAS and a negative public opinion.¹⁰¹ It was established relatively *ad hoc* and was enforced against the strong concerns of the BMAS, thus showing the primacy of foreign policies in the early post-war period.¹⁰² Foreign pressure continued to dominate the following agreements, especially when NATO member Turkey demanded to be included into the program after Greece has been admitted as well.¹⁰³

The program was established with little public debate, without the involvement of the parliament and under the expectation of its limited duration which thus made it unnecessary to design social policies targeting the social integration of immigrants.¹⁰⁴ Employers and industrialists were fully supportive of the system as they could utilize a highly flexible workforce.¹⁰⁵ Although the German Trade Union Federation (DGB) was concerned that the wages of domestic workers could decline due to the influx of cheap labor, unions ultimately agreed to the program due to the estimated effects on Germany's growth rate and after the German government pledged to regulate the wages of foreign labor at the same level as those of domestic labor. The system operated through foreign branches of the

¹⁰¹ Heike Knortz, *Diplomatische Tauschgeschäfte. "Gastarbeiter" in der westdeutschen Diplomatie und Beschäftigungspolitik 1953–1973* (Cologne: Böhlau Verlag, 2008), 68–75.

¹⁰² *Ibid.*, 80.

¹⁰³ Johannes-Dieter Steinert, *Migration und Politik. Westdeutschland – Europa – Übersee 1945–1961* (Osnabrück: Secolo, 1995), 307.

¹⁰⁴ Chin, *The Guest Worker Question in Postwar Germany*, 47.

¹⁰⁵ *Ibid.*, 45.

Federal Office for Labor Recruitment and Unemployment Insurance (BAA) that recruited laborers for a limited period.¹⁰⁶ It was structurally not unlike the pre-war recruitment of foreign labor, but this time responded not to domestic, but to foreign pressure when Germany was seeking to regain international trust. The introduction of the “guest worker” category suggested that low-qualified foreigners could be used temporarily to match the labor demand in Germany. Just as before, foreigners were only accepted for jobs for which employers could not find any domestic labor, and only after passing relatively rigorous administrative procedures.¹⁰⁷

In addition, the free movement of workers from the ECSC and later European Community (EC) was fully allowed with the Treaty of Rome in 1957 which severely limited the legislative leeway of the German government related to the movement of EC citizens to Germany. The influx of EC workers into Germany became one of the most important source of unregulated immigration until today while national laws may only limit the immigration of non-EC citizens.

In 1965, the new Alien Act (AuslG)¹⁰⁸ replaced the 1938 APVO of the NS state that was reactivated in 1951 as the legal basis for post-war immigration policies.¹⁰⁹ It was drafted by the administration and established without any significant debate in the Parliament.¹¹⁰ Although it was praised as an “expression of the open-minded foreigner politics of the Federal Republic”¹¹¹, it gave the state de facto substantial legal authority over foreign workers including the possibility to deport them for partly vague reasons (art. 10), with some critics going so far as comparing it to laws of the Third Reich.¹¹² Foreigners were granted a residence permit only when the “presence of the foreigner [did] not interfere with German interests” (art. 2) comprising political, economic, labor market or “other” aspects.¹¹³ Similarly, the Work Promotion Law (AFG) of 1969 made the issuing of work permits dependent on the “situation and development of the labor market”¹¹⁴ (art. 19). While these formulations replaced the even vaguer language of the APVO that accepted immigrants only when they are

¹⁰⁶ Ibid, 38f., 49.

¹⁰⁷ Jutta Höhne et al, “Die Gastarbeiter. Geschichte und aktuelle soziale Lage,” *Wirtschafts- und Sozialwissenschaftliches Institut (Hans Böckler Foundation) Report 16* (2004), 4.

¹⁰⁸ Das Ausländergesetz der Bundesrepublik Deutschland vom 28. April 1965, http://www.zaoerv.de/25_1965-/25_1965_3_b_499_515.pdf.

¹⁰⁹ Stefan Luft, *Staat und Migration. Zur Steuerbarkeit von Zuwanderung und Integration* (Frankfurt am Main: Campus Verlag, 200), 36.

¹¹⁰ Schneider, *Modernes Regieren und Konsens*, 118.

¹¹¹ Dietrich Rollmann, cited in: Chin, *The Guest Worker Question in Postwar Germany*, 51.

¹¹² Luft, *Staat und Migration*, 62.

¹¹³ Gianni D’Amato, *Vom Ausländer zum Bürger. Der Streit um die politische Integration von Einwanderern in Deutschland, Frankreich und der Schweiz*, 3rd edition (Münster: Lit Verlag, 2005), 89.

¹¹⁴ Arbeitsförderungsgesetz (AFG) vom 25. Juni 1969, in *Bundesgesetzblatt* 51, 28. Juni 1969.

“worthy of German hospitality”¹¹⁵, receiving or renewing the right of residence still seemed like an act of mercy in which the Foreigner Agency ultimately retained the right to reject any application with full discretion.¹¹⁶ Since foreigners were distinguished from German citizens who stood in a “fiduciary and legal relation with the state”¹¹⁷, they could be deprived of several basic rights that German citizens were guaranteed such as the right to vote and the right of free movement. Indeed, the *Länder* and municipal administrations utilized their large scope of discretion in order to assert a very restrictive interpretation of the law.¹¹⁸ While the parliament remained relatively silent, opposition was formed among the politicized civil society of the 1960s, but the voices of unions, churches, welfare organizations, lawyers and scientists remained unheard, especially in the recessionary economic climate of 1967.¹¹⁹

2.1.2.3 Policy stagnation, party polarization and interest alignment: Germany’s consolidation as a “de facto country of immigration”

In contrast to the expectation that foreigners would stay temporarily in Germany, only 11 million out of 14 million foreign workers went back to their home countries between 1953 and 1973.¹²⁰ Unlike in the pre-war period, the rotation of foreign workers could *not* be implemented against the resistance of industrial interests that would have faced high training costs for new recruits and lose the benefits of experienced foreign workers. Nevertheless, they did not favor the permanent settlement of foreigners and their families either since they still planned to dismiss them eventually in case of labor surpluses. Considerations of foreign policy also played an important role as there was no way to legitimize the deportation of millions of foreigners. For instance, the Fourth Protocol of the European Human Rights Convention explicitly prohibited collective deportations.¹²¹ Accordingly, work permits were distributed without limitation¹²² and the share of permanent foreign residents grew from 1.2 percent in 1960 to 4.9 percent in 1970 corresponding to roughly 2.6 million foreign workers. Most

¹¹⁵ Ausländerpolizeiverordnung vom 22. August 1938.

¹¹⁶ Ibid, 90. Christian Joppke, “The Domestic Legal Sources of Immigrant Rights: The United States, Germany, and the European Union,” *European University Institute Working Paper SPS* 99, no. 3 (1999), 21.

¹¹⁷ Erhard Schüler, *Die Ermessensentscheidung der Ausländerbehörde, erörtert anhand der Verwaltungspraxis in Berlin*, Schriftenreihe zur Rechtssoziologie und Rechtsstatsachenforschung 32 (Berlin: Duncker & Humblot, 1974), 17.

¹¹⁸ Schneider, *Modernes Regieren und Konsens*, 131.

¹¹⁹ Ibid, 120.

¹²⁰ Klaus J. Bade, “Ausländer und Asylpolitik in der Bundesrepublik Deutschland: Grundprobleme und Entwicklungslinien,” *Friedrich Ebert Stiftung Digitale Bibliothek*, <http://library.fes.de/fulltext/asfo/01011002.htm>.

¹²¹ Luft, *Staat und Migration*, 56f.

¹²² Ibid, 70.

of them were of Turkish or Yugoslavian origin, while Italians tended to return to their home country.¹²³

After the oil crisis, the guest worker program was halted in 1973. But as subsequently more and more foreign workers sent their families to Germany, the development towards a country of immigration seemed already irreversible. In 1976, 80 percent of newly arriving immigrants were unemployed family members.¹²⁴ Although Germany attempted to regulate the re-integration of immigrants into their home countries by cooperating with the sending countries' governments, the number of returning workers was almost matched by the number of immigrants that arrived newly.¹²⁵ In the worsening domestic and global economic environment, unemployment among foreign workers increased disproportionately in line with the previous announcements of employers whereas unemployment among domestic workers decreased only slightly.¹²⁶

Although the German government temporarily tried to restrict family reunification in several *Länder* between 1975 and 1977 and banned family members from working, the constitutional protection of marriage made it impossible to completely limit this legal option.¹²⁷ Germany thus had to face the social reality of a growing foreign population on its territory that became partly dependent on state services and, in particular, education for the growing second-generation immigrants. A special *Bund-Länder commission* consisting of representatives of both the federal state and the *Länder* was founded in order to suggest a new comprehensive labor market policy for foreigners in the post-guest worker environment. In order to improve the legal status of the former guest workers, art. 8 of the AuslG was amended in 1978 stating that after five years of residence the *permanent right of residence* could be granted.¹²⁸

Next to continuing attempts to promote the repatriation of immigrants, a first concept for their long-term settlement was developed in 1979 under the SPD-FDP (Free Democratic Party) coalition by the first government *Commissioner for Foreign Employees and their Families*, the social-democrat Heinz Kühn who drafted the far-reaching *Kühn memorandum* called "State and development of the integration of foreign employees and their families in the Federal Republic of Germany." This surprising

¹²³ Höhne et al, "Die Gastarbeiter. Geschichte und aktuelle soziale Lage," 6.

¹²⁴ Luft, *Staat und Migration*, 69.

¹²⁵ *Ibid*, 56.

¹²⁶ Höhne et al, "Die Gastarbeiter. Geschichte und aktuelle soziale Lage," 9.

¹²⁷ D'Amato, *Vom Ausländer zum Bürger*, 93.

¹²⁸ Klumeyer and Papademetriou, *Immigration Policy in the Federal Republic of Germany*, 100.

initiative triggered the first societal debate on the meaning of integration and assimilation.¹²⁹ In the memorandum, Germany was described as a de facto country of immigration in need of a comprehensive concept of *integrating* immigrants instead of an uncoordinated series of ad hoc measures. The document promoted an inclusive concept of integration including the municipal right to vote, liberalized naturalization requirements and proactive integrative measures.¹³⁰ Kühn emphasizes these measures while rejecting additional immigration into Germany that could overburden the state. For the first time, a politician recognized the practical necessity to develop comprehensive policies for those foreigners who had come to Germany due to the myopic immigration policies of the past CDU-led governments.

However, strong opposition came from a number of right-wing professors in the controversial “Heidelberg Manifesto” of 1982 who used ethnic and racial overtones in favor of programs to send back foreigners to their home countries. Moreover, a significant part of public opinion and especially conservative CDU and CSU voters were still skeptical if the integration of foreigners was feasible. The failed attempts to integrate children of foreigners into the school system and the rising number of unemployed people among foreigners as Germany continued to deindustrialize are named as important reasons why public opinion remained negative towards foreigners in the 1980s.¹³¹

The SPD-led government rejected most proposals for a more far-reaching reform and instead further restricted immigration while staying passive on integration.¹³² This is especially surprising because the SPD-Chancellor Schmidt has previously pledged to abolish the “dogma” that Germany is not a country of immigration.¹³³ But incremental reform measures were decided in the BMAS without consulting Kühn and suggestions were almost exclusively limited to the second generation of immigrants who were legally given priority in receiving the opportunity to obtain the German citizenship under the condition of renouncing the citizenship of their home country.¹³⁴ Hence, the BMAS still relied upon the assumption that foreign workers could potentially return to their home countries which made

¹²⁹ Karin Hunn, *‘Nächstes Jahr kehren wir zurück...’: die Geschichte der türkischen “Gastarbeiter” in der Bundesrepublik* (Göttingen: Wallstein, 2005), 402f.

¹³⁰ Heinz Kühn, “Stand und Weiterentwicklung der Integration der ausländischen Arbeitnehmer und ihrer Familien in der Bundesrepublik Deutschland,” Memorandum des Beauftragten der Bundesregierung, September 1979, 4f.

¹³¹ Klusmeyer and Papademetriou, *Immigration Policy in the Federal Republic of Germany*, 104.

¹³² *Ibid.*

¹³³ Hunn, *‘Nächstes Jahr kehren wir zurück...’*, 405.

¹³⁴ *Ibid.*, 286.

the societal integration of foreigners merely a temporary necessity. Accordingly, the German government again announced plans to increase its assistance to re-integrate foreign workers into the labor market of their home countries.¹³⁵

The change of government in 1982 consolidated the status quo that “Germany is not a country of immigration” as stated in the coalition agreement between the CDU and the FDP under Chancellor Helmut Kohl.¹³⁶ In general, it continued the somewhat contradictory understanding that Germany should assist in the integration of those foreigners who were already living in Germany while both limiting the immigration of new foreigners *and* promoting the return of foreign workers. In line with the surging public debate, immigration policies received special attention in a “priority program”. Furthermore, in accordance with the end of the guest worker program, the jurisdiction for immigration policy shifted from the BMAS to the BMI.¹³⁷

The government initially did not make any significant initiatives to reduce the inherent contradictions in this concept although it promised to introduce a new comprehensive alien act. Instead, in a highly politicized environment with a generally negative public opinion towards foreigners (especially with respect to asylum-seekers), a new act in 1983 that had already been prepared in the last years of the previous government promoted the re-migration of foreigners into their home countries with financial support of the German government. A sum of 10,500 Deutsche Mark (DM) (roughly 6000 US-dollar) plus 1,500 DM (860 US-dollar) per child was granted in case an unemployed immigrant decided to repatriate to his or her home country within one year.¹³⁸ The replacement of the formerly FDP-led BMI with the conservative CDU politician Friedrich Zimmermann confirmed this restrictive orientation of the *Bundesregierung*¹³⁹ but also unsheathed the divisions within the CDU and the coalition.¹⁴⁰ The internal division on foreigner and migration issues became especially visible between Zimmermann and Liselotte Funcke, the newly appointed government Commissioner for Foreigners from the FDP who opposed Zimmermann’s plans to restrict family reunification and reduce

¹³⁵ Martin Ohlert, *Zwischen ‘Multikulturalismus’ und ‘Leitkultur’: Integrationsleitbild und –politik der im 17. Deutschen Bundestag vertretenen Parteien* (Wiesbaden: Springer, 2014), 285.

¹³⁶ Ohlert, 174.

¹³⁷ Bade, “Ausländer und Asylpolitik in der Bundesrepublik Deutschland.”

¹³⁸ Gesetz zur Förderung der Rückkehrbereitschaft von Ausländern, in Institut für Arbeitsmarkt- und Berufsforschung, *Chronik der Arbeitsmarktpolitik*, http://doku.iab.de/chronik/31/1983_12_01_31_gese.pdf.

¹³⁹ Ohlert, *Zwischen ‘Multikulturalismus’ und ‘Leitkultur’*, 176f.

¹⁴⁰ Green, *The politics of exclusion*, 51.

the competences of her post.¹⁴¹ Zimmermann's suggestions that he drafted in his own BMI commission were ultimately rejected in another commission on foreigner policy in 1983 that prepared the revision of the AuslG in 1990. The failure of Zimmermann's proposals to create a consensus within the CDU/CSU, the Cabinet and the BMI itself demonstrates the increasing involvement of other political actors in matters of immigration who did not leave immigration and integration policies to the sole decision-making power of the executive anymore.

The neglect of the German government to come to terms with the reality of two generations of foreigners, coupled with the lack of success in actually limiting immigration, also expressed itself in increasing vote shares for far-right parties such as the *Republikaner* and the National-democratic Party of Germany (NPD) in the municipal and *Länder* elections of 1986 and 1989.¹⁴² This was another proof for the polarization of immigration and immigrant policies between far-right, conservative, liberal, social-democratic and leftist positions in the German party system. Unlike in the previous 30 to 40 years, there was neither a unitary executive that could easily agree on one position nor a tacit agreement of all parties in the *Bundestag* on the proposals of the government. Another veto player during this period emerged with the German Federal Court (BVerfG) that ruled against Kühn's proposal to give foreigners municipal voting rights after the state governments in Hamburg and Schleswig-Holstein legislated in favor of such a possibility in 1989. By referring to GG, art. 20, sec. 2 that "all state authority is derived from the people" and art. 116 (1) that "a German [...] is a person who possesses German citizenship", the BVerfG argued that only residents with German citizenship had the right to vote.¹⁴³

The historical year 1990 did not only mark the reunification of Germany, but also the ratification of a new Alien Act that concluded a decade of debates on immigration and further formalized the legal status of immigrants without, however, introducing more substantial change as promoted by the SPD and Greens.¹⁴⁴ After Zimmermann was replaced with Wolfgang Schäuble, the law was ratified quickly just before the *Bundesregierung* lost its majority in the *Bundesrat* in the following regional elections thus preventing the politicization of migration issues for electoral purposes.¹⁴⁵ Schäuble was

¹⁴¹ Bade, "Ausländer und Asylpolitik in der Bundesrepublik Deutschland." *Der Spiegel*, "Ausländer: Recht absonderlich," 2nd May 1988, <http://www.spiegel.de/spiegel/print/d-13527177.html>.

¹⁴² Green, *The politics of exclusion*, 56.

¹⁴³ BVerfGE 83, 37, Ausländerwahlrecht I, 31st October 1990, <http://www.servat.unibe.ch/dfr/bv083037.html>.

¹⁴⁴ D'Amato, *Vom Ausländer zum Bürger*, 92.

¹⁴⁵ Simon Green, "Zwischen Kontinuität und Wandel: Migrations und Staatsangehörigkeitspolitik," in *Regieren in der Bundesrepublik Deutschland: Innen- und Außenpolitik seit 1949*, ed. Manfred G. Schmidt and Reimut Zohlnhöfer (Wiesbaden: VS Verlag für Sozialwissenschaften, 2006): 113–136, 124.

also able to consult with other parties (most importantly the FDP), churches, welfare organizations and the United Nations High Commissioner for Refugees (UNHCR) in order to form a consensus on the most urgent issues that were addressed within the new law.¹⁴⁶

The new law replaced both the 1965 Alien Act and the Asylum Process Law (AsylVFG) of 1982. Much more comprehensive than the former versions, it comprised new paragraphs addressing the immigration status of second-generation immigrants and facilitated their naturalization by, for instance, dropping the requirement for long-term residence while demanding sufficient knowledge of the German language (art. 85f.). Dual citizenship was tolerated for the first time if the foreigner encountered major difficulties in renouncing his original citizenship (art. 87). Moreover, the new AuslG specified and formalized the conditions for the issuing of residence permits (*Aufenthaltserlaubnis*) (art. 3–17), permanent residence permits (art. 24–26), the unlimited leave to remain (*Aufenthaltsberechtigung*) (art. 27), the temporary residence permit for specific purposes (*Aufenthaltsbewilligung*) (art. 28f.) and the residence permit for humanitarian reasons (*Aufenthaltsbefugnis*) (art. 30–35), regulated family reunification according to the financial circumstances of the residing foreigner (art. 18–22, 27a, 29), expanded the legal reasons for deportation (art. 42–57) and elaborated the institutional setting of immigration policies while enlarging the authority of the Foreigner Agency (art. 63–65).¹⁴⁷

While the 1965 version gave the Foreigner Agency substantial leeway in deciding on the status of foreigners according to national “interests,” the ratification of the new law significantly improved the legal protection of foreigners and their families.¹⁴⁸ It also facilitated the naturalization of long-term foreign residents and young foreigners. On the other hand, it generally continued the tradition of making *alien* instead of *minority* or *immigrant* policies.¹⁴⁹ In line with the aims to limit immigration, residence permits were still almost exclusively issued for the purpose of family reunification.¹⁵⁰ Indeed, the Commissioner for Foreigners later criticized that integration issues still remained unresolved in several areas.¹⁵¹ The act also remained controversial with respect to its general constitutionality. Rittstieg, for instance, criticizes that residents with foreign citizenship continue to be treated as

¹⁴⁶ Schneider, *Modernes Regieren und Konsens*, 138.

¹⁴⁷ Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Ausländergesetz – AuslG) vom 9. Juli 1990, <http://www.info4alien.de/auslg.htm>.

¹⁴⁸ Christine Langenfeld and Stine Waibel, “Von der Begrenzung zur Steuerung: Deutschlands Abkehr vom “widerstrebenden” Einwanderungsland,” in *Grenzüberschreitendes Recht – Crossing Frontiers. Festschrift für Kay Hailbronner*, ed. Georg Jochum, Wolfgang Fritzemeyer and Marcel Kau (Heidelberg et al.: C.F. Müller, 2013): 185–200, 185f.

¹⁴⁹ D’Amato, *Vom Ausländer zum Bürger*, 92.

¹⁵⁰ *Ibid*, 93.

¹⁵¹ *Ibid*, 94.

a potential danger for society and are to be held under special governmental supervision.¹⁵²

The German government also again initiated a limited recruitment program with Eastern European countries in which a strictly regulated residence for work purposes not exceeding three years (or three months in specific “seasonal employee agreements”) was allowed for each foreign worker, not surpassing the maximum number of 100,000 employees per year.¹⁵³ In contrast to the guest worker program of the 1950s, the agreements did not leave any room for family reunification or long-term settlement thus once again avoiding to increase unwanted immigration.¹⁵⁴ The regulation was passed without any significant public debate and was a clear result of the lobbying efforts of different industries (e.g. the German Restaurant and Hotel Federation) that were dependent on a certain seasonal influx of foreign workers. The regulation also enabled other selective immigration such as in temporary vocational training programs.¹⁵⁵

2.1.2.4 Germany as a country of asylum? New immigration streams and post-unification immigration policies

Since citizenship rules remained unaltered and the second-generation immigrants still faced hurdles in the process of naturalization, Germany continued to have a large foreign population in its territory. As a result of the remaining issues in integrating foreign citizens into the German society and the surging influx of asylum-seekers after the end of the Cold War, right-wing violence against foreigners proliferated in 1991 and 1992 while public opinion became critical of the alleged “exploitation” of the right to asylum by rent-seeking foreigners. In addition, a large number of ethnically German repatriates from Eastern Europe that faced discrimination or other disadvantages after the end of WWII and were hindered from going to Germany due to administrative restrictions of the communistic regimes arrived between 1988 and 1992.¹⁵⁶ Since legal immigration to Germany from non-EU countries was generally limited and mainly feasible via the way of family reunification, attempts to seek asylum in Germany remained as one possible legal loophole. The ensuing debate on the right to asylum and

¹⁵² Helmut Rittstiegl, “Das neue Ausländergesetz. Verbesserungen und neue Probleme,” in *Das neue Ausländerrecht*, Klaus Barwig, Berthold Huber and Klaus Löcher (Baden-Baden: Nomos, 1994): 23–32.

¹⁵³ Peyman Javaher Haghighi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag – Interkulturelle Verantwortung der Gewerkschaften im Betrieb*, Dissertation (University of Hannover, 2000), 41.

¹⁵⁴ Joppke, “The Domestic Legal Sources of Immigrant Rights,” 22.

¹⁵⁵ Alexander C. Caviedes, *Prying Open Fortress Europe: The Turn to Sectoral Labor Migration* (Plymouth: Lexington Books, 2010), 79.

¹⁵⁶ Green, “Zwischen Kontinuität und Wandel,” 125. Wolfgang Seifert, “Geschichte der Zuwanderung nach Deutschland nach 1950,” *Dossier Deutsche Verhältnisse. Eine Sozialkunde* (Bundeszentrale für politische Bildung), 31st May 2012, <http://www.bpb.de/politik/grundfragen/deutsche-verhaeltnisse-eine-sozialkunde/138012/geschichte-der-zuwanderung-nach-deutschland-nach-1950?p=all>.

its possible exploitation by rent-seeking immigrants dominated the agenda in the 1990s, deflecting from the unresolved long-term issues of immigration. Although the Green party and even a governmental working group strongly recommended viewing immigration and asylum issues holistically, the CDU/CSU led by conservatives from Bavaria single-mindedly focused on the “exploitation of asylum” that dominated the public agenda.¹⁵⁷

In the controversial “asylum compromise” of 1993, the polarized German parties agreed to limit the right to asylum to countries that do not fall in the categories of “safe countries” of origin or transit and accelerated the bureaucratic procedures related to the application for asylum. The right to asylum was newly defined in GG, art. 16a in line with these principles. The compromise was the result of a long deliberation between the parties without including interest groups to any significant extent. Unlike what its name might suggest, it was not only a compromise related to the right of asylum but also included other incremental changes in migration policy such as facilitating the naturalization of settled foreigners and granting them a legal claim to naturalization under certain conditions.¹⁵⁸ Indeed, as the graph below shows, the change was very effective in increasing the naturalization rate. At the same time, the immigration of ethnically German repatriates from Eastern Europe was regulated as well – even though with limited practical consequences – while war refugees received a new, special status in distinction to the asylum process.¹⁵⁹ The immigration of ethnically Germans is still feasible today if significant knowledge of the German language is proven. The legislative change was prepared by bargaining processes and significant internal changes within the SPD (the so-called Petersberger Turn) and the FDP.¹⁶⁰ However, the demand of the social-democrats to reform the 1913 RuStAG that became obsolete after German unification was deferred.¹⁶¹

¹⁵⁷ Schneider, *Modernes Regieren und Konsens*, 155.

¹⁵⁸ *Ibid.*, 159f.

¹⁵⁹ Stefan Luft and Peter Schimany, “Asylpolitik im Wandel,” in *20 Jahre Asylkompromiss. Bilanz und Perspektiven*, ed. Stefan Luft and Peter Schimany (Bielefeld: transcript Verlag, 2014): 11–32, 13.

¹⁶⁰ John Kannankulam, “Kräfteverhältnisse in der bundesdeutschen Migrationspolitik,” in *Kämpfe und Migrationspolitik. Theorie, Methode und Analysen kritischer Europaforschung*, ed. Forschungsgruppe “Staatsprojekt Europa” (Bielefeld: transcript Verlag, 2014): 93–112, 108.

¹⁶¹ Green, “Zwischen Kontinuität und Wandel,” 124f.

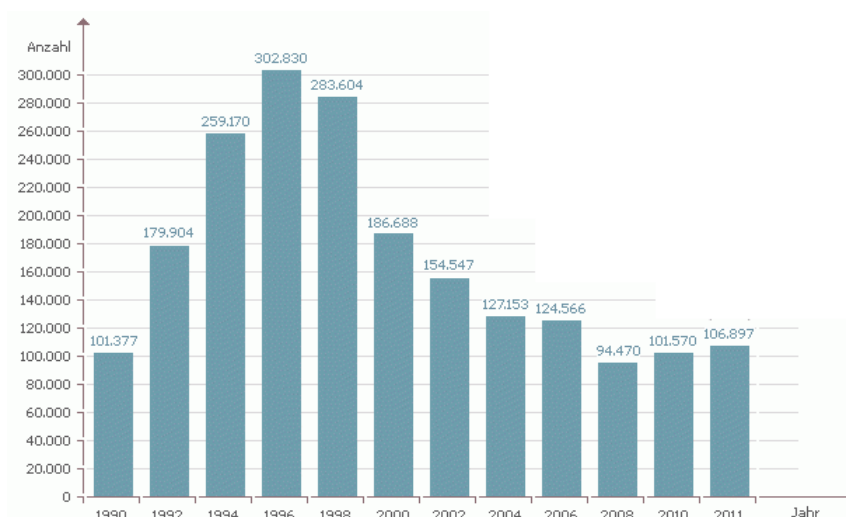


Figure 4. Number of naturalized persons in Germany 1990–2011¹⁶²

In the 1990s, incremental changes in immigration and integration policies were thus realized without recognizing Germany as a country of immigration even though the number of immigrants surged up to 5.582 million (4.7 percent) in 1990. The challenge of designing a new comprehensive immigration and integration regime could be further deferred after the number of immigrants slowly declined in the mid-1990s, reaching levels of negative net migration in 1997 and 1998.¹⁶³ At the same time, the societal and scientific debate on immigration reform continued in reaction to the recent hostility towards foreigners. For instance, in the “Manifesto of the 60”, scientists argued for improved integration policies and a reform of the citizenship law. Moreover, the SPD and Green party continued to suggest reform proposals in the *Bundestag*. Even the coalition partner FDP proposed a new immigration law in 1997, but was largely ignored by the CDU.¹⁶⁴

The Alien Act was again reformed incrementally in 1997 in the “Act to Change Foreigner- and Asylum-Related Regulations” in order to further facilitate naturalization and family reunification while also adding more legal reasons for deportation. Moreover, it added a definition of the tasks and duties of the Commissioner for Foreigner Issues (art. 91).¹⁶⁵ The outcome of the mediation process of the *Bundesrat*, it was the result of a compromise between the federal state and the individual state governments dominated by the SPD and Green Party.¹⁶⁶

¹⁶² Bundeszentrale für politische Bildung (BPB), “Zahlen und Fakten: Die soziale Situation in Deutschland – Eingebürgerte Personen,” 28th November 2012, <http://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/61637/einbuengerung>.

¹⁶³ Seifert, “Geschichte der Zuwanderung nach Deutschland nach 1950.”

¹⁶⁴ Schneider, *Modernes Regieren und Konsens*, 159f.

¹⁶⁵ Gesetz zur Änderung ausländer- und asylverfahrensrechtlicher Vorschriften vom 29. Oktober 1997, in *Bundesgesetzblatt* 72 (1997).

¹⁶⁶ Schneider, *Modernes Regieren und Konsens*, 162.

In sum, post-war immigration policies were characterized by efforts to process the unexpected societal and political consequences of the guest worker program that led to the presence of a substantial foreign population on German territory. The fact that in 2008 roughly 15.5 million people had a “migration history” (indicating that their parents or grandparents came to Germany as foreigners after 1949) demonstrates that Germany has truly become a country of immigration – although reluctantly.¹⁶⁷ Unlike in the pre-war period, the guest worker program was ignited by foreign pressure rather than domestic coalitions although the latter became more important during the consolidation period. How exactly they have aligned themselves to the new conditions will be studied in more detail below. Due to the favorable economic circumstances, a sizeable number of immigrants – especially from Turkey – decided to stay in Germany and use the legal possibilities to reunite with their families. Accordingly, immigration policies shifted substantially from being mainly concerned with the short-term employment of foreigners to broader social issues of immigrant integration in concurrence with the shift from the BMAS to the BMI. Even though the right to asylum was restricted, an even more restrictive orientation could be prevented due to the veto pressures within the German political system.

The immigration from EC/EU member states added a new stream of unregulated immigration and the legal status of EC/EU immigrant workers was consistently improved over time. In general, EC/EU immigrants have had a relatively shorter total residence period in Germany,¹⁶⁸ and thus their integration had not been a major priority. The limited legal possibilities of regulating the stay of EC/EU immigrants had the effect that the immigration of non-EU citizens was designed more restrictive, especially for the case of “unwanted” low-qualified labor.

After the recruitment program was halted, the social-liberal German government from 1974 to 1982 led by Chancellor Schmidt and the conservative-liberal coalition of Chancellor Kohl from 1982 to 1998 began to enact cautious policies aiming to increase the naturalization rate and make the residence status of immigrants more secure. Although there were political proposals for more far-reaching reforms in the 1980s (such as in the Kühn memorandum), all incremental changes were based upon the rejection of the image that Germany has become a country of immigration. In that sense, a great line of continuity can be drawn from the beginnings of the German nation-state until the late 1990s as Germany continued an immigration policy based partly on ethnic differentiation and immigration

¹⁶⁷ Eugen Ehmann and Heinz Stark, *Deutsches Staatsangehörigkeitsrecht*, 8th edition (Heidelberg et al.: Hütig Jehle Rehm, 2010), 42.

¹⁶⁸ Bundesamt für Migration und Flüchtlinge, *Migrationsbericht 2013* (Berlin: BMI, 2013), 211.

restrictions with the main difference arising out of the new primacy of foreign policy that made the collective deportation of foreign workers impossible and led to the process of European integration.

2.2 The reform of the Immigration Act 2000/2004: Critical juncture or incremental change?

2.2.1 The structure of institutions and political coalitions in immigration policy-making before the reform period

2.2.1.1 Institutions: Administration, legislation and judicial review

The governmental competence for administrating immigration policies shifted from the BMAS to the BMI after the suspension of the guest worker program. The relation of both ministries was tense, especially if they had been led by ministers of different parties with divergent policy proposals. The local BAAs under the BMAS had the task to distribute work permits to foreigners, but became less important after the active recruitment of foreigners was stopped. While the guest worker program was largely implemented without recognizing public opinion or the parliament in the early years of the FRG under Chancellor Adenauer, this dominance of the executive could not be maintained in the long term.

The BMI has a history of regarding immigration from a security viewpoint and being averse to any far-reaching demands for integration even though its orientation was dependent on the respective leading minister.¹⁶⁹ It stands in close cooperation with the Ministry of Justice (BMJ) and the Ministry of Finance (BMF) that check and supervise the judicial and financial conditions of immigration reform. Its special authority is defined in art. 65 of the AuslG in which it is given the right to interfere with the process of issuing visas in order to “protect the political interests” of Germany and the right to order directives and guidance in case the security or other substantial interests of Germany is endangered. Another important ministry is the AA that supervises German embassies abroad. It was highly influential in the 1950s in arguing in favor of the initiation of the guest worker program that was opposed by the BAMS and the BMI.¹⁷⁰

The structure of ministries is replicated at the level of the 16 individual states and city-states with slight variations and particularities. The *Länder* have their own autonomous administration and exclusive legislative competencies in specific areas (e.g. education, culture, broadcasting etc.) according to art. 70 (GG). Although these competencies have been significantly reduced in the last reforms of

¹⁶⁹ Luft, *Staat und Migration*, 71.

¹⁷⁰ Schneider, *Modernes Regieren und Konsens*, 120.

federalism, the *Länder* governments remain key actors in migration policy-making as they hold administrative responsibility for the execution of the federal alien law according to art. 84 (GG). Accordingly, they have significant leeway in designing the specific structures and procedures within the Foreigner and Naturalization Agencies. Due to this indispensable role, it is obligatory for the federal government to consult with representatives of the state governments in order to deliberate legislative proposals and ensure their ratification as well as their successful implementation. Both the federal and state ministries are coordinated by *inter-ministerial working groups* that are established ad hoc for specific issues (e.g. for the question of asylum in 1984). These working groups are crucial fora for intra-governmental deliberation, bargaining and consensus-finding. They also often include representatives of the municipal governments who are organized in *City and Municipality Associations* and manage the practical and urban consequences of immigration. In particular, they have a vested interest in negotiating the financial burden on municipalities in relation to that of *Länder* and the federal government.

Central in Germany to the practical tasks of enforcing the AuslG are the Foreigner Agencies (*Ausländerbehörde*) that implement federal law at both a regional and local level by, most importantly, issuing the different types of residence permits. The specific tasks of the Foreigner Agencies are listed in art. 63–84 of the AuslG and include all major administrative tasks concerning the admission or deportation of foreigners. The Foreigner Agency cooperates with other public agencies (e.g. the Residents' Registration Office or the Custom Office), courts, police agencies and (in special cases) even doctors in determining the presence of illegal immigrants, violations of the AuslG and other reasons for deportation. A separate agency, the Naturalization Agency, exists on a municipal level to manage all matters related to naturalization. It cooperates with the Citizenship Agency that is authorized to issue citizenship certificates and related documents. At the federal level, another agency, the Federal Agency for the Recognition of Refugees processes the asylum applications of refugees. It cooperates with the Commissioner for Asylum Issues who is authorized to decide on the recognition of refugees and asylum seekers.¹⁷¹ The agency was renamed and significantly enhanced in its range of tasks in the 2004 reform of the AuslG. All data related to foreign residents is saved and administered in the Registration Agency. The agencies are assisted by the Federal Police at German airports and at the borders of Germany who are authorized to issue visas and arrange the return of foreigners to their

¹⁷¹ BMI, "Bundesbeauftragter für Asylgelegenheiten (BBfA)," http://www.bmi.bund.de/SharedDocs/Standardartikel/DE/Ministerium/Beauftragte/beauftr_asyl.html.

home countries in case of non-admission (AuslG, art. 63). According to art. 64a, the German embassies cooperate with German security, police and intelligence agencies in order to determine the grounds for denying approval. For other cases related to foreigners such as the enforcement of deportations, the local police will be notified by the Foreigner Agency. Foreigners can protest the refusal of a visa at administrative courts, but these possibilities are limited and do not usually disrupt the process of deportation according to art. 70–73.

The Commissioner for Foreigners takes on a special role within this governance structure and has been introduced to institute a form of governmental representation for foreign residents and advance their integration into the German society. The Commissioner is appointed by the German government after the election of the *Bundestag*. Although the function was established under the jurisdiction of the BMAS, it is largely independent and has its own staff (art. 91a). Its functions include assisting the government in the development of integration policies, supporting the mutual understanding and harmonious coexistence between natives and foreigners, counteracting discrimination against foreigners, helping foreigners in representing their interests and protecting the right of free movement for EU citizens (art. 92b). It supports the *Bundesregierung* in immigration reform undertakings by writing proposals and comments. Every two years, it reports on the current state of foreigners in Germany to the Bundestag. Most importantly, it can force other agencies to comment on possible violations of foreigners' rights (art. 91c). There are Commissioners at both a federal and state level.

The *legislative* process of immigration policy-making is quite unique in Germany with the *Bundesrat* and the BVerfG as two key veto players that often counteract the legislative plans of the federal government. *First*, even in the case where the *Bundesregierung* has a stable majority within the Parliament, decisions relating to immigration policy usually activate the *Bundesrat* as a federal representation of *Länder* governmental interests. Since the ratification of a federal law affects and alters the administrative procedures within individual states, the *Bundesrat* has the right to veto bills of the *Bundestag*. The latter can then consider proposals of state governments in order to find a consensus. In case no agreement is found directly, a mediating committee is created between *Bundestag* and *Bundesrat* members who deliberate a possible solution. The number of votes in the *Bundesrat* is distributed proportionally according to the population size of one of the 16 states and city-states. The *Bundesrat* is not elected but consists of representatives of the corresponding (coalition) governments. Each government then has to agree upon a unitary vote in the chamber. In the history of the FRG, it has been very common that the majority within the *Bundesrat* did not correspond to the majority in

the *Bundestag*, thus creating a powerful veto player that can counteract federal projects and use federal issues to attract voters during state elections. While a final consensus is found in most cases, especially after the mediation procedure is initiated, the result can deviate strongly from the original formulation. In the area of immigration policy, the mediation process has been initiated frequently starting with the AuslG of 1965.¹⁷² Moreover, the *Bundesrat* initiated own legislative proposals regarding immigration policies in the 1960s and 1970s in contrast to the rather passive *Bundestag*.¹⁷³

Second, the BVerfG can be called upon by other governmental institutions including groups within the *Bundestag* and *Bundesrat*. Problematically, it is sometimes used as a political tool to retroactively suspend laws. On the one hand, the BVerfG protects the rights of labor migrants to reunify with their families and protect them from expulsion.¹⁷⁴ In its interpretation of the GG, it states that migrants enjoy higher constitutional protection in accordance with the length of their stay. Even though the AuslG made the renewal of residence permits dependent on the decision-making of the Foreigner Agency, the BVerfG argued in favor of automatically renewing residence permits in cases where the foreigner had already stayed in Germany for a long time.¹⁷⁵ On the other hand, the BVerfG has otherwise demonstrated a rather rigid interpretation of the GG excluding, for instance, local voting rights for foreigners. Similarly, it has ruled against the objection of a Turkish citizen who lost his German citizenship after he reclaimed his Turkish citizenship even though he had naturalized as a German. According to the judges, legislatively ruling out dual citizenship is not in contradiction to the GG.¹⁷⁶ Thus, it generally held an ambiguous position limiting the influence of the government on the individual rights of immigrants while defending the principles of nationality in the GG.

Just as important as the process of ratifying and reviewing immigration laws is the process of preparing these laws. Chancellor Schmidt introduced the format of commissions in the 1970s to deliberate proposals among different levels of government and societal groups. This measure marked the shift from executive dominance to the increasing, although still limited, coordination of political and societal interests. In 1965, the “Social-political Talk Forum” at the Ministry of Labor and the “Inter-ministerial Committee for Foreigner Policy” prepared these more inclusive forms of governance that initially coordinated different ministerial interests to facilitate the ratification and implementation of

¹⁷² Schneider, *Modernes Regieren und Konsens*, 118.

¹⁷³ *Ibid*, 131.

¹⁷⁴ Joppke, “The Domestic Legal Sources of Immigrant Rights,” 20.

¹⁷⁵ *Ibid*, 21.

¹⁷⁶ Handelsblatt, “Verbot doppelter Staatsangehörigkeit ist rechtens,” 10th January 2007, www.handelsblatt.com/politik/deutschland/bundesverfassungsgerichts-urteil-verbot-doppelter-staatsangehoerigkeit-ist-rechtens/2754090.html.

policy proposals.¹⁷⁷ The first commission was formed in 1976 to debate employment issues of foreigners and consisted of representatives of both the federal and the *Länder* governments. Unions and employer associations were consulted while the BMAS worked on the formulations of concrete legislative proposals. It was open to ideas from civil society groups that were active in drafting their own propositions, but generally recognized the compromise of the 1970s that combined restrictive immigration policies with selective initiatives for the integration of second-generation immigrants.¹⁷⁸ However, it competed with the Kühn commission whose demands were much more far-reaching. In the Kohl era, another commission was created under Zimmermann and for the first time also included representatives of the municipal governments.¹⁷⁹ It was formed with the expectation of introducing new restrictions and included neither civil society groups nor scientific expertise who were involved only at a later point within the regular legislation process.¹⁸⁰ The role of commissions was thus strongly determined by the intentions of political decision-makers. The format was replicated several times for different legislative projects, for instance in a working group in preparation of asylum law reforms in 1980 and 1991.¹⁸¹

Moreover, since 1971, foreigners and naturalized German nationals can be elected and appointed to “Foreigner Councils” (*Ausländerbeirat*) at a municipal level to draft proposals for immigrant integration as a measure to increase their political representation. The councils are organized in working groups at a regional and federal level with 400 of municipal councils united in the Federal Immigration and Integration Council (BZI). Their competencies, however, are severely limited as most decision-making in immigration policy is made on the federal level.¹⁸² They are also not sufficiently integrated within the municipal government structures and were only selectively asked for advice.¹⁸³

The (simplified) structure of immigration policy-making in Germany is summed up in the graph below. The somewhat crowded picture reveals the multiple interactions between institutions that exist on different governmental levels and leave several participatory possibilities open to civil society.

¹⁷⁷ Schneider, *Modernes Regieren und Konsens*, 122, 125.

¹⁷⁸ *Ibid.*, 125f

¹⁷⁹ *Ibid.*, 132.

¹⁸⁰ *Ibid.*, 133f.

¹⁸¹ *Ibid.*, 147.

¹⁸² Roland Roth, “Integration durch politische Partizipation und bürgerschaftliches Engagement,” in *Lokale Integrationspolitik in der Einwanderungsgesellschaft. Migration und Integration als Herausforderung von Kommunen*, ed. Frank Gesemann and Roland Roth (Wiesbaden: VS Verlag für Sozialwissenschaften, 2009): 195–216, 201f.

¹⁸³ Vera Gerling, *Soziale Dienste für zugewanderte Senioren/Innen. Erfahrungen aus Deutschland und Großbritannien und ein Vergleich kommunaler Praxis der Partnerstädte Dortmund und Leeds*, Dissertation (University of Dortmund, 2001), 76.

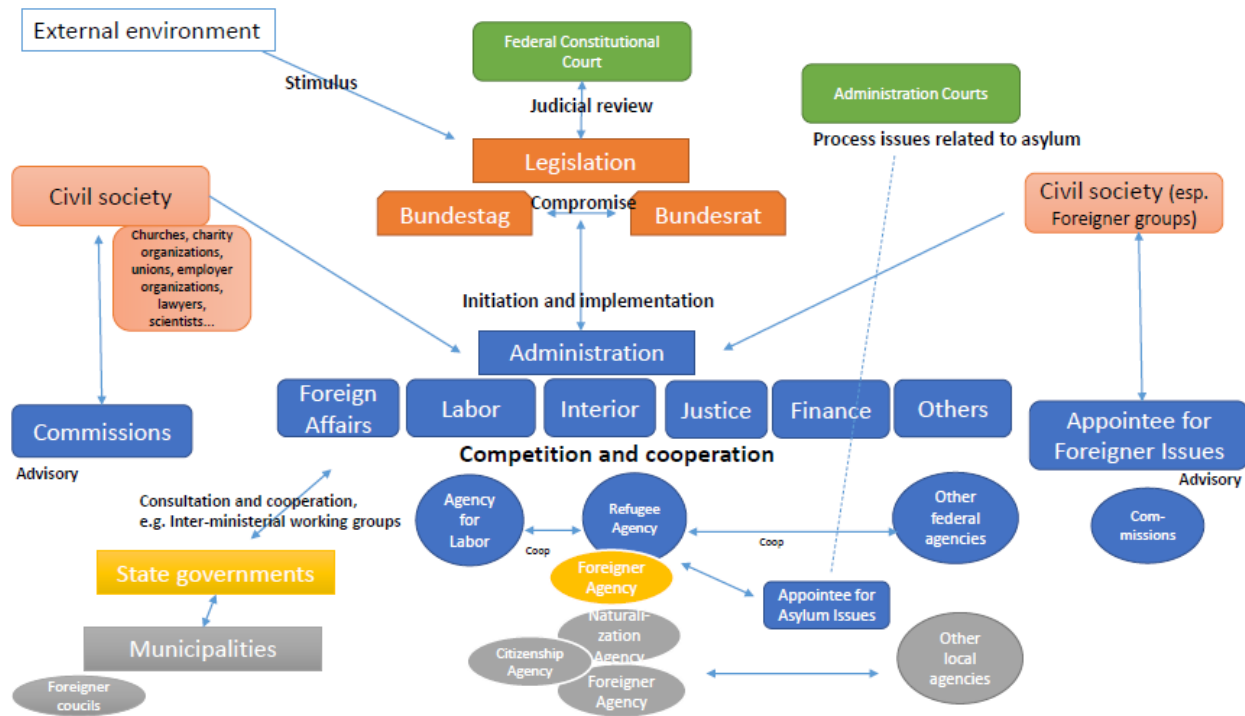


Figure 5. Structure of immigration policy-making in Germany (by author)

2.2.1.2 Party positions

After the suspension of the recruitment program in the 1970s, parties became increasingly polarized around issues of immigration – in particular naturalization requirements, the integration of second-generation immigrants, family reunification and the right to asylum. Especially in the 1980s, immigration became highly politicized as the number of asylum-seekers surged. While the recruitment phase was dominated by the primacy of foreign policy and inter-ministerial bargaining under the expectation that immigration is merely a temporary phenomenon, political parties developed more differentiable positions when immigration issues became relevant for attracting votes.

Social-democratic Party of Germany (SPD)

Since the beginning of the guest worker program, the SPD stressed the importance of protecting the interests of domestic workers threatened by the influx of cheap labor. The SPD would only agree to the program if the wages of domestic workers remained stable and there were no negative effects on housing prices or the workers' job security.¹⁸⁴ With this impulse to not re-create the dual labor market of the pre-war period, coupled with an internationalist ideology, the SPD quickly began to demand

¹⁸⁴ Tietze, *Einwanderung und die deutschen Parteien*, 32f.

an equal status for foreign workers with respect to their protection from exploitation and discrimination, and objected to the idea of rotating them between their home country and Germany. It was thus an early advocate of the concept of immigrant integration in line with the idea of preventing their social descent and exclusion from the German labor market and society which would ultimately affect the wages and job security of low-skilled native workers as well. It was clearly at the forefront of proposing various inclusive measures.¹⁸⁵ Issues related to immigration were discussed more controversially within the different state branches of the SPD. The *Bundestag* group, for instance, did not oppose the restrictive immigration policies of the government since the more acute task of integrating foreigners into the German society would be at risk with an even higher number of immigrants.¹⁸⁶ In addition, party members and officials were split between those who wanted to protect the interests of domestic workers against asylum-seekers who came to Germany for economic motives and those who supported the rights of refugees and asylum-seekers unconditionally.¹⁸⁷ The controversy was ultimately resolved in favor of more restrictive measures in the asylum compromise.¹⁸⁸ During the final years of the social-liberal coalition, it was one of the first political voices to demand the overdue reform of the citizenship law of 1913 that would include the right for children of immigrants to receive the German citizenship under specific conditions.¹⁸⁹

In the 1990s, the SPD encouraged the debate on a new immigration law and for the first time promoted a proactive immigration policy to counteract the adverse effects of demographic change. The paper “Guidance for modern integration policy” of 1995 defined Germany as a country of immigration for the first time.¹⁹⁰ The proposal opted for quotas for new immigrants who may work in Germany under specific conditions while keeping the path for family reunification fully open. Integration was to be further advanced by facilitating naturalization and granting *ius soli* rights for children of foreigners with the possibility of dual citizenship under exceptional circumstances.¹⁹¹ In its program for the elections in 1998, the SPD affirmed its views of regulating immigration and ratifying a new citizenship law that would benefit second- and third-generation immigrants in Germany.¹⁹²

¹⁸⁵ *Ibid.*, 38ff, 46.

¹⁸⁶ *Ibid.*, 32–36.

¹⁸⁷ *Ibid.*, 55–57.

¹⁸⁸ *Ibid.*, 64.

¹⁸⁹ *Ibid.*, 47.

¹⁹⁰ *Ibid.*, 79.

¹⁹¹ *Ibid.*, 65ff.

¹⁹² SPD, *Arbeit, Innovation und Gerechtigkeit. SPD-Programm für die Bundestagswahl 1998* (Bonn, 1998), 44.

Among the constituents of the SPD, a disproportionate number come from West Germany, are middle-aged (between 25 and 54), and are Protestant or without religious denomination. The “typical” SPD voter has a relatively low education and is traditionally related to the working class. Voters comprise a large number of skilled workers and employees from the lower and mid-career level.¹⁹³ Increasingly, voters were also recruited among academics, employees and civil servants.¹⁹⁴

Christian-Democratic Union of Germany (CDU) and Christian-Social Union (CSU)

The CDU/CSU has traditionally been skeptical of immigration although it was the party responsible for initiating the guest worker program in the 1950s. While it was generally in favor of the idea of using foreign employees as a reserve pool of labor during phases of economic growth, it did not have positive views on the long-term settlement of foreigners from non-European countries in the FRG.¹⁹⁵ This clearly reflected the CDU/CSU’s conservative skepticism of multi-cultural coexistence in the German society.¹⁹⁶ However, there was never a full consensus on immigration and integration issues in the party union. *First*, the independent CSU of Bavaria held consistently more conservative positions than the CDU. The branches in Baden-Württemberg and Hessen generally seconded these views. *Second*, the federal CDU itself was split between conservatives and modernizers such as Heiner Geißler who led the faction of the Christian-Democratic Employees (CDA) who were open to discuss the social issues that the guest worker program entailed and showed a more proactive approach towards integration.¹⁹⁷ *Third*, this division also expressed itself in a sporadic splits between the parliamentary CDU/CSU group and the government. For instance, a (rejected) bill for a new citizenship law was introduced in 1994 that would give children of foreigners *ius soli* citizenship rights and the option to decide their citizenship at the age of 23. A very similar model was later introduced by the social-democratic-Green coalition of 1998.¹⁹⁸

Under Chancellor Kohl, the CDU enacted largely restrictive measures related to immigration and introduced only incremental measures for integration. Key positions such as the chairman of the party

¹⁹³ Isabell Thaidigsmann, “Sozialstruktur und Wählerverhalten. Das Ende einer alten Beziehung?” *Konrad-Adenauer-Stiftung Working Paper* 126 (2004), 26f.

¹⁹⁴ Martin Mertens, “Wählerschaft und Mitglieder,” *Dossier Parteien in Deutschland* (Bundeszentrale für politische Bildung), 22nd February 2010, <https://www.bpb.de/politik/grundfragen/parteien-in-deutschland/42093/waehlerschaft-und-mitglieder>.

¹⁹⁵ Tietze, *Einwanderung und die deutschen Parteien*, 153f.

¹⁹⁶ *Ibid*, 158f.

¹⁹⁷ *Ibid*, 161.

¹⁹⁸ Green, *The politics of exclusion*, 93.

or the leading minister of the BMI were filled with conservative figures that clashed with the modernizers in the party and were largely unsuccessful in asserting their legislative proposals.¹⁹⁹ Until the ratification of the 1990 AuslG, however, the CDU began to promote the idea that foreign residents may live according to their “own cultural ideas” while respecting Germany’s laws and traditions rather than demanding their full assimilation.²⁰⁰ The facilitation of naturalization requirements was explicitly seen as a measure to incentivize their allegiance to the German state.²⁰¹ The election program in 1998 accordingly argued for a restrictive immigration policy coupled to the advancement of integrative measures. Further immigration in the “densely populated country” would “endanger the inner peace” of Germany. The program praised the zero tolerance policy of the former CDU/CSU government related to illegal immigration and the exploitation of the right to asylum. In the area of immigrant integration, the CDU pledged to reform the citizenship law and further facilitate naturalization while demanding from foreigners to adapt themselves to the basic values of Germany and renounce their former citizenship in case they decide to naturalize.²⁰²

Among the constituents of the CDU/CSU, a disproportionate number come from West Germany, is catholic, have relatively low education, are relatively old (60 or more) and/or have relatively high income. A high number of occupations of CDU/CSU constituents are in self-employed occupations and farming.²⁰³

Free Democratic Party (FDP)

The liberals have been key junior partners for both the SPD and the CDU and thus represent the party with the longest time of direct governing responsibility. As the weaker coalition partner, the FDP was only selectively successful in asserting liberal immigration and integration policies against the more skeptical SPD and CDU. Instead, the party was split between those who wanted to accommodate and compromise with the larger party and those voices insisting on modern and liberal policies comprising the right of dual citizenship and the regulated entry of foreign workers.²⁰⁴ Until the elections in 1998, it occupied many important ministerial positions, most frequently in the AA, the BMJ, the BMI and the Federal Ministry of Economic Affairs (BMW). During the period of the SPD-

¹⁹⁹ Tietze, *Einwanderung und die deutschen Parteien*, 175.

²⁰⁰ *Ibid*, 187.

²⁰¹ *Ibid*, 189.

²⁰² CDU/CSU, *Wahlplattform von CDU und CSU 1998–2002* (Bonn, 1998), 31ff.

²⁰³ Thaidigsmann, "Sozialstruktur und Wählerverhalten," 25. Martin Mertens, "Wählerschaft und Mitglieder," *Dossier Parteien in Deutschland* (Bundeszentrale für politische Bildung), 22nd February 2010, <https://www.bpb.de/politik-/grundfragen/parteien-in-deutschland/42068/waehlerschaft-und-mitglieder>.

²⁰⁴ Migration News (University of California, Davis), "Germany: Bosnians, Immigration Policy," *Migration News* 4, no. 5 (1997), <https://migration.ucdavis.edu/mn/more.php?id=1229>.

FDP coalition, it developed its own perspective on issues of immigration and integration after the suspension of the recruitment program when Minister of Foreign Affairs Genscher from the FDP recognized Germany as a country of immigration (although not one of permanent settlement) and demanded a more committed integration policy that improved the civil rights of foreign residents and granted them equal opportunities. The FDP strongly supported the legal right of naturalization for second-generation immigrants and further improvements in facilitating naturalization.²⁰⁵

In the CDU-FDP coalition, it rejected Zimmermann's proposal of reducing the maximum legal age at which children of foreign workers were allowed to reunite with their guest workers parents in Germany from 16 to 6 years.²⁰⁶ Similarly, with respect to the right of asylum, the FDP defended the status quo of the GG similar to the opinions of the SPD and the Greens, again distinguishing itself from the CDU.²⁰⁷ In 1993, it was the first party that demanded to allow for the regulated immigration of foreign workers in order to alleviate the adverse consequences of the ageing German society.²⁰⁸ It also called for the toleration of dual citizenship and the introduction of *ius soli* rights for children of foreigners.²⁰⁹ During the discussions on the new immigration law in the 1990s, it supported the *Optionsmodell* – proposed by parts of the CDU – that gives children of foreigners a choice to choose their citizenship when they reach a specific age. Integration was defined as a process that needs both the efforts of the immigrants to integrate into society as well as the societal conditions to accept and welcome immigrants.²¹⁰ In the 1998 program for the elections, the FDP accordingly advocated the reform of the citizenship law to include the *Optionsmodell*, to introduce the voting right for foreign residents in municipal elections and to ratify a new immigration law that regulates the new entry and societal integration of foreign workers.²¹¹

Among FDP voters, a disproportionate number are male and from the upper and middle classes. It is popular among the self-employed, but there is no clear religious demographic anymore although the FDP was traditionally related to the Protestant middle-class in Germany.²¹²

²⁰⁵ Ibid, 378f.

²⁰⁶ Bernd Geiß, "Die Ausländerbeauftragten der Bundesregierung, " in *Deutschland – ein Einwanderungsland? Rückblick, Bilanz und neue Fragen*, ed. Edda Currie and Tanja Wunderlich (Stuttgart: Lucius & Lucius, 2001): 127–140, 129–133,

²⁰⁷ Ohlert, *Zwischen 'Multikulturalismus' und 'Leitkultur'*, 388.

²⁰⁸ Ibid, 392.

²⁰⁹ Ibid, 393.

²¹⁰ Ibid, 399ff.

²¹¹ FDP, Wahlprogramm zur Bundestagswahl 1998 der Freien Demokratischen Partei: "Es ist ihre Wahl," in *Archiv des Liberalismus*, 2nd May 2008, http://www.freiheit.org/files/288/1998_Bundestagswahlprogramm.pdf, 57f.

²¹² Thaidigsmann, "Sozialstruktur und Wählerverhalten," 27. Martin Mertens, "Wählerschaft und Mitglieder," *Dossier Parteien in Deutschland* (Bundeszentrale für politische Bildung), 22nd February 2010, <https://www.bpb.de/politik-grundfragen/parteien-in-deutschland/42105/fdp>.

Alliance '90/The Greens

The Green party evolved out of the new social movements of the 1970s, in particular the environmental movement, and was officially founded in 1980. It was elected into the *Bundestag* for the first time in 1983. It began as a left-wing, progressive force that focused primarily on environmental issues, but quickly adopted a variety of other issues similar to the main parties. In their first general program of 1980 they demanded full civil rights for foreigners and their families, equal rights and opportunities in the workplace, the discontinuity of deporting politically persecuted foreigners, the municipal *and* national right of voting, the right of dual citizenship and the right for children of foreigners to naturalize.²¹³ These far-reaching demands that sharply criticized the status quo of immigration and integration policies corresponded to the Greens' ideal of a multi-cultural society and their goal to end all discrimination against minorities. In the election program of 1987 they also targeted the issues of immigrant women whose resident statuses were still dependent on their husbands'. Divorce thus sometimes entailed deportation from Germany. Moreover, they demanded the possibility of unrestricted family reunification and the establishment of special consultation centers for foreign women.²¹⁴ The Greens depicted themselves as lawyers for the millions of immigrants and criticized the various forms of hostility and discrimination against foreigners in Germany and demanded the introduction of legislative anti-discrimination measures and the unconfined right of asylum.²¹⁵ Assimilation and even the necessity to learn the German language in order to naturalize were rejected.²¹⁶ A draft of a new immigration law in 1991 mentioned a point system in which points are distributed according to the specific reasons of residence in Germany with the highest number of points given for an immigrant who has been hired.²¹⁷

The program for the federal elections in 1998 was characterized by a pledge to reform the citizenship law and change its traditional *ius sanguinis* orientation in order to introduce a new act that gives immigrants from non-EU countries who have stayed at least three years in Germany the same legal rights as immigrants from EU countries. The Greens also demanded to grant foreigners municipal voting rights, provide an independent residence title for the spouses of foreigners, grant children of

²¹³ Die Grünen, *Das Bundesprogramm* (1980), http://www.boell.de/sites/default/files/assets/boell.de/images/download_de/publikationen/1980_001_Grundsatzprogramm_Die_Gruenen.pdf, 38. Tietze, *Einwanderung und die deutschen Parteien*, 156.

²¹⁴ Die Grünen, *Bundestagswahl Programm 1987*, http://www.boell.de/sites/default/files/assets/boell.de/images/download_de/publikationen/1987_Wahlprogramm_Bundestagswahl.pdf, 20.

²¹⁵ *Ibid*, 8f.

²¹⁶ Tietze, *Einwanderung und die deutschen Parteien*, 161.

²¹⁷ *Ibid*, 169f.

Ethnic nation-states at the crossroads

foreigners ius soli citizenship, recognize dual citizenship, abolish the practice of eviction, and re-open Germany to immigration.²¹⁸

The Green party has been traditionally voted for by the younger generation and middle-aged to older (especially female) persons from 40 to 54 with a high formal education working in middle-class or upper-class jobs.²¹⁹

Party of Democratic Socialism (PDS)

The PDS is the successional party of the GDR's former leading Socialist Unity Party of Germany (SED). It was transformed and newly founded in both West and East Germany after Germany's unification, but mostly derived its votes in the 1990s from East Germany. It was elected into the united *Bundestag* in 1990. With respect to immigration policy, it was one of the fiercest critics of the asylum compromise and strongly defended the rights of refugees as well as the need for strict anti-discrimination measures. It rejected the ethnic-nationalistic origins of the citizenship law and promoted the legalization of dual citizenship and the education of immigrant children in their native tongue.²²⁰

This view was reaffirmed in the election program of 1998 in which the PDS committed to the aims of creating a multicultural society with equal civic and political rights of immigrants including the right to vote for foreign residents who have lived in Germany for at least five years and equal opportunities in the education system and labor market. Moreover, the party demanded the introduction of a comprehensive anti-discrimination law and an individual right of permanent residence (independent of the spouse). Similar to the Greens, it aimed to return to an unrestricted right of asylum instead of a currently "humiliating" legislation.²²¹

The PDS has strong support among younger voters in East Germany with high formal education, without religious denomination and occupations as qualified employees.²²²

²¹⁸ Bündnis 90/Die Grünen, Programm zur Bundestagswahl 98. Grün ist der Wechsel (Bonn, 1998), 120ff.

²¹⁹ Thaidigsmann, "Sozialstruktur und Wählerverhalten, 28. Martin Mertens, "Wählerschaft und Mitglieder," *Dossier Parteien in Deutschland* (Bundeszentrale für politische Bildung), 22nd February 2010, <http://www.bpb.de/politik/-grundfragen/parteien-in-deutschland/42159/waehlerschaft-und-mitglieder>.

²²⁰ PDS, Opposition gegen Sozialabbau und Rechtsruck. Wahlprogramm der PDS 1994 (Bonn, 1994), 22.

²²¹ PDS, Programm der PDS zur Bundestagswahl 1998. Für den politischen Richtungswechsel! Sozial und solidarisch – für eine gerechte Republik!, 28ff.

²²² Martin Mertens, "Wählerschaft und Mitglieder," *Dossier Parteien in Deutschland* (Bundeszentrale für politische Bildung), 22nd February 2010, <http://www.bpb.de/politik/grundfragen/parteien-in-deutschland/42138/waehlerschaft-und-mitglieder>.

Right-wing, anti-immigrant and nativist parties

Nationalist parties in Germany include the Republicans (*Republikaner*, founded in 1983) who received 1.8 percent of federal votes in the 1998 federal election, the German People's Union (DVU, founded in 1971) with 1.2 percent of votes, and the NPD (founded in 1964) with 0.25 percent of votes.

The NPD holds strongly nationalist and partly anti-Semitic views glorifying Germany's national-socialistic past. It has organized hostile citizen initiatives against foreigners in the 1980s and rejects both immigration and integration as a "genocide" on the German people. Similar to the DVU, it agitated against multi-culturalism in favor of a model of ethnic and racial nationalism not unlike the biopolitical concepts of the NSDAP. It also argued for a revision of the German borders to those before WWII.²²³ In general, the NPD and DVU associated immigration with criminality and the loss of German identity.²²⁴ In its 1998 electoral program, the DVU formulated its aims to prioritize Germans before foreigners in the labor market, reduce the financing for diversity projects, fight against foreigner criminality and severely restrict further immigration.²²⁵

The parties are also associated with non-party right-wing groups of so-called "comradeships", informally organized small groups that participate in demonstrations and sometimes violent agitations.²²⁶ An upsurge in violence against asylum-seekers by these groups took place particularly in the early 1990s.²²⁷ The Republicans who do not hold any revisionist views of the past can be rather seen as a populist-conservative party that focused on the criminality of foreigners and advocated an assimilationist societal view on their integration.²²⁸ Right-wing parties generally target low-income men

²²³ Albert Scharenberg, "Brücke zum Mainstaem – Mainstream als Brücke. Europäische Rechtsparteien und ihre Politik gegen Einwanderung," in *Globalisierter Rechtsextremismus? Die extremistische Rechte in der Ära er Globalisierung* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2006): 70–111, 86f.

²²⁴ Martin Langebach and Jan Raabe, "Die Genese einer extreme rechten Jugendkultur," in *Autonome Nationalisten. Neonazismus in Bewegung*, ed. Jan Schedler and Alexander Häusler (Wiesbaden: VS Verlag für Sozialwissenschaften, 2011): 36–53, 28.

²²⁵ Richard Stöss, "Rechtsextremismus in West- und Ostdeutschland," *Friedrich Ebert Stiftung Digitale Bibliothek*, <http://library.fes.de/fulltext/asfo/00659003.htm>.

²²⁶ Gudrun Heinrich, "Akzeptanzprobleme der Migration in Mecklenburg-Vorpommern," in *Abwanderung und Migration in Mecklenburg und Vorpommern* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004): 279–294, 286.

²²⁷ *Ibid*, 288.

²²⁸ Coerw Krüger, "Der REP-Bundestagswahlkampf 1994," in *Rechtsextremismus in Parlamenten. Forschungsstand, Fallstudien, Gegenstrategien*, ed. Christoph Butterwegge et al. (Opladen: Leske & Budrich, 1997): 243–266, 257.

that are disadvantaged from immigration. Accordingly, in the 1990s, voters with low formal education, those with manual labor jobs and the unemployed were overrepresented according to different studies. Citizens in East Germany have higher vote shares than those in West Germany.²²⁹

Summary of party positions

The illustration below shows the positioning of the main parties in the FRG around the year 1998 a few years before the ground-breaking citizenship and immigration law was passed. The two axes are the immigration axis and the integration axis. A restrictive view on immigration is indicated by policies that limit the right of asylum and minimize immigration streams while more open immigration policies include measures to re-open the borders for new streams of foreign workers or asylum-seekers by using, for instance, a point system or quotas. The second dimension differentiates between the different principles of societally integrating foreigners. While the *assimilationist* view calls for the immigrant's adjustment to German values and traditions, the *multi-cultural* view embraces the differences between cultures and concedes the right of cultural independence for immigrant communities on the condition that the German legal order is observed.

What becomes apparent is that while there is a general consensus on intensifying measures to integrate immigrants into society – especially the second generation – and raise the naturalization rate, opinions differ if and how new immigration should be allowed again and what the appropriate guiding principle for integration should be. Indeed, there was a trend towards granting immigrants the right to protect their own culture in the German society. Even the CDU has recognized this right although it also emphasized the necessity for immigrants to adjust to German values. The PDS and the Greens most distinctively embraced the idea of a multi-cultural society and completely rejected the traditional notion of an ethnic German nation-state with the Green party even going so far as to waive German language skills as requirements for naturalization. The SPD and FDP, too, supported various policies that correspond to a multi-cultural society such as the right to vote in municipal elections or limited *ius soli* rights. In the FDP, however, some critical voices against multi-culturalism were present as well.²³⁰ With respect to the immigration dimension, the CDU/CSU unambiguously rejected new immigration. The Green party developed the most far-reaching concept of admitting labor immigrants while the PDS mostly concentrated on the asylum issue. The FDP, too, formulated cautious notions

²²⁹ Urban Kaiser, *Wer wählt rechts und warum? Eine Analyse der Wähler der Republikaner und deren Wahlmotivation. Die baden-württembergischen Landtagswahlen 1992 bis 2001* (Norderstedt: Grin, 2005), 5. Sven Eichstädt, "Rechtsextreme Wähler sind männlich, arm, arbeitslos," *Die Welt*, 6th December 2011, <http://www.welt.de/politik/deutschland/article13754021/Rechtsextreme-Waehler-sind-maennlich-arm-arbeitslos.html>.

²³⁰ Ohlert, *Zwischen 'Multikulturalismus' und 'Leitkultur'*, 396.

Ethnic nation-states at the crossroads

to increase immigration in order to alleviate the economic consequences of the ageing German society while the SPD, which openly supported restricting immigration for many decades, also slowly favored a new system of regulated immigration. Finally, the far right-wing parties Republicans, NPD and DVU held an extremely assimilationist (or rather: exclusionist) view on integration and wanted to restrict immigration completely.

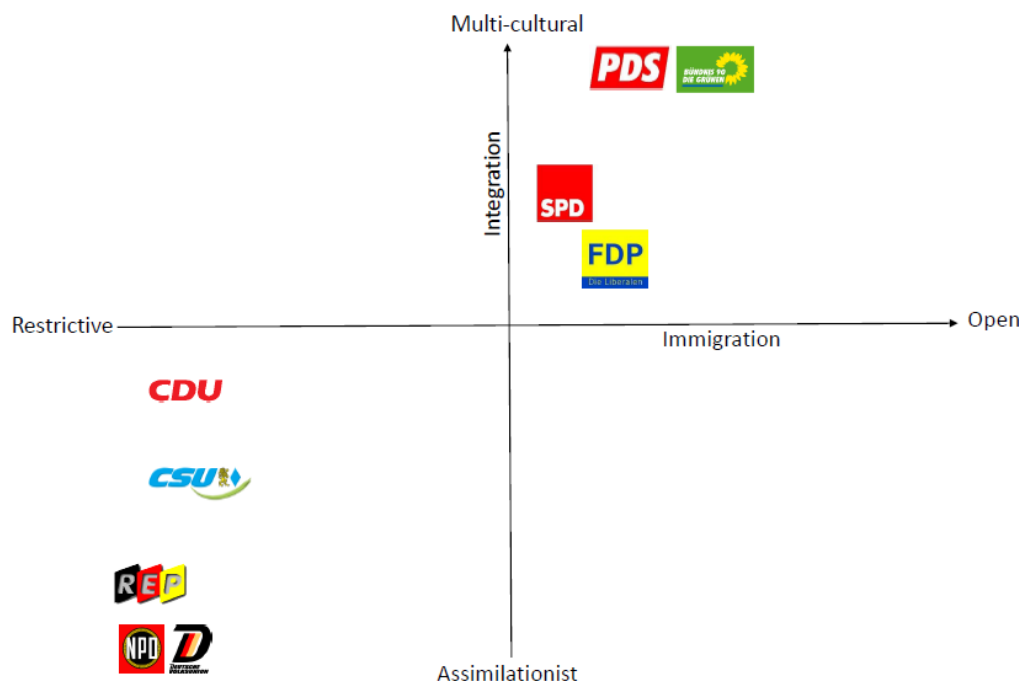


Figure 6. Summary of party positions in 1998 depicted on an immigration and an integration axis (by author)

2.2.1.3 Societal coalitions and interest groups

2.2.1.3.1 Immigrant associations

In accordance with the immigration history in Germany, there are different types of organized and unorganized immigrants that each hold particular interests. In general, most foreign residents in Germany have stayed in the FRG for a significantly long time period – the majority between 10 and 15 years.²³¹ In particular, immigrants from Turkey, Italy, Greece, Croatia, Serbia, Kosovo, Spain and Portugal have on average stayed in Germany for a long period of time (20 years or more).²³² The legal claim to naturalization is redeemed mostly by Turkish immigrants, followed by Polish and Ukrainian immigrants.²³³ Problematically, the education level of immigrants and Germans with a migration history (second- and third-generation immigrants) is still significantly lower compared with natives, in

²³¹ BPB, “Zahlen und Fakten: Die soziale Situation in Deutschland – Ausländische Bevölkerung nach Aufenthaltsdauer.”

²³² Bundesamt für Migration und Flüchtlinge, *Migrationsbericht 2013*, 211.

²³³ *Ibid*, 217.

addition to issues of labor market integration. The majority of citizens without a formal educational degree consists of citizens with a migration history.²³⁴

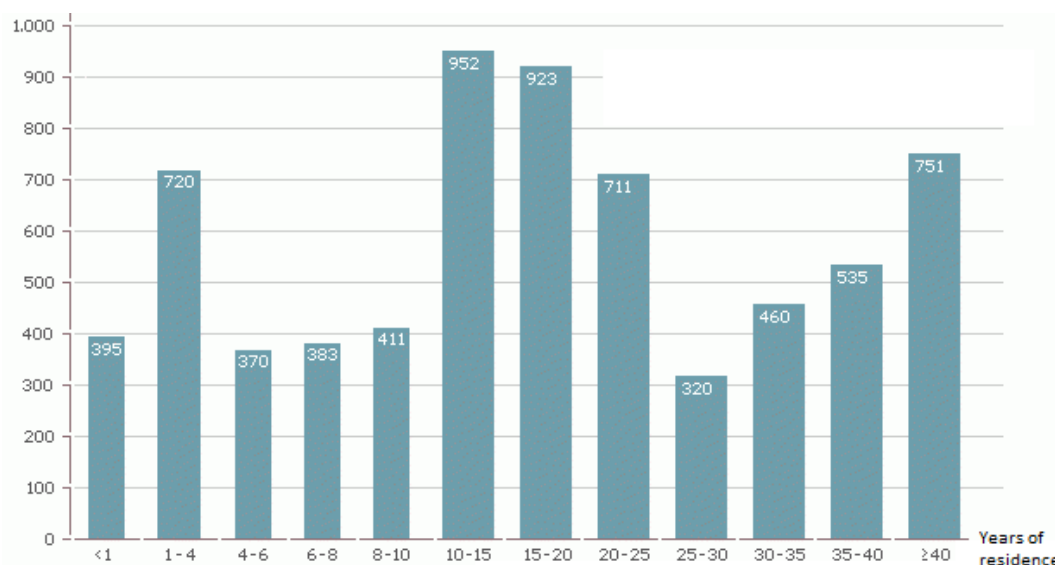


Figure 7. Distribution of immigrants' years of residence in Germany (2011)²³⁵

Immigrants from EU member states

After the ratification of the Schengen agreement in 1985, the key division in German immigration law has been that between immigrants from EU member-states who automatically receive the right of residence and may work in Germany and non-EU immigrants without these privileges. Integrative measures such as integration classes, naturalization requirements or citizenship rules, however, generally relate to both types of immigration. EU citizens are allowed to remain in Germany for either up to three months or for more than three months in order to find employment if they can finance themselves or for the purpose of family reunification.²³⁶ They are not registered at the local Foreigner Agencies and their legal status is determined by EU law. In 2013, 3.37 million of a total of 7.63 million foreign residents immigrated from EU countries which is a share of 44.1 percent.²³⁷ Only a small percentage of roughly 15.7 percent out of these EU citizens decided to take the step of naturalization until 2011.²³⁸

²³⁴ BPB, "Bevölkerung mit Migrationshintergrund II" Zahlen und Fakten. Die soziale Situation in Deutschland, 28th November 2012, <http://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/61649/migrationshintergrund-ii>.

²³⁵ BPB, "Ausländische Bevölkerung nach Aufenthaltsdauer."

²³⁶ BMI, "Häufig gestellten Fragen zum Thema: Freizügigkeit," http://www.bmi.bund.de/SharedDocs/FAQs/DE/-Themen/Migration/Freizuegigkeit/Freizuegigkeit_1.html.

²³⁷ Statistisches Bundesamt, "Ausländische Bevölkerung," <https://www.destatis.de/DE/ZahlenFakten/Gesellschaft-Staat/Bevoelkerung/MigrationIntegration/AuslaendischeBevoelkerung/Tabellen/Geburtsort.html;jsessionid=74491EDB-4F4AE2C5BE711E9DAD17621C.cae1>.

²³⁸ BPB, "Zahlen und Fakten: Die soziale Situation in Deutschland – Eingebürgerte Personen Zahlen und Fakten."

Ethnic German repatriates (Aussiedler and Spätaussiedler)

Former emigrants of German decent (or with former German citizenship) are a another important stream of immigrants, but their number declined exponentially from 397,073 new arrivals in 1990 to merely 2,427 in 2013 as can be seen in the graph below.²³⁹ From 1990 to 2011, most of these immigrants came from Kazakhstan, Russia, Poland and Romania. *Aussiedler* do not only enjoy full residence and citizenship rights, but are highly organized and linked especially to the CDU. For instance, there are strong networks between the CDU and the conservative Federation of Expellees and associated regional groups (*Landsmannschaften*) that have branches for each nation of origin. They also enjoy strong support from churches and welfare organizations. Other parties are generally supportive as well although the Greens and the PDS reject the ethnic implications of the immigration and citizenship laws.

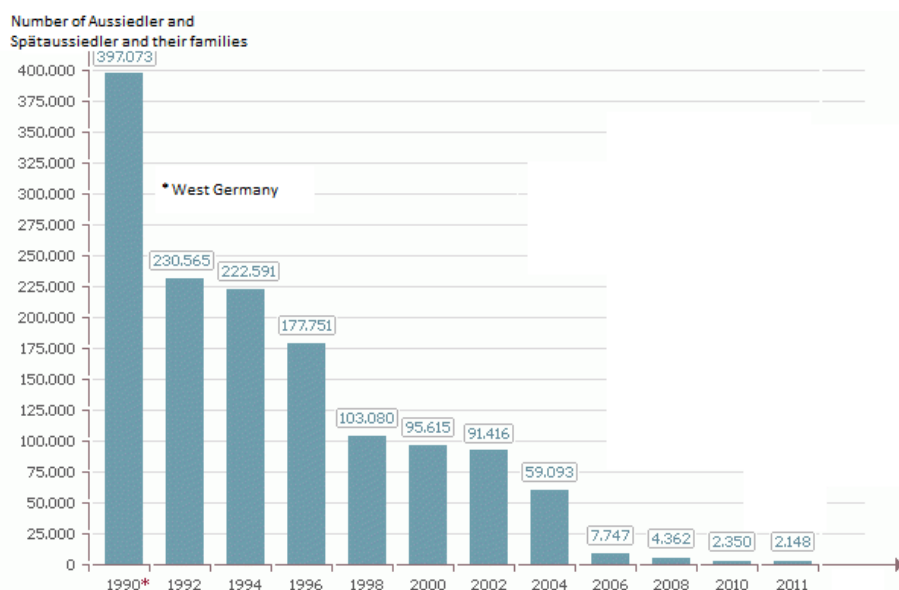


Figure 8. Number of Aussiedler and Spätaussiedler and their families over time²⁴⁰

Guest workers and their families

Most of the post-war immigration is based upon the guest worker program and the related family reunification. Over the course of the years, immigrants became increasingly organized, especially among the dominant group of the Turks who created a network of thousands of social, religious and

239 Bundesverwaltungsamt, Spätaussiedler und ihre Angehörigen. Jahresstatistik 2013, http://www.bva.bund.de/Shared-Docs/Downloads/DE/BVA/Staatsangeh%C3%B6rigkeit/Aussiedler/Statistik/J_Jahresstatistik2013.pdf?__blob=publicationFile&v=3. BPB, “Zahlen und Fakten: Die soziale Situation in Deutschland – (Spät-)Aussiedler,” 28th November 2012, <http://www.bpb.de/nachschlagen/zahlen-und-fakten/soziale-situation-in-deutschland/61-643/aussiedler>.

240 BPB, “(Spät-)Aussiedler” Zahlen und Fakten. Die soziale Situation in Deutschland.”

political organizations which became important pressure groups. Next to Turkish umbrella organizations that will be analyzed here, other immigrant groups are usually organized in similar types of organizations that are structured along ethnic lines (91 percent in 1999).²⁴¹

Turkish associations typically remain in contact with their home country while being embedded into German politics and society, which they try to influence through publicity campaigns, advisory activities and involvement in German parties and institutions.²⁴² In the 1960s and 1970s, there was a large number of Turkish labor groups that advocated for their interests, for example the “Association of Turkish employees in Cologne and surroundings” or “Türk Danis,” which was founded by the powerful welfare organization Workers’ Welfare (AWO). Later, the groups became more diverse and began to represent the societal interests and religious practices of long-term immigrants and their families in the German society.²⁴³

The groups range in their orientation from apolitical to nationalistic and Islamist. Local mosques and so-called “cultural centers” are key forums for self-organization and the planning of various religious and non-religious activities, but remain somewhat distant from German politics and society. The first party that explicitly represents the interests of Turkish and Muslim immigrants was founded in 2010 under the name of the “Federation for Innovation and Justice” (BIG) while other fragmented political organizations often reproduced the different political views of Turkey and remained somewhat marginal in the German political system. These groups comprise Turkish and Kurdish nationalistic groups (e.g. the far-right Turkish Grey Wolves), moderate groups (e.g. the Federation of Social-democratic Associations of Turkey in Europe that is associated with the SPD), religious groups (e.g. the secularist Turkish-Islamic Union of the Religious Institutions DITIB and the Islamist Mili Görüs) and leftist groups (e.g. the Federation of Immigrant Associations of Turkey). Some organizations such as Mili Görüs or the Organization of Islamic Associations and Communities Cologne (ICCB) are monitored by the Federal Office for the Protection of the Constitution (BfV).²⁴⁴ Parties, too, created or assisted the creation of their own groups such as the Liberal-Turkish-German Association

²⁴¹ Patrick Richard Ireland, *Becoming Europe: Immigration, Integration, and the Welfare State* (Pittsburgh: University of Pittsburgh, 2004), 49.

²⁴² Canan Atilgan, “Türkische politische Organisationen in der Bundesrepublik Deutschland,” *Konrad-Adenauer-Stiftung, Kommunalpolitik, Materialien für die Arbeit vor Ort* 9, 3f.

²⁴³ Handan Çetinkaya, “Türkische Selbstorganisationen in Deutschland: neuer Pragmatismus nach der ideologischen Selbsterfleischung,” in *Einwanderer-Netzwerke und ihre Integrationsqualität in Deutschland und Israel*, ed. Dietrich Thränhardt and Uwe Hunger (Münster: Lit Verlag, 2000): 83–110, 84.

²⁴⁴ Atilgan, “Türkische politische Organisationen in der Bundesrepublik Deutschland,” 11f.

(LTD) of the FDP or the German-Turkish Union (DTU) of the CDU in order to increase the participation of immigrants in the political process.²⁴⁵

The most important organizations that demanded broad rights and opportunities for the Turkish minority formed regionally in Berlin in the 1980s as the “Turkish Community of Berlin” and the “Federation of Turkish Immigrants” in Hamburg. These groups became the foundation for the creation of the federal umbrella organization of the “Turkish Community” (*Türkische Gemeinde*) in 1995 that currently comprises roughly 200 individual associations. The Turkish Community has created a committee for dialogue between Germany and Turkey and often acted as a proxy for the interests of Turkey, but has recently begun to distance itself more and more from Turkish politics.²⁴⁶ The organization competes and coordinates with the “Council of Citizens of Turkish Descent” whose political demands include the introduction of dual citizenship, the enforcement of anti-discrimination measures and the improvement of conditions of migrants in various areas of society.²⁴⁷ Both organizations are not very coherent as they represent a broad variety of different political views and orientations of local associations. Muslims are represented by (at least) two Islamic umbrella organizations, the “Islamic Council for the Federal Republic of Germany” and the “Central Council of Muslims in Germany,” which organizes mostly non-Turkish Muslims. Key demands include the introduction of Islamic religious classes at school and the permission to slaughter animals according to ritual rites.²⁴⁸

Finally, there are also social organizations founded by both German citizens and Turkish migrants that aim to establish full social and legal equality of immigrants such as the German-Turkish Foundation, the Turkish-German Health Foundation in Gießen or the Association for the Promotion of a Modern Way of Living.²⁴⁹ Other associations that remained unmentioned include Turkish organizations of scholars and entrepreneurs.²⁵⁰

Asylum-seekers, refugees, and others

Asylum-seekers and refugees do not have any direct forms of self-organization, but find a reliable political lobby in left-wing parties, unions and civil society groups such as *Pro Asyl* (and associated groups) and receive support and advice from international organizations such as the UNHCR, NGOs such as the International Organization for Migration in Germany as well as churches and welfare

²⁴⁵ Ibid, 7f.

²⁴⁶ Ibid, 22.

²⁴⁷ Ibid, 20

²⁴⁸ Zentralrat der Muslime in Deutschland, “Islamischer Religionsunterricht, Statements zu dem Lehrplan,” 26th April 1999, <http://zentralrat.de/14594.php>. Çetinkaya, “Türkische Selbstorganisationen in Deutschland,” 90.

²⁴⁹ Ibid, 104ff.

²⁵⁰ Ibid, 102f.

organizations. Civil society groups are cross-linked in so-called “refugee councils” that work in all 16 individual states. These refugee councils reach out to inform the public and defend the rights of refugees and asylum-seekers, and lobby for these rights in front of agencies, parties and individual politicians.²⁵¹

Other purposes of residence in Germany include educational (university studies, language classes, other training), occupational and other purposes such as the return of German citizens from abroad. These forms of immigration, however, are usually not organized.

Trade unions

Although the degree of unionization is not particularly high in Germany (roughly 18 percent),²⁵² unions and their umbrella organizations take a systemic role in various corporatist arrangements with the government (e.g. in the coordinating group for foreign workers at the BMAS), representing the interests of domestic workers.²⁵³ Unions have been key actors in demanding protection against the adverse effects of labor immigration such as pressure on domestic wages and worsening job security. Foreign workers directly competed with low-skilled Germans who consequently developed hostile attitudes against the guest worker program. In manufacturing, for instance, the number of German employees decreased by 870,000 while the number of guest workers increased by 1.1 million people. Moreover, the growth of real wages began to stagnate because of the increase in labor supply.²⁵⁴ Unions initially followed the consensus that guest workers would only stay temporarily showing a rather passive attitude as long as full employment was realized.²⁵⁵ Over time, however, they developed an institutional interest in adding foreign workers as union members in order to gain a more powerful position in wage negotiations, increase their mobilization potential, and avoid repeating the mistakes of the pre-war era when minority unions were created due to the lack of inclusion by German unions.²⁵⁶ Another conducive effect was that immigration supported the unions’ objectives to lower the total working hours in Germany.²⁵⁷

²⁵¹ Flüchtlingsrat Berlin, “Unsere Arbeit,” <http://www.fluechtlingsrat-berlin.de/unserearbeit.php>.

²⁵² Worker-participation.eu, “Gewerkschaften,” <http://de.worker-participation.eu/Nationale-Arbeitsbeziehungen/Quer-durch-Europa/Gewerkschaften>.

²⁵³ Peter Kühne, “The Federal Republic of Germany: Ambivalent Promotion of Immigrants’ Interests,” in *Trade Unions, Immigration and Immigrants in Europe 1960–1993*, ed. Rinus Pennix and Judith Roosblad (New York City/Oxford: Berghahn Books): 39–64, 39f.

²⁵⁴ Luft, *Staat und Migration*, 42f.

²⁵⁵ Haghghi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 21f

²⁵⁶ Kühne, “The Federal Republic of Germany,” 54.

²⁵⁷ Ulrich Herbert and Karin Hunn, “Guest Workers and Policy on Guest Workers in the Federal Republic: From the Beginning of Recruitment in 1955 until its Halt in 1973,” in *The Miracle Years: A Cultural History of West Germany, 1949–1968*, ed. Hanna Schissler (Princeton: Princeton University Press, 2001): 187–218, 196.

The DGB pledged in 1971 to represent foreign workers to the same degree as domestic workers. The latter made its support largely dependent on the domestic economic situation that affected their wages and employment situation.²⁵⁸ Unions organized special training for foreign workers and improved their participatory possibilities in union activities by granting them the active and passive voting right for work councils.²⁵⁹ The main industrial umbrella organizations also set up specific departments and sections that dealt with issues of foreign workers in unions.²⁶⁰ Still, as the recession endangered German jobs, they still backed the political consensus on discontinuing the recruitment program and sending the guest workers home – if necessary by deporting them – while restricting further immigration and giving priority to German nationals in hiring decisions.²⁶¹ But after this expectation did not come true and migrants instead began to organize themselves demanding a more adequate representation, the unions' alien policies became somewhat contradictory. On the one hand, unions pioneered in the demand for improved integrative policies that guaranteed the rights of residence and political participation. But these measures were not necessarily in the interests of domestic workers, who remained skeptical.²⁶² Therefore, the DGB also continued to support the principle that work permits are distributed according to the employment situation and rejected local voting rights for foreign residents.²⁶³

Until the 1980s, unions generally did not oppose the official government policies although cautious proposals to improve the residence status for foreigners were formulated. During the 1980s, however, the distance to the *Bundesregierung* became significantly wider. For example, several large unions now supported the reform of the AFG to dissolve the link between the issuing of work permits and the development of the labor market, introduce municipal voting rights for foreigners (IG Metall), dismantle the disadvantages of foreign residents in the education and job training system (IG Chemie-Papier-Keramik) and promote full equality between domestic and foreign workers (DGB).²⁶⁴ The expulsion of foreigners should be made more difficult in contrast with the plans of the federal government to broaden the causes for deportation.²⁶⁵ Furthermore, the unions' concept of society became

²⁵⁸ Peter Kühne, "Gewerkschaftliche Asyl- und Einwanderungspolitik. Auf dem Weg zu neuen Konzepten?" *Gewerkschaftliche Monatshefte* 2 (1992): 108–117, 108.

²⁵⁹ Nihat Öztürk, "Partizipation von Migranten und Einwanderern in Betrieben und den Gewerkschaften – Das Beispiel der IG Metall," in *Wohlfahrtsstaat, Einwanderung und ethnische Minderheiten: Probleme, Entwicklungen, Perspektiven*, ed. Andreas Treichler, (Wiesbaden: Westdeutscher Verlag, 2002): 295–312, 296.

²⁶⁰ Kühne, "The Federal Republic of Germany," 58.

²⁶¹ *Ibid.*, 46.

²⁶² Kühne, "Gewerkschaftliche Asyl- und Einwanderungspolitik," 109.

²⁶³ Haghghi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 30.

²⁶⁴ *Ibid.*, 43.

²⁶⁵ Kühne, "The Federal Republic of Germany," 48.

clearly more multi-cultural and expressly anti-assimilationist.²⁶⁶ As a consequence, they began to support the idea of legalizing dual citizenship.²⁶⁷ Reasons for this transformation can be identified in the increasing degree of organization of foreigners within the unions and the inauguration of the conservative CDU/FDP coalition government that lacked linkages to unions. In 1983, the IG Metall (the largest umbrella organization in Germany) gave immigrant workers the right to organize themselves in committees, host conferences (most importantly the National Foreigner Conferences) and write proposals for the union's own alien policies. From 1973 to 2000, IG Metall increased the degree of unionization of immigrants from 28.2 to 54 percent although their participation in work councils and other leadership positions remained low.²⁶⁸ According to a survey in 1995, roughly 70 percent of foreign workers felt represented by work councils compared to only 35 percent in 1985.²⁶⁹

Another important form of union activity is the creation and enforcement of various anti-discrimination measures in the workplace. Unions fight against the structural discrimination of immigrants in finding employment, that is assumed to be one of the reasons for the high unemployment rate of migrants in addition to the lack of qualifications.²⁷⁰ They campaign for mutual understanding and inter-cultural awareness in firms and in the general public²⁷¹ and sanction racist behavior by using warnings, monetary penalties or even dismissals. Executives have to join special training programs to establish an open and inclusive work culture.²⁷² Unions also expanded their political pressure to other issues of immigration that did not necessarily fall into their area of interest, such as the right to asylum and the various new restrictions of the 1980s and 1990s. However, issues of representing foreign workers' interests remained as unions lowered the priority for foreign worker issues (e.g. the DGB by closing the Foreign Workers department) or failed to implement the policies that were agreed upon by the decision-making bodies.²⁷³

In order to give their demands more legitimacy, unions stood in close contact with churches, foreigner organizations, NGOs such as *Pro Asyl* and *Amnesty International*, and welfare organizations, while using their contacts and linkages with political parties (especially the SPD, the Greens and the PDS) in order to initiate legislative change and receive direct information from the highest levels of

²⁶⁶ Haghighi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 44.

²⁶⁷ Kühne, "The Federal Republic of Germany," 50.

²⁶⁸ Öztürk, "Partizipation von Migranten und Einwanderern in Betrieben und den Gewerkschaften," 299.

²⁶⁹ Haghighi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 152, 183.

²⁷⁰ Öztürk, "Partizipation von Migranten und Einwanderern in Betrieben und den Gewerkschaften," 303.

²⁷¹ Haghighi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 46.

²⁷² Öztürk, "Partizipation von Migranten und Einwanderern in Betrieben und den Gewerkschaften," 307.

²⁷³ Haghighi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 185, 188f.

politics.²⁷⁴ The proposals of the IG Metall in 1991 to reform the immigration law towards a quota system, the specific of which were to be discussed in a broad forum involving both societal and political actors, were similar to those of the Greens.²⁷⁵ Moreover, unions were leading in drafting proposals for anti-discrimination legislation.²⁷⁶ Next to their mobilization capacities, unions used their own publications and conferences in order to reach out to the public.

2.2.1.3.2 *Employer organizations*

The employer organizations, most importantly the Federation of German Employers (BDA), the Association of German Chambers of Industry and Commerce (DIHK) and the Federation of the German Industry (BDI) were among the strongest supporters of the guest worker program in the 1950s and continue to be in favor of matching labor demand with selective immigration from abroad. They directly participated in the recruitment program and the hiring of foreign workers by forwarding their specific labor demand to the German government.²⁷⁷ In times of labor shortages, they could thus reap the benefits of an expanding pool of low-skilled labor and stagnating real wages.²⁷⁸ Instead of making manual labor jobs more attractive by increasing wages or investing in mechanization, employers could defer these costly decisions and use imported labor instead.²⁷⁹ Moreover, pressure on company pension schemes was relieved due to the favorable age structure of foreign workers.²⁸⁰ Employer associations also lobbied successfully against introducing the principle of rotating foreigners in order to benefit from their experience and to avoid the high costs of training new employees.²⁸¹

On the other hand, employer associations were in accordance with the view that the guest worker program was only temporary and generally favored the idea that foreign workers could be sent home dependent on the decision of the employer, for example in periods of unemployment, although they realized that this might be difficult to realize.²⁸² Accordingly, they did not resist the halt of the recruitment program in 1973 as labor demand decreased significantly, and began to favor attempts to

²⁷⁴ Kühne, "Gewerkschaftliche Asyl- und Einwanderungspolitik," 110f.

²⁷⁵ *Ibid.*, 114.

²⁷⁶ Haghghi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 47

²⁷⁷ Luft, *Staat und Migration*, 46f.

²⁷⁸ Herbert and Hunn, "Guest Workers and Policy on Guest Workers in the Federal Republic," 196

²⁷⁹ Luft, *Staat und Migration*, 43.

²⁸⁰ *Ibid.*, 46.

²⁸¹ Silke Hans, *Assimilation oder Segregation? Anpassungsprozesse von Einwanderern in Deutschland* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2010), 29.

²⁸² Herbert and Hunn, "Guest Workers and Policy on Guest Workers in the Federal Republic," 195. Luft, *Staat und Migration*, 48.

restrict the residence period of foreign workers and their families instead. In case of permanent settlement, any promised advantages of a “mobile” labor force would vanish.²⁸³ Employers also observed the increasing self-organization and unionization of foreign workers with skepticism and especially criticized the readiness of immigrants to strike.²⁸⁴

While unions significantly transformed their political views in the 1980s in opposition to the *Bundesregierung*, the same was not true for employers associations whose position was strongly dependent on the particular labor demand. They thus did not oppose the restrictive immigration policy of the CDU/FDP coalition.²⁸⁵ When labor became scarce, such as in the 1990s, employers began to lobby again for selectively increasing immigration.

2.2.1.3.3 Churches and welfare organizations

The Protestant and Catholic churches in Germany are important actors in Germany’s immigration policy-making as they finance and organize powerful welfare organizations and represent a humanitarian perspective on immigration issues that falls outside of economic cost-benefit analyses. Churches directly support immigrants, especially political or religious refugees, by offering different advisory services and support. Their humanitarian work for migrants is a result of their religious conviction and self-conception based on the biblical experiences of migrations and expulsions that they interpret as a duty to show solidarity with migrants.²⁸⁶

Originally, the role of the churches was restricted to pastoral activities and counseling.²⁸⁷ But together with unions and welfare organizations, they later formulated the early realization that the guest worker program had already led to the long-term settlement of a significant number of foreigners, thus rejecting the dogma that Germany was not a country of immigration.²⁸⁸ Measures such as the right to vote in municipal elections were discussed openly and generally supported.²⁸⁹ Churches were politically activated after the CDU-led government in the 1980s initiated a restrictive alien policy and discussed limiting the right of asylum in the 1980s and 1990s. In this era, churches campaigned

²⁸³ Ibid, 57.

²⁸⁴ Haghghi, *Ausländerfeindlichkeit und Diskriminierung im betrieblichen Alltag*, 40.

²⁸⁵ Jan Motte, “Nicht Ausländer-, sondern Strukturpolitik: Die bundesdeutsche Praxis der Rückkehrförderung in den 80er Jahren,” *Einwanderung im Spiegel sozialwissenschaftlicher Forschung*, ed. Bernhardt Santel and Hermann Schock (Wiesbaden: Springer, 2000): 55–72, 58.

²⁸⁶ Andreas Blätte, *Einwandererverbände in der Migrations- und Integrationspolitik 1998–2006* (Wiesbaden: Springer VS, 2014), 201.

²⁸⁷ Ibid.

²⁸⁸ Wolf-Dieter Just, “Der Islam und die Evangelische Kirche in Deutschland. 'Klarheit und gute Nachbarschaft'?", in *Islamfeindlichkeit: Wenn die Grenzen der Kritik verschwimmen*, 2nd edition, ed. Thorsten Gerald Schneiders (Wiesbaden: VS Verlag für Sozialwissenschaften): 391–402, 396.

²⁸⁹ D’Amato, *Vom Ausländer zum Bürger*, 113.

against the view that asylum-seekers came to Germany merely to improve their economic situation and used the institution of church asylum since 1983 to help refugees that were threatened with deportation.²⁹⁰ The use of this officially illegal measure was strongly opposed by the CDU, while the Greens and parts of the SPD expressed their support.²⁹¹ The churches continued to put political pressure on the German government throughout the 1980s and 1990s, stressing the universality of human rights and the necessity to improve the legal protection of foreign residents.²⁹²

An important statement of the ecumenical cooperation between churches and their joint work to advocate for the rights of refugees and asylum-seekers was the “Shared Word” of 1997 in which both Protestant and Catholic church formulated their view on migration issues in Germany. They stressed the indivisibility of human rights that should be central for any discussions around immigration and refugee policies.²⁹³ The paper sharply criticized the hostility towards foreigners in the 1990s and instead promoted a broad societal consensus on immigration based on “multi-cultural and poly-ethnic coexistence in cultural tolerance and social peace.”²⁹⁴ Using both political and theological arguments, it demanded to develop a common European refugee policy within the EU. Moreover, it advocated for the unconditional right of asylum, participatory rights for migrants in the political, economic and social sphere, improved integrative measures, the development of a comprehensive migration concept in Germany, and the reform of the citizenship law.²⁹⁵ Both churches cautiously formulated positive views in favor of a quota system of immigration.²⁹⁶ With respect to their own role, they saw themselves as lawyers for “ethical principles” within the political and societal dialogue on immigration and integration.²⁹⁷ In particular, they pledged to integrate Christian foreigners into the churches, work together with Christian communities of foreigners and engage in the inter-religious and inter-cultural dialogue with other religions.²⁹⁸ To achieve these objectives, they organized language exchange programs, youth exchanges, meeting places for young foreigners, counselling, events targeting the improvement of inter-cultural understanding and, most importantly, the institution of church asylum.²⁹⁹

²⁹⁰ Hans, *Assimilation oder Segregation?*, 119f.

²⁹¹ *Ibid.*, 124.

²⁹² Harald Bauer, *Immigration Dialectic: Imagining Community, Economy, and Nation* (Toronto et al.: University of Toronto Press, 2011), 187.

²⁹³ Kirchenamt der Evangelischen Kirche in Deutschland and Sekretariat der Deutschen Bischofskonferenz, “...und der Fremdling der in deinen Toren ist...’ Gemeinsames Wort der Kirchen zu den Herausforderungen durch Migration und Flucht,” *Gemeinsame Texte* 12 (1997), 8.

²⁹⁴ *Ibid.*, 29.

²⁹⁵ *Ibid.*, 35, 55f, 58, 61, 65, 67ff, 69ff, 79f.

²⁹⁶ *Ibid.*, 71.

²⁹⁷ *Ibid.*, 59.

²⁹⁸ *Ibid.*, 86f, 89.

²⁹⁹ *Ibid.*, 97f, 102.

A more ambiguous attitude, however, became visible in discussions on the role of Islam. Catholic conservatives such as Cardinal Lehman spoke out against the judicial equality of Christian and non-Christian religions in Germany. Similarly, the building of a mosque in Cologne was strongly opposed by Cardinal Meisner.³⁰⁰ Protestant churches, on the other hand, held more accommodating and pragmatic views towards Islam, as illustrated in the 2000 leaflet of the umbrella association Evangelical Church in Germany (EKD) with the topic entitled “Living together with Muslims in Germany”. Both churches, however, either implicitly or explicitly criticized the lack of modernization in the Islamic world, which would obstruct the integration of Muslim immigrants, and desired a “domesticated” Islam that is embedded into the German society.³⁰¹

Welfare organizations in Germany take a key role in providing social and welfare services such as counselling, elderly care, training, food services, family counseling, youth services, homeless shelters, hospitals, nursery homes or psychiatric clinics. They also offer services for foreigners such as language and integration classes, migration counseling,³⁰² educational services and sometimes their own asylum shelters in which refugees are allowed to stay with their families until the final decision on their residence status has been made.³⁰³ Although these non-profit, public-law associations are for the most part financed by public funds, the *Caritas* (Catholic) and *Diakonie* (Protestant) organizations are partly owned by churches and have an expressly religious mission that is influenced by the directives of the church leadership. Other organizations have humanitarian or political missions. The AWO, for instance, is associated with unions and the ideals of democratic socialism. The German Paritatic Welfare Association (DPWV) was founded in the 1920s for humanitarian purposes. All organizations hold humanitarian views and try to take influence on political decision-making. They have an institutional interest in adding immigrants to their services in order to receive more public funds and legitimize their expansion.³⁰⁴

Originally, the *Caritas* concentrated on services (especially job training and technical counseling) for Catholic immigrants (Italians, Spaniards, Portuguese, and Yugoslavs) while the *Diakonie* took

³⁰⁰ Just, “Der Islam und die Evangelische Kirche in Deutschland,” 400. Kirchenamt der Evangelischen Kirche in Deutschland and Sekretariat der Deutschen Bischofskonferenz, “...und der Fremdling der in deinen Toren ist...,” 80ff.

³⁰¹ Frank Heiner Böltz, *Die Wahrnehmung des Islam in Deutschland. Eine Diskursanalyse des Jugendmagazins der Bundeszentrale für politische Bildung* (Berlin: epubli, 2015), 109.

³⁰² Arbeitskreis Ethnologie und Migration, *Migration – Bürokratie – Alltag. Ethnographische Studien im Kontext von Institutionen und Einwanderung*, EuroMed Studien zur Kultur- und Sozialanthropologie des eudomediterranen Raumes 7 (Münster: Lit Verlag, 2011), 78f.

³⁰³ Doreen Müller, *Flucht und Asyl in europäischen Migrationsregimen. Metamorphosen einer umkämpften Kategorie am Beispiel der EU, Deutschlands und Polens* (Göttingen: Universitätsverlag Göttingen, 2010), 148.

³⁰⁴ Ireland, *Becoming Europe*, 35.

care of non-Catholic Christians (Greeks and Serbs), and the AWO provided services for non-Christian immigrants such as Turkish, Tunisian and Moroccan foreign residents.³⁰⁵ Due to the tendency of Turkish immigrants to settle in Germany, the AWO effectually took over responsibility for a majority of immigrants. While welfare organizations were in favor of increasing immigration, critics of the system stressed that they merely used foreigners for their own institutional interests by creating a “cliental relationship” of dependency instead of giving them participatory opportunities or proactively collaborating with foreigner associations. According to these critics, their services discouraged the formation of self-organized associations among foreigners. Moreover, they have fortified ethnic segregation among immigrants due to their exclusionary treatment of immigrant groups.³⁰⁶

In the 1980s, the paradigm of welfare provision in Germany was under threat as grassroots self-help organizations flourished and began to compete with larger welfare organizations. As a result, *Caritas*, *Diakonie* and AWO changed to a more political role and became active in defending the civil and political rights of immigrants. The welfare system for foreign residents diversified and included immigrant self-help organizations as intermediaries while the ethno-national segregation between the welfare organizations dissolved.³⁰⁷ In addition, after German unification in the 1990s, many immigrant organizations that were associated with the *Caritas* and *Diakonie* changed their affiliation to the non-religious DPWV in order to distance themselves from their paternalism.³⁰⁸ All welfare organizations generally follow the same positive outlook on immigration. *Caritas* and *Diakonie* cooperate immediately with the churches in organizing projects and events aiming to increase the mutual understanding between foreigners and Germans.³⁰⁹ In particular the AWO also often cooperates with unions and the DGB as one political coalition to increase financial resources in order to improve its service provision.³¹⁰

2.2.1.3.4 Civil society groups and NGOs

Finally, a network of civil society groups, neighborhood initiatives and NGOs exist that are partly embedded in political institutions. Unlike in other areas, there is no competition between the NGOs

³⁰⁵ Ibid, 35f.

³⁰⁶ Ibid, 34–37.

³⁰⁷ Ibid, 42.

³⁰⁸ Ibid, 48.

³⁰⁹ Just, “Der Islam und die Evangelische Kirche in Deutschland,” 396.

³¹⁰ Sabine Dreher, “Citizenship and Migration in Germany and the United States,” in *Globalising Interests. Pressure Groups and Denationalization*, ed. Michael Zürn (New York: State University of New York Press, 2005): 125–186, 183. Steffen Angenendt, “Einwanderungspolitik und Einwanderungsgesetzgebung in Deutschland 2000–2001,” in *Migrationsreport 2002. Fakten – Analysen – Perspektiven*, ed. Klaus J. Bade and Rainer Münz (Frankfurt am Main: Campus Verlag, 2002): 31–60, 53.

in fulfilling their tasks. *Pro Asyl* is the largest humanitarian lobby for refugees, asylum-seekers and illegal immigrants in Germany. Founded in 1986, *Pro Asyl* fights for the human rights of refugees and against racism in society by informing the public about the fate of individual refugees, financing and assisting in lawsuits of refugees and publishing documentation. It also acts as a hub for the interactions between churches, welfare organizations, human rights organizations and members of refugee councils.³¹¹ *Amnesty international* is another example of an NGO that promotes human rights for refugees and asylum-seekers as one area of its work, especially for cases when asylum-seekers are deported back to countries where the protection of their human rights is endangered.³¹² Medical organizations such as *medico international*, *Doctors without Borders* and the *German Doctors Chamber* are also involved in lobbying in favor of refugees. The *German Doctors Chamber*, for example, refused to follow its legal obligation to share information with the *Foreigner Agencies* whenever they treat illegal immigrants.³¹³ Other groups in this complex network include local initiatives to welcome refugees, independent counseling, education and training centers targeting a specific group of refugees, lawyer groups that offer help for lawsuits, information webpages, anti-racism projects and groups, academic initiatives and various campaigns with specific objectives (e.g. lobbies for Roma refugees of Yugoslavia, lobbies criticizing the imprisonment of asylum-seekers or lobbies for refugee children).³¹⁴

2.2.2 Analyzing the reform period from 1999 to 2004: Elite consensus and regional dissent

2.2.2.1 Legislative changes

*Reform of the Citizenship Act (Staatsangehörigkeitgesetz) in 1999*³¹⁵

The new Citizenship Act ratified in 1999 significantly altered the conditions under which citizenship could be attained. In essence, it modified the original *ius sanguinis* concept by adding a *ius soli* provision that gives children of foreigners the option to obtain the German citizenship. As long as one of the parents had German citizenship, the child would be granted the German citizenship as well (art. 4). If none of the parents were German but one of the parents had lived at least 8 years in Germany

³¹¹ *Pro Asyl*, “Über uns,” <http://www.proasyl.de/de/ueber-uns/>. Kerstin Seifer, *Governance als Einfluss-System. Der politische Einfluss von NGOs in asymmetrisch strukturierten Interaktionsarrangements* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2009), 137.

³¹² *Ibid.*

³¹³ Müller, *Flucht und Asyl in europäischen Migrationsregimen*, 148.

³¹⁴ Flüchtlingsrat Berlin, “Links,” <http://www.fluechtlingsrat-berlin.de/links.php>.

³¹⁵ Staatsangehörigkeitgesetz, <http://www.gesetze-im-internet.de/rustag/BJNR005830913.html>.

and had the permanent right of residence, the child would be granted the German citizenship and given the option to decide for or against it when he or she turned 23 (*Optionsmodell*) according to art. 29. The child then has to prove that it rejected his or her other citizenship.

The law also removed the possibilities to be naturalized by serving in the German government or in the army. Instead, it added provisions for citizens of German descent (*Spätaussiedler*) to attain German citizenship (in accordance with the Federal Exiles Act) (art. 7). The general naturalization requirements were comprehensively specified and included, amongst others, sufficient financial means (art. 8) and knowledge of the German language (art. 9). Foreign residents also received a *legal claim* to naturalization after eight years and under the condition that they pledged allegiance to the democratic order in Germany, rejected their former citizenship, could support themselves and their family financially, had not been convicted for a serious criminal act, and proved knowledge of the German language and the judicial and social order in Germany. Spouses and children also had the right to naturalize even if they had not resided in Germany for eight years. In general, the successful passing of a naturalization test was obligatory to fulfill the naturalization requirements (art. 10).

Although dual citizenship was generally ruled out, the legal possibility was granted in case the former citizenship could not be rejected or only rejected under highly difficult conditions (art. 12). Since this is very difficult or impossible for Turkish or Iranian nationality, for example, people from these nations had the de facto possibility to hold two or more nationalities. The reform thus formalized the fact that 1.4 million people were already living in Germany with multiple citizenship in 1994.³¹⁶ Moreover, dual citizenship was legalized for EU citizens.

The cautious introduction of *ius soli* elements is a paradigm change that contrasts strongly with the 19th century conception of an ethnic German community and its privileging of ethnic Germans while limiting immigration and restricting the participatory rights of foreigners. Granting children of foreigners the German citizenship under specific circumstances was an important symbol of Germany's willingness to integrate foreigners by giving their children equal opportunities in Germany's political and social system.

³¹⁶ Ingo von Münch, *Rechtspolitik und Rechtskultur. Kommentare zum Zustand der Bundesrepublik Deutschland* (Berlin: Berliner Wissenschafts-Verlag, 2011), 87.

Reform of the Immigration Act (Zuwanderungsgesetz) in 2004³¹⁷

The new Immigration Act (“Law for the Regulation and Limitation of Immigration and the Regulation of the Residence and Integration of Union Citizens and Aliens”) ratified in 2004 replaced the 1990 AuslG and comprehensively reformed Germany’s alien and asylum legislation. As in 1990, its jurisdiction only relates to foreigners from non-EU countries. The first and main part is called the Residence Act (“Law for the Residence, Employment and Integration of Foreigners in the Federal Territory”) while the second part specifies the free movement of EU citizens and the third part changes various laws.

First, the new law simplified the complex system of residence permits and reduced their number to three “residence titles” (art. 4) comprising the Schengen visa, a residence permission and a (permanent) settlement permission. The permission to work could be issued together with the residence title or later at the Employment Agency (BA). The settlement permission included the unrestricted right to work and could be issued after a foreigner held a residence permission for five years, could finance him- or herself, has been a member of a health insurance organization for at least 60 months, has not been convicted for a serious crime, had sufficient knowledge of the German language and the German legal and social order and had sufficient living space for him-/herself and his/her family (art. 9).

Second, for the first time the Immigration Act comprehensively regulated the possibilities of immigration and the conditions under which a residence permit may be granted. These rules represented a clear improvement in comparison with the 1990 AuslG in which the admission requirements were mentioned only abstractly, giving the Foreigner Agency significant power of discretion. According to the new act, residence permits could be distributed for (1) educational purposes (university studies, language classes, school education) (art. 16), (2) job training purposes (art. 17), (3) work purposes (art. 18–21), (4) humanitarian and political purposes (art. 22–26), (5) family reunification purposes (art. 27–36) and (6) other, special purposes (art. 37–38).

With respect to work purposes, the immigration of low-skilled labor continued to be restricted. The Federal Agency for Employment is authorized to distribute working permissions by considering the employment situation in Germany and apply preferential treatment for Germans and EU citizens (art. 38). It also has to check if the alien is employed under the same conditions and received the wages as a German employee.

³¹⁷ Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern, vom 30. Juli 2004, http://www.bmi.bund.de/SharedDocs/Gesetzestexte/DE/Zuwanderungsgesetz.pdf?__blob=publicationFile.

An important innovation was introduced for high-qualified immigrants (scientists, scholars and other specialists). Such an immigrant was advantaged not just in receiving a residence permit, but in specific conditions – when the BA consents, the foreigner can finance himself without problems, and his integration into German society does not pose any major difficulties (art. 19) – could also receive a settlement permission. Furthermore, self-employed persons can receive a residence permission if their contribution to the German economy is proven (art. 21).

Third, the Residence Act improved the status of asylum-seekers and refugees in Germany in accordance with the Geneva Convention and EU law. Non-state and gender-related persecution were added as legitimate reasons for the granting of an asylum status (art. 60). Moreover, the residence status of asylum-seekers that received an “exceptional leave to remain” (*Duldung*) because they could not be expelled to their home countries (e.g. due to war or a worsening health condition) was improved and they now had the possibility to receive a residence permission if they could not be deported for at least 18 months.³¹⁸

Fourth, integrative measures were intensified and expanded. Special integration classes financed by the federal government with a focus on language training and the teaching of Germany’s history, culture and judicial order were offered to foreign residents (art. 43). Immigrants coming to Germany for work, family reunification or humanitarian reasons, or immigrants who had received a settlement permission, were allowed to join these classes (art. 44). Among these, those who did not have conversational German skills or who were selected by the Foreigner Agency to join these classes (e.g. because they receive financial assistance from the government) were mandated to participate in integration classes (art. 44a).

Fifth, once again reasons for deporting foreigners were newly structured, specified and expanded. The Residence Act now distinguished between “compulsory deportation” (art. 53), “deportation as a rule” (art. 54) and “deportation due to discretionary decision” (art. 55) for lesser crimes or usage of government financial assistance. After the 9/11 attacks, the new law offered more legal possibilities to evict foreigners if a connection to terrorist or radical Islamist groups is presumed. It also centralized the decision-making authority in the BMI. For the inspection of foreigners, the data exchange with the BfV became obligatory.

³¹⁸ Jan Schneider, “Rückblick: Zuwanderungsgesetz 2005,” *Grundlegendossier Migration* (Bundeszentrale für politische Bildung), 15th May 2007, <http://www.bpb.de/gesellschaft/migration/dossier-migration/56351/zuwanderungsgesetz-2005?p=all>.

Sixth, the institutional setting of migration policy changed as well. Most importantly, the Federal Agency for the Recognition of Refugees was transformed into the Federal Agency for Migration and Refugees (BAMF). The agency's functions were expanded and its main role now lay in coordinating integration measures with other agencies and the federal government and in conducting scientific research that can be used for the regulation of immigration (art. 75). Every year it published the *Migration Report* with comprehensive research on the status and development of immigration and integration. Further, it organized the integration classes and delegated its execution to local carriers. It cooperated with the *Goethe Institute* and universities in order to develop the course contents.³¹⁹ A second institutional innovation was the abolition of the Commissioner for Asylum Issues that was criticized by groups such as *Pro Asyl* as an “institutionalized obstacle” for the asylum procedure.³²⁰

Another institutional innovation was the introduction of optional “hardship case commissions” at the *Länder* level in which a commission decides on single cases of foreigners (especially asylum-seekers) who did not receive a residence permit through the usual legal path but had urgent humanitarian or personal reasons to not be deported from Germany (art. 23a). The commission itself had to find such cases while the foreigner did not have a right to call for its involvement. The organization and composition of these commissions varied depending on the stipulations of *Länder* governments. They could include representatives of the ministries, agencies, churches, Muslim communities, welfare organizations, municipal organizations, refugee organizations, members of the state parliaments, the state Commissioner for Foreigners and/or medical organizations. Their role was to deliberate a recommendation for the state Ministry of the Interior, but not grant the residence status themselves. The illustration below shows the structure of immigration law in Germany.

³¹⁹ Goethe-Institut, BMI and BAMF, Rahmencurriculum für Integrationskurse, Deutsch als Zweitsprache, http://www.goethe.de/lhr/prj/daz/pro/Rahmencurriculum_online_final_Version5.pdf.

³²⁰ Pro Asyl (Bundesweite Arbeitsgemeinschaft für Flüchtlinge), “Stellungnahme zum Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern,” 10th January 2002.

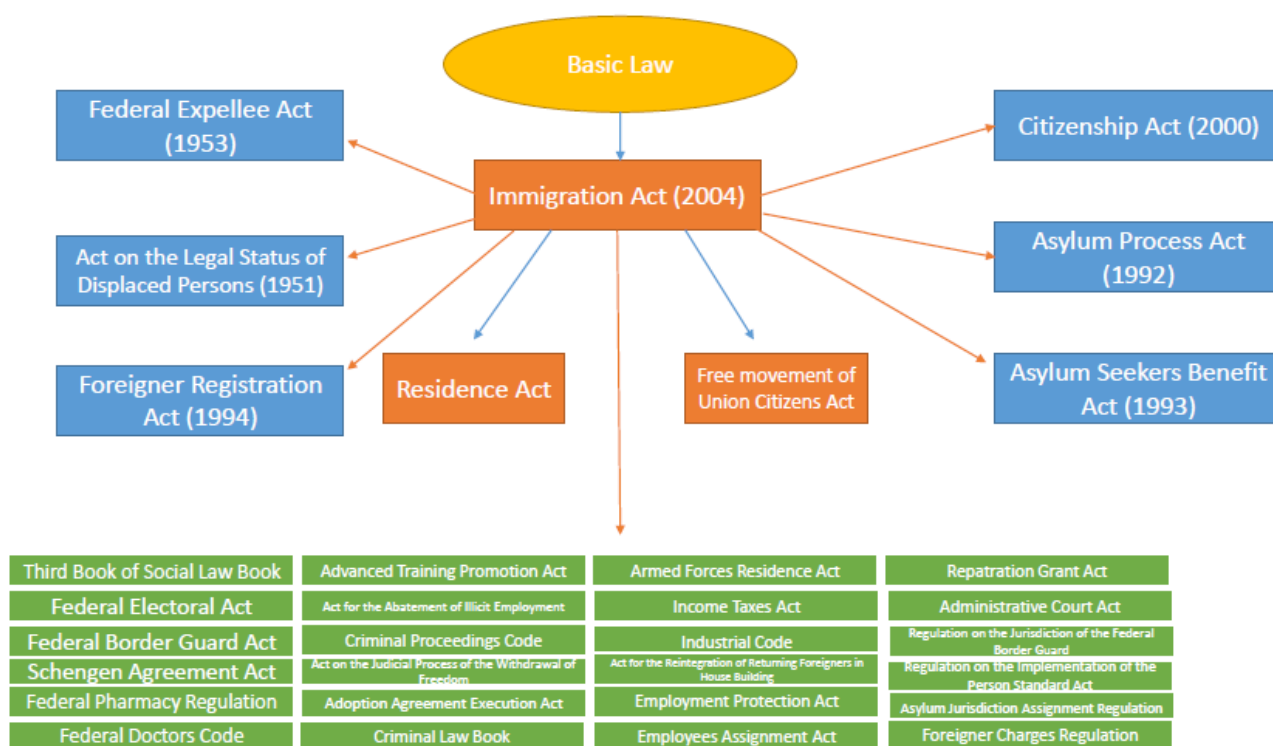


Figure 9. Structure of immigration law in Germany (by author)

2.2.2.2 Political coalitions and institutions of the Citizenship Act and the Immigration Act

The Citizenship Act and the debate on dual citizenship: Political coalitions

What originally triggered the new debate on reforming the citizenship law was the success of the SPD and the Green party in the federal elections of 1998. They formed a coalition government for the first time under Chancellor Schröder and remained in power until 2005. The coalition agreement between SPD and the Greens contained the pledge to reform the citizenship law in order to grant the *ius soli* birth right for children if at least one parent had been born in Germany or immigrated as a child prior to the age of 14. Moreover, it included the plan to give foreigners a legal claim for naturalization after eight years of residence (or less under specific conditions) instead of 15 years, the municipal right to vote and improvements in the rights of foreign spouses and asylum-seekers.³²¹ Importantly, the agreement also includes the recognition that Germany has irreversibly become a country of immigration. Later, the first draft of the law also incorporated the controversial right of dual citizenship.³²²

³²¹ SPD and Die Grünen, *Aufbruch und Erneuerung – Deutschlands Weg ins 21. Jahrhundert. Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die Grünen*, Bonn, 20th October 1998, 31f.

³²² Schneider, *Modernes Regieren und Konsens*, 165.

The main fault line between the parties emerged on the issue of dual citizenship, with the SPD and Greens on the one side and the CDU/CSU on the other side, while the FDP took a mediating position and suggested the *Optionsmodell* as a compromise distancing itself from its previous approval of dual citizenship. The Green party generally favored the suggestions of the SPD, but pushed for more initiatives in the area of naturalization, especially for refugees and immigrants dependent on government benefits, while attempting to lower the language requirements for naturalization. Its main demand was to alter the *ius sanguinis* stipulations of the citizenship law to the *ius soli* birth right.³²³

The CDU/CSU used the state election campaign in Hessen in 1999 in order to collect the signatures of roughly 300.000 citizens who opposed dual citizenship, seeing it as an obstacle to integrate foreigners.³²⁴ This strategy was actually a typical instrument of new social movements and was used successfully by the conservatives for the first time. The CDU/CSU argued that dual citizenship could not ensure the loyalty of immigrants to the German state and would instead endanger Germany's domestic security.³²⁵ A similar, but more hostile campaign was created by the far-right NPD while the CDU itself received unwelcome support from the DVU and Republicans. These parties used the state elections to stress their positioning against dual citizenship which was regarded a symbol for the development towards a multi-cultural society.³²⁶ Politicians of other parties and even parts of the CDU itself criticized the CDU/CSU campaign as populist and reactionary.³²⁷ The success of the campaign expressed itself not only in the high number of signatures, but also in the fact that the CDU surprisingly won the *Länder* elections in Hessen in 1999.³²⁸

The debate formed supportive political coalitions in favor of dual citizenship around the governing parties of the SPD and Green party, parts of the FDP and the CDU (especially representatives of the CDA, but also the Commissioner for Foreigners in Berlin), the Federal Foreigner Council, foreigner associations (e.g. the Turkish Community in Germany), Christians (e.g. the Representative of Bavarian Catholics) and unions (e.g. the Union for Education and Science).³²⁹ These opinions are generally

³²³ Tietze, *Einwanderung und die deutschen Parteien*, 159.

³²⁴ Wolfgang Gieler and Supriyo Bhattacharya, *Deutsche Migrationspolitik – Die Standpunkte und Strategien politischer Parteien im Vergleich*, Politikwissenschaft 196 (Münster: Lit Verlag, 2013), 19.

³²⁵ Christian Hoffmann, *Integrationspolitik in Deutschland nach 1998. Staatsangehörigkeitsrecht, Green Card und Zuwanderungsgesetz* (Hamburg: Diplomica Verlag, 2009), 52f. Entwurf eines Gesetzes zur Neuregelung des Staatsangehörigkeitsrechts. Die Eckwerte des Unions-Entwurfs, in *CDU-Dokumentation* 9 (1999).

³²⁶ Henrik Steglich, *Rechtsaußenparteien in Deutschland. Bedingungen ihres Erfolgs und Scheiterns* (Göttingen: Vandenhoeck & Ruprecht, 2010), 316.

³²⁷ Rhein-Zeitung, "Ausländerpolitik: Union im Kreuzfeuer der Kritik," 5th January 1999, <http://archiv.rheinzeitung.de/on/99/01/05/topnews/staatsbuenger.html>.

³²⁸ Münch, *Rechtspolitik und Rechtskultur* 88.

³²⁹ Rhein-Zeitung, "Ausländerpolitik: Union im Kreuzfeuer der Kritik."

as expected. One of the central demands of foreigner groups has been the introduction of dual citizenship to facilitate the decision of their members to naturalize in Germany and they thus supported the policies of the SPD-Green coalition. In fact, according to surveys in 1999, 2001 and 2002, 60 percent of naturalized Turkish immigrants voted SPD, stating that they would *never* vote for the CDU/CSU. Increasing the naturalization rate would thus be in the electoral interest of the SPD.³³⁰ After the 1980s, unions, too, became friendly towards measures that are supposed to have positive effects on integration. Together with the associated welfare organizations, churches in particular criticized the hostility towards foreigners that was stimulated by the campaign favoring an unconditional right for dual citizenship in order to formalize the fact that a high share of immigrants already had dual citizenship due to the legal exceptions.

Although these groups and parties lobbied against the CDU/CSU initiative, its undeniable success (and the gains for the Republicans) proved that at least in Hessen the median voter was rather skeptical towards granting foreigners dual citizenship. This was confirmed by a survey in 1996 in which 52 percent of respondents in West Germany and 59 percent in East Germany generally rejected this possibility. These numbers of rejection were higher than those for the municipal right to vote and equal possibilities to receive access to social benefits.³³¹ This rejection was especially developed around conservative voters who were mobilized in the signature campaign and had a stronghold in the CDU branch of Hessen. The initiative was backed by a majority of the conservative Bavarian CSU whose chairman Stoiber was highly influential in federal politics and had designed the proposal for the campaign together with executives of the federal CDU.³³² This development thus exemplifies for the influence of the CSU on federal politics and the success of an innovative, emotional campaign that captured the general public's skepticism of dual citizenship. The fact that state elections can be exploited for federal topics such as immigration policy was very apparent in the case of Hessen.

The Citizenship Act and the debate on dual citizenship: Institutional setting

The immediate institutional effect of the transformed regional political landscape after the state elections was a change in the composition of the *Bundesrat* which was involved in the legislative process of ratifying the StAG. The election of a conservative-liberal government in Hessen replaced

³³⁰ Andreas M. Wüst, "Das Wahlverhalten eingebürgerter Personen in Deutschland," *Aus Politik und Zeitgeschichte* 52 (2003).

³³¹ Andrea Herrmann, *Ursachen des Ethnozentrismus in Deutschland. Zwischen Gesellschaft und Individuum* (Opladen: Leske & Budrich, 2001), 53.

³³² Andreas Kießling, *Die CSU. Machterhalt und Machterneuerung* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004), 300.

a previous SPD-Greens coalition which thus gave the federal government a severe disadvantage in passing the citizenship law as it lost its majority in the *Bundesrat*. As a result, the government coalition essentially became dependent on the consent of the FDP who participated in several coalitions with the SPD in *Länder* governments and hence had the power to reject any proposal of the ruling parties by refusing to consent in the *Bundesrat*. Since the casting of votes in the *Bundesrat* had to be unanimous for each state government, a disagreement between two governing parties would result in the abstention from voting. Hence the FDP who was in the powerful position to be able to coalesce with both the CDU and SPD received enough leverage to realize its legislative goals of introducing the *Optionsmodell* as an alternative to full dual citizenship rights.

Instead of the government, the draft law was brought in by a group of parliamentarians of the SPD, the Green party and the FDP, and was passed with 365 yes-votes (including 23 deviating CDU votes) and 182 no-votes in the *Bundestag*. Neither the majority of the CDU/CSU nor the more idealist voices of the SPD, Greens and the PDS were satisfied with the compromise.³³³ The statements of 40 parliamentarians of the SPD and all delegates of the Green party reveal the satisfaction with the introduction of cautious *ius soli* elements, as well as the disappointment that the legal possibility of dual citizenship was excluded in the final version of the law.³³⁴

The hurdle of the *Bundesrat* is not the only point in the legislative process where regional political interests alter the conditions in which federal political coalitions can interact with each other in legislative projects. In addition, as federal laws exert an immediate effect on the administrative level of states, the BMI also had to negotiate with *Länder* governments on the *implementation* of the Citizenship Act. Accordingly, the Bavarian government was able to sharpen parts of the naturalization conditions (e.g. the time periods after which discretionary naturalization was possible) and language requirements.³³⁵ Finally, when it came to the implementation of citizenship policies in the individual states, the agencies still had significant leeway to shape the local immigration regime in a stricter or more lenient way.

³³³ Henning Storz, "Einwanderungsland Deutschland," in *Staatsbürgerschaft im Einwanderungsland Deutschland. Handbuch für die interkulturelle Praxis in der Sozialen Arbeit, im Bildungsbereich, im Stadtteil* (Opladen: Leske & Budrich, 2002): 21–52, 22f.

³³⁴ *Ibid.*, 24.

³³⁵ Heike Hagedorn, "Föderalismus und die deutsche Staatsangehörigkeit: die Einbürgerungspolitik der Bundesländer," in *Integrationspolitik in föderalistischen Systemen, Studien zu Migration und Minderheiten* 10, ed. Lale Akgün and Dietrich Thranhardt (Münster: Lit Verlag, 2001): 91–117, 99f.

In effect, the system of German federalism has severely skewed the decision-making process on the federal level and restricted a more significant change in citizenship policies. Due to the unique German political system, parties such as the FDP that had a higher degree of freedom to coalesce with either major party received disproportionate power whenever the *Bundesrat* majorities change. Two states with a conservative majority could severely alter the process of law formulation at the federal level. While it is true that public opinion largely supported these conservative views, the same did not hold true for the level of political and societal elites who were largely favorable towards a more significant change.

The Immigration Law: Political coalitions and party positions

What triggered the new debate on a comprehensive reform of immigration law was not the initial agenda-setting of the government coalition as in the case of the citizenship law. In 2000, Chancellor Schröder still rejected a new immigration law in response to public opinion whereby the majority of all constituents' parties showed negative views towards opening up the country again for immigration.³³⁶ Instead, the debate was provoked by acute labor demand and the pressure of IT businesses and their umbrella organizations in times of extraordinary growth rates of the sector (9 percent per year on average between 1997 and 2000).³³⁷ The IT employer organization Federal Association of Information Technology, Telecommunications and New Media (BITKOM), various scholars, major businesses such as IBM and Siemens³³⁸ and the association *Initiative D21* strongly lobbied for the opening of Germany's labor market for highly qualified immigrants in the IT sector in order to increase Germany's international competitiveness,³³⁹ which was already lagging behind other countries.³⁴⁰

According to BITKOM, there was a scarcity of labor of roughly 75,000 work places in the year 2000³⁴¹ (previous calculations stated even higher numbers)³⁴² as the number of users of high-speed internet and mobile phone owners surged.³⁴³ BITKOM also published several studies, surveys and

³³⁶ Klaudia Tietze, "Migration von Hochqualifizierten im Kontext der Entwicklung der Einwanderungskonzepte deutscher Parteien," in *Migrations- und Integrationsprozesse in Europa. Vergemeinschaftung oder nationalstaatliche Lösungswege?*, ed. Uwe Hunger et al. (Wiesbaden: VS Verlag für Sozialwissenschaften, 2008): 35–50, 41.

³³⁷ Ralph Greifenstein, *Die Green Card: Ambitionen, Fakten und Zukunftsaussichten des deutschen Modellversuchs* (Bonn: Friedrich-Ebert-Stiftung, 2001), 9.

³³⁸ Heike Pethe, *Internationale Migration hoch qualifizierter Arbeitskräfte. Die Greencard-Regelung in Deutschland* (Wiesbaden: Deutscher Universitäts-Verlag, 2006), 10.

³³⁹ Schneider, *Modernes Regieren und Konsens*, 167.

³⁴⁰ Greifenstein, *Die Green Card*, 8.

³⁴¹ BITKOM, "IT-Fachkräfte: 10 Jahre Greencard für IT-Experten," 5th March 2010, http://www.bitkom.org/de/markt_statistik/64054_62675.aspx.

³⁴² Greifenstein, *Die Green Card*, 13.

³⁴³ *Ibid*, 7.

reports specifying the necessary means that the German government had to take towards realizing the goal of an “information/IT society”. In particular, immigration of highly qualified IT specialists would benefit small businesses that did not have access to large internal labor markets like multinational businesses do.³⁴⁴ *Initiative 21* supported these goals as a powerful network of 200 businesses of not only the information- and communication technology sector, but also of consulting firms, media businesses, the banking sector, health care and market research firms. Government institutions and parties were involved in the association as well, striving to increase the growth of the IT sector and the digitalization of the German society by financing both commercial and non-commercial projects. Due to the unique public-private partnership, the initiative had unprecedented access to government channels and could communicate directly with Chancellor Schröder.³⁴⁵

The government projects by the Federal Ministry for Education and Research (BMBF) “Forum Info 2000” and “Innovations and Jobs in the IT Society of the 21st century” were generally in line with these lobby demands and financed various related education, infrastructure and labor market projects, among these also the *Initiative 21*.³⁴⁶ The BMAS and the BAA cooperated in these domestic initiatives that primarily aimed to increase the employment of IT specialists.³⁴⁷ The idea of the Green Card evolved in an innovative corporatist forum founded in 1998 by Schröder that included representatives of the government, unions and employer associations. The forum “Union for Labor, Education and Competitiveness” was founded to deliberate measures to decrease unemployment in Germany, and included a working group that dealt with labor scarcities in the IT sector. Immigration of highly qualified foreigners was not considered very controversial since most prejudices and negative attitudes towards foreigners in Germany generally targeted low-skilled immigrants.³⁴⁸ A leading voice in the design of the program was the BMBF, which coordinated its proposals with the Chancellery and the *Initiative 21*. The program was announced with high publicity at the computer trade show CEBIT in Hannover.³⁴⁹

The initiative included a new and limited labor recruitment program for a maximum of 20,000 immigrants over the course of five years in the areas of informatics and applied IT jobs – a total of four

³⁴⁴ Caviedes, *Prying Open Fortress Europe*, 71.

³⁴⁵ Der Spiegel, “Green-Card-Initiative: Schröder bevorzugt nahes Ausland,” 13th March 2000, <http://www.spiegel.de/netzwelt/web/green-card-initiative-schroeder-bevorzugt-nahes-ausland-a-68920.html>.

³⁴⁶ Dirk Hyner, *Survival of the Most Flexible? Analyse der Entwicklung des sozio-technischen Systems Btx/T-Online in einer revolutionär veränderten Umwelt*, Diploma Thesis (University of Konstanz, 2000), 35. Greifenstein, *Die Green Card*, 17.

³⁴⁷ Ibid, 18f.

³⁴⁸ Ibid, 21.

³⁴⁹ Schneider, *Modernes Regieren und Konsens*, 167f.

different job categories. It was initiated as a simple regulation by the BMAS without the participation of the parliament and came into effect quickly in August 2000 with the name “Regulation on residence permits for highly qualified foreign specialists in information- and communication technologies” (IT-ArGV). The applicant either had to prove that he had a degree in IT-related fields or had to earn at least 51,000 Euro per year at his German employer – the latter provision was criticized strongly by small business owners.³⁵⁰ The residence permits were limited to a five year period³⁵¹ and the workers could bring their immediate families to Germany as well. Spouses received a work permit after a waiting period of one year.³⁵² Until 2004, 17,931 specialists immigrated into Germany, a majority (31 percent) from India, followed by Eastern Europe and Romania.³⁵³

What is puzzling about the Green Card is that it was not particularly ground-breaking since the “Recruitment Stop Exception Regulation” of 1990 already formulated the possibilities for a temporary occupation of foreign workers in specified job categories. But the regulation only allowed for either seasonal workers for a maximum of three months (art. 4) and service contract employees (art. 3) who were officially employed in the foreign headquarters of the sending country. It also established rules on the distribution of work permits for various other purposes such as training, research, au-pair (art. 2) and other special purposes (art. 5). These contracts were limited mainly to countries for which government agreements existed.³⁵⁴ A simple revision of the regulation would still have been sufficient to include the recruitment of IT specialists according to art. 5, sec. 2.³⁵⁵

Instead, it seems likely that the Green Card Initiative was particularly intended to trigger a public debate and influence the negative opinion on immigration both among the general public and SPD voters whose image of the “typical” foreign resident was largely that of the unemployed or low-skilled and unintegrated former industrial worker that is more of a burden than a benefit for society. Using the *zeitgeist* of the New Economy and the broad consensus among economic associations as a trigger, Schröder put the topic of immigration back on the political agenda, but this time within the positive

³⁵⁰ Caviedes, *Prying Open Fortress Europe*, 72.

³⁵¹ Verordnung über die Arbeitsgenehmigung für hoch qualifizierte ausländische Fachkräfte der Informations- und Kommunikationstechnologie (IT-ArGV), 11th September 2000.

³⁵² Holger Kolb, “Die deutsche ‘Green Card’,” *Focus Migration*, http://focus-migration.hwwi.de/Die_Deutsche_Green_C.1198.0.html.

³⁵³ Sven Astheimer, “Geburtsstunde der Greencard: Als Einwanderung wieder als Gewinn galt,” *Frankfurter Allgemeine Zeitung*, 1st March 2010, <http://www.faz.net/aktuell/technik-motor/cebit-2010/geburtsstunde-der-greencard-als-einwanderung-wieder-als-gewinn-galt-1941918.html>.

³⁵⁴ Elmar Hönekopp, Ost-West-Wanderungen: Die neuen Migrationsbewegungen,” *Friedrich-Ebert-Stiftung Digitale Bibliothek*, <http://library.fes.de/fulltext/asfo/01007001.htm>.

³⁵⁵ Annette Treibel, “Von der Anwerbestoppausnahme-Verordnung zur Green Card,” in *Deutschland – ein Einwanderungsland? Rückblick, Bilanz und neue Fragen*, ed. Edda Currle and Tanja Wunderlich (Stuttgart: Lucius & Lucius, 2001): 113–126, 116.

context of investing in the future of the German economy. The discussions encouraged societal interest groups and parties to comment and form opinions on immigration reform for which many draft laws of parties in the *Bundestag* still existed. This interpretation is supported by the chairman of the *Initiative 21* communications board stating that “for us more important than the number of Green Cards is the change in thinking.”³⁵⁶

Accordingly, the approval of the program entailed further expectations of allowing for the systematic immigration of other foreign workers to match the labor demand in specific industries. The BDA criticized the relatively low quota and demanded to open up the labor market for qualified immigrants. The BDA, BDI and DIHT called for a more flexible and un-bureaucratic solution to recruit immigrants and a liberalized distribution of work permits to family members of immigrants. Other sectors such as machine engineering also asked for an expansion of the program to reduce labor scarcity in these sectors.³⁵⁷ As an employer of nursing staff, the welfare organization Caritas also hoped for its own Green Card program.³⁵⁸ Initiating the legislative process to design a comprehensive immigration law was named as the next logical step by the president of the Industry and Trade Chamber.³⁵⁹

These economic perspectives were generally supported by the FDP, which also argued in favor of a liberalized immigration law in accordance with the labor demand in Germany.³⁶⁰ Churches in general focused on the hostility towards foreigners triggered by conservative campaigns, but did not make any direct political suggestions.³⁶¹ Immigrant associations such as the Turkish Community also saw the regulation as a trigger to discuss an overdue reform of the immigration law.³⁶² Human rights and refugee organizations such as *Pro Asyl* used the debate in order to demand the recognition of the rights of refugees that had been largely neglected in the debate on the Green Card with some proposals of the CDU/CSU going so far as to trade off limited immigration possibilities for highly qualified

³⁵⁶ Norbert Eder, “Dokumentation der Initiative D21,” in *Deutschland online. Standortwettbewerb im Informationszeitalter. Projekte und Strategien für den Sprung an die Spitze*, ed. Erwin Staudt (Berlin/Heidelberg: Springer, 2002): 217–238, 225.

³⁵⁷ Greifenstein, *Die Green Card*, 23f.

³⁵⁸ *Ibid.*, 24.

³⁵⁹ Claus Hipp, “Green Card reicht nicht,” *Welt am Sonntag*, 11th March 2001, <http://www.welt.de/print-wams/article610060/Green-Card-reicht-nicht.html>.

³⁶⁰ Die Welt, “CSU und FDP kritisieren Green-Card-Regelung,” 1st August 2000, <http://www.welt.de/print-welt/article525945/CSU-und-FDP-kritisieren-Green-Card-Regelung.html>.

³⁶¹ Berliner Zeitung, “Schröder will Gesetz zur Einwanderung,” 2nd May 2000, <http://www.berliner-zeitung.de/archiv/kirchen-kritisieren-kampagne-gegen-green-card-schroeder-will-kein-gesetz-zur-einwanderung,10810590,979547-0.html>.

³⁶² Türkische Gemeinde in Deutschland, “Green Card und Einwanderungsgesetz: TGD begrüßt die Anerkennung der faktischen Einwanderung,” Press release, 7th March 2000, <http://www.tgd.de/2000/03/07/green-card-und-einwanderungsgesetz-tgd-begrust-die-erkennung-der-faktischen-einwanderung/>.

immigrants with more restrictions for the immigration of asylum-seekers.³⁶³ Finally, scientists – especially the Council for Migration – had already stressed Germany’s demographic problem before the debate and supported the arguments in favor of admitting more immigrants.³⁶⁴

Unions argued that instead of importing labor, the German state should rather invest in the training of unemployed computer specialists and incentivize the education of high school graduates in IT-related fields. This opinion was expressed by the chairman of the DGB³⁶⁵ and supported by training and education providers.³⁶⁶ But their opinions on the program varied and were not consistent over time. On the one hand, the main influential umbrella organizations viewed the immigration of qualified immigrants rather skeptical and as a measure of last resort, while priority should be given to developing the German labor market. The DGB stated the objection that German IT companies could be incentivized to disinvest in the education and training of German employees if the import of foreign labor was cheaper. Similar to the discussions in the 1950s on the guest worker program, unions apprehended that employers could pay foreign workers less than domestic workers, which would result in a downward pressure on domestic wages. Umbrella organizations and other major unions in the IT sector thus made their consent on the program dependent on its actual design, its temporariness and further investments into the training and education system. Most of these concerns were recognized by the federal government.³⁶⁷ On the other hand, unions were not *generally* opposed to immigration even though the IG Metall used a particularly emotional campaign against the Green Card regulation. But the DGB, ÖTV (for employees in the public sector) and the DAG (union for employees) were in favor of participating in developing a comprehensive immigration concept.³⁶⁸

The CDU/CSU, too, did not show a unitary opinion towards the Green Card regulation. In North-Rhine Westphalia, the CDU began a strong campaign against the Green Card in preparation for the state elections. It criticized the fact that the import of labor was prioritized above educating and training Germans in IT-related fields and in addition intended to restrict other measures introduced by the

³⁶³ Elisabeth Zimmermann, “Die Debatte um die Green Card. Große Koalition will Asylrecht kippen,” *World Socialist Web Site*, 4th April 2000, <https://www.wsws.org/de/articles/2000/04/gree-a04.html>. Sigrid Aversch, “Pro Asyl fordert Konzept für Einwanderung,” *Berliner Zeitung*, 3rd May 2000, <http://www.berliner-zeitung.de/archiv/verbindung-mit-integration-pro-asyl-fordert-konzept-fuer-einwanderung.10810590,9795840.html>.

³⁶⁴ Schneider, *Modernes Regieren und Konsens*, 169f.

³⁶⁵ Der Spiegel, “Green-Card-Initiative: Schröder bevorzugt nahes Ausland.”

³⁶⁶ Caviedes, *Prying Open Fortress Europe*, 71, 73.

³⁶⁷ See for instance Antje Scheidler, “Deutschland: Green Card-Debatte weitet sich aus,” *Migration & Bevölkerung*, 3rd April 2000, <http://www.migration-info.de/artikel/2000-04-03/deutschland-green-card-debatte-weitet-sich-aus>.

³⁶⁸ Greifenstein, *Die Green Card*, 24–28. Alexander Häusler, “Multikulturalismus als Bedrohung deutscher Identität. Migration und Integration in Medien der extremen Rechten,” in *Themen der Rechten – Themen der Mitte. Zuwanderung, demografischer Wandel und Nationalbewusstsein* (Opladen, Leske & Budrich, 2008): 67–94, 55.

former SPD-led government such as offering classes in the native languages for children of foreign residents.³⁶⁹ Using populist slogans such as “Children instead of Indians” (“Kinder statt Inder” in German), the main candidate Rüttgers tried to use the hostile popular sentiments towards foreigners for electoral purposes. Tellingly, the slogan was later re-used by the right-wing Republicans.³⁷⁰ The campaign was reprehended by the SPD, the Greens, the FDP, unions, businesses and churches.³⁷¹

But in the end, the CDU in NRW lost 0.7 percent points since the previous elections and remained in the opposition. Both the federal CDU and most other *Länder* branches did not approve of the campaign. Although the federal CDU initially expressed the same opinion of prioritizing the education of German children,³⁷² Rüttgers’ attempts to principally reject immigration of highly qualified computer experts encountered the clear opposition of parliamentarians and state ministers specialized in economic areas.³⁷³ The disunity within the CDU was striking,³⁷⁴ but finally led to a debate on the advantages and disadvantages of immigration whose outcomes had to be dealt with in a new immigration law. While the Green Card initiative was criticized, the CSU in Bavaria countered with its own initiative of a Blue Card that also targeted IT specialists but kept the option open to include other job categories. Moreover, it coupled the residence permit to the respective employment period instead of regulating it legally.³⁷⁵ It was later extended to other states such as Hessen as well.³⁷⁶ Hence, the CDU/CSU was open to reform immigration law as long as immigration were to be directed strictly towards economic necessities.

The regional attempts to utilize popular sentiments against foreigners for electoral purposes were not successful for the case of highly qualified immigrants, as Germans were not very familiar with this type of foreigner. The temporariness of the program also reduced the resistance of unions that did not form an unlikely political coalition with the conservative parts of the CDU/CSU. Framing the immigration debate in the context of economic growth and the New Economy opened up politics and

³⁶⁹ Der Spiegel, “‘Kinder statt Inder’: Rüttgers verteidigt verbalen Ausrutscher,” 9th March 2000, <http://www.spiegel.de/politik/deutschland/kinder-statt-inder-ruettgers-verteidigt-verbalen-ausrutscher-a-68369.html>.

³⁷⁰ Gitte Halder, *Demographischer Wandel und politische Antworten in Deutschland. Eine Simulationsstudie im Rahmen eines allgemeinen Gleichgewichtsmodell* (Frankfurt am Main: Internationaler Verlag der Wissenschaften, 2008), 148.

³⁷¹ RP Online, “Debatte um CDU-Green-Card-Aktion verschärft sich: Özdemir vergleicht Rüttgers mit Haider,” 2nd April 2000, <http://www.rp-online.de/politik/oezdemir-vergleicht-ruettgers-mit-haider-aid-1.2264507>.

³⁷² Der Spiegel, “Green-Card-Initiative: Schröder bevorzugt nahes Ausland.”

³⁷³ Die Welt, “Streit in der CDU um Green Card als Wahlkampfthema,” 31st March 2000, <http://www.welt.de/print-welt/article509729/Streit-in-der-CDU-um-Green-Card-als-Wahlkampfthema.html>.

³⁷⁴ Die Welt, “Hamburgs CDU lehnt Green Card nicht völlig ab,” 17th March 2000, <http://www.welt.de/print-welt/article507608/Hamburgs-CDU-lehnt-Green-Card-nicht-voellig-ab.html>.

³⁷⁵ Der Spiegel, “Einwanderung à la Bayern: Blue Card statt Green Card,” 3rd July 2000, <http://www.spiegel.de/politik/deutschland/einwanderung-a-la-bayern-blue-card-statt-green-card-a-83683.html>. Greifenstein, *Die Green Card*, 40f.

³⁷⁶ Schneider, *Modernes Regieren und Konsens*, 168.

society for a new discussion on partly easing the requirements for immigration. The change in societal sentiments was also depicted in the “Berlin Speech” of the Federal President Rau in 2000 who traditionally acted as an integrative and independent political voice. Rau praised the contribution of immigrants to the German society, defended the right to asylum and further encouraged the debate by stating that Germany needs “a broad consensus on integration and immigration.”³⁷⁷

Even though the SPD was initially split between the pragmatic and leftist parts of the party and the Green Card was initially only seen as a temporary measure born out of necessity, the SPD parliamentarians soon pushed forward and formulated their first concept for a “new migration policy” in 2000 that broke with the paradigm of merely restricting immigration, and created a comprehensive concept coordinating societal and economic interests.³⁷⁸ It intended to both improve humanitarian immigration and create new possibilities for skilled labor migration in jobs for which German employees could not be found and thus was in keeping with the classical union view to prioritize German nationals in the labor market.³⁷⁹ It also proposed a point system with quotas similar to classical immigration countries in which education, work experience, age and language skills are considered, and defined intensified integration measures especially in the areas of language education, job training and general education that should be guided by respect for different cultures and traditions.³⁸⁰ The right of asylum and the rights of asylum-seekers were defended against their critics.³⁸¹ This concept of the SPD parliamentarians, however, was not necessarily congruent with the concept of the SPD-led BMI.³⁸²

The Green party defined its concept of immigration and integration with the ideal of a “multi-cultural democracy” in line with its previous demands.³⁸³ Its proposals for a new immigration law called for unrestricted family reunification and a system of flexible quotas for labor migrants in sectors that should be specified with the participation of the *Bundestag*. The concept was based upon three pillars

³⁷⁷ Johannes Rau, Berliner Rede 2000 von Bundespräsident Johannes Rau, “One Angst und ohne Träumereien: Gemeinsam in Deutschland leben,” 12th May 2000, http://www.bundespraesident.de/SharedDocs/Reden/DE/Johannes-Rau/Reden/2000/05/20000512_Rede2.html.

³⁷⁸ Schneider, *Modernes Regieren und Konsens*, 197.

³⁷⁹ SPD-Bundestagsfraktion (Querschnittsarbeitsgruppe Integration und Zuwanderung), *Die neue Politik der Zuwanderung. Steuerung, Integration, innerer Friede*. Die Eckpunkte der SPD-Bundestagsfraktion, 1f, 5.

³⁸⁰ *Ibid*, 9ff.

³⁸¹ *Ibid*, 14ff.

³⁸² Schneider, *Modernes Regieren und Konsens*, 228f.

³⁸³ Michaela Frost, *Paradigmenwechsel in der deutschen Zuwanderungsdebatte. Das Zuwanderungsgesetz und die Konzepte der Bundestagsparteien im Einwanderungsland Deutschland*, Diploma Thesis (University of Potsdam, 2005), 73.

consisting of 1) quotas to match the labor demand in Germany by using foreign workers, 2) the regulated acceptance of immigrants due to political and humanitarian reasons as well as the granting of a legal residence status for illegal immigrants, and 3) the acceptance of immigrants with legitimate claims (e.g. asylum, refugees, family reunification).³⁸⁴ The right of asylum was supported unconditionally while the position related to the integration of immigrants did not differ substantially from that of the SPD.³⁸⁵

In the political opposition, the CDU showed continuity with previous resolutions and still did not recognize Germany as a country of immigration.³⁸⁶ However, it set up a relatively moderate commission on immigration issues in 2000 to counter the initiative of the *Bundesregierung* and inadvertently polarized the party into more restrictive positions taken by the CSU and the leadership of the *Bundestag* faction and more liberal positions represented in the commission and by more economically oriented politicians such as Merkel and Merz.³⁸⁷ The resolution of the Federal Committee of the CDU in 2001 summarizes its somewhat torn position within the immigration debate. In the preamble, it defined its basic position as a “cosmopolitan patriotism” based on the German and European identity and the values of Christianity.³⁸⁸ As four main objectives, it advocated 1) limiting immigration, 2) recognizing Germany’s humanitarian duties, 3) regulating immigration according to German interests, and 4) integrating immigrants into the German society.³⁸⁹ Next to the predictable claims to restrict the right of asylum due to the high number of exploitation cases, the CDU for the first time reflected upon the possibility to selectively reopen the labor market system for qualified and highly qualified immigrants in view of the demographic transformation. It was thus strictly oriented along the needs of the German economy while labor migration for low-qualified sectors was ruled out.³⁹⁰ Labor migration and family reunification was to be generally regulated with quotas and a point system (similar to the proposal of the SPD) according to German interests.³⁹¹ This point system, however, was highly controversial within the CDU itself and was later removed in favor of the status quo.³⁹² As another restrictive measure, the maximum age for children of immigrants to reunify with their families in

³⁸⁴ Tietze, *Einwanderung und die deutschen Parteien*, 172.

³⁸⁵ Frost, *Paradigmenwechsel in der deutschen Zuwanderungsdebatte*. 74–77.

³⁸⁶ *Ibid.*, 80.

³⁸⁷ Schneider, *Modernes Regieren und Konsens*, 224.

³⁸⁸ Bundesausschuss der CDU Deutschland, *Zuwanderung steuern und begrenzen. Integration fördern*, 7th June 2001, 1.

³⁸⁹ *Ibid.*, 2.

³⁹⁰ *Ibid.*, 5f.

³⁹¹ *Ibid.*, 8f.

³⁹² Frost, *Paradigmenwechsel in der deutschen Zuwanderungsdebatte*. 83.

Germany should be reduced to six or ten years.³⁹³ The CDU claimed that integration would generally be easier for those immigrants that share the German cultural order and have a higher educational level.³⁹⁴ As specific measures of integration, integration classes, language classes, training and education measures, and individual integration “contracts” with immigrants were proposed.³⁹⁵

As another opposition party, the FDP already developed an early migration concept that would allow immigration in accordance with the interest of Germany and the humanitarian rights of refugees. In sectors with high labor demand, the immigration would be largely liberalized.³⁹⁶ This rule would pertain to both jobs that do and those that do not require qualifications under the condition that no German applicant can be found. A point system would only be introduced for the immigration of younger workers who are needed for demographic reasons.³⁹⁷ Its views on asylum largely corresponded to those of the Green party with a similar liberal design and the abolishment of the ban to work for recognized refugees. In the area of integration, too, it supported the consensus of introducing integration classes and intensifying measures to promote the language education of immigrants.³⁹⁸ Its concept of multi-cultural co-existence was based upon the liberal idea of an “open society of citizens” with equal participatory rights and duties for citizens independent of their nationality.³⁹⁹

Finally, the PDS parliamentarians formulated an “immigration policy based on human rights” stressing the rights of refugees, asylum-seekers and migrant women, and rejecting an immigration act that is based solely on the discrimination between “useful” and “non-useful” immigrants.⁴⁰⁰ Its demands for a “right of immigration” under the circumstances that the immigrant can support him-/herself financially and its concessive policy towards illegal immigrants were unrealistic in the political climate of the 2000s,⁴⁰¹ but were clearly thought of as an uncompromising leftist alternative to the proposals of the other four parties. Other major ideas were aimed at increasing the rights of refugees,

³⁹³ Bundesausschuss der CDU Deutschland, *Zuwanderung steuern und begrenzen*, 13.

³⁹⁴ *Ibid*, 17f.

³⁹⁵ *Ibid*, 19–23.

³⁹⁶ Frankfurter Allgemeine Zeitung, “Zuwanderung: Konzept der FDP stößt bei SPD und Grünen auf Kritik,” 31st July 2001, <http://www.faz.net/aktuell/politik/zuwanderung-konzept-der-fdp-stoesst-bei-spd-und-gruenen-auf-kritik-132157.-html>.

³⁹⁷ Frost, *Paradigmenwechsel in der deutschen Zuwanderungsdebatte*, 90.

³⁹⁸ *Ibid*, 92.

³⁹⁹ Gieler and Bhattacharya, *Deutsche Migrationspolitik*, 22.

⁴⁰⁰ PDS im Bundestag, *Eckpunkte für eine menschenrechtliche Zuwanderungspolitik: Offene Grenzen für Menschen in Not. Individuelles Recht auf Einwanderung*, 26th June 2001, 5.

⁴⁰¹ *Ibid*, 6f.

expanding the possibilities of family reunification, abolishing the legal discrimination between German nationals and foreigners, introducing simplified conditions for the issuing of permanent residence and settlement permits, and creating a comprehensive anti-discrimination law.⁴⁰²

Influential interest groups were involved in the discussions and used the new window of opportunity to re-affirm their demands of the Green Card debate. Employer associations such as the BDA demanded concessions in the area of labor migration as part of a comprehensive strategy of liberalization and, in order to reach this goal, also founded a powerful lobbying group – the New Social Market Economy Initiative.⁴⁰³ The BD emphasized the urgent needs of both the industry and the ageing German society to admit more foreigners and create a “systematic immigration policy” oriented on the needs of the German labor market, similar to the immigration models of Canada and Australia.⁴⁰⁴

While recognizing that Germany had become a country of immigration, unions continued to focus on the training and education of German nationals and the fight against unemployment. Even though accepting immigrants as an addition to the German workforce should remain an exception, a point system whereby immigrant quotas were regulated with the participation of unions was generally approved.⁴⁰⁵ The immigration of labor within the EU should be accompanied by a transition period for new member-states.⁴⁰⁶ With respect to the right of asylum, anti-discrimination measures, family reunification and immigrant integration, unions remained liberal, however.⁴⁰⁷ Although the DGB recognized the need for comprehensive immigration reform, it did not agree to expand immigration by introducing more Green Card exceptions in other sectors.⁴⁰⁸

As expected, strong proponents of immigration reform were immigrant associations and the municipal foreigner councils whose proposals for the introduction of immigrant quotas went above the focus

⁴⁰² Ibid, 10-29.

⁴⁰³ Georg Menz, “Employers and Migrant Legality: Liberalization of Service Provision, Transnational Posting, and the Bifurcation of the European Labor Market,” in *Migrants At Work. Immigration & Vulnerability in Labour Law*, ed. Cathryn Costello and Mark Freedland (Oxford: Oxford University Press, 2014): 44–59, 54.

⁴⁰⁴ BDI, “Die 8 BDI-Thesen zur Zuwanderungspolitik,” Position paper, 1st March 2001.

⁴⁰⁵ DGB, “Für einen Perspektivenwechsel in der Einwanderungs- und Integrationspolitik: Nr. 123 vom 24.04.2001,” in *Zuwanderung gestalten! Der DGB-Bundesvorstand nimmt Stellung 1997–2005*, Schriftenreihe Migration und Arbeitswelt 30, 22. DGB, Stellungnahme zum Referentenentwurf des BMI zum “Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von EU-Bürgern und Ausländern” (Zuwanderungsgesetz), 10th September 2001.

⁴⁰⁶ DGB, Thesen des Deutschen Gewerkschaftsbundes für die Regelung der Einwanderung, 3rd April 2001.

⁴⁰⁷ DGB, Deutschland ist Einwanderungsland: Stellungnahmen des DGB 2000, 7th September 2004.

⁴⁰⁸ DGB, “DGB halt Einwanderungs- und Integrationsgesetz für notwendig: Nr. 095 vom 23.03.2001,” in *Zuwanderung gestalten! Der DGB-Bundesvorstand nimmt Stellung 1997–2005*, Schriftenreihe Migration und Arbeitswelt 30, 21.

on highly qualified immigrants.⁴⁰⁹ Any measures that would sharpen the requirements for naturalization (such as language conditions) were rejected⁴¹⁰ in favor of relaxed naturalization conditions for first-generation immigrants and a protection against the deportation of children of foreign residents born in Germany.⁴¹¹

Churches, too, were in favor of an overdue paradigm change based on the humanitarian principles stated in the churches' joint work on immigration issues. In the area of integration, churches affirmed diversity as an asset of the German society while the GG served as a unifying, republican element that had to be recognized by Muslims as well.⁴¹² Key demands comprised the facilitation of family reunification for children of foreigners, the relaxation of the conditions to issue settlement permissions, and improvements for the rights of asylum-seekers, refugees and illegal immigrants.⁴¹³ A similar humanitarian position was taken by the main welfare organizations such as Caritas who attributed parts of the responsibility for a surge in hostility towards foreigners to the lack of political responsiveness in designing a modern immigration law.⁴¹⁴ However, they expressed their concern with respect to the establishment of integration classes which could compete with their own social services.⁴¹⁵

The first draft by Schily in 2001 activated the parties and interest groups again to comment on the proposal and emphasize their position. An official hearing of the major groups was also organized in January 2002. Most of these groups were disappointed as their proposals were only partly recognized, and especially the provisions in the area of asylum law were criticized as too restrictive. Some of the criticized provisions were later changed, such as the overly restrictive stipulations for family reunification and the point system.

⁴⁰⁹ See, for example, Ausländerbeirat der Landeshauptstadt München, "Resolution für ein Zuwanderungsgesetz," Beschluss 73, 17th July 2000, 4.

⁴¹⁰ Islamische Gemeinschaft Milli Görüş, "Migrantenverbände werten Verschärfung des Zuwanderungsgesetzes als 'einen Rückschritt'," 2nd April 2007, <http://www.igmg.org/nachrichten/artikel/2004/04/05/migrantenverbaende-werten-verschaerfung-des-zuwanderungsgesetzes-als-einen-rueckschritt.html>.

⁴¹¹ Türkische Gemeinde in Deutschland, "Der Gesetzentwurf des Bundesministeriums des Innern ist restriktiv und widerspricht den bisherigen Versprechungen und Positionen der Regierungsparteien!" Press notice, 5th September 2001.

⁴¹² Manfred Kock, "Zuwanderung und Integration aus kirchlicher Sicht," 31st January 2003, http://www.ekd.de/vortraege/kock/030131_kock_zuwanderung.html.

⁴¹³ EKD, Stellungnahme des Bevollmächtigten des Rates der EKD zum Gesetzentwurf der Fraktionen SPD und BÜNDNIS 90/DIE GRÜNEN für ein Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz), *Bundestag-Drucksache* 14/7387.

⁴¹⁴ Deutscher Caritasverband, "Caritas-Präsident Puschmann fordert Konzept zur Gestaltung von Zuwanderung und Integration – Mangelnde Klarheit fördert Fremdenfeindlichkeit," Press notice, 8th August 2000, <http://www.caritas.de/pressemitteilungen/caritas-praesident-puschmann-fordert-konzept-zur-g/114999/>.

⁴¹⁵ Pro Asyl, "Stellungnahme zum Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung."

Interest groups with a specifically humanitarian purpose such as Amnesty International, UNHCR and *Pro Asyl*, lobbied in favor of improvements in the protection of illegals and refugees, for instance in case of refugees from non-state or gender-related persecution, and rejected the planned restrictions for family reunification and foreign residents.⁴¹⁶ Other lobbies with similar purposes included the Association of Bi-national Families and Partnerships,⁴¹⁷ the Republican Lawyers Association, the German Lawyers Association and the New Judges Association,⁴¹⁸ the German Association of Jurists that demanded an intensified protection for women and children,⁴¹⁹ the Jesuit Refugee Service,⁴²⁰ and the scientific “Council for Migration.”⁴²¹ Most groups also criticized the rapidness of the legislative process that would inhibit an extensive discussion.⁴²²

The churches painted a mixed picture of the draft, with positive remarks for the facilitated immigration possibilities and negative remarks for the new restrictions, in particular in the area of humanitarian immigration, family reunification and asylum.⁴²³ The umbrella organization for the welfare organizations (Federal Working Group of the Free Public Welfare) similarly expressed its disappointment regarding the limited measures for integration, the restrictive design of humanitarian immigration and the confined possibilities for permanent settlement.⁴²⁴ Especially the Caritas found fault with the general perception of foreigners as a security issue (especially after 9/11) instead of as citizens

⁴¹⁶ Amnesty international et al., Gemeinsame Stellungnahme zu den asyl- und flüchtlingsrechtlichen Elementen des Referentenentwurfes eines Zuwanderungsgesetzes (ZuwGE). Pro Asyl, Reformruine Zuwanderungsgesetz, <http://www.proasyl.de/texte/2002/zuwanderung.pdf>. Pro Asyl, Pro Asyl zur Zuwanderungsdebatte: BMI will Ausländerrecht verschärfen; Das Asylrecht wird ausgehöhlt; Tausenden droht die Illegalität, http://www.proasyl.de/texte/gesetze/brd/zuwanderungsgesetz/positionen/proasyl_flugblatt.htm.

⁴¹⁷ Verband Binationaler Familien und Partnerschaften, Stellungnahme zu den Nachzugsregelungen in dem Entwurf eines Zuwanderungsgesetzes des Bundesinnenministers, 17th August 2001.

⁴¹⁸ Republikanischer Anwältinnen- und Anwälteverein, Stellungnahme des RAV zum Entwurf eines Zuwanderungsgesetzes. Deutscher Anwaltverein, Stellungnahme des Ausländer- und Asylrechtsausschusses des Deutschen Anwaltvereins e.V. zum Entwurf eines Zuwanderungsgesetzes, August 2001. Republikanischer Anwältinnen- und Anwälteverein, Presseerklärung des RAV zum Zuwanderungsgesetz. Über die Verschlechterung der rechtlichen Situation der Ausländer durch das geplante Zuwanderungsgesetz, 15th January 2002.

⁴¹⁹ Deutscher Juristinnenbund (djb), Stellungnahme zum Referentenentwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthaltes und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz), 5th September 2001.

⁴²⁰ Jesuiten-Flüchtlingsdienst, Stellungnahme zum Gesetzentwurf der Fraktionen SPD und BÜNDNIS 90/DIE GRÜNEN zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthaltes und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz) (Drucksache 14/7387) und anderen Drucksachen.

⁴²¹ Frankfurter Rundschau, "Über die unerwünschten Zuwanderer," 28th September 2001, <http://www.proasyl.de/texte/gesetze/brd/zuwanderungsgesetz/positionen/oberndoerfer.html>.

⁴²² See for instance Pro Asyl, "Stellungnahme zum Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung."

⁴²³ Der Bevollmächtigte des Rates der EKD/Der Leiter des Kommissariats der deutschen Bischöfe, Stellungnahme zum Referentenentwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthaltes und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz).

⁴²⁴ Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege, Stellungnahme zum Referentenentwurf eines Zuwanderungsgesetz vom 03.08.2001.

with equal rights.⁴²⁵ The DGB also criticized the limited paradigm change of the draft and demanded to facilitate the issuing of settlement permissions and help immigrants to find a long-term occupation.⁴²⁶

Schily then revised the draft and incorporated some of the suggestions that almost all interest groups mentioned such as the recognition of non-state and gender-related persecution as legitimate reasons to accept asylum-seekers and the improvement of the legal status of “tolerated” foreigners (who are scheduled to be deported from Germany).⁴²⁷ Rules for “hardship cases” among asylum-seekers, however, that were requested by welfare organizations and other interest groups were not yet introduced at this point.⁴²⁸

In sum, after the Green Card initiative stimulated the societal debate and the formation of political coalitions, all parties for the first time proposed their own comprehensive concepts for immigration reform under the active participation of interest groups. While the debate surrounding the reform of the citizenship law mainly polarized the opposition between multi-cultural and conservative-assimilationist views on citizenship with the latter winning over the public in the question of dual citizenship, the new debate added the dimension of labor scarcities in a promising economic sector and the necessity to introduce foreign labor. On other issues such as integration and the institutional conditions of immigration policy, a consensus could be found more easily among the parties and interest groups. Interest group cooperation was especially developed between churches, humanitarian NGOs, lawyer associations and welfare organizations who supported the rights of illegals, asylum-seekers and refugees unconditionally. Unions and their umbrella organizations largely agreed with the government position on limiting labor migration although the definition of Germany as a “country of immigration” and far-reaching measures of integration were supported. The CDU was split and as a whole not prepared to share this view, but did not find any supporters in the organized interests although it represented some of the unorganized parts of the German society who rejected a more liberal immigration and integration law. Political coalitions were thus formed in the following groupings:

- The coalition government, parts of the SPD, CDU and Green party and unions in favor of limited change in immigration policies. This political coalition was divided, however, with respect to

⁴²⁵ Deutscher Caritasverband, *Stellungnahme des Deutschen Caritasverbandes zum Gesetzentwurf Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz)*, Bundsratsdrucksache 921/01, Bundestagsdrucksache 14/7387 (Deutscher Caritasverband: Freiburg, 2002), 3.

⁴²⁶ DGB, *Stellungnahme zum Referentenentwurf des BMI*.

⁴²⁷ Pro Asyl, “*Stellungnahme zum Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung*.”

⁴²⁸ Deutscher Caritasverband, *Stellungnahme des Deutschen Caritasverbandes*, 2.

Ethnic nation-states at the crossroads

measures of integration, the permanent residence status of foreigners and the rights of asylum-seekers, refugees and illegal immigrants.

- Parts of the SPD and Green party, churches, lawyer associations, religious and non-religious welfare organizations, immigrant associations and humanitarian NGOs, refugee and migration councils and left-liberal and social-democratic newspapers in favor of a liberalized immigration regime that goes beyond economic interests, and a systematic integration policy with an extensive protection of asylum-seekers, refugees, illegal immigrants, and families of foreigners.

- The FDP and employers organizations in favor of a liberal immigration regime oriented towards economic interests.

- Parts of the CDU and the majority of the CSU supporting the continuation of the restrictive immigration regime of the Kohl era representing the interests of a large part of their low qualified and conservative constituents. Far right-wing parties such as the NPD, Republicans and DVU and right-wing grassroots organizations held similar views, but wanted to restrict immigration policies even more often using a hostile and partly racist rhetoric.

- The PDS with left-wing grassroots organizations as a more radical opposition promoting open borders and equal rights for immigrants.

If we relate this structure of political coalitions not only to interest groups and parties, but also to voters, we could argue that a significant part of low-income voters with low formal education and elderly voters (supporting disproportionately the CDU and SPD) as well as Catholic voters from Southern Germany (supporting disproportionately the CSU) might show the most resistance towards changes in immigration and integration policy.

In the following part, I will discuss the institutional conditions of ratifying the law that inhibited a more significant paradigm change in the history of German immigration policy although most interest groups and parties were in favor of a more substantial solution and most of them expressed their dissatisfaction in retrospect.

The Immigration Law: Institutions of immigration reform

The draft law was suggested by the BMI under the leadership of Minister Schily.⁴²⁹ After the failure of Zimmermann's plans to reform the Alien Act in the 1980s and the recent blockade during the revision of the citizenship law, the format of a societal *commission* was chosen in order to prepare a consensus, give advisory to the government and involve societal interests in the formulation of the

⁴²⁹ Schneider, *Modernes Regieren und Konsens*, 196.

law.⁴³⁰ The commission was tacitly planned by Schily, who selected the moderate CDU parliamentarian Rita Süssmuth as chairman and Hans-Jochen Vogel of the SPD as co-chairman in order to facilitate a consensus,⁴³¹ but the CDU explicitly refused to cooperate and began to prepare an own draft law while sharply discrediting Süssmuth for participating in the commission.⁴³² It created its own party commission on immigration policy in order to gain publicity and to support the process of intra-party decision-making.⁴³³

In total, the commission incorporated 21 members of various areas: scientists, representatives of political foundations, unions, employer organizations, municipal organizations, churches, the Jewish community, think tanks, ministries, lawyers, Turkish entrepreneurs, the UNHCR and the former Federal Commissioner for Foreigners.⁴³⁴ All parties besides the PDS were represented as members as well. However, no representatives of the welfare organizations were included into the commission and no adequate and impartial representation could be found for immigrant associations.⁴³⁵ The secretary of the commission was largely staffed with members of the BMI and other bureaucrats of related federal ministries and agencies.⁴³⁶

The Süssmuth commission was divided into three working groups and heard a great number of politicians and experts from all related interest groups, government ministries, public agencies NGOs and scientific institutes.⁴³⁷ By considering and including proposals of interest groups into the final report, the commission received significant legitimacy and could work towards a consensus that ultimately was not opposed by any of the above listed groups and organizations.⁴³⁸ Although the commission was introduced by Schily, it also stood in competition with the BMI's own plans for immigration reform since it worked relatively autonomously from both the ministerial and the parliamentary level.⁴³⁹

The final report that was based upon the consensus of all commission members promoted a liberal immigration policy and a multi-cultural view on society linked to substantial concessions for the

⁴³⁰ Ibid, 199.

⁴³¹ Ibid, 204f.

⁴³² Ibid, 205, 201.

⁴³³ Ibid, 223.

⁴³⁴ Unabhängige Kommission "Zuwanderung", Zukunft gestalten, Integration fördern, 4th July 2001, 2f.

⁴³⁵ Ibid, 217.

⁴³⁶ Ibid, 219ff.

⁴³⁷ Ibid, 257.

⁴³⁸ Ibid, 260f.

⁴³⁹ Ibid, 263f, 265.

rights of immigrants and proactive integrative measures. The document defined Germany as a “country of immigration” that is dependent on immigrants due to acute labor scarcities, the competition around qualified immigrants in a globalized economy, the freedom of movement within the EU, and an ageing society.⁴⁴⁰ It included an extensive chapter of why immigration is beneficial for Germany and strived to prepare a significant paradigm change.⁴⁴¹ Specifically, the commission suggested introducing a point system for the permanent immigration of qualified foreigners, opening up the possibility for the temporary immigration of low-qualified foreigners in accordance with the labor demand in selected industries and proactively recruiting young foreigners to participate in Germany’s dual vocational training system, amongst other facilitations for highly qualified executives, scientists and the self-employed.⁴⁴²

The commission generally defended the right of asylum declining to change the articles of the GG, proposed measures for an accelerated and more effective application procedures,⁴⁴³ and demanded to consider non-state and gender-related persecution as legitimate reasons to grant asylum.⁴⁴⁴ It also promoted the right for asylum-seekers (both recognized and tolerated) to receive work permission after a one-year waiting period.⁴⁴⁵ With respect to the introduction of hardship commissions it remained somewhat skeptical, however, mirroring the disunity within the commission itself.⁴⁴⁶ For family reunification, flexible rules were suggested for family members outside the core family while the maximum age for the subsequent immigration of immigrant children should be raised to 18 years.⁴⁴⁷ Integrative measures were to be further intensified by different targeted measures such as the introduction of Islam classes taught in German schools,⁴⁴⁸ the legalization of the right of dual

⁴⁴⁰ Zukunft gestalten, Integration fördern, 11f, 17.

⁴⁴¹ Ibid, 82.

⁴⁴² Ibid, 84ff.

⁴⁴³ Ibid, 138f.

⁴⁴⁴ Ibid, 162.

⁴⁴⁵ Ibid, 118.

⁴⁴⁶ Ibid, 170f.

⁴⁴⁷ Ibid, 195.

⁴⁴⁸ Ibid, 228.

citizenship for immigrants and their spouses that arrived in Germany as guest workers,⁴⁴⁹ the ratification of a comprehensive anti-discrimination law⁴⁵⁰ and the creation of integration classes for immigrants.⁴⁵¹ Institutionally, it suggested establishing a migration council that comprises ministry representatives and societal groups in a corporatist forum to make yearly suggestions for the planning of migration policies and the specification of quotas for immigrants in specific work sectors.⁴⁵²

Next to the work of the commission, another important institutional influence to introduce a new immigration law came from liberal EU guidelines on asylum and immigration issues after the Treaty of Amsterdam authorized the creation of rules, albeit limited, at a supra-national level. These guidelines included regulations and proposals with respect to the process of recognizing asylum-seekers, granting refugees temporary residence permission in EU states, anti-discrimination rules and proposals addressing family reunification.⁴⁵³ The EU Asylum Process Guideline of the EU, for instance, was influential in compelling the CDU to accept the expansion of asylum reasons to non-state and gender-related persecution.⁴⁵⁴ On the other hand, although these regulations might have had an additional influence on incentivizing the adaption of laws in Germany, the harmonization of asylum and migration questions in the EU is still one of the least developed fields even after the ratification of the Treaty of Lisbon. The finalized regulation on family reunification, too, still gave member states enough leeway to introduce national restrictions.⁴⁵⁵

In comparison with the concepts of each individual party, the report of the Süssmuth commission was not very far away from the proposals of the SPD, FDP and Green party (with the exception of the PDS). It was opposed however by factions and state branches of the SPD and CDU that in case of the SPD defended the priority of German before foreign workers or in case of the CDU were in favor of a strictly regulated immigration policy. The federal CDU leadership completely rejected the proposals as too liberal – even though it contradicted the position its own immigration commission. All major interest groups were generally in favor of the proposal if selective changes were made in the actual law.⁴⁵⁶

⁴⁴⁹ Ibid, 249.

⁴⁵⁰ Ibid, 252.

⁴⁵¹ Ibid, 261.

⁴⁵² Ibid, 271.

⁴⁵³ Ibid, 267.

⁴⁵⁴ Green, “Zwischen Kontinuität und Wandel: Migrations und Staatsangehörigkeitspolitik,” 130.

⁴⁵⁵ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

⁴⁵⁶ Sven T. Siefken, *Expertenkommissionen im politischen Prozess: Eine Bilanz zur rot-grünen Bundesregierung 1998–2005* (Wiesbaden: VS Verlag für Sozialwissenschaften), 171ff.

Although the German government nominally prepared innovative means for the institutional participation of interest groups and parties, comparing the commission report with the actual law demonstrates the limitations of the process. The first draft of the law was prepared by the BMI and was clearly written to establish a consensus both amongst the SPD and between the SPD, the CDU and the Green party. The results of the Süßmuth commission were devaluated as only one of many proposals to reform the Immigration Act.⁴⁵⁷ In particular, the CDU could again use its powerful status in the *Bundesrat* in order to influence the legislative outcomes substantially.⁴⁵⁸ This might seem surprising as not only all major interest groups including the unions were in favor of a more substantial change, but also the CDU itself drafted a more liberal concept of immigration within its own commission. The CDU/CSU's willingness to compromise with the government, however, worsened significantly when the unemployment rate increased and federal and state elections became imminent.⁴⁵⁹ Moreover, the powerful position of the CSU within the CDU/CSU alliance was further strengthened due to the chancellor candidacy of Stoiber.⁴⁶⁰

In the end, the finalized law did not mirror the paradigm change in the attitudes of societal elites to break with the alien laws of the past. Schily's first draft law already included stipulations regarding family reunification, asylum and naturalization that were more conservative than expected by the members of the Süßmuth commission and other societal groups. Rather, these stipulations were evidently intended to appease the CDU/CSU.⁴⁶¹ The law thus antagonized all major interest groups who were disappointed with the limited progress. Within the government itself, the BMJ and the AA formulated highly critical comments as well.⁴⁶² The more conservative faction of the CDU/CSU still opposed a large part of the draft law related to the "unlimited" immigration possibilities of highly qualified foreigners and the government's integration concept.⁴⁶³

Ultimately, the revision of the draft demonstrated that the SPD-led ministry had to reconsider parts of the law in order to gain the approval of the Green party that was necessary to prevent a break-up of the coalition. The revision incorporated the demands of the Greens, a group of SPD parliamentarians and various interest groups to recognize non-state and gender-related persecution as legitimate

⁴⁵⁷ Schneider, *Modernes Regieren und Konsens*, 282.

⁴⁵⁸ *Ibid*, 175.

⁴⁵⁹ Frost, *Paradigmenwechsel in der deutschen Zuwanderungsdebatte*, 44.

⁴⁶⁰ *Ibid*, 355.

⁴⁶¹ Franz Nuscheler, *Internationale Migration: Flucht und Asyl*, 2nd edition (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004), 160.

⁴⁶² Schneider, *Modernes Regieren und Konsens*, 286.

⁴⁶³ *Ibid*, 285.

reasons for asylum, improved the legal status of “tolerated” asylum-seekers and increased the maximum age for children of foreigners to move to Germany.⁴⁶⁴ In the politicized environment of upcoming state and federal elections, however, it did not fit the conservative demands of the CDU/CSU, which used the immigration topic for campaigning purposes.⁴⁶⁵

The law was passed in 2002 before the federal elections after substantial demands of the CDU in Brandenburg that participated in a SPD/CDU coalition were recognized. These concessions were necessary in order to secure the unanimous vote of Brandenburg within the *Bundesrat*. However, due to a formal error in the voting procedure within the *Bundesrat* (the vote was not given unanimously because the coalition in Brandenburg did not come to an agreement), the law had to be annulled by the BVerfG after several state governments initiated a lawsuit.⁴⁶⁶ During this time frame, however, the majority in the *Bundesrat* changed in favor of the CDU/CSU-FDP coalition which again made it necessary to find new compromises. The CDU/CSU returned to a more conservative position, identifying immigration largely as a security issue after the terrorist attacks in Madrid. After the law was passed in the *Bundestag*, but rejected in the *Bundesrat* as expected, the mediation process was initiated. Representatives of the Green party, however, quit the negotiations after their positions were mostly ignored.⁴⁶⁷

Hence, the unique structure of veto players within the German system and the limited openness of the CDU to cooperate with the coalition government when it inhabited a powerful systemic position were two main factors why immigration reform was only limited. The ratification of the law was deferred until May 2003 during which the CDU/CSU claimed 131 (!) changes to the law before it would agree to accept it. In order to enable the ratification, Schily personally talked to the CDU government leader Müller of the Saarland and the CSU government leader Beckstein of Bavaria.⁴⁶⁸

A “paradigm change” is thus more visible in the debates rather than in the actual law which incorporated some proposals of the Süßmuth commission and interest groups (expansion of asylum reasons, introduction of hardship cases, admission of limited immigration, etc.), but was clearly limited due to the necessity of having to reach consensus with the CDU/CSU. While the CDU/CSU internally showed willingness to open itself for a more liberal view towards immigration and began to accept that Germany has indeed become a country of immigration, it reacted to the continuing skepticism in

⁴⁶⁴ Frost, *Paradigmenwechsel in der deutschen Zuwanderungsdebatte*, 44.

⁴⁶⁵ *Ibid.*, 45.

⁴⁶⁶ *Ibid.*, 46.

⁴⁶⁷ *Ibid.*, 306f.

⁴⁶⁸ *Ibid.*, 46f.

the general public and in its constituents for electoral purposes.⁴⁶⁹ The establishment of the Süssmuth commission triggered all interest groups to develop comprehensive positions on immigration and although it had only a partial influence on the bargaining and negotiating processes between the parties, it was an important forum for all interest groups to harmonize their position and form informal alliances. We can also assume that it had a positive influence on public opinion. The graph below shows that the approval rate in favor of a new immigration law increased after the commission began its work.

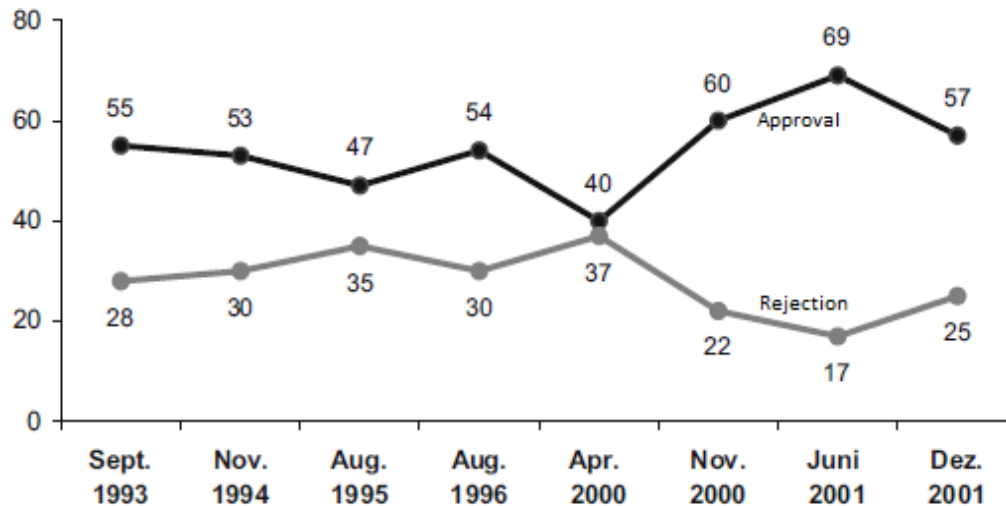


Figure 10. Approval and rejection rate in favor of and against the introduction of a new immigration law⁴⁷⁰

2.3 Critical antecedents and critical juncture? The aftermath of the Immigration Act

The developments in Germany after the new Immigration Act was introduced show that the topic of integration in particular became a top issue on the agenda of the German government after the Grand Coalition between the CDU and SPD was inaugurated in 2005.⁴⁷¹ Moreover, the integration achievements of Turkish and Muslim immigrants were controversially discussed as their education and job market integration were still not only below levels of German nationals but also below those

⁴⁶⁹ Christian Schicha, *Legitimes Theater? Inszenierte Politikvermittlung für die Medienöffentlichkeit am Beispiel der 'Zuwanderungsdebatte'*, Studien zur politischen Kommunikation 1 (Lit Verlag: Münster, 2007), 277.

⁴⁷⁰ Schneider, *Modernes Regieren und Konsens*, 286.

⁴⁷¹ CDU/CSU and SPD, *Gemeinsam für Deutschland – mit Mut und Menschlichkeit. Koalitionsvertrag zwischen CDU, CSU und SPD*, 11th November 2005, 117–120.

of the *Aussiedler* and *Spätaussiedler* from Eastern Europe.⁴⁷² The inclusive dimension of the Immigration Act was implemented under the motto of “Supporting and demanding” (“Fördern und Fordern”) by organizing the first yearly Integration Congress in which societal interest groups and migrant associations worked together on a National Integration Plan. In a second congress of 2006 – the Islam Congress – the federal government cooperated explicitly with Muslim associations and individuals in order to stimulate mutual dialogue and understanding between the government, societal groups, churches and Muslims. These congresses followed through with the basic idea of the Süßmuth commission to create societal forums in which the various interest groups, parties and coalitions negotiate to find a consensus.

The National Integration Plan was an important symbol of the government’s emphasis on integration. The CDU-led government’s emphasis continued the approach of proactively including immigrant associations and other societal groups into discussion fora, albeit without any binding legislative power.⁴⁷³ This strategy of centralized consensus-finding and co-optation on a political and societal level can indeed be seen as a key milestone in Germany’s path towards being a reluctant “country of immigration” that prioritizes the integration of existing foreigners before re-opening the borders again for low-qualified labor migrants. This new accommodating attitude of the government towards immigrants in Germany that became clear in the debate on the Immigration Act contrasts sharply with the exclusionist paradigm of the 1950s until the 1980s and the assimilationist expectations from the 1980s to the 2000s. It also led to a more coherent organization of Muslim umbrella organizations in a coordinating council which worked against the fragmentation of interests and created a dialogue partner for the government.⁴⁷⁴

The limited paradigm change in 2004/2005 also entailed further incremental reforms of the Immigration Act and related regulations that generally expanded the possibilities to immigrate for other highly skilled groups (e.g. researchers, qualified workers without an academic education, etc.).⁴⁷⁵ But the general attitude of the government towards immigration and immigrants remained somewhat ambiguous, in line with the diverging perspectives and bargaining needs within and between the parties.

⁴⁷² Franz Solms-Laubach, “Warum Türken bei der Integration nicht mitspielen,” *Die Welt*, 25th January 2009, <http://www.welt.de/politik/article3088721/Warum-Tuerken-bei-der-Integration-nicht-mitspielen.html>.

⁴⁷³ Bundesregierung, Der Nationale Integrationsplan. Neue Wege – Neue Chancen.

⁴⁷⁴ Christoph Müller-Hofstede and Carolin Butterwegge, “Neue Integrationsdebatten und –politik,” *Grundlegendossier Migration* (Bundeszentrale für politische Bildung), <http://www.bpb.de/gesellschaft/migration/dossier-migration/56349/-integrationsdebatten-und-politik>.

⁴⁷⁵ Ludger Pries, “Deutschlands Wandel zum modernen Einwanderungsland. Kernbotschaften des Jahresgutachtens,” *Sachverständigenrat deutscher Stiftungen für Migration und Integration*, Presentation, Mettmann, 15th November 2014, 5.

In the reform of the Immigration Act in 2007 that adjusted German law to EU regulations, the legal status of recognized and tolerated refugees was improved while the government facilitated the immigration of self-employed foreigners. But in line with the previous reform experiences, there was again a restrictive side limiting family reunification, introducing stricter conditions for naturalization and defining higher sanctions for non-participation in integration classes. These measures were largely reactive to the negative debate on foreigners in Germany (especially related to forced marriages of Turkish migrants and terrorist incidents) and not only strained the relation between the government and migration associations, but also within and between the SPD and CDU that were internally split.⁴⁷⁶ Other laws and regulations that increased the possibilities to immigrate included the introduction of the Blue Card EU project in 2012, as well as small changes to the Residence Act in 2012 and to the Occupation Regulation in 2013.⁴⁷⁷

The controversial discussion around immigration and integration continues until today, ten years after the ratification of the Immigration Act. In general, immigration policies have evolved from the simple administration of immigration as a labor market and foreign policy issue and the exclusion of migrant interest from the public sphere (1950s–1970s) to the slow recognition of immigrant integration as a social and political priority coupled to restrictions of further immigration (1980s–2000s) to the ambiguous treatment of immigration as both an issue of public security and social integration linked to the selective opening of the labor market (2000s–today). The process of European integration that included the right of free movement for workers happened simultaneously to this development and made the opening up of borders for third-country nationals even more unlikely, especially for low-skilled immigrants. Together with the guest worker program that had the unintended effect of establishing a large foreign population on Germany territory, European integration was a critical antecedent that prepared the juncture in 2004/2005 in which the conservative political coalition gained a disproportional institutional advantage even though it was not nominally the most powerful of all coalitions. The fact that the political elite still discusses the introduction of a point system today shows that there is still room for change.

Foreign policy, domestic security and immigration continue to be entangled in Germany, and the rise of the Islamic State, the domestic terrorist threat in Germany and a new refugee crisis in the EU have led again to the rise of new conservative movements that take the place of the CDU which has

⁴⁷⁶ Jan Schneider, “Novellierung des Zuwanderungsgesetzes 2007,” *Grundlagendossier* (Bundeszentrale für politische Bildung), 15th May 2007, <http://www.bpb.de/gesellschaft/migration/dossier-migration/56350/zuwanderungsgesetz-2007>.

⁴⁷⁷ Pries, “Deutschlands Wandel zum modernen Einwanderungsland,” 5.

become a much more moderate force under Merkel, compared with during the Kohl era. The alienation of conservative CDU voters pushed them in different forms of organizations that are today represented by the Alternative for Germany (AfD) and the citizen movement Patriotic Europeans against the Islamization of the Occident (PEGIDA) that might form a powerful new coalition demanding increased restrictions if the right to asylum and a less accommodating attitude towards Islam.⁴⁷⁸ Importantly, though, this alliance is not equal to those political alliances that are simply against any immigration, since, for instance, it explicitly favors a point system similar to that of classical immigration countries.⁴⁷⁹ The somewhat naïve ascertainment of the majority of German journalists that these movements are simply “anti-immigrant” does not convey the more complex sentiments and demographics among their supporters. Roughly speaking, they are especially strong in East Germany and, according to a study of the University of Dresden, recruited mostly from the middle class and have slightly above-average income.⁴⁸⁰ Although both the AfD and PEGIDA are organizations that do find supporters from the far right, they can be more adequately interpreted as an organized expression of the lingering dissatisfaction among the public over the lack of success in integrating Muslims into the German society and the general skepticism towards immigration from Muslim countries. The political landscape in Germany is changing at this moment and the positions of the AfD show the possibility of a new immigration model with a unique combination of a more open immigration regime for qualified immigrants (mainly for economic reasons) coupled to an assimilationist view on integration – a combination that has not existed yet in the political history of Germany. Updated for the new positioning of parties in 2015 (CSU, Green party, Republicans, NPD without change; SPD, FDP and AfD advocating a point system for immigration; CDU tending towards a more multi-cultural positioning in its view on integration; PDS with an outsider position on immigration), the diagram below shows the further differentiation of positions on immigration and integration policies that might affect actual policies after the next federal and state elections under the potential participation of the AfD (and the danger of a continuing exclusion of the FDP from the Bundestag).

⁴⁷⁸ PEGIDA, Positionspapier der PEGIDA, <http://www.lvz-online.de/f-Download-d-file.html?id=2942>.

⁴⁷⁹ Ibid. Alternative für Deutschland, “Zuwanderung und Asyl,” <http://www.alternativefuer.de/programm-hintergrund/fragen-und-antworten/zuwanderung-und-asy/>.

⁴⁸⁰ Fabian Reinbold, “Studie über Pegida-Teilnehmer: In Dresden marschiert die Mittelschicht,” *Der Spiegel*, 14th January 2015, <http://www.spiegel.de/politik/deutschland/pegida-studie-in-dresden-marschiert-die-mittelschicht-a-1012913.html>.

3. Japan's immigration policy-making in a comparative perspective

3.1 Institutional and political antecedents in Japan's contemporary immigration and integration policies

3.1.1 The Japanese nation-state and ethnic nationalism

In the following chapter, I will analyze the history and structure of Japan's immigration policy-making from a comparative perspective. Japan is used as a point of reference because its ethnic notions of the nation-state mirror that of Germany. While complex in itself, the ideas of ethnicity and the uniqueness of Japanese culture served as an important unifying narrative of the Japanese state that developed in the period of modernization under the Meiji government from 1868⁴⁸¹ and was radicalized in the war against Russia, during the First World War and especially during the Pacific War. Similar to Germany, nationalism also served as a means to defend the constructed internal unity of the nation-state against outside forces that threatened the cohesion of the newly founded state⁴⁸² even though there had always been ethnic diversity and continuous foreign influences within the Japanese territory. The motives of the political elites were the same both in Germany and Japan: nationalism was an important means in order to protect the new government from both internal and external threats.⁴⁸³ According to Anderson, Prussia had even been the model for Japanese nationalism in the 19th century.⁴⁸⁴ Citizenship was defined by blood right, just as in the case of Germany and other European countries that were studied by Japanese government advisors.⁴⁸⁵ As an ideology, ethnic nationalism existed not only in right-wing circles, but also amongst liberal, Romanticist and leftist intellectuals, often in direct reference to the variety of concepts of ethnic nation-hood in Germany.⁴⁸⁶ After WWII, these intellectual notions of ethnic nationalism became en vogue again (e.g. in the 日本人論 *nihonjinron* theories) after Japan achieved high economic growth rates in the 1960s, unlike in Germany where these ideas influenced policies in a less outspoken and more fragmented way (e.g. in

⁴⁸¹ See, for instance Kevin M. Doak, *A History of Nationalism in Modern Japan. Placing the People* (Leiden: Koninklijke Brill NV, 2007).

⁴⁸² Kevin M. Doak, "Ethnic nationalism and romanticism in early twentieth-century Japan," in *Race, Ethnicity and Culture in Modern Japan*, ed. Michael Weiner (Abingdon/New York: RoutledgeCurzon, 2004), 16f.

⁴⁸³ Michael O. Sharpe, *Postcolonial Citizens and Ethnic Migration. The Netherlands and Japan in Age of Globalization* (Basingstoke: Palgrave Macmillan, 2004), 119.

⁴⁸⁴ *Ibid.*, 116.

⁴⁸⁵ *Ibid.*, 118.

⁴⁸⁶ Doak, "Ethnic nationalism and romanticism in early twentieth-century Japan," 18f, 23.

the conservative factions of the CDU).⁴⁸⁷ Today, the preferential treatment for immigrants of Japanese descent is similar to the status of *Aussiedler* in Germany and the ideals of an ethnically homogeneous nation still partly define the immigration and integration discourse. However, the limited explanatory power of this model is quickly revealed when the complexity of Japan's institutional and societal network of immigration-related interests is considered. While ethnicity is an important part of Japan's immigration history, just as in the case of Germany, it cannot explain the changes in immigration policies, which will be analyzed in the following sections.

3.1.2 History of Japan's immigration policy-making

3.1.2.1 Between emigration and colonialism: Japan's pre-war migration and citizenship policies

Unlike Germany, Japan's net migration remained negative during most of its history, starting from the Meiji period during which the Japanese state endorsed the diffusion of Japanese influence around the globe and the regulation of population growth by supporting the emigration of poor Japanese farmers and workers to different parts of the world.⁴⁸⁸ The Meiji period thus broke away from the restricted migration possibilities during the 鎖国 (*sakoku*) era under the Tokugawa shogunate.⁴⁸⁹ Emigration was further instigated by an increase in land and other taxes, the introduction of universal military conscription, natural disasters such as the Great Kantō Earthquake (関東大地震) and social unrest linked to economic recessions and famines.⁴⁹⁰ Emigration was both related to the colonization of the early 20th century, initially in parts of Micronesia, Taiwan, Korea and parts of Manchuria, and to educational opportunities in the US (especially in Hawaii and the West Coast), leading to anti-Japanese agitations and restrictive Japanese entry in Canada and the United States in 1923 and 1924.⁴⁹¹ After the borders were closed, the migration streams shifted to Latin America, Peru and Brazil that suffered from labor shortages. Other popular destinations were Russia, the Philippines and Manchuria.⁴⁹²

⁴⁸⁷ Sandra Wilson, "Rethinking nation and nationalism in Japan," in *Nation and Nationalism in Japan*, ed. Sandra Wilson (London: Routledge, 2011): 1–20, 19. Chiavacci, *Japans neue Immigrationspolitik*, 35.

⁴⁸⁸ Sharpe, *Postcolonial Citizens and Ethnic Migration*, 119.

⁴⁸⁹ James Stanlaw, "Japanese emigration and immigration: from the Meiji to the modern," in *Japanese Diasporas: Unsung pasts, conflicting presents, and uncertain futures*, ed. Nobuko Adachi (Abingdon/New York: Routledge, 2006): 35–51, 35.

⁴⁹⁰ *Ibid.*, 36, 39ff.

⁴⁹¹ Japanese American National Museum, "Brief Historical Overview of Japanese Emigration, 1868–1998," <http://www.janm.org/projects/inrp/english/overview.htm>.

⁴⁹² Sharpe, *Postcolonial Citizens and Ethnic Migration*, 120. 坂口満宏「誰が移民を送り出したのか: 環太平洋における日本人の国際移動・概観」、『立命館大学国際言語文化研究所』21巻 2010年4号: 53–66, 54f.

Thus, while Germany developed an early set of institutions and political coalitions related to the labor *immigration* of especially Polish immigrants, the baseline in Japan was exactly the opposite. As a country of sending labor migrants and farmers abroad, it initially had to face issues of discrimination, and thus formulated policies to expand its interests abroad. Germany's emigrant diaspora was of a much earlier origin, starting from early settlements in different Eastern European and Baltic countries during the period of the German Eastern Settlement in the 12th century within the Holy Roman Empire. Other emigration waves happened during the 18th century (to Eastern Europe and the USA), the 19th century (to Russia and especially the USA), and the 20th century during the two world wars, mainly after catastrophic events such as droughts, religious persecution or wars and not because of a proactive government program. Due to the late-comer status of Germany, colonialism was not a particularly strong movement for emigration. While German landlords and industrialists could make use of a stream of labor immigrants over the porous borders that forced the German state to establish a centralized regulative regime, the Japanese state cooperated with emigration companies or founded own state-owned companies such as the 海外工業株式会社 (*kaigai kōgyō kabushiki kaisha*) to assist in the emigration process⁴⁹³ and created a legislative framework with the Emigration Protection Act (移民保護規則).⁴⁹⁴ Emigration in Germany coupled to a negative net migration rate was more pronounced in the more unstable years of the 18th and early 19th century while the number of immigrants began to exceed the number of emigrants at the beginning of the German Empire in the so-called *Gründerzeit*, which was a period of economic growth, urbanization and agrarian modernization.⁴⁹⁵

At the same time, in Japan immigration policies were at most *ad hoc* and based on international treaties such as the Japanese-British treaty, which allowed for “mixed residence” and the opening up of the country for immigrants without the creation of an institutional framework.⁴⁹⁶ During the period of the Pacific War, the recruitment of forced labor from colonies in China and Korea was the most important stream of immigration although on a much smaller scale (around 700.000 workers)⁴⁹⁷ than

⁴⁹³ Ibid, 121.

⁴⁹⁴ National Diet Library. 100 Years of Japanese Emigration to Brazil, “Argument for colonial emigration and emigration policies of the Government,” http://www.ndl.go.jp/brasil/e/s1/s1_2.html.

⁴⁹⁵ Jochen Oltmer, “Arbeitsauswanderung und Auswanderung,” *Deutsches Historisches Museum*, http://www.dhm.de/archiv/ausstellungen/gruenderzeit/exposes/Oltmer_percent20-percent20Arbeitswanderung_percent20und_percent20Auswanderung.pdf. Johannes Leicht, “Die Auswanderung aus Deutschland,” *Deutsches Historisches Museum*, <https://www.dhm.de/lemo/kapitel/reaktionszeit/alltag/auswanderung>.

⁴⁹⁶ Akira Iriye, “Japan’s drive to great-power status,” in *The Emergence of Meiji Japan*, ed. Marius B. Jansen (Cambridge et al.: Cambridge University Press, 1995): 268–330, 311.

⁴⁹⁷ Naitō Hisako, “Korean Forced Labor in Japan’s Wartime Empire,” in *Asian Labor in the Wartime Japanese Empire: Unknown Histories*, ed. Paul H. Kratoska, 2nd edition (Abingdon/New York: Routledge: 2015): 90–100, 93, 98.

in Germany. International marriages became legal in 1873 even before the Nationality Act was introduced and led to the loss of nationality for Japanese wives of foreign citizens while foreign wives were automatically granted Japanese nationality. It also included the legal possibility for foreign men to become Japanese under special rules (the 入夫 *nyufu* system).⁴⁹⁸ These rules mirrored the marriage and nationality rules in Germany as defined in the Citizenship Act of 1870.

The first comprehensive Nationality Act (国籍法) ratified in 1899 was also similar to the German version and evolved out of the family registration system (戸籍制度).⁴⁹⁹ It was a result of the reception of the German Civil Code and French Law in Meiji Japan.⁵⁰⁰ Based on the principle of *ius sanguinis*, it defined Japanese citizenship by blood right (art. 1–3) and included the possibilities for aliens to acquire the Japanese nationality – by marriage, as a family member of a naturalized person, through adoption or by using the legal process of naturalization (art. 5). *Ius soli* rights were only granted for children of unknown parents. Naturalization became generally possible after a residence period of period of five years and three years for children of foreigners unless their parents were also born in Japan, with similar conditions as in 19th century Germany (art. 9). However, until 1949 only a minuscule number of 298 people had made use of the possibility to naturalize in Japan.⁵⁰¹ Germany's Citizenship Act had a federal design, included additional possibilities to naturalize after being accepted as a German civil servant and did not mention a minimum period for naturalization that was left to the discretion of the responsible ministry and related agencies. Quite the contrary, the Japanese Nationality Act restricted foreigners from high political and military offices (art. 16).⁵⁰² Small revisions were made in 1916 and 1924, adding paragraphs for the possibility to renounce Japanese citizenship due to the pressure from the US and other host countries of Japanese emigrants.⁵⁰³

A genuine foreigner policy was initiated in the colonies rather than in the Japanese territory itself as can be seen in the 皇民家 (*kōminka*) policies that aimed to assimilate Taiwanese and Korean citizens to Japanese culture. In the colony of Taiwan, the successful assimilation of Ainu and Okinawans

⁴⁹⁸ William Wetherall, "Nationality in Japan," in *Japan's Diversity Dilema. Ethnicity, Citizenship, and Education* (Lincoln: iUniverse, 2006): 11–46, "1873 International Marriage Proclamation." 嘉本伊都子「国際結婚をめぐる諸問題:「境界線」上の家族」,『家族社会学研究』8巻 1996年8号: 53–66, 56.

⁴⁹⁹ Wetherall, "Nationality in Japan," "1873 International Marriage Proclamation."

⁵⁰⁰ See, for instance, Ronald Frank "Cicil Code, General Provision," in *History of Law in Japan since 1868*, ed. Wilhelm Röhl (Leiden: Koninklijke Brill NV, 2007), 184ff.

⁵⁰¹ Terra Morris-Suzuki, *Re-inventing Japan: Time, Space, Nation* (New York: M.E. Sharpe, 1998), 227.

⁵⁰² Japanese Law of Nationality (1873), translated by Gilbert Bowles (Tokyo, 1915).

⁵⁰³ William Wetherall, "Japan's Nationality Law. A primer and guide to other articles," *Yosha Research*, 1st January 2007, http://members.jcom.home.ne.jp/yosha/yr/nationality/Nationality_primer.html.

served as a model to allow Taiwanese-Japanese intermarriage, abolish the use of Chinese, teach Japanese in schools, change the education system and enforce Japanese religion and customs.⁵⁰⁴ The local reactions to Japanese rule varied from collaboration and support to indifference and violent resistance.⁵⁰⁵ Similarly, but without the introduction of Japanese Nationality Law, efforts were made to assimilate Koreans to Japanese culture. Both Taiwanese and Koreans had the legal right to settle in other parts of the Japanese Empire, including the Japanese territory itself, but Koreans in particular chose to settle in Japan. In 1937, roughly 800,000 Korean immigrants worked in low-skilled occupations such as mining, construction and textile manufacturing helping to expand the Japanese economy. This number increased further due to the immigration of forced labor from 1942.⁵⁰⁶

3.1.2.2 Restricting entry and preventing settlement: Japan's post-war immigration policies until 1990

With the breaking up of Japan's colonial empire after WW2, the Supreme Commander of the Allied Powers (SCAP) became responsible for Japan's military and diplomatic matters until 1952. Roughly 3.5 million Japanese inhabitants in the colonial areas returned to Japan.⁵⁰⁷ The legal status of Koreans residing in Japan who were unable or unwilling to return to Korea after 1945 became ambiguous. After these former colonial citizens were forced to register their status and many Taiwanese and Koreans did not voluntarily repatriate in the immediate post-war years, Japan took the radical step to revoke the citizenship rights of all former Taiwanese and Korean colonial subjects when the Peace Treaty of San Francisco (サンフランシスコ講和条約) was ratified in which Japan officially relinquished all claims to the former colonial territories.⁵⁰⁸ However, they were allowed to stay in Japan with their children even without a formal residence status as defined in two laws of April 1952 and December 1952.⁵⁰⁹ Nevertheless, this measure contrasts with Germany in which the revocation of citizenship was banned under art. 16 of the GG after its misuse against political enemies and Jews in the NS era. Koreans (and to a lesser extent Taiwanese) were strongly associated with communist influences and black market activities in the post-war Japanese society. These illegal activities drew in various grievances of the Japanese public and elites.⁵¹⁰ They also had an ambiguous status among the Americans due to their dual position as quasi-nationals of Japan *and* "liberated" people from

⁵⁰⁴ Denny Roy, *Taiwan: A Political History* (Ithaca: Cornell University Press, 2003), 41f.

⁵⁰⁵ *Ibid.*, 45ff.

⁵⁰⁶ Wetherall, "Nationality in Japan," "Korea as Chōsen."

⁵⁰⁷ Tomonori Taki, "Redefining its self image and redefining its role as a regional power: Contemporary Japan and international population movement," *Centre for the Study of Globalisation and Regionalisation Working Paper* 273/10, 15.

⁵⁰⁸ Sharpe, *Postcolonial Citizens and Ethnic Migration*, 124.

⁵⁰⁹ Ko Swan Sik, *Nationality and International Law in Asian Perspective* (Dordrecht: Martinus Nijhoff, 1990), 212.

⁵¹⁰ Chung, *Immigration and Citizenship in Japan*, 73.

Japanese colonialism which had the effect of contradictory policies from both the Japanese and the SCAP towards Koreans.⁵¹¹ The revocation of citizenship rights for Koreans and Taiwanese was seen as a final step to break with Japan's colonial past and enforce the repatriation of Koreans that were seen as a burden on the democratizing Japanese society, not least because of their stronger antipathy towards the American Occupation.⁵¹²

Japan's immigration and citizenship laws today are based upon the immediate post-war order. Among the reforms related to immigration policy, a new Nationality Act was introduced in 1950 based upon the stipulation of the new 1947 Constitution that "the conditions necessary for being a Japanese national shall be determined by law" (art. 10). The Nationality Act thus radically changed the "legal and philosophical basis of citizenship"⁵¹³ in line with the reconstruction of Japan towards a liberal democracy with sovereign Japanese citizens. On the other hand, the more specific provisions of the law did not change as much: besides removing most articles and paragraphs that discriminated against women, abolishing the articles on automatic naturalization possibilities after marriage and granting naturalized foreigners full citizenship rights (including the right to take high political or military positions), it generally continued the *ius sanguinis* rules of the 1899 version.⁵¹⁴ According to article 6 and 7, naturalization was facilitated for foreigners "born in Japan" with a "continuous domicile or residence in Japan for at least three years, or whose father or mother [...] was born in Japan", which mostly referred to Koreans and Taiwanese,⁵¹⁵ but there was no general *right* of naturalization and the MOJ had full discretion to reject an application.⁵¹⁶

The Regional or District Legal Affairs Bureau(s) (the local branch offices of the MOJ) became responsible for all matters related to naturalization.⁵¹⁷ The specific procedures for the permission and renunciation of Japanese nationality were regulated in the Nationality Act Enforcement Regulation (国籍法施行規則).⁵¹⁸ From 1952 to 1984, the possibility to naturalize was predominantly (96 per cent) used by Koreans and Taiwanese who had already resided in Japan since the end of WWII.⁵¹⁹ Compared to the German RuStAG of 1913, the act was not as comprehensive and still allowed for

⁵¹¹ Ibid, 75.

⁵¹² Ibid, 72ff.

⁵¹³ Morris-Suzuki, *Re-inventing Japan*, 228.

⁵¹⁴ Nationality Act, Act No. 147 of May 4, 1950. Sik, *Nationality and International Law in Asian Perspective*, 187.

⁵¹⁵ Ibid, 200.

⁵¹⁶ Ibid, 195.

⁵¹⁷ Ibid, 198.

⁵¹⁸ William Wetherall, "1950 Nationality Law. One step forward, two steps backward," *Yosha Research*, 1st April 2006, http://members.jcom.home.ne.jp/yosha/yr/nationality/Nationality_law_1950.html.

⁵¹⁹ Sik, *Nationality and International Law in Asian Perspective*, 197.

the revocation of citizenship by the state. Otherwise, the *ius sanguinis* rules of citizenship were quite similar. Unlike in Germany, naturalization decisions are under the supervision of the Ministry of Justice instead of the Ministry of the Interior.

The basis for the Japanese immigration system was laid by Cabinet Orders in the 1940s and 1950s and influenced by the U.S. One of the first legal outcomes was the 1947 Foreigner Registration Order (外国人登録令). After the inhabitants of colonial Japan had to register earlier in 1946, the order regulated the registration of foreigners at a municipal level under the authority of the MOJ. It also included an interim border control system that authorized the SCAP to preside over immigration requests (art. 3). Possibilities to immigrate were limited almost exclusively to government officials and their families while colonial Taiwanese and Korean citizens (在日 *zainichi* Koreans) were not treated as Japanese nationals (art. 2). These restrictions were mainly aimed to control the movements of Koreans into Japan.⁵²⁰ The order was later replaced by the more comprehensive 1952 Foreigner Registration Law (外国人登録法), which included a fingerprinting system criticized strongly by Korean citizens as a form of discrimination. Complaints, however, remained unanswered until the 1980s.⁵²¹ The jurisdiction for the registration of aliens was passed from the Ministry of Interior Affairs to the MOJ in 1947 and to the Ministry of Foreign Affairs (MOFA) in 1950.⁵²²

The first infrastructure for the regulation of immigration was set up in 1949 with the establishment of a department for immigration issues under the MOFA.⁵²³ In October 1950, the department was re-established as the Emigration And Immigration Agency while the MOFA department remained under a different name.⁵²⁴ The department dealt with all matters regarding (legal and illegal) immigration and emigration (art. 3), set up Immigration Inspectors (入國監理官) for issues related to customs and the entrance of foreigners into Japan (art. 4) and a Control Liaison Council (出入國管理連絡協議会) responsible for the deportation of illegal immigrants (art. 5). The law was complemented by the Illegal Entrant Deportation Procedure Order (不法入国者等退去強制手続令) in 1951.

⁵²⁰ William Wetherall, “Alien registration and immigration. Changing statuses during and after the Occupation of Japan,” *Yosha Research*, 1st January 2007, http://members.jcom.home.ne.jp/yosha/yr/empires/Postwar_registration_immigration.html.

⁵²¹ 草加道常「「新たな在留管理制度」は何をもたらすか 改定入管法の特徴と問題点」, 『Migration Policy Review』 2巻 2010年: 120–139, 123f. Peter J. Herzog, *Japan's Pseudo-Democracy*, 2nd edition (Abingdon/New York: Routledge, 2013), 89ff.

⁵²² William Wetherall, “Alien control laws in Japan. The regulation of entry, stay, and residence,” *Yosha Research*, 1st August 2007, http://members.jcom.home.ne.jp/yosha/yr/minorities/Alien_control_laws.html#1945.

⁵²³ Wetherall, “Alien registration and immigration. Changing statuses during and after the Occupation of Japan.” Wetherall, “Alien control laws in Japan.”

⁵²⁴ Wetherall, “Alien registration and immigration.”

Finally, the Immigration Control Order (ICO) of 1951 (出入国管理令)⁵²⁵ became a symbol of the restoration of Japan's sovereignty as the country regained full control over its borders and foreign affairs. Initially under MOFA, immigration issues were moved to the jurisdiction of MOJ in 1952. The law became the basis of post-war Japan's immigration policy and a main part of it remains unchanged today while more significant parts for the admission of refugees, a new system of residence categories, institutional precisions and an expansion of reasons for deportation, fines and imprisonment were introduced later. The character of the law is very different from the 1965 AuslG in Germany and even the translation *Immigration Control Order* is not very precise because it is rather a law regulating the entry and exit of both aliens and Japanese nationals (art. 60f). For a great part, it lists provisions related to border control, landing procedures, deportation rules and penalties. Border control procedures are regulated in other laws in Germany while the AuslG prioritized the requirements for the issuing of residence and settlement permissions that are mentioned only abstractly in the ICO. The Japanese law comprises provisions related to entry and landing, procedures for landing, residence and departure procedures, deportation procedures, the responsibility of the captain of a vessel or aircraft and the carrier, departure from and return to Japan of Japanese nationals, auxiliary provisions, and penal provisions.

Visas for foreigners were issued overseas at Japanese consular offices under the supervision of MOFA. MOJ had the authority and discretion to deny entry for various reasons (e.g. the commitment of crimes) (art. 5). The issuing of a status of residence was mandatory for various activities, including diplomatic service, government and international organization activities, transit, tourism, trading, investment, activities at Japanese universities (as students, researchers or professors), entertainment (drama play, sports, music), religious activities, journalism and highly qualified occupations. There is no residence status for unskilled labor. Unlike in Germany where work permits were issued by the Federal Agency for Labor, Japan followed the American example and directly integrated work permissions into the different visa categories.⁵²⁶ The law also defined the possibilities for permanent residence or family reunification of spouses and children without further specification. It generally limited the residence to three years for all categories besides permanent residence and diplomatic work. The admission of permanent residence was dependent on the decision-making of MOJ based on whether the immigrant would benefit Japan, had not committed any crimes and could generally

⁵²⁵ Immigration Control Order and Refugee Recognition Act (Cabinet Order No. 319 of 1951).

⁵²⁶ Chiavacci, *Japans neue Immigrationspolitik*, 125.

support him- or herself (art. 4).⁵²⁷ Permanent residence corresponds to a settlement permission in Germany and involves an unlimited right to reside and work in Japan. The more specific rules for the admission of temporary or permanent residents remained unmentioned and were regulated by binding administrative guidelines. The MOJ holds substantial discretion in presiding over the admission of foreigners and the actual granting of permanent residence permissions was handled very strictly, especially if there were “no special ties with Japan or Japanese nationals.”⁵²⁸ Even though temporary labor migration of skilled foreign workers was admitted, family reunification was ruled out for non-permanent residents.⁵²⁹ Koreans who resided in Japan before 1945 and their immediate descendants received preferential treatment in the issuing of permanent residence permissions due to a bilateral agreement between Japan and Korea in 1965 when both countries normalized their diplomatic relations.⁵³⁰ The restrictive attitude of the Japanese government towards immigrants became also visible in its treatment of refugees. In line with most other East Asian countries, it did not sign the UN Convention Relating to the Status of Refugees for 30 years even though the subject had been discussed in the Japanese Diet since 1962. Instead, it merely mentioned the legal possibility within the ICO of granting a special temporary residence status to refugees involved in sea accidents, in particular to boat people from Vietnam.⁵³¹

Until the early 1980s, immigration policies did not change significantly and were generally in line with migration policies in the East Asian region. However, in the early 1970s the growing labor demand for unskilled labor, especially in the care worker sector and in the construction industry, could not be matched by domestic workers anymore and thus led to an unorthodox exploitation of the immigration possibilities as trainees (研修生) supported by a number of employers. However, the system was opposed officially by the Japanese government and especially the Ministry of Health, Labour and Welfare (MHLW).⁵³² In accordance with the demands of business associations, only a marginal expansion was realized by instituting small training programs and admitting technical trainees from

⁵²⁷ 出入国管理令, 昭和 26 年政令第 319 号.

⁵²⁸ Sik, *Nationality and International Law in Asian Perspective*, 212.

⁵²⁹ Takeyuki Tsuda and Wayne Cornelius, “Japan: Government Policy, Immigrant Reality,” in *Controlling Immigration: A Global Perspective*, ed. Wayne A. Cornelius, Philip L. Martin and James F. Hollifield (Stanford: Stanford University Press, 2004): 439–476, 450.

⁵³⁰ Sik, *Nationality and International Law in Asian Perspective*, 212. 外務省条約局「条約集・昭和40年(二国間条約) 在日韓国人の法的地位協定(日本国に居住する大韓民国国民の法的地位及び待遇に関する日本国と大韓民国との間の協定)」, 東京. 日本外交主要文書・年表, 1965.

⁵³¹ Osamu Arakaki, *Refugee Law and Practice in Japan* (Hampshire/Burlington: Ashgate, 2008), 17.

⁵³² Chiavacci, *Japans neue Immigrationspolitik*, 78.

Asia.⁵³³ But the mounting criticism from foreign countries and the media, coupled with decreasing labor demand after the first oil shock in 1973, ultimately led to the removal of this loophole by the MOJ in 1974 while some large companies in the industry proved unsuccessful in lobbying for more open immigration policies. Even though a loose coalition of the Ministry of Economy, Trade and Industry (METI), small and medium-sized enterprises (SMEs) and employer organizations (*nikkeiren* 日経連 and the Japanese Chamber for Trade and Industry 日本商工会議所) were in favor of changing towards a more proactive immigration policy, the opposition of the MHLW, the main union associations (*dōmei* 同盟 for the private sector and *sōhyō* 総評 for the public sector) and the Japanese New Left (*shinsayoku* 新左翼) prevailed.⁵³⁴

Since then and continuing until today, a debate around the “new” immigration of foreign workers and refugees has been triggered, associated with issues of demographic change and economic stagnation. This development was in accordance with the increasing immigration pressure from neighboring developing countries whose pool of increasingly urbanized and geographically mobile workers increased rapidly in the 1980s, coupled to decreasing labor demand from the Gulf region.⁵³⁵ Before analyzing these changes from the perspective of political coalitions and institutions, I will sum up the historical differences between Japan and Germany.

3.1.3 The history of immigration policy-making of Japan and Germany in comparison

The Japanese law did permit qualified, but strictly temporary immigration while low- and non-qualified immigration was generally ruled out. In that sense, it was the opposite of the situation in Germany in which the immigration of low-skilled workers and their families was permitted in bilateral agreements. This temporary opening was a foreign policy measure supported by labor scarcities in the industries. Immigration policies were accordingly designed in an *ad hoc* manner managed by the AA and the BMAS. In Japan, colonial citizens from Korea and Taiwan who lost their citizenship in 1952 were allowed to stay in Japan without a formal status of residence while the early immigration law was mainly formulated as a technical *border control* law that left many decisions related to the residence status of immigrants to the discretion of MOJ.

First, a major reason for the difference in the initial baseline can be identified in the early deregulation of labor movements in the ECSC that led to the influx of European immigrants in Germany.

⁵³³ Bertram, “Japan and Labor Migration,” 18.

⁵³⁴ Chiavacci, *Japans neue Immigrationspolitik*, 81ff.

⁵³⁵ *Ibid*, 90.

Accordingly, there were no legislative possibilities to create restrictions for this immigration stream. The defeat of Japan and Germany in WW2 represented critical junctures in the political history of both nations, but had a stronger institutional impact on Germany than on Japan. Although both countries enjoyed high growth rates after the war, became key allies in US foreign policy during the Cold War and were allowed or even encouraged to rebuild a military under constitutional limitations, they were embedded in very different regional contexts and institutional settings. The reconciliation between the former enemies Germany and France led to a process of European integration while Germany's admission of moral responsibility for the war contrasts with the lingering historical issues and the limited integration in the North East Asian region even today. Even though Japan engaged in multi-dimensional economic and aid relations, these relations never spilled over to some form of binding institutional arrangement that would go beyond multi-lateral and non-binding fora for economic and financial cooperation. Reasons for this lack of regional integration can also be traced back to US policy in both regions. The Marshall Plan has been established by the US for Europe incentivized a process of European integration that reduced Germany's dependency on the US. In East Asia, however, hub-and-spoke relations with Japan and other Asian countries continue to dominate.⁵³⁶ Foreign pressure and the attempts of the German government under Chancellor Adenauer to reconcile with European countries and win back Germany's sovereignty by integrating with former enemy countries led to the irreversible integrative dynamic of the EC that included the right of foreigners from member countries to work in Germany. Japan, instead, severely limited permanent settlement possibilities for new immigrants (aiming especially at the existing immigration pressures from the Korean peninsula) and only admitted temporary skilled migration for a maximum period of three years in the ICO of 1952.

Second, in Germany, the idea of an ethnic homogeneous state was radically delegitimized after the war. In the Potsdam Agreement of 1945, the Allied powers agreed upon a comprehensive political program to de-militarize, “de-nazifize”, democratize and decentralize Germany. The aim was “[t]o convince the German people that they [had] suffered a total military defeat and that they cannot escape responsibility for that they [had] brought upon themselves.” (art. 3, sec. ii)⁵³⁷ However, immigration policies were not revised for a period of 20 years after the war, during which Germany still used legislation of the NS era in order to have a legal framework. Moreover, the German government was

⁵³⁶ Thränhardt, “Japan und Deutschland in der Welt nach dem Kalten Krieg,” 46

⁵³⁷ The U.S., the Soviets and the British set policy on postwar Europe, Berlin Potsdam Conference, July 17–August 2, 1945, <http://www.pbs.org/wgbh/americanexperience/features/primary-resources/truman-potsdam/>.

not willing to institute a new nationality law in the imminent division of the territory. In Japan, the terms of the Potsdam Declaration were reduced to 13 points which were not as strictly implemented even though it stated that “[t]here must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest” (art. 6)⁵³⁸. In post-war Germany, early notions of a post-national order could develop without significant nationalist backlashes while the government committed to its relation with the US as a priority before unification and the restoration of sovereignty. In comparison with Germany, the political personnel was not as rigidly replaced in Japan, with key war figures such as Prime Minister Kishi remaining in their position after the war. The more thorough institutional juncture is also evident in the system of party competition and federalism that determined the political structure in post-war Germany while in the 1955 system of Japan, the bureaucracy dominated within a centralized, one-party system based on the LDP leadership.⁵³⁹

Third, foreign countries did not – or rather could not – exert any significant pressure on Japan with respect to the initiation of a guest worker program such as in Germany. Normalization between South Korea and Japan was achieved only in 1965 and between Japan and the People’s Republic of China in 1971. Southeast Asian countries did not reach the tipping point yet where they had the economic, “physical and technical conditions that enable migration.”⁵⁴⁰ Even if they had exerted pressure, it is not clear that MOFA would have reacted positively to it such as in Germany where the AA was an accommodating actor for which the reconciliation with foreign countries was of major importance. Although guest worker programs had been suggested in Japan in 1967, they were rejected by the Japanese bureaucracy.⁵⁴¹ In comparison to Germany, Japan could use a larger number of workers from rural areas (roughly eight to ten million) as a source of labor for industrialization. The share of agricultural workers thus dropped from 48 to 10 percent in Japan,⁵⁴² but only from 24.6 to 5.1 percent in Germany (with a lower absolute number of workers) in the same period.⁵⁴³ Domestic labor mobility, technical innovations, long working hours and the use of women and aged workers on a part-time

⁵³⁸ Potsdam Declaration, Proclamation Defining Terms for Japanese Surrender Issues at Potsdam, July 26, 1945.

⁵³⁹ Thränhardt, “Japan und Deutschland in der Welt nach dem Kalten Krieg,” 17–20.

⁵⁴⁰ Taki, “Redefining its self image and redefining its role as a regional power,” 16.

⁵⁴¹ *Ibid.*

⁵⁴² *Ibid.*

⁵⁴³ Statistisches Bundesamt, “Arbeitsmarkt,” <https://www.destatis.de/DE/ZahlenFakten/Indikatoren/LangeReihen/Arbeitsmarkt/lrerw013.html>.

basis also reduced the need for foreign labor in the Japanese economy significantly.⁵⁴⁴ The remaining labor demand could be partly filled by making use of backdoors such as the trainee system.⁵⁴⁵

Fourth, even though Japan had a significant foreign population on its territory, it did not make any efforts to initiate integrative measures for former colonial Korean and Taiwanese citizens. At both social and political levels, participatory possibilities were limited while the German government began to prioritize immigrant integration after the suspension of the recruitment program in 1974. Foreigners were largely excluded from the labor and housing market and did not have access to social security benefits such as pensions or social housing. Poverty was also disproportionately high among Korean residents.⁵⁴⁶ After the repatriation of *zainichi* Koreans failed, the Japanese government had to accept the reality of a foreign population on its territory and made concessions in securing their legal residence status – similar to the early efforts of the German *Bundesregierung* in the 1965 AuslG. It mainly created the possibility to acquire a “special permanent residence” title for the first- and second-generation Koreans after the normalization of Japanese-Korean relations, but no proactive measures have been taken in order to increase the integration of foreign residents into Japanese society, educational or labor market system, in sharp contrast to the assimilationist measures of the colonial period. But since Koreans had already migrated to Japan in the early 20th century and cultural differences to Japan were not as high as between Germans and Turks, integration happened more naturally as can be seen for instance in the high inter-marriage rate in 1965 of roughly 47 percent.⁵⁴⁷ However, naturalization continues to be severely limited and was discouraged by Korean immigrant associations.⁵⁴⁸

3.2 Immigration reform in Japan: Similarities and differences with Germany

3.2.1 The structure of institutions and political coalitions in immigration policy-making before the reform period

3.2.1.1 Institutions: Administration, legislation and judicial review

Due to the related task of managing family registration, Japanese immigration policies fell under the purview of the MOJ, which held a rather conservative, restrictive orientation. At regional and

⁵⁴⁴ Taki, “Redefining its self image and redefining its role as a regional power,” 17.

⁵⁴⁵ Bertram, “Japan and Labor Migration,” 17.

⁵⁴⁶ Chiavacci, *Japans neue Immigrationspolitik*, 69f.

⁵⁴⁷ Theinr Theint Htwe, 「Intermarried Couples and Divorces in Japan. Resolution of child-related Disputes after Divorce」, 『現代社会文化研究』 53号 2012年: 37–60, 40.

⁵⁴⁸ Erin Aeran Chung, “Non citizens, Voice, and Identity: the Politics of Citizenship in Japan’s Korea Community,” *The Center for Comparative Immigration Studies Working Paper* 80, 5.

local levels, the Legal Affairs Bureaus acted as local branches of MOJ, managing all aspects of naturalization. The same structure exists for immigration purposes (e.g. the issuing of residence permits) in Regional and Local Immigration Bureaus that are coordinated by the National Immigration Bureau. These are supported by regional Immigration Information Centers in eight different prefectures.⁵⁴⁹

Institutional fragmentation was particularly high, with almost all central ministries and agencies having a vested interest in migration issues. The responsibilities for immigration control and social welfare for immigrants and refugees were fragmented among different ministries as well.⁵⁵⁰ Among the ministries, the MHWL traditionally holds a protectionist view on labor immigration representing the interests of domestic employees. Ministries tending towards a pro-immigration stance include MOFA, METI, the Ministry of Agriculture and Forestry⁵⁵¹ and the Economic Planning Agency.⁵⁵²

Just as in other policy areas, inter-ministerial negotiations and sectionalism dominate in the formulation of legislative proposals. Competition between the ministries and even between ministerial bureaus often inhibits more cooperative solutions.⁵⁵³ In Japan's political system, the LDP had the sole governing responsibility from 1952 until 1993. Since 1998, the LDP has generally governed in a coalition together with the Buddhist New Kōmeitō (公明党) and other conservative parties, interrupted only from 2010 until 2012 by the Democratic Party of Japan (DPJ). Due to the stable majorities in the Japanese Lower (衆議院) and Upper House (参議院), the legislative could rarely act as a veto player thus giving the Japanese government a strong autonomy to formulate policies. The Upper House does have a veto position for bills, but can be overridden by a two-thirds majority in the Lower House. Until 1989, the LDP kept a majority in both houses, thus effectively eliminating this veto power.⁵⁵⁴

In comparison with Germany, structures to include interest groups into the formulation of immigration policies have been limited. Rather, there are networks between LDP politicians, corporations and the bureaucracy that gave rise to notions of an "Iron Triangle". On the other hand, the LDP itself has pluralized significantly since the 1970s when so-called *zoku* (族) were evolving, which catered to

⁵⁴⁹ Immigration Bureau, Organization/Structure, <http://www.immi-moj.go.jp/english/info/>.

⁵⁵⁰ Hiroshi Honma, "Japan's Refugee Policy. From Post-World War II to Present Day," *Women's Asia* 21, no. 18 (2007): 22–25, 24.

⁵⁵¹ Kibe and Thränhardt, "Japan: A Non-Immigration Country Discusses Migration," 235.

⁵⁵² Chiavacci, *Japans neue Immigrationspolitik*, 119.

⁵⁵³ John Creighton Campbell, "Policy Conflict and Its Resolution within the Governmental System," in *Conflict in Japan*, ed. Ellis S. Krauss, Thomas P. Rohlen and Patricia G. Steinhoff (Honolulu: University of Hawaii Press, 1984): 294–335, 298ff.

⁵⁵⁴ Kenji Hayao, *The Japanese Prime Minister and Public Policy* (Pittsburgh: University of Pittsburgh Press, 1993), 36.

specific interest groups, were evolving in addition to a new system of permanent LDP commissions in specific policy areas – most importantly the Policy Affairs Research Council (PARC) – that are dominated by representatives of the respective factions.⁵⁵⁵ An individual LDP politician thus can be split between his voter clients and the general LDP position.⁵⁵⁶

The Japanese Supreme Court (最高裁判所) has largely acted in accordance with the policies set by the government. Termed the “most conservative constitutional court in the world”⁵⁵⁷ by David Law, it has rarely acted actively revised legislation that it deemed unconstitutional although it has the power for “judicial review” according to art. 81 of the Constitution. Compared to the German BVerfG, which struck down over 600 laws even though it was established later in history, the Japanese Supreme Court only ruled against eight laws.⁵⁵⁸ The conservative, LDP-friendly orientation of the court is based upon the immediate appointment of judges by the Cabinet and the frequent political interventions that followed opposing rulings, amongst other reasons, although the court is formally independent.⁵⁵⁹ Even in cases where the Supreme Court does not see a constitutional contradiction to an initiative that would increase the political rights of immigrants – such as introducing the municipal right to vote of permanent residents – the decisions usually do not have a political influence on the governmental level.⁵⁶⁰ In another case of 2005, the court ruled against the possibility of foreigners to be promoted to senior positions in government institutions.⁵⁶¹ When it comes to immigrants’ rights against discrimination, however, there have been cases protecting foreigners from ethnic and racial discrimination at a lower court level,⁵⁶² especially after Japan signed the normalization agreement with South Korea in 1965 and the international Human Rights Convention in 1979.⁵⁶³

Cities have designed creative immigrant incorporation programs that range from the organization of affordable language classes to consultation services and in the case of Kawasaki even to the creation of a Foreigners’ Advisory Council in 1996 with representatives from foreign communities – similar to the Foreigner Councils in Germany. The council has been successful in advocating the

⁵⁵⁵ Chiavacci, *Japans neue Immigrationspolitik*, 50f.

⁵⁵⁶ Campbell, “Policy Conflict and Its Resolution within the Governmental System,” 300.

⁵⁵⁷ David S. Law, “The Anatomy of a Conservative Court: Judicial Review in Japan,” *Texas Law Review* 87 (2009): 1545–1593, 1545.

⁵⁵⁸ *Ibid*, 1547.

⁵⁵⁹ *Ibid*, 1587ff.

⁵⁶⁰ Ken Haig, “Japanese immigration policy,” in *The Routledge Handbook of Japanese Politics*, ed. Alisa Gaunder (Abingdon/New York: Routledge, 2011): 223–235, 225.

⁵⁶¹ Kingston, *Contemporary Japan*, 159.

⁵⁶² Tsuda and Cornelius, “Japan: Government Policy, Immigrant Reality,” 467.

⁵⁶³ Chiavacci, *Japans neue Immigrationspolitik*, 86.

passing of an ordinance prohibiting discrimination of foreigners in the housing market.⁵⁶⁴ These local policies were enacted from the 1980s (but often much later) in response to pressure from Korean residents and in line with Japan's goals of "internationalization."⁵⁶⁵ However, the lack of a national framework and late attention by the Ministry of Home Affairs to the state of foreign residents led to a variety of services that can be minimal as in the case of Kawaguchi.⁵⁶⁶

The illustration below shows the structure of immigration policy-making in Japan. Compared with Germany, the structure is relatively simpler and generally based on the dominance of the LDP within the bureaucracy and legislative. Corporatism is not as institutionalized as in Germany and works generally through networks between the administration, the LDP and powerful businesses and economic associations. The system has strikingly few veto players as the Supreme Court usually does not oppose legislative proposals by the LDP government, the Lower and Upper House have been based upon strong LDP majorities and the central state in Tokyo is structurally and legislatively dominant when compared to the prefectures and municipalities. Immigration policies have remained largely at the level of the executive administration while the legislative has not been a powerful instrument of opposition and societal debates do not find an institutionalized expression in commissions or councils that integrate societal interests and prepare a consensus. Instead, the interests of civil society groups such as immigrant associations are aggregated at a municipal level.

⁵⁶⁴ Katherine Tegtmeier Pak, "Towards Local Citizenship: Japanese Cities Respond to International Migration," *The Center for Comparative Immigration Studies Working Paper* 30 (2001), 9ff.

⁵⁶⁵ Chikako Kashiwazaki, "Local Government and Resident Foreigners: A Changing Relationship," in *Japan's Road to Pluralism: Transforming Local Communities in the Global Era*, ed. Shunichi Furukawa and Toshihiro Menju (Tokyo: Japan Center for International Exchange, 2003): 63–88, 65ff.

⁵⁶⁶ Tegtmeier Pak, "Towards Local Citizenship," 913.

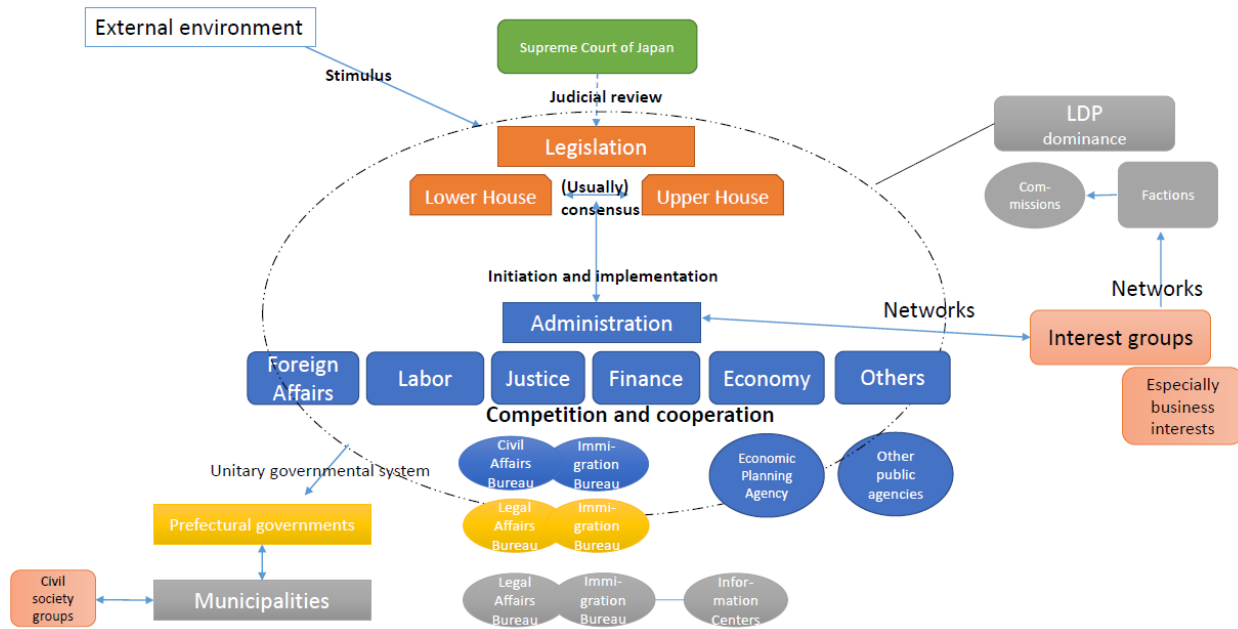


Figure 12. Institutional structure of immigration-policy making in Japan (by author)

3.2.1.2 Party positions

In strong contrast to Germany, parties generally did not develop a clear position on immigration issues and were struggling to find internal commonalities between the various factions. With low inter-party competition and a negligible volume of labor immigrants and refugees, there were no incentives to use sensitive immigration issues in election campaigns. For the large part of its history, the LDP could leave immigration policies to the discretion of MOJ with which it shared the perception of foreigners as a domestic security issue, leaving the topic out of the public discourse. The factionalism within the LDP also made a party consensus on immigration unlikely, considering that there were both LDP politicians who represented the interests of constituent employers with high labor demand and those without such a constituency and who focused rather on public security aspects of immigration.⁵⁶⁷ Instead, the first debates on immigration largely took place within and between the ministries without a significant societal or legislative participation. Moreover, unlike the German CDU who was always in favor of admitting immigrants with German descent from Eastern Europe (*Aussiedler*) due to the historic connections, the LDP was originally not in favor of admitting Latin American *nikkeijin* (日系人) of Japanese descent until the 1990s. It also did not enact measures to ease their naturalization and integration into Japan⁵⁶⁸ unlike the German CDU.

⁵⁶⁷ Chiavacci, *Japans neue Immigrationspolitik*, 122f.

⁵⁶⁸ Sharpe, *Postcolonial Citizens and Ethnic Migration*, 144.

In the political opposition, the Japanese Socialist Party (JSP) that merged into the DPJ in 1998 was not coherent in its position either and could not develop clear arguments against the restrictive immigration policies of the LDP.⁵⁶⁹ As the result of the merger of two smaller groups, the JSP also split into different competing factions.⁵⁷⁰ It was not able to become an electoral alternative in Japan, thus leading to the LDP-dominated 1955 system.⁵⁷¹ The early socialist and communist parties of the 1950s did sympathize with the social discrimination and poverty of Korean immigrants, but ultimately also supported the idea of their repatriation.⁵⁷² In 1995, the leftist parties and the Buddhist party Kōmeitō agreed to grant municipal voting rights to foreign residents after a Supreme Court ruling, but before that no proactive initiatives were visible.⁵⁷³ As immigration issues were not a topic with which the JSP could win votes, it largely supported the status quo while focusing its agenda on other issues (e.g. the US-Japan military alliance). Only on the far left, in the Japanese Communist Party (JCP), the first concept for the immigration of low-skilled immigrants *including* their integration into Japanese society was developed in the 1990s.⁵⁷⁴ Parties and groups from the far-right are rather weak although individual politicians such as the former governor of Tokyo Shintarō Ishihara may express hostile opinions towards immigrants. The main anti-foreigner group *zainichi tokken wo yurusanai shimin no kai* (在日特権を許さない市民の会) targets specifically *zainichi* Koreans and has an agenda of removing their residence privileges in Japan. It uses public demonstrations as a platform, but does not hold any significant political power. Its demographic includes a disproportional number of male and young persons with low income.⁵⁷⁵

The irrelevance of topics of immigration and integration among Japanese political parties until the 1990s/2000s and the pioneering policy platform on immigration of the JCP are striking. Neither immigration nor the integration of Korean citizens into the Japanese labor market and education system were systematically addressed by any mainstream party. Both the rigid institutional structure and the non-pluralistic party system supported the status quo until the 1990s/2000s. In Germany, the parties

⁵⁶⁹ Chiavacci, *Japans neue Immigrationspolitik*, 120.

⁵⁷⁰ Chae-Jin Lee, “Factional Politics in the Japan Socialist Party: The Chinese Cultural Revolution Case,” *Asian Survey* 10, no. 3 (1970): 230–243.

⁵⁷¹ Robert A. Scalapino, “Japanese Socialism in Crisis,” *Foreign Affairs* (1960), <http://www.foreignaffairs.com/articles/71542/robert-a-scalapino/japanese-socialism-in-crisis>.

⁵⁷² Hwa Ji Shin, *Trajectories of Nation: Remaking Citizenship, Immigration, and National Self-image in Japan* (New York: Stony Brook, 2007), 74f.

⁵⁷³ Haig, “Japanese immigration policy,” 225f.

⁵⁷⁴ Chiavacci, *Japans neue Immigrationspolitik*, 120.

⁵⁷⁵ The Diplomat, “Japanese Court Rules Against Anti-Korean Hate Group,” 8th October 2013, <http://thediplomat.com/2013/10/japanese-court-rules-against-anti-korean-hate-group/>.

were incentivized to take a stance on immigration and integration issues after the guest worker program, European integration and family reunification created a substantial foreign population whose integration into German society proved to be a challenge. Moreover, after the end of WWII, immigration also received a stronger *moral* connotation than in Japan which, for instance, explains the positive attitude of the conservative CDU towards the immigration of foreigners from Eastern Europe with German descent, the proactive position of the German government related to Jews who lost their citizenship during the Third Reich, and the initiation of the guest worker program as a reaction to the pressure of foreign countries. In addition, the Green party formulated an early, idealistic policy program on immigration, but unlike the JCP could be integrated into a coalition government with the SPD in 1998 due to Germany's multi-party system in which small parties potentially received the opportunity to be involved into coalition governments. They could then use their position within the coalition in order to negotiate legislative changes.

3.2.1.3 Societal coalitions and interest groups

3.2.1.3.1 Immigrant associations

The main immigrant associations in Japan represent Korean residents and have their origin in Japan's post-war environment. The main political organization was abbreviated *choryon* (League of Korean Residents in Japan) and represented all *zainichi* Koreans. It offered social services for Koreans suffering from poverty, ran its own schools and initially supported the Japanese government's program of repatriation. It also tried to campaign for the restoration of the right to vote of Korean citizens in Japan. However, it soon began to openly support the JCP, and communist North Korea using the sentiments of disappointed Koreans who expressed their grievances of the mistreatment by the Japanese government even though they were officially "liberated nationals." The *choryon* organized protests together with the JCP advocating radical ideas such as the overthrow of the Emperor, and was partly responsible for violent agitations after the Japanese government ordered Korean schools to be closed in 1948. In the climate of communist revolutions in neighboring countries, inspired *zainichi* Koreans organized the *soboi* as a para-military organization that aimed to establish a

communist Japan with the support of the JCP.⁵⁷⁶ The *choryon* was ultimately closed by the Japanese authorities in 1949 as a “terrorist organization.”⁵⁷⁷

The first immigrant association that formed in post-war Japan was thus associated with violence, communism and agitation against the Japanese state. Even though Turkish political and leftist organizations existed in Germany as well, they were highly fragmented and did not represent an immediate danger to the state. Instead, the evolving formation of Turkish labor organizations and their integration into German unions was a constructive means of pressuring unions to establish participatory structures for immigrants and improve their representation.

The newly forming Korean immigrant associations after the shutdown of *choryon* generally mirrored the division of Korea in a communist North and a US-backed South part. Supporters of North Korea initially joined the JCP⁵⁷⁸ and founded the *chongryon* in 1955 as a highly centralized, representative organization of North Korean citizens in Japan that continued the communist orientation of the *choryon*, supported the repatriation of *zainichi* Koreans to North Korea, and promoted Korean unification under North Korean premises. Even though it faced resistance from the Japanese government, it was able to successfully lobby for the re-opening of schools and the founding of *Chosun University* in Tokyo.⁵⁷⁹ *Chongryon* has grown to be a powerful organization although its membership numbers shrank in the 1970s. It finances itself by various businesses (e.g. *Pachinko* parlors) and owns newspapers and banks in Japan. In 1986, roughly 13 percent of *zainichi* Koreans in Japan attended *chongryon* schools.⁵⁸⁰ In lack of official Japanese-North Korean relations, the *chongryon* functions as the only quasi-official channel of the North Korean government that backs the organization. It kept a very reserved political attitude as long as its main goal to support the ethnic education of *zainichi* North Korean citizens in Japan could be fulfilled.⁵⁸¹ It has even been argued that the organization was actively tolerated by the LDP in the 1970s and 1980s.⁵⁸² This peculiar tacit understanding between

⁵⁷⁶ Changsoo Lee, “Ethnic Discrimination and Conflict: The Case of the Korean Minority in Japan,” in *Case Studies on Human Rights and Fundamental Freedoms, A World Survey 3*, ed. Willem Adriaan Veenhoven (The Hague: Martinus Nijhoff, 1976): 263–286, 273ff.

⁵⁷⁷ Antony DiFilippo, *US-Japan-North Korea Security Relations. Irrepressible Interests* (Abingdon/New York: Routledge, 2012), 150.

⁵⁷⁸ Sonia Ryang, “Japan’s Ethnic Minority: Koreans,” in *A Companion to the Anthropology of Japan*, ed. Jennifer Robertson (Malden et al.: Blackwell, 2005): 89–103, 91.

⁵⁷⁹ Lee, “Ethnic Discrimination and Conflict,” 275ff.

⁵⁸⁰ Myung Oak Kim and Sam Jaffe, *The New Korea. An Inside Look at South Korea’s Economic Rise* (New York: AMACOM), 77.

⁵⁸¹ *Ibid*, 76.

⁵⁸² Armin Rosen, “The Strange Rise and Fall of North Korea’s Business Empire in Japan,” *The Atlantic*, 26th July 2012, <http://www.theatlantic.com/international/archive/2012/07/the-strange-rise-and-fall-of-north-koreas-business-empire-in-japan/260373/>.

the Japanese government and the somewhat indifferent orientation of the organization towards the political situation within Japan were important reasons why the *chongryon* has not actively lobbied for improvements of the political rights of Korean citizens in Japan.

The *mindan* (Korean Resident Association in Japan) is the second main *zainichi* Korean organization in Japan. Founded in 1946 by a group of *zainichi* Koreans who disagreed with the leftist and radical elements of the *choryon*, it became associated with South Korea after the division of the peninsula. Similar to its counterpart, it provides social services and *education* in Korean – although on a smaller level than the *chongryon*.⁵⁸³ The group competed with *chongryon* to win over the former colonial Korean citizens and organized various campaigns to promote repatriation to South Korea,⁵⁸⁴ but did not have a close relationship with the South Korean government unlike the *chongryon* even after the relations between Japan and South Korea normalized in 1965.⁵⁸⁵ Instead, the *mindan* consisted of various factions that held either a positive or a hostile attitude towards the South Korean government – for instance against its human rights abuse. It also led to the split up of smaller groups from the *mindan*. However, in the 1970s the South Korean government grew more supportive of the *mindan* in order to support the ideological war against North Korean elements in Japan and it received the task to issue visas for *zainichi* Koreans from the Park government.⁵⁸⁶

Since the 1970s, the role of the *mindan* increasingly switched from supporting links to the homeland to advocating minority rights and cultivating Korean culture in Japan in accordance with the growth of a second generation of *zainichi* Koreans. Protests against fingerprinting and registration laws erupted in the 1980s (30 years after the introduction of the law) comprising especially young participants. New groups such as the *mintōren* (民闘連) or the *zainippon kankokujin rengōkai* (在日本韓国人連合会) were founded among second generation *zainichi* Koreans and explicitly targeted domestic issues of Koreans in Japan such as ethnic discrimination in the labor and housing market or in the education system. Other grassroots groups were often organized or co-organized by Japanese citizens.⁵⁸⁷ *Mintōren*, too, accepts Japanese members and differs strongly from the centralized top-down structures of *mindan* and *chongryon*. Instead of a foreign policy view on Korean issues in Japan that

⁵⁸³ Ann B. Cary, “Affiliation, Not Assimilation: Resident Koreans and Ethnic Education,” in *Studies in Japanese Bilingualism*, ed. Mary Goebel Noguchi and Sandra Fotos (Bristol: Multilingual Matters, 2001), 103.

⁵⁸⁴ Shipper, *Fighting for Foreigners*, 62.

⁵⁸⁵ Lee, “Ethnic Discrimination and Conflict,” 278f.

⁵⁸⁶ John Lie, *Zainichi (Koreans in Japan). Diasporic Nationalism and Postcolonial Identity* (Berkeley et al.: University of California Press, 2008), 72.

⁵⁸⁷ Michael O. Sharpe, “What Does Blood Membership Mean in Political Terms?: The Political Incorporation of Latin American Nikkeijin (Japanese Descendants) (LAN) in Japan 1990–2004,” *Japanese Journal of Political Science* 12, no. 1 (2011): 113–142, 139.

was largely promoted by *mindan*, *mintōren* has an expressly domestic policy perspective and increased the political pressure on the Japanese federal and local government(s). While the first generation predominantly identified exclusively with their Korean heritage, the second and subsequent generations developed a more complex and syncretic picture of a Korean-Japanese identity.⁵⁸⁸ Although this is certainly true for the new Korean generation associated to South Korea, members of the *chongryon* continued to have strongly nationalistic attitudes and opposed integrative measures such as the granting of municipal voting rights to *zainichi* Koreans as assimilationist.⁵⁸⁹

Zainichi Korean groups were successful in pressuring the Japanese government to incrementally lower the requirements for fingerprinting until it was ultimately abolished for *zainichi* permanent residents. However, this small success could not be expanded to the whole alien registration system and other demands such as the introduction of local voting rights for foreign residents thus showing the limited responsiveness of the Japanese government.⁵⁹⁰ Other demands comprised the right to employment in the public sector, the right to ethnic education, and social security.⁵⁹¹ *Mindan* and *chongryon* also lobbied against ethnic discrimination in Japan, but the hostile division between both groups and their prioritization of foreign policy issues have severely limited their political agency compared to smaller civil society groups. *Mindan* often does not negotiate itself but only promotes negotiations between the Japanese and the South Korean government. *Chongryon* is even stronger in stating its quasi-embassy function to represent citizens of North Korea in Japan.⁵⁹² Moreover, *Chongryon* and older *mindan* members often hold anti-assimilationist and exclusionist views on Korean ethnicity that are still shaped by the negative experiences of the colonial and post-colonial era in Japan.⁵⁹³

The foreign policy orientation of immigrant associations in Japan is also present in Chinese groups (科学総会) that are split between supporters of Taiwanese independence and mainland patriotic associations. The former have a higher rate of membership than the latter due to Japan's colonial history. The groups are highly localized and do not have any federal coordination mechanism, thereby limiting their political voice. They mainly focus on consultation, information, education and club services

⁵⁸⁸ 金命貞「地域社会における多文化共生の生成と展開、そして、課題」、『立命館大学国際言語文化研究所』392号 2011年6号: 59–82, 71f.

⁵⁸⁹ Yasunori Fukuoka and Yukiko Tsujiyama, “Mintohren: Young Koreans Against Ethnic Discrimination in Japan,” *The Bulletin of Chiba College of Health Science* 10, no. 2.

⁵⁹⁰ David Chapman, *Zainichi Korean Identity and Ethnicity* (Abingdon/New York: Routledge, 2008), 74f.

⁵⁹¹ Kashiwazaki, “Local Government and Resident Foreigners,” 9.

⁵⁹² 在日本朝鮮人総聯合会、たびかさなる試練、<http://www.chongryon.com/j/cr/about/1-10.html>.

⁵⁹³ Chulhee Chung and Jeffrey Broadbent, “Introduction to Korean Society, Culture, and Politics,” in *East Asian Social Movements. Power, Protest, and Change in a Dynamic Region*, ed. Jeffrey Broadbent and Vicky Brockman (New York et al.: Springer, 2011), 131f.

instead of promoting the civil or political rights of Chinese and Taiwanese in Japan. A similar service orientation is visible for Thais and Filipinos in Japan while strong foreign policy orientations are visible in Burmese and Vietnamese associations.⁵⁹⁴

The clearly distinguishable Turkish population in Germany thus made more efforts to clamor for civil rights in Germany than the indistinguishable Korean population in Japan for which there were only few cultural or religious differences from the Japanese population.⁵⁹⁵ Since the 1970s, there has been a consensus in Germany on the necessity to establish integrative measures to facilitate the co-existence of Germans and Turks (and other nationalities). The Japanese state, on the other hand, has been largely passive and has instead confronted the Korean community with the expectation of assimilation, not least because of its indistinguishability. Moreover, political Turkish groups that mirrored the political circumstances in Turkey have been only one part of a broad and fragmented network of immigrant associations in Germany. Until today, these political associations have become marginal in comparison with associations that lobby for the improvement of living circumstances of Turkish immigrants in Germany. The late or non-existing normalization between Japan and South Korea or North Korea, respectively, has instead led to the establishment of two highly centralized and mutually hostile groups that were later complemented by Korean-Japanese groups promoting the rights of Koreans in Japan.

With the exception of second-generation Korean groups, the politicization of other immigrant groups seems strikingly low in Japan – possibly due to the low rate of permanent residents among them. Politicization is also inhibited because no political alliances could form between immigrant associations and parties. In Germany, the SPD, FDP and even the CDU founded their own immigrant associations in order to process their political demands. The Greens and PDS, too, were strongly in accordance with many of immigrants' demands. In addition, welfare organizations also partly founded own immigrant associations. Even though immigrant organizations are not necessarily powerful within Germany's political system, they have become a strong domestic lobby for their civil and political rights while the same does not hold true for Korean and other associations in Japan, which have concentrated largely on foreign policy issues and service provision.

3.2.1.3.2 Trade unions

In the colonial era, Korean workers were used by employers as a low-wage alternative to domestic workers. Unions thus traditionally had a negative attitude towards labor immigrants in line with the

⁵⁹⁴ Shipper, *Fighting for Foreigners*, 62–68.

⁵⁹⁵ Chung, *Immigration and Citizenship in Japan*, 55.

opposition of low-skilled Japanese workers that had to compete with immigrants and suffered from decreasing or stagnating wages.⁵⁹⁶ While unions were not officially recognized by the Japanese state in the pre-war era, the influence of US labor laws brought forward unions on the plant level and made the main industrial union *sanbetsu* (産業別労働組合) a powerful and militant political actor in a tense economic environment with high inflation and low wage growth.⁵⁹⁷ After the dissolution of *sanbetsu* due to the government's anti-communist agenda, the leftist *sōhyō* (日本労働組合総評議会) in the public sector and the conservative *zenrō* (全労会議, later: *dōmei* or 日本労働組合総同盟) in the private sector were founded in 1951 and 1954, respectively.⁵⁹⁸ Unions themselves became organized on the enterprise level. While *sōhyō* was affiliated with the JSP (and later the SDP = Social Democratic Party), the *dōmei* was related to the Democratic Socialist Party (DSP, 民主社会党) that split off from the JSP in 1994. Other large union associations included the *chūritsu rōren* (中立労連) of independent unions and the *shinsanbetsu* (新産別) as an association of industrial unions.⁵⁹⁹ Unionization declined from 55.8 percent in 1949 to 18.5 percent in 2010.⁶⁰⁰ Accordingly, the number of strikes reduced dramatically over this period, showing the structural weakness of unions acquired over time.⁶⁰¹ Both umbrella organizations are associated with larger companies.⁶⁰²

The resistance of unions towards labor migration continued to persist in post-war Japan and the main umbrella organizations were successful in forming an informal coalition with the MHLW, the SPJ, DSP and actors in the Japanese New Left to prevent a more open labor migration regime in the early 1970s.⁶⁰³ As the rate of unionization was especially high in large corporations (61 percent compared to 24 percent in middle-sized and 2 percent in small-sized companies), the pressure to conform with these union views was still relatively high on employers of large corporations and their respective associations.⁶⁰⁴ Since unions are organized as enterprise unions instead of sectoral unions, they

⁵⁹⁶ Doak, "Ethnic nationalism and romanticism in early twentieth-century Japan," 316f.

⁵⁹⁷ Dae Yong Jeong and Ruth V. Aguilera, "The Evolution of Enterprise Unionism in Japan: A Socio-Political Perspective," *British Journal of Industrial Relations* 46, no. 1 (2008): 98–132, 115.

⁵⁹⁸ Suzuki Akira, "The Death of Unions' Associational Life? Political and Cultural Aspects of Enterprise Unions," in *The State of Civil Society in Japan*, ed. Frank J. Schwartz and Susan J. Pharr (Cambridge: Cambridge University Press, 2003): 195–213, 196.

⁵⁹⁹ Masahiko Daimon, "Die Gewerkschaften in Japan," *Friedrich Ebert Stiftung Studie*, November 2012, 3.

⁶⁰⁰ Hiroyuki Fujimara, "Japan's Labor Unions: Past, Present, Future," *Japan Labor Review* 9, no. 1 (2012): 6–24.

⁶⁰¹ *Ibid*, 7f.

⁶⁰² Jennifer Chan, *Another Japan is Possible: New Social Movements and Global Citizenship Education* (Stanford: Stanford University Press, 2008), 87.

⁶⁰³ Chiavacci, *Japans neue Immigrationspolitik*, 79.

⁶⁰⁴ *Ibid*, 122.

have a much closer relation to their respective companies than in Germany which inhibits the formation of solidarity among workers.⁶⁰⁵ As a result of this dependence, they were more powerful in times of economic growth than in the post-bubble period⁶⁰⁶ and could oppose labor immigration more efficiently against the interests of employer organizations.

However, while unionization was only marginally higher in Germany (e.g. around 30 percent in the 1970s and 20 percent in the 2000s)⁶⁰⁷, the political influence of unions was relatively strong throughout Germany's post-war history and there were no internal controversies around their political orientation. The political power of union umbrella organizations in Japan depended largely on the concessions of the LDP even though they were integrated in advisory committees (審議会) together with employers.⁶⁰⁸ In Germany, the connections between union organizations and the social-democratic SPD have been strong and reliable so that the main umbrella organizations could express unions' demands with one voice even though there was no single unitary federation.

Until 1989 when *dōmei* and *sōhyō* merged into the national umbrella organization *rengō* (日本労働組合総連合会) to receive a stronger negotiation position, both associations and especially the leftist *sōhyō* opposed immigration for low-skilled immigrants and supported the status quo while the *dōmei* was at least open for cautious changes. *Rengō* became associated with the SPJ and later the DSP. Two smaller umbrella organizations, the *zenrōren* (全国労働組合総連合 associated to the JCP) and *zenrōkyō* (全国労働組合連絡協議会) were formed opposing the unification of union associations in *rengō* and representing a more militant, leftist orientation⁶⁰⁹ while *rengō* was a rather non-confrontational actor.⁶¹⁰ The *rengō* supported the formation of the DPJ in 1996.⁶¹¹

Coincidentally, however, the MHLW became a less reliable partner in supporting union demands as it shared the general orientation of the government in the 1990s towards a liberalization of the Japanese labor market.⁶¹² Representatives of unions participated in deliberation councils in the

⁶⁰⁵ 藤村博之「日本の労働組合 - 過去・現在・未来」、『日本労働研究雑誌』606巻 2011年: 79-89, 81f.

⁶⁰⁶ Michael Ehrke, "Gewerkschaften in Japan. Betriebliche Rolle und politische Positionen," *Friedrich Ebert Stiftung Analyse*, June 1996, 4ff.

⁶⁰⁷ Forschungsgruppe Weltanschauungen in Deutschland (fowid), "Deutscher Gewerkschaftsbund Mitgliederzahlen, absolut 1950-2005," 17th March 2006, 3.

⁶⁰⁸ Daimon, "Die Gewerkschaften in Japan," 7. Chiavacci, *Japans neue Immigrationspolitik*, 191.

⁶⁰⁹ Daimon, "Die Gewerkschaften in Japan," 4.

⁶¹⁰ David W. Edgington, "Joining the Past and Present in Japan," in *Japan at the Millennium. Joining Past & Future*, ed. David W. Edgington: 3-24, 21.

⁶¹¹ Daimon, "Die Gewerkschaften in Japan," 7.

⁶¹² Karen A. Shire, "Gesellschaft," in *Japan: Wirtschaft - Gesellschaft - Politik*, ed. Paul Kevenhörster, Werner Pascha and Karen Shire (Opladen: Leske & Budruch, 2003): 179-258, 235.

MHLW to bring in proposals for the formulation of policies, but this format was overshadowed by the work of the *Deregulation Subcommittee* founded in 1995.⁶¹³

Since unions only represent regular employees and not all immigrants have this status, they were not able to represent foreigners sufficiently⁶¹⁴ and community unions that represent the rights of foreigners in Japan such as the *National Union of General Workers Tokyo South District* or *Zenkoku Ippan Foreign Laborers' Union* were created with the support of Japanese locals to organize against the exploitation from employers.⁶¹⁵ Even though fragmentation along ethnic lines is still high among these unions,⁶¹⁶ the first rally for immigrant workers was organized by a group of community unions in 1993 on a self-proclaimed “Day for Foreign Workers’ Rights”.⁶¹⁷ Accordingly, the interest of unions to integrate foreign workers has been growing during the 1990s among the *rengō* and *zenrōren*, but their formal integration still remains low.

German and Japanese unions generally coincide in their support of the immigration of qualified labor migrants. Japanese unions, however, have not revised their attitude towards the admission of low-skilled labor immigrants while their political power has decreased over time due to their declining institutional inclusion, internal unity and decreasing unionization rate. There have been no discussions on making the unions’ consent to labor migration dependent on the legally required equality of wages of foreign and domestic workers as in Germany in the 1950s. Moreover, due to the lack of integration of foreign workers into Japanese unions, there has been evidently no learning process towards a more liberal integration regime in Japan. In Germany, unions have become an active lobby for intensified integration measures while developing a more positive attitude towards labor immigration as well.

3.2.1.3.3 Employer organizations

In Japan, the main employers organizations comprise the *keizai dōyūkai* (経済同友会) for corporate executives, the *nikkeiren* and *keidanren* (日本経済団体連合会) for big businesses (*nikkeiren* was absorbed by *keidanren* in 2010) and the Chamber of Commerce representing SMEs. Similar to Germany, employer organizations lobbied the government for opening up the labor market for qualified

⁶¹³ Keisuke Nakamura, “Decline or Revival? Japanese Labor Unions,” *Japan Labor Review* 4, no. 1 (2007): 7–22, 10f.

⁶¹⁴ 藤村「日本の労働組合 - 過去・現在・未来」, 81.

⁶¹⁵ Asia-Pacific Human Rights Information Center, “Breaking the Barrier: Japanese NGOs Take Up the Challenge,” *FOCUS* 5 (1996). Glenda S. Roberts, “NGO support for migrant labor in Japan,” in *Japan and Global Migration. Foreign workers and the advent of a multicultural society*, ed. Mike Douglass and Glenda S. Roberts (London/New York: Routledge, 2000): 276–301, 279.

⁶¹⁶ *Ibid.*, 283.

⁶¹⁷ Shipper, *Fighting for Foreigners*, 119.

immigrants and selectively for low-skilled immigrants in accordance with labor scarcities. First proposals to expand the use of the trainee system were already formulated in the early 1970s in order to allow for limited low-skilled immigration in specific work sectors. But while this labor demand was high in SMEs, large corporations could still find enough employees in the labor market, outsource their production facilities abroad or use their internal labor market.⁶¹⁸ Without large corporations supporting the cause of small- and middle-sized businesses, the political pressure was possibly not high enough to enforce a liberalization of immigration or even a continuation of the scheme for health care workers.⁶¹⁹

In Germany, the main umbrella organization of employer associations represents the interests of all sectors on a national level, thus preventing the fragmentation and localization of interests on the enterprise level that we see in Japan. Moreover, unlike in Japan, labor demand was not significantly lower in larger businesses (e.g. Thyssen-Krupp). Germany's employer organizations thus generally embraced both low- and high-qualified immigration depending on the specific labor demand. The same did not hold true for Japanese employer organizations that were split between SMEs supporting unskilled labor immigration in areas with high labor demand (e.g. construction) and the three main employer organizations with a more skeptical attitude favoring only skilled labor immigration. *Keidanren* did not formulate a clear policy position until the early 1990s. *Keizai dōyūkai* and *Nikkeiren* have largely opposed the opening of the Japanese labor market for low-skilled foreign labor, with the latter even referencing the negative experiences of Western European countries.⁶²⁰

Until the 1990s/2000s, the employer organizations of large corporations who were embedded into network-based relations with the LDP did not recognize the necessity to import low-skilled labor while SMEs did express their positive opinion, but did not have significant political support to increase the pressure on the LDP government. In Germany, employers benefited from the labor import during the guest worker program and kept a positive attitude towards low qualified immigrants even though they prioritized the need to open up the German labor market for skilled labor in the late 1990s. In particular the BDA as the main umbrella organization for all industry-related associations has been effective in expressing a pro-immigration stance using corporatist government channels.

⁶¹⁸ Kibe and Thränhardt, "Japan: A Non-Immigration Country Discusses Migration," 235.

⁶¹⁹ Bertram, "Japan and Labor Migration," 25.

⁶²⁰ Chiavacci, *Japans neue Immigrationspolitik*, 121. David Chiavacci, "Indispensable future workforce or internal security threat? Securing Japan's future and immigration," in *Governing Insecurity in Japan. The Domestic Discourse and Policy Response*, ed. Wilhelm Vosse, Reinhard Drifte and Verena Blechinger-Talcott (Abingdon/New York, 2014): 115–140, 125.

3.2.1.3.4 Civil society groups and NGO

There is loose network of more than 200 local civil society groups and NGOs⁶²¹ proliferating since the 1980s⁶²² that, amongst other purposes, supports the most vulnerable immigrants in Japan such as victims of human trafficking and (female) migrant workers. A large part of associations is coordinated by the umbrella organization *National Network in Solidarity with Migrant Workers* founded in 1997, which actively lobbies to improve the protection of human and civil rights of foreign residents.⁶²³ Groups such as *HELP Asian Women's Shelter* offer specific services for female victims of human trafficking. Other groups such as *Amnesty International Japan*, *Forum for Refugees Japan* or *Japan Association for Refugees* support the human rights of refugees in Japan and demand improvements in their living circumstances.⁶²⁴ Among these groups, a number have an explicitly Christian mission such as the *Christian Coalition for Refugee and Migrant Workers* or the *Jesuit Lawyers Network for Refugees*, but without the institutional and financial support of state-supported welfare organizations and churches as in Germany. Related volunteer-based NGOs (e.g. *Asian Friends* or *Bahay ni Maria* for Filipino women) deal with the sizeable population of illegal immigrants in Japan and offer legal services alongside their advocacy for reforms in refugee law and the procedures in the Immigration Bureaus.⁶²⁵ Other services include assistance in labor disputes, the supply of medical services, housing services and the protection of migrant women from exploitation.⁶²⁶

NGOs partly cooperate with local governments to improve services for recognized immigrants⁶²⁷ and organize events to improve the mutual understanding among foreigners and Japanese natives.⁶²⁸ Many NGOs, however, often do not have an official, government-certified status as “Non-profit organizations.” Organizations with this status can receive government funding, but also have to draw

⁶²¹ The last count was attempted by Shipper in 2002. See Apichai Shipper, *Pragmatism in activism: Organizing support for illegal foreign workers in Japan* (Cambridge: Program of US-Japan Relations, Harvard University, 2002). Takeyuki Tsuda, “Localities and the Struggle for Immigrant Rights: The Significance of Local Citizenship in Recent Countries of Immigration,” in *Local Citizenship in Recent Countries of Immigration: Japan in Comparative Perspective* (Oxford: Lexington, 2006): 3–36, 24

⁶²² Deborah J. Milly, “Looking Outward: International Legal Norms and Foreigner Rights in Japan,” in *Local Citizenship in Recent Countries of Immigration: Japan in Comparative Perspective* (Oxford: Lexington, 2006): 153–172, 131.

⁶²³ Motoko Shuto, “Labour Migration and Human Security in East and Southeast Asia,” in *Migration, Regional Integration and Human Security. The Formation and Maintenance of Transnational Spaces*, ed. Harald Kleinschmidt (Hampshire/Burlington: Ashgate, 2006): 205–224, 221. National Network in Solidarity with Migrant Workers, “Protecting Foreigners in Japan: Some Proposals,” *FOCUS* 29 (2002).

⁶²⁴ See, for instance, the list on Refugee Assistance Headquarters, “List of Organizations for Refugees in Japan,” <http://www.rhq.gr.jp/english/list/list-raj.htm>.

⁶²⁵ National Network in Solidarity with Migrant Workers, “Protecting Foreigners in Japan.”

⁶²⁶ Tsuda, “Localities and the Struggle for Immigrant Rights,” 24.

⁶²⁷ *Ibid*, 25.

⁶²⁸ Shipper, *Fighting for Foreigners*, 121.

up financial reports and risk government intervention. Many of these groups are not professionally organized, but there is a high degree of cooperation expressing itself for example in “cross-organizational taskforces” on specific issues. NGOs are often politically connected to left-wing and liberal political parties or individual legislators that they can use as a channel for advocacy. They also interact with agencies and ministries and organize a yearly event with representatives of ministries, the so-called *shochō kōshō* (所長交渉), to lobby for their concerns. Moreover they use the media and other public forms of expression for instance through the *Foreigner Discrimination Watch Network* (外国人差別ウォッチ・ネットワーク) in order to raise public awareness.⁶²⁹ As lobbying through political avenues has often proven unsuccessful, NGOs also use courts to demand the clarification of foreigners’ rights or the penalization of public officials in case they did not act in accordance with the law.⁶³⁰

The general effectiveness of these groups in lobbying for change or assisting illegal immigrants can be questioned as many illegals do not even know about the existence of these groups according to Shipper.⁶³¹ Furthermore, according to Reimann, the political environment in Japan is not favorable for NGOs since they face difficult legal procedures while only benefiting from limited tax deductions and operating on a restrictive budget until the ratification of the 1998 Nonprofit Organization Law.⁶³² They have also not been well-integrated into the political decision-making process unlike in Germany where NGOs such as *Pro Asyl* have had extensive connections to parties or ministries and coordinate the Foreigner Councils as quasi-institutionalized fora for the political integration of foreigner interests.⁶³³ Due to the lack of influence on a national level, immigrant support groups and NGOs in Japan try to use their influence at local governments and courts – often successfully, but with only an indirect influence on the national government.

⁶²⁹ Ryoko Yamamoto, “Migrant-support NGOs and the Challenge to the Discourse on Foreign Criminality in Japan,” *Japan Focus*, <http://japanfocus.org/Ryoko-YAMAMOTO/2521/article.html>.

⁶³⁰ Milly, “Looking Outward: International Legal Norms and Foreigner Rights in Japan,” 130.

⁶³¹ Shipper, *Fighting for Foreigners*, 122.

⁶³² Kim D. Reimann, *The Rise of Japanese NGOs. Activism from above* (Abingdon/New York: Routledge, 2010). Sharpe, “What Does Blood Membership Mean in Political Terms,” 140.

⁶³³ Atsushi Yamakoshi, “The Changing Face of NGOs in Japan,” *Japan Economic Institute*, <http://www.gdrc.org/ngo/-jpngo-face.html>.

3.2.2 Analyzing immigration reform and inertia from 1980 to today: Elite dissent and political fragmentation

3.2.2.1 The immigration situation in the 1980s and 1990s

The exploitation of the trainee system in accordance with the interests of employers is one example of the loopholes within the Japanese ICO, and that defines relatively broad immigration categories that can be used to (temporarily) immigrate. No such categories existed in Germany where until the 2000s immigration was solely possible through the guest worker system (until 1974), via family reunification, for studies at a German university or vocational school, for humanitarian reasons or in various exceptional cases (e.g. seasonal employment or employment as an expatriate). Starting from the 1980s, three new streams of labor immigrants became relevant in Japan and challenged the paradigm of Japan as a “closed” country. The *first* stream of immigrants were Southeast Asian women using the “entertainer” visa category, immigrating often with the help of specialized recruitment agencies. Their number rose from roughly 10,000 in 1976 to 70,000 in 1988 – comprising approximately 87.5 percent of all distributed working visas for that period.⁶³⁴ The category originated from a post-war entertainment system for US soldiers stationed in Japan. “Entertaining”, however, was mostly an euphemism for prostitution and related work in the Japanese sex industry, thereby entailing an increase in human trafficking.⁶³⁵ Women were often deceived about the nature of their work and subject to threats and punishments as means of control.⁶³⁶ However, due to the shadowy nature of the work of these immigrants, no national debate was triggered immediately.⁶³⁷ *Secondly*, starting from the mid-1980s, illegal immigration increased strongly due to immigrants overstaying their tourist visas and working in manual jobs with significant labor shortages such as the construction industry, manufacturing or retail. According to Morita, their numbers surged up to 280,000 in 1991.⁶³⁸ *Thirdly*, the advent of new labor immigration to Japan in the 1980s coincided with the period in which the “internationalization” (国際化) of Japan in terms of opening up itself for foreign investments, tourism,

⁶³⁴ Chiavacci, *Japans neue Immigrationspolitik*, 93.

⁶³⁵ Shipper, *Fighting for Foreigners*, 45f.

⁶³⁶ Sally Cameron and Edward Newman, “Trafficking of Filipino Women to Japan: Examining the Experiences and Perspectives of Victims and Government Experts. Executive Summary,” in *United Nations Global Programme against Trafficking in Human Beings, Journal of United Nations University* (2003), 8f.

⁶³⁷ Chiavacci, *Japans neue Immigrationspolitik*, 95.

⁶³⁸ Kiriro Morita and Saskia Sassen, “The New Illegal Immigration in Japan, 1980–1992,” *International Migration Review* 28, no. 1 (1994): 153–163.

international education and international ideas was introduced by Prime Minister Nakasone and discussed actively in politics, society and media.⁶³⁹ According to a survey in the mid-1980s, only 8 percent of Japanese people were opposed to this new paradigm⁶⁴⁰ that, however, was not designed as a means to make Japan a more diverse society open for the influx of immigrants.⁶⁴¹ Instead, it mostly related to an ongoing attempt to internationalize the education and research system and make Japan more attractive for global students by, for instance, pledging to attract 100,000 international students in Japanese universities and language schools by the year 2000 or initiating the Japan Exchange and Teaching (JET) program in 1987.⁶⁴² Since these students were allowed to work in part-time jobs for 20 hours per week in order to finance their stay in Japan, many students from countries with a lower general income level (especially from China) used the opportunity to study in a language school on a student visa as a pretense to work in Japan.⁶⁴³

3.2.2.2 Immigration reforms from 1982 until today

After labor immigration initially increased without any domestic policy changes, the following three periods of reform can be distinguished in Japanese immigration policy-making. Unlike in Germany where a guest worker program allowed for the substantial immigration of low-skilled immigrants from 1955 to 1974, Japan enacted reforms to incrementally increase the number of low-skilled immigrants in a more subtle way by ignoring the exploitation of the entertainment residence status (until 2004), expanding the trainee system (1990) and allowing for the immigration of ethnically Japanese from Latin America (1990). No proactive policies that aimed to incorporate immigrants into the Japanese societies were enacted besides abolishing the controversial practice of fingerprinting (1993–2000) and eliminating the discriminatory practices towards children of Japanese women married to foreign men in the Nationality Act (1985).

First, in 1982 the ICO was revised to include chapters on the admission of asylum-seekers after Japan signed the International Covenants on Human Rights in 1979, the UN Convention on the Elimination of All Forms of Discrimination against Women in 1980, and the UN Convention Relating to the Status of Refugees in 1981. The reform represented a typically “reactive” behavior of the Japanese

⁶³⁹ Morris-Suzuki, *Re-inventing Japan*, 194.

⁶⁴⁰ John Lie, *Multiethnic Japan* (Cambridge/London: Harvard University Press, 2001), 22.

⁶⁴¹ *Ibid*, 25f.

⁶⁴² Comparative International Education, “日本の教育 Education in Japan. Internationalization,” *Middlebury Institute of International Studies at Montebury*, <http://sites.mii.edu/japaned/internationalization/>.

⁶⁴³ Yasuo Kuwahara, “Migrant Workers in the Post-War History of Japan,” *Japan Labor Review* 2, no. 4 (2005): 25–47, 37f.

state that was forced to adapt to the norms of the international arena by increasing the admission of refugees and improving the access of foreign residents to social services.⁶⁴⁴ It was also “reactive” to the sudden influx of boat people from Indochina for which no adequate policies existed. After the first discussions in the Diet on the UN Convention in 1962, 19 years passed until the convention was finally ratified showing the cautiousness of the Japanese government in admitting long-term immigrants and the divisions within the government itself, which was split between MOJ and MOFA.⁶⁴⁵ The debate was supported by humanitarian voices such as NGOs, but it is questionable to what extent the Japanese state reacted to their non-institutionalized pressure. Next to smaller changes in the ICO, the Japanese Diet ratified the chapter “Recognition of Refugee Status and Other Related Matters” in which it defines the procedural norms for the recognition of refugees, the rules and procedures for deportation and the legal provisions for refugees to file an objection against the asylum decision of the MOJ. The revised order – the “Immigration Control and Refugee Recognition Act” (ICARRA) – assigned the main responsibilities for the recognition of refugees to the Immigration Bureau that so far had primarily focused on immigration control.⁶⁴⁶ Institutionally, this might have been necessary in order to convince MOJ from the reform. The MOFA in particular strongly promoted reform in order to improve Japan’s international image.⁶⁴⁷

Accordingly, the implementation of the law was restrictive. By 2009, Japan had accepted 508 refugees out of 7,297 applications (acceptance rate of 6.96 percent).⁶⁴⁸ The system was not directed towards the protection of refugees, but was rather in line with the status of Japanese immigration law as a border control law. Objections to the decision of MOJ mostly failed in front of the courts.⁶⁴⁹ This first major revision of the ICO went along with only limited opposition in the Japanese Diet in which the one-sided allocation of decision-making power to the Immigration Bureau was not substantially criticized.⁶⁵⁰ Similarly, questions regarding the rights of refugees were almost exclusively focused on the situation of Indo-Chinese boat people without taking a more long-term view.⁶⁵¹

⁶⁴⁴ Atsushi Kondo, “Development of Immigration Policy in Japan,” *Asia and Pacific Migration Journal* 11, no. 4 (2002): 415–436, 416f.

⁶⁴⁵ Arakaki, *Refugee Law and Practice in Japan*, 17. Haig, “Japanese immigration policy.”

⁶⁴⁶ 難民の地位に関する条約等への加入に伴う出入国管理令その他関係法律の整備に関する法律, 昭和 5 法律 8 6 巻.

⁶⁴⁷ Haig, “Japanese immigration policy,” 223.

⁶⁴⁸ Sophie Knight, “Asylum-seekers find little refuge in Japan,” *Japan Today*, 26th July 2009, <http://www.japantoday.com/category/lifestyle/view/asylum-seekers-find-little-refuge-in-japan>.

⁶⁴⁹ Honma, “Japan’s Refugee Policy,” 24.

⁶⁵⁰ Arakaki, *Refugee Law and Practice in Japan*, 23.

⁶⁵¹ *Ibid*, 26.

In the same year, the Nationality Act was also revised in order to conform Japanese citizenship regulations to international standards of prohibiting discrimination against women and preventing cases of statelessness. The change was a predictable reaction to international pressure and domestic protests from Japanese women groups. Most importantly, the act changed the patrilineal system of nationality in which only children of married Japanese men could be granted the Japanese citizenship. In Germany, similar discriminatory provisions were ruled unconstitutional in 1974. As a consequence and in order to prevent the proliferation of unwanted dual nationality cases, the law introduced the necessity for affected children to choose their nationality within two years after they turned twenty (art. 14), mirroring the principle that was later introduced in Germany's 1999 Citizenship Act.⁶⁵² The naturalization system, however, remained completely unchanged. Similar as to Germany, there remained many legal loopholes to acquire dual nationality, for instance when the foreign state did not allow for the renunciation of citizenship.⁶⁵³

Second, in 1990 the ICARRA was once again reformed substantially. Two tables were added in which 28 different residence statuses were listed including the corresponding authorized activities. These strengthened the generous immigration and residence possibilities for skilled labor for a maximum period of three years by expanding the occupational categories (e.g. investment banking, accounting etc.).⁶⁵⁴ In order to fight illegal immigration, employers could be fined for up to 3 million yen or be imprisoned if they hired illegal aliens (art. 73-2). Moreover, more possibilities were added for unqualified immigrants to come to Japan. As the most revolutionary measure, the law allowed for the immigration of Latin American emigrants with Japanese descent as “long-term residents” (Appended Table II, specified in MOJ Notice No. 132, 1990) without any restrictions to work.⁶⁵⁵ Although the residence period was limited to three years for the immigrant worker and one year for spouses and children, the renewal of the visa was not restricted.⁶⁵⁶ The immigration of first- and second-generation *nikkeijin* low-skilled labor immigrants had already started in the 1980s, but was officially legalized in 1990. Secondly, between 1991 and 1993 regulations were changed to extend and

⁶⁵² William Wetherall, “1985 Nationality Law revisions. Ambilineality, acknowledgement, and choice,” *Yosha Research*, 1st April 2006.

⁶⁵³ Wetherall, “Nationality in Japan,” 42.

⁶⁵⁴ 李政宏「日本の外国人入国政策の変遷と外国人入国の推移」、『早稲田大学大学院教育学研究科紀要』20巻 2012年: 189–199, 190f.

⁶⁵⁵ Koji Sasaki, “Between Emigration and Immigration: Japanese Emigrants to Brazil and Their Descendants in Japan,” in *Transnational Migration in East Asia*, Senri Ethnological Reports 77, ed. Shinji Yamashita et al. (Osaka: National Museum of Ethnology, 2008): 53–66, 53.

⁶⁵⁶ Keiko Yamanaka, “‘I will go home, but when?’: Labor migration and circular diaspora formation by Japanese Brazilians in Japan,” in *Japan and Global Migration. Foreign workers and the advent of a multicultural society*, ed. Mike Douglass and Glenda S. Roberts (London/New York: Routledge, 2000): 120–149, 129.

expand the trainee system to small-sized companies.⁶⁵⁷ Moreover, the Japan International Training Cooperation Organization (JITCO) was founded to institutionalize the recruitment of trainees.⁶⁵⁸

As a consequence of the law, the *nikkeijin* population increased to 148,000 residents in 1992 and to 312,900 residents in 2006,⁶⁵⁹ with an increasing tendency of permanent settlement at the end of the 1990s.⁶⁶⁰ The number of students remained at a level of roughly 60,000 in the 1990s, but increased to above 100,000 by 2002.⁶⁶¹ Skilled labor grew from 60,000 residents in 1992 to almost 200,000 by 2008.⁶⁶² The law was not immediately successful in stopping the trend of illegal immigration as the number of illegal immigrants per year further increased from 22,629 in 1989 to 35,903 in 1991, showing the ineffectiveness of the sanctioning regime.⁶⁶³ While the law itself did not address any integrative measures, an act in 1991 granted all pre-1945 Korean and Taiwanese immigrants in Japan who had lost their citizenship the “special residence status.”⁶⁶⁴ Besides these limited measures to improve the legal status of old-comer immigrants, their human and civil rights remained mostly undebated and progress was visible by removing restrictive or discriminatory practices such as the controversial fingerprinting measures.⁶⁶⁵

Structurally, the revised ICARRA allowed for the immigration of low-skilled immigrants to match the labor demand in specific industries. *Nikkeijin* workers were often employed as temporary contract workers and thus contributed to a more flexible Japanese labor market.⁶⁶⁶ In Germany, a similar immigration possibility in accordance with ethnic characteristics of immigrants was instituted after WWII for Eastern European repatriates of German descent that lived in the Soviet Union. The timing, however, shows that the reasons to allow for this immigration stream were primarily a part of Germany’s post-war policies to process those emigrants that fled Germany before or during WWII. Similar to Japan, most of the *Aussiedler* worked in low-skilled occupations and were often unfamiliar with Germany’s culture or language. *Nikkeijin* immigrants were nominally of Japanese descent, but their different socialization in South American countries made an immediate assimilation into Japanese society unrealistic. As the book by Roth illustrates, *nikkeijin* were clearly seen as foreigners in

⁶⁵⁷ Focus Migration, “Japan,” *Länderprofil* 24 (2012), 3.

⁶⁵⁸ Kuwahara, “Migrant Workers in the Post-War History of Japan,” 39.

⁶⁵⁹ Sasaki, “Between Emigration and Immigration: Japanese Emigrants to Brazil and Their Descendants in Japan.”

⁶⁶⁰ Chiavacci, *Japans neue Immigrationspolitik*, 164.

⁶⁶¹ *Ibid.*, 172.

⁶⁶² *Ibid.*, 173.

⁶⁶³ Saskia Sassen, “Economic Internationalization: The New Migration in Japan and the United States,” *Social Justice* 31, no. 1 (1993): 73–102, “The New 1990 Immigration Law in Japan.”

⁶⁶⁴ Wetherall, “Alien control laws in Japan.”

⁶⁶⁵ *Ibid.*

⁶⁶⁶ Chiavacci, *Japans neue Immigrationspolitik*, 166.

the Japanese society.⁶⁶⁷ In contrast, the treatment of the German government was much more inclusive for *Aussiedler* who, for instance, automatically received the German citizenship when immigrating into Germany.⁶⁶⁸ The lack of any integrative measures that would help *nikkeijin* to receive equal opportunities in the Japanese society was thus more similar to the neglect of integrating guest workers who were similarly expected to stay only *temporarily*. The legal possibilities for *nikkeijin* labor immigrants ultimately had a similar effect on the Japanese labor market and society as the guest worker and *Aussiedler* program had in Germany by matching the labor demand in the industries and unintentionally challenging the paradigm of a homogenous society.

Third, the last period with an intensive reform debate in the early 2000s merely led to incremental changes in immigration policies – in the same period when Germany ratified a new, comprehensive Immigration Act. Policies were especially directed towards further restricting the possibilities of illegal immigration and human trafficking, and enabling new targeted immigration possibilities for skilled immigrants in specified industries by means of adding a labor migration chapter to Economic Partnership Agreements (EPA). Chapters were added on the “Movement of Natural Persons” as particularly the example of the Japan-Philippines EPA demonstrates. Stating that “each party shall set out [...] the specific commitments it undertakes for [...] natural persons of the other Party who engage in supplying services as nurses or certified care workers or related activities [...],”⁶⁶⁹ it opened up the possibility for the immigration of Filipino nurses and care workers into Japan.

In order to combat human trafficking, an Inter-Ministerial Liaison Committee (Task Force) was established at the Cabinet, and adopted a comprehensive National Action Plan to prevent and eliminate human trafficking, as well as to protect its victims in Japan. Amongst other measures, strict penalties against human trafficking were included into the ICARRA while the government provided shelter and counseling for affected women.⁶⁷⁰ Furthermore, applications for entertainer visas were examined more carefully by the Immigration Bureau,⁶⁷¹ so that their number declined from 134,879

⁶⁶⁷ Joshua Hotaka Roth, *Brokered Homeland: Japanese Brazilian Migrants in Japan* (Ithaca: Cornell University Press, 2002).

⁶⁶⁸ Betsy Teresa Brody, *Opening the Doors: Immigration, Ethnicity, and Globalization in Japan* (New York/Abingdon, 2002), 91.

⁶⁶⁹ Agreement Between Japan and the Republic of the Philippines for an Economic Partnership, 89.

⁶⁷⁰ Ministry of Foreign Affairs, Japan’s Actions to Combat Trafficking in Persons. A Prompt and Appropriate Response from a Humanitarian Perspective, 1f

⁶⁷¹ *Ibid*, 3.

new entrants in 2004 to 48,250 in 2006.⁶⁷² Next, the ICARRA was amended to restrict illegal immigration by tightening border control procedures, expanding the means to detect illegal residents and improving the efficiency of the deportation procedure.⁶⁷³

These legislative measures were supported by heightened awareness of police forces and stricter controls in the aftermath of the 9/11 terrorist attacks. The number of illegal immigrants accordingly decreased from 222,000 in 2004 to roughly 110,000 in 2009.⁶⁷⁴ Moreover, as the first integration concept on the national level, the Ministry of Internal Affairs and Communication published the *Proposal for a Program Promoting Multicultural Coexistence*, which addressed the necessity to improve the assistance of foreigners in education, the labor market and social welfare. However, the program was largely based upon initiatives that local government themselves created and did not substantially add any financial or institutional support.⁶⁷⁵ Vaguely formulated, it at least showed that a shift from perceiving foreigners as temporary visitors to equal members of society might be taking place.⁶⁷⁶ Moreover, since 2000, MOJ began publishing a Basic Plan for Immigration Control, and since 2005 an Immigration Control Report, showing the higher priority of immigration issues.

Until today, the Japanese government has mostly enacted piecemeal revisions of immigration law even though there was an intense debate in the 2000s. The most recent suggestion by advisers of Prime Minister Abe involves the idea to increase the number of foreign residents by 200,000 per year, but Abe has not yet agreed to do so and public opinion is largely negative.⁶⁷⁷ While there are some immigration possibilities for unskilled labor, these are generally based upon backdoor channels (trainees, entertainers, students, *nikkeijin*) next to the relatively open admission of skilled labor. What is striking is that Japan has not developed any strategy for the integration and long-term settlement of foreigners in its territory.

⁶⁷² Yuriko Saito, “The trafficking of Thai women to Japan and countermeasures of the Thai government,” in *Human Security, Transnational Crime and Human Trafficking. Asian and Western perspectives*, ed. Shiro Okubo and Louise Shelley (Abingdon/New York: Routledge, 2011): 233–252, 223.

⁶⁷³ Chikako Kashiwazaki and Tsuneo Akaha. “Japanese Immigration Policy: Responding to Conflicting Pressures,” *Migration Policy Institute*, 1st November 2006, <http://www.migrationpolicy.org/article/japanese-immigration-policy-responding-conflicting-pressures>.

⁶⁷⁴ 本岡大和「Democracy from within an Immigration Detention Center: A Hunger Strike by “Illegal” Immigrants in Japan」,『立命館言語文化研究室』23巻 2012年4号: 103–115, 106.

⁶⁷⁵ Patrick Heinrich, “After Homogeneity: Maintaining Unity in a Linguistically Diversifying Japan,” in *Language and Citizenship in Japan*, ed. Nanette Gottlieb (Abingdon/New York: Routledge, 2012): 19–36, 23ff

⁶⁷⁶ *Ibid.*, 24.

⁶⁷⁷ Jonathan Soble, “Japan stands by migration controls despite shrinking population,” *Financial Times*, 2nd June 2014, <http://www.ft.com/intl/cms/s/0/32788ff0-ea00-11e3-99ed-00144feabdc0.html>.

3.2.2.3 The 1990 immigration reform: Repeating Germany's mistakes?

3.2.2.3.1 *Political coalitions in comparison*

The first debate in the late 1980s that ended in the ratification of a revised ICARRA in 1990 took place in the pre-Bubble environment with strong economic growth rates and mounting international criticism of Japan's trade surplus by the US. Framed by Prime Minister Nakasone's concept of "internationalization," a comprehensive debate took place on the question of opening up Japan's labor market for low qualified immigrants.⁶⁷⁸ A second point of debate which revolved around the question of which measures should be used to fight illegal immigration, took part mainly within and between the ministries. Political coalitions formed around the first and more controversial question while there was a general consensus on the question of skilled labor immigration which was not very significant, usually temporary and targeted in specific sectors. In Germany, as an indicator for the diversification of opinions and interests and the pluralization of the German party system, even the question of skilled labor was negotiated between the different parties and interest groups during the debate on the Green Card initiative and the reform of the Immigration Act. Knowing the unintended effects of the guest worker program in terms of the permanent settlement of immigrants, unions and especially conservative parties could use their political and institutional influence in order to successfully alter or veto specific positions that were against their interests.

In Japan, the 1990 reform did not lead to the alignment of interests or changes in interest group positions. No party besides the JCP took an unambiguous stance on immigration, leaving the formulation of policies mainly to the ministries. This contrasts strongly with the pluralistic party system in Germany where parties became highly politicized and took unique and increasingly diversified stances on immigration and integration policies.

For the late 1980s, Chiavacci also reveals a very ambiguous picture for employer organizations than other authors who simply ascribe a pro-immigration position.⁶⁷⁹ The positions of the main employer umbrella organizations continued to be fragmented and in case of the *keidanren* even completely unarticulated. *Keizai dōyūkai* only actively promoted facilitations for the immigration of highly qualified immigrants supported by *nikkeiren*⁶⁸⁰ in which opinions differed between those who promoted the use of foreign labor and those who stressed the necessity to utilize all domestic labor potentials,

⁶⁷⁸ Chiavacci, *Japans neue Immigrationspolitik*, 107f.

⁶⁷⁹ See e.g. Chan, *Another Japan is Possible: New Social Movements and Global Citizenship Education*, 89.

⁶⁸⁰ Chiavacci, *Japans neue Immigrationspolitik*, 119.

demonstrating the fragmentation even *within* large employer associations.⁶⁸¹ On the other hand, organizations representing SMEs were again strongly in favor of a liberal immigration reform and actively lobbied politicians and ministries in line with high labor scarcities in the construction industry.⁶⁸²

Among the union umbrella organizations, *sōhyō* and *dōmei* also continued to oppose low-skilled labor migration and held a similar position as the three main employer associations, emphasizing their consent to skilled labor migration, and in case of the *dōmei* promoting prioritized non-discrimination measures for foreigners in Japan above liberalizing immigration. Instead, they suggested increasing developmental aid to developing countries in order to make labor immigration less necessary.⁶⁸³ As illegal immigrants often worked together with unionized Japanese workers in the same companies, some unions defended the human and labor rights of illegals. However, no comprehensive concept of integration that would demonstrate a more inclusive and multi-cultural perspective of Japanese unions on immigration was developed.⁶⁸⁴ In general, their positions coincided with those of the SPJ and the MHLW.⁶⁸⁵ Since the 1980s, unions in Germany, on the other hand, developed a multi-cultural view on immigrant integration including the granting of expansive rights for immigrants and used their influence in the SPD and in the Süßmuth commission to give political weight to their demands. Even though their position towards increasing immigration was never fully supportive, the negotiation and bargaining processes in the German political arena almost always led to a final consensus and the relationship between unions and employer organizations was based on routine cooperation and the willingness to find a common position.

Another source of inertia in disregarding the incorporation of immigrants at the national legislative level was the inactivity and lack of influence of both NGOs and immigrant associations. Due to the restrictive nature of Japanese NGO laws, a large part of NGOs focused on local tasks and services without being able to fulfill an advocacy function or coordinate with each other at the national level.⁶⁸⁶ That left only international NGOs such as *Amnesty International* lobbying for global human rights of foreign workers, while immigrant associations similarly continued to be excluded from national policy-making processes.

⁶⁸¹ Wolfgang Herbert, *Foreign Workers and Law Enforcement in Japan* (Abingdon/New York: Routledge, 1996), 70.

⁶⁸² Chiavacci, *Japans neue Immigrationspolitik*, 120.

⁶⁸³ *Ibid*, 122.

⁶⁸⁴ Sachi Takaya, "Making irregular migrants insecure in Japan," in *Irregular Migration and Human Security in East Asia*, ed. Jiyoung Song and Alistair D.B. Cook (Abingdon/New York: Routledge): 23–37, 27f.

⁶⁸⁵ Chiavacci, *Japans neue Immigrationspolitik*, 122.

⁶⁸⁶ Yamanaka, "Civil Society and Social Movements for Immigrant Rights in Japan and South Korea," 630.

Thus, with respect to political coalitions, no significant change took place that could explain the 1990 reform. With the exception of SMEs, positions on the liberalization of low-skilled labor immigration were either ambiguous (employer organizations, LDP) or negative (unions, SPJ). Political coalitions were mostly absent in the field of immigrant integration policies, showing the limited interests of the major interest groups to incentivize permanent settlement in Japan. Instead, a general consensus existed on maintaining or incrementally improving the status quo of skilled labor immigration. Finally, civil society groups and immigrant associations did not have the capabilities to significantly influence policies at the national level.

3.2.2.3.2 *Institutions in comparison*

Most negotiations on immigration policy reforms in Japan took place within and between the ministries that established own commissions to make proposals for immigration reform.⁶⁸⁷ In total, seventeen different ministries and agencies were involved in the debate.⁶⁸⁸ This fragmentation is significantly different from the German case, where first the BMAS and later the BMI formulated draft laws relatively independently and with the support of other ministries and the Cabinet. Different ministerial and regional interests were coordinated at an early stage, e.g. in inter-ministerial working groups, to find a preliminary consensus. If one ministry were to not recognize this process and act discretely, such policy proposals usually do not have a high chance of ratification – as shown by the example of the conservative minister Zimmermann has shown who had to resign after his ideas to further restrict immigration created inter-ministerial and inter-governmental conflicts.

When it comes to the different positions of the individual ministries and agencies, the differences between Japan and Germany are actually not that large. In essence, the debate in the late 1980s evolved as an opposition between MOFA on the one and MOJ and MHLW on the other side. While the former promoted immigration under the framework of “internationalization” and developmental aid for developing East Asian countries, the latter insisted on the restrictive status quo, emphasizing the assumed adverse effects on either public security or domestic labor interests.⁶⁸⁹ Explicitly referencing the issues of regulating immigration after the formalization of guest worker programs in post-war Europe, the MHLW even demanded further restrictions and a stronger supervision on employment possibilities for foreigners that should be realized by introducing a permit system for Japanese employers under the authority of MHLW itself.⁶⁹⁰ By doing so, however, it purposefully infringed

⁶⁸⁷ Chiavacci, *Japans neue Immigrationspolitik*, 116.

⁶⁸⁸ Haig, “Japanese immigration policy,” 229.

⁶⁸⁹ Chiavacci, *Japans neue Immigrationspolitik*, 116f.

⁶⁹⁰ Brody, *Opening the Doors*, 40.

upon the jurisdiction of MOJ that countered with its own proposals.⁶⁹¹ Within this intense inter-ministerial conflict, no common front could be created even among these two ministries with a nominally similar position.⁶⁹² MOFA was supported by the Economic Planning Agency that argued in favor of liberalized immigration opportunities. Affirming voices also came from the fishery department in the Ministry of Agriculture while the Ministry of Construction opposed the opening of the construction sector for foreign workers. METI was internally split and held an ambiguous position.⁶⁹³ Against this bureaucratic sectionalism, the Prime Minister, the Prime Minister's Office and the Cabinet did not develop a significant coordinating function.⁶⁹⁴ This contrasts with the strong position of the Chancellor in Germany who, for instance, pushed forward in 1999 by assisting in the development and political enforcement of the Green Card regulations.

Written under the jurisdiction of MOJ, the first draft law already included almost the same points as the finalized version, thus clearly demonstrating the weakness of political coalitions and ministerial competitors in influencing immigration reform. As the law would grant the permanent right of residence to *zainichi* Korean and Taiwanese, the MOJ thought of providing the same rights for second- and third-generation emigrants with Japanese descent, though at the beginning mostly targeting the neglected war orphans in former Manchuria rather than Latin Americans.⁶⁹⁵ In addition, it was a measure to give amnesty to the significant number of *nikkeijin* who had already worked in Japan illegally, which has been requested by the Brazilian government.⁶⁹⁶

The provision was created under the influence of MOFA civil servants who held positions within MOJ's immigration department⁶⁹⁷ and was thus, unlike most authors in the English literature state, originally *not* intended as a measure targeting the labor market scarcities, but as a foreign policy measure. It is thus not unlike the admission of *Aussiedler* in Germany after the end of WWII although the Japanese program was introduced to a much later point. The consequences of WWII and the more systematic persecution of nearly 13 million ethnic Germans in the Soviet Union explain why the law was instituted much earlier. The program was also on a much larger scale with 2.7 million repatriates

⁶⁹¹ Chiavacci, *Japans neue Immigrationspolitik*, 126

⁶⁹² Haig, "Japanese immigration policy," 228.

⁶⁹³ Chiavacci, *Japans neue Immigrationspolitik*, 118.

⁶⁹⁴ Wayne A. Cornelius, "Japan: The illusion of immigration control," in *Controlling Immigration: A Global Perspective* (Stanford: Stanford University Press, 2004), ed. Wayne A. Cornelius, Philip L. Martin and James F. Hollifield: 375–410, 386.

⁶⁹⁵ Chiavacci, *Japans neue Immigrationspolitik*, 128ff.

⁶⁹⁶ Jeannette Behaghel and Gabriele Vogt, "Arbeitsmigration nach Japan: Rechtliche Rahmenbedingungen, politischer Diskurs," in *Arbeitswelten in Japan*, Japanstudien 18, ed. René Haak (Munich: Iudicium, 2006): 111–148, 129f.

⁶⁹⁷ Chiavacci, *Japans neue Immigrationspolitik*, 130f.

arriving between 1988 and 1998.⁶⁹⁸ Only at a later stage was the idea of admitting *nikkeijin* as low-skilled labor indeed able to achieve an internal consensus within the LDP, satisfying both the proponents of the admission of low-skilled labor and the promoters of ethnic homogeneity and public safety.⁶⁹⁹ *Nikkeijins* were admitted under the presupposition of their temporary stay and their smooth integration into the Japanese society.⁷⁰⁰ Accordingly, even though the experience of Germany could have been a lesson, no debate on integration policies took place leading to similar problems of integrating *nikkeijin* Japanese into the labor market, education and housing system. The low number and growth rate of naturalization is another sign for the lack of willingness of foreign residents to assimilate fully into Japanese society and the inability of the government to incentivize to do so.⁷⁰¹

This dominance of MOJ was based upon the lack of resistance from other actors besides the MHLW and the fragmented structure of interest group coalitions. The example of the successful expansion of the trainee program from 1991 to 1993 against the view of MOJ instead shows that the MHLW can indeed win the LDP, interest groups and other ministries over, depending on the specific issue. In case of the trainee system proposal, associations of SMEs exerted significant pressure on the government to allow for more foreign labor. The MHLW supported this cause with a slightly modified proposal, not least to receive more ministerial responsibilities. It was again opposed by the MOJ which, however, found itself in the same isolated position as the MHLW with its proposals for the initiation of a work permit system.⁷⁰² At a later point, representatives of private businesses – especially the *keidanren* and business representatives within the *Third Exceptional Commission for the Promotion of Administration Reforms* – even won political support to realize the controversial idea of granting permission for trainees to become employed for a period of three years.⁷⁰³ This measure represented another backdoor for employers to accept low-skilled foreign labor and was prone to exploitation since the capacities of especially small firms to provide training were evidently low and trainees were used as normal workers.⁷⁰⁴

⁶⁹⁸ Debora Hinderliter Ortloff, “Blood Relatives: Language, Immigration, and Education of Ethnic Returnees in Germany and Japan,” *Comparative Education Review* 51, no. 4 (2007): 446–470, 451.

⁶⁹⁹ Chiavacci, *Japans neue Immigrationspolitik*, 132.

⁷⁰⁰ Sharpe, *Postcolonial Citizens and Ethnic Migration*, 269.

⁷⁰¹ Sharpe, “What Does Blood Membership Mean in Political Terms?” 127f.

⁷⁰² Chiavacci, *Japans neue Immigrationspolitik*, 140f.

⁷⁰³ *Ibid.*, 142ff.

⁷⁰⁴ Kuwahara, “Migrant Workers in the Post-War History of Japan,” 38f.

In comparison with Germany, it becomes apparent that the issue of creating an *intra-party consensus* within the factionalized LDP, the lack of strong political coalitions between interest groups *and* between interest groups and parties, and the fragmented institutional structure of immigration policy formulation explain why change has only been limited in the early 1990s. There has been a striking lack of strategy and vision in immigration policies due to the lack of coordination between the different and often diverging ministerial and societal interests. In the German case, these interests were proactively included in participatory institutional structures and commissions while usually no fragmentation took place on the administrative level. Instead, the fragmentation of interests could be channeled in the pluralistic German party system, that explains most outcomes in immigration policies since the 1970. Successful policy reforms were dependent on achieving an *inter-party consensus* between the four main parties and interest groups tried to find a preliminary societal consensus even though the BMI had the final say and was influenced by external conditions such as the terrorist threat after 9/11. The political power of unions, employer organizations, immigrant associations and NGOs was additionally increased by their interpersonal connections and networks with political parties. In the end, the elite consensus between different societal groups and the inter-governmental consensus were both opposed by a partially negative public opinion and the strong institutional role of conservative state governments in limiting the change of the status quo. In Japan, on the other hand, there has been neither an elite nor an inter-governmental nor an intra-party consensus on immigration in the late 1980s. As a result, the MOJ proposals could be largely realized without any significant changes, with the only exception of the MHLW-led concept to expand the trainee system. At the same time, the incidental proposal of the *nikkeijin* program could at least create a party consensus within the LDP and triggered an immigration reform without the necessity to consider integration policies as promoted by NGOs and some local governments.

3.2.2.4 The immigration reforms during the 2000s

3.2.2.4.1 *Political coalitions in comparison*

In the following years, the number of immigrants increased further up to 2.3 million estimated residents (including illegal immigrants) even though Japan entered the post-bubble phase with low economic growth rates.⁷⁰⁵ Even though there has been no significant immigration reform until today, the debate on immigration policies has continued and selective initiatives have been undertaken in order

⁷⁰⁵ Chiavacci, *Japans neue Immigrationspolitik*, 156.

to counteract the negative effects of an ageing and childless Japanese society.⁷⁰⁶ Demographic arguments have been used extensively in Germany during the immigration reform period from 1999 to 2004 as well, although the debate has been originally triggered by labor scarcities in the IT sector. In Japan, these arguments were opposed by the Japanese public and political elite, citing an increasing association of foreigners (especially illegal immigrants) with crime.

Similar to Germany, the discourse was dominated by economic interest groups and related ministries. The Industry and Trade Chamber of Japan was again one of the strongest promoters of immigration reform and demanded to actively recruit labor immigrants in sectors with labor scarcities such as nursing or agriculture by concluding bilateral agreements with other countries. This time, however, the associations of large corporations, especially *nikkeiren* and *keidanren*, formulated new positions as well, possibly in order to stay competitive in the post-bubble recessionary environment. *Nikkeiren* promoted a proactive immigration policy and the acceptance of foreigners as long-term immigrants in 2000.⁷⁰⁷ *Nippon Keidanren* (after the fusion of *nikkeiren* and *keidanren* in 2002) published the report “Japan 2025. Envisioning A Vibrant, Attractive Nation in the Twenty-First Century” in which it defined the future of Japan as a more diverse country that “welcome[s] all contributions from all people, including non-Japanese who come to live in this country.”⁷⁰⁸ Among its recommendations to achieve this objective, it mentions the necessity to improve the work and research climate for skilled foreign labor, open up the labor market for non-skilled immigrants, develop policies to integrate foreigners into the Japanese society, create bilateral agreements to import labor and coordinate policies to ensure that no negative effects of these measures will affect the Japanese labor market. In general, immigration should receive a much higher priority at the political and corporate level, which would necessitate the establishment of a comprehensive and coordinated national framework. With respect to the *nikkeijin* immigration, the *keidanren* promoted a non-discriminatory approach that would restrict their rights to come to Japan without an official employment status or sufficient financial means. For the first time, integration measures were suggested in order to create equal opportunities for foreigners and Japanese in childhood education, housing, the social security system, and political participation in municipal elections. On the other hand, *keidanren* also affirmed the societal discourse on crime committed by foreigners and urged for “strong measures to ensure public security.”⁷⁰⁹

⁷⁰⁶ Ibid, 199.

⁷⁰⁷ Ibid, 223.

⁷⁰⁸ Nippon Keidanren, *Japan 2025. Envisioning A Vibrant, Attractive Nation in the Twenty-First Century*, 3.

⁷⁰⁹ Nippon Keidanren, “Interim Recommendations on Accepting Non-Japanese Workers. Bring Dynamism of Diversity in Japan by Opening Doors to Transnational Human Resources,” 14th November 2003.

Unions and the main umbrella organization *rengō*, however, did not change their position significantly. Similar to German unions, they stressed the prioritization of using the domestic potential of women, the elderly and unskilled Japanese nationals before the acceptance of foreign workers should be debated. *Rengō* was also highly critical of the trainee scheme and openly requested the abolishment of the current system and its replacement with a new scheme. It developed a more proactive position on the integration of foreigners, supporting the voting right in municipal elections for foreign residents who have stayed at least five years in Japan, the right of foreigners to become local civil servants, the lowering of requirements for naturalization, improvements for cultural exchange between foreigners and Japanese and the abolishment of any forms of discrimination in the housing market, education system and social security system. Moreover, it formulated a clear opinion in favor of protecting the human rights of refugees and improving the admission procedures.⁷¹⁰ With the only difference to German unions that *rengō* did not become a lobby for illegal immigrants, but even demanded their strict deportation from Japan,⁷¹¹ its policy positions were very similar to that of German unions in the 2000s. On the other hand, the structure of enterprise unions, the economic recession, the shrinking unionization rate and the exclusion of unions from the Deregulation Committee of Prime Minister Koizumi significantly weakened their institutional status.⁷¹²

The Special Non-profit Activities Act was introduced in 1998 in order to facilitate the acquisition of a legal status and expand the range of activities NGOs can officially engage in. But as the government supervision and the granting of tax deductions continued to be tight, the structure of NGOs remained largely localized and without significant advocacy power.⁷¹³ For instance, they were not successful in changing the predominant association of foreigners with an increase in the crime rate.⁷¹⁴ As a more powerful tool of lobbying, the *National Network in Solidarity with Migrant Workers* was founded in 1997 and has now become one of the most relevant organizations for national advocacy.⁷¹⁵ In its proposals in the 2000s, there was a strong focus on human rights issues, especially human trafficking, discrimination in the work space, labor rights (especially of “entertainers”), women’s

⁷¹⁰ Rengō, “RENGO’s View on the Issue of Foreign Workers.” https://web.archive.org/web/20061008091440/http://www.jtuc-rengo.org/specialtopics/print/pr_foreignworkers03.html.

⁷¹¹ Ibid.

⁷¹² Hiroaki Richard Watanabe, *Labour Market Deregulation in Japan and Italy: Worker protection under neoliberal globalisation* (Abingdon/New York: Routledge, 2014), 126. Fujimara, “Japan’s Labor Unions,” 7.

⁷¹³ Yamanaka, “Civil Society and Social Movements for Immigrant Rights in Japan and South Korea,” 630.

⁷¹⁴ Chiavacci, *Japans neue Immigrationspolitik*, 207.

⁷¹⁵ Yamanaka, “Civil Society and Social Movements for Immigrant Rights in Japan and South Korea,” 635.

rights and domestic violence.⁷¹⁶ Until today, the network has become an important advisory and advocacy group, but its actual influence on national policy was limited due to its financial constraints and lack of institutional integration.⁷¹⁷ Another national NGO network – the *Japan Network Against Trafficking in Persons* (人身売買禁止ネットワーク) – was founded in 2003 in order to criticize the exploitation of “entertainers.” Together with international pressure – especially from the US – the Japanese government finally agreed upon a more restrictive issuing of entertainer visas.⁷¹⁸

On a local scale, NGOs were generally more successful, for instance in pressuring the Immigration Bureau to distribute special residence permits to a number of illegal immigrants.⁷¹⁹ With respect to immigrant associations, *zainichi* Korean and Chinese organizations continued to engage in lobbying activities, but this did not apply to *nikkeijin* who founded almost exclusively socio-cultural organizations (e.g. soccer clubs). The main organization of *nikkeijin*, the *kaigai nikkeijin kyōkai* (海外日系人協会) is funded directly by JICA, municipalities and corporations, and has a solely educational and cultural mission, organizing exchange, study and Japanese language programs, amongst other services.⁷²⁰ Other groups focus on supporting remittances, recruitment, consultation or the provision of access to Latin American products and services. Accordingly, discussions on strengthening the civic and human rights of *nikkeijin* in Japan have been limited, especially in the national arena.⁷²¹ The electoral system reform in 1994 improved the political representation of *zainichi* Koreans and Taiwanese due to the better possibilities to be elected by list-wise election based on the proportional representation mechanism.⁷²² However, it did not significantly improve the representation of *nikkeijin* who are still politically passive corresponding to the lack of advocacy organizations.⁷²³

Thus, among political coalitions, only the employer organizations of large corporations substantially changed their positions and engaged in proactive advocacy for a liberalized immigration regime and heightened integration efforts. The *rengō* also demanded improved integration measures, but did not

⁷¹⁶ National Network in Solidarity with Migrant Workers, “Protecting Foreigners in Japan.”

⁷¹⁷ Yamanaka, “Civil Society and Social Movements for Immigrant Rights in Japan and South Korea,” 635. Gabriele Vogt, “Facing the Challenge of Immigration? The State, Civil Society and Structures of Interdependence,” *German Institute for Japanese Studies Working Paper 5* (2006), 34.

⁷¹⁸ Chiavacci, *Japans neue Immigrationspolitik*, 255f.

⁷¹⁹ *Ibid.*, 218.

⁷²⁰ The Association of Nikkei & Japanese Abroad, <http://www.jadesas.or.jp/en/>. Sharpe, “What Does Blood Membership Mean in Political Terms?” 118.

⁷²¹ *Ibid.* Takeyuki Tsuda, *Strangers in the Ethnic Homeland: Japanese Brazilian Return Migration in Transnational Perspective* (New York/Chichester: Columbia University Press, 2003), 311.

⁷²² Sharpe, “What Does Blood Membership Mean in Political Terms?” 130f.

⁷²³ *Ibid.*, 138.

change its restrictive position on immigration while NGOs continued to be marginal in the policy formulation process despite the NGO law reform in 1998.

3.2.2.4.2 *Institutions in comparison*

Significant institutional changes that modified the Japanese political system, however, took place in the 1990s and 2000s. *First* of all, the electoral system was changed in 1994 from a Single Non-Transferable Vote system with multi-member districts to a parallel proportional representation system with single-member districts. The change that made the system quite similar to the German one had the intention of shifting from inter-party to inter-candidate competition and reduce the incentives for pork-barrel spending. It also gave more parties the chance to secure seats in the Diet.⁷²⁴ *Second*, a significant administrative reform took place in 2001 that strengthened the Cabinet, increased the possibilities for the Prime Minister to make own policy initiatives and established the Cabinet Office to assist the Cabinet.⁷²⁵ The number of non-bureaucratic, political executives within the ministries was raised as well.⁷²⁶ Essentially, the reforms gave politicians more possibilities to design their own policies instead of routinely leaving this function to the ministries, whose number was reduced from 23 to 13.⁷²⁷ The Cabinet Secretariat was elevated to a key executive actor that takes a strong coordinating function between the ministries.⁷²⁸ *Third*, this administrative change was supported by the strong leadership of Prime Minister Koizumi who created political decision-making councils such as the Deregulation Committee and the Council on Economic and Financial Policy. The latter, for example, included only the Prime Minister, the governor of the Bank of Japan, five Cabinet members, and four private sector experts as members.⁷²⁹ *Fourth*, the DPJ was founded in 1996 as the largest competitor of the LDP and assumed political leadership from 2009 to 2012 after running on a broad reform agenda. However, it ruled under unstable political circumstances and with rather disappointing outcomes.⁷³⁰

⁷²⁴ Ko Maeda, "Has the Electoral System Reform Made Japanese Elections Party-Centered?" *Presentation at the Stanford Conference on Electoral and Legislative Politics in Japan*, June 2007, 3.

⁷²⁵ Prime Minister of Japan and his Cabinet, "Central Governmental Reform of Japan: Establishing a System with More Effective Political Leadership," http://japan.kantei.go.jp/central_government/frame.html.

⁷²⁶ Chiavacci, *Japans neue Immigrationspolitik*, 189.

⁷²⁷ *Ibid*, 186.

⁷²⁸ Tomohito Shinoda, "Japan's Cabinet Secretariat and Its Emergence as Core Executive," *Asian Survey* 45, no. 5 (2005): 800–821.

⁷²⁹ Tomohito Shinoda, *Contemporary Japanese Politics: Institutional Changes and Power Shifts* (New York/Chichester: Columbia University Press, 2013), 84.

⁷³⁰ Masami Ito, "DPJ's promise to change the system failed," *The Japan Times*, 1st December 2010, <http://www.japan-times.co.jp/news/2012/12/01/national/dpjs-promise-to-change-the-system-failed/>.

The Basic Plan for Immigration Control in 2000 encapsulated the position of MOJ, stating that “it would not be realistic to suddenly introduce a large number of foreign labor.”⁷³¹ The focus on domestic security, public order and the situation of illegal immigrants continued to be of major importance in the next two plans as well, although the most recent plan in 2010 admitted that the Japanese government “intends to actively promote the acceptance of foreigners.”⁷³² Among all the ministerial actors, MOJ, the Ministry of Social Affairs (MOSA) that replaced the MHLW, *rengō* and the National Policy Agency formed a strong coalition opposing the liberalization of immigration and proposing counter-measures to fight illegal immigration. The proponents of reform included METI, MOFA and economic interest groups although the first two were not consistently proactive.⁷³³ The view of the former coalition was supported by Koizumi who formed the Cabinet Conference on Policy Counter-measures to sharply reduce the number of illegal immigrants.⁷³⁴

The debate on liberalizing immigration policies was triggered and perpetuated by political actors in small commissions, councils and project teams. First proposals came from the Economic Strategy Council that was created in 1998 as an advisory council of the Prime Minister. Moreover, an advisory group of the MOSA was formed that spoke in favor of skilled immigration.⁷³⁵ In 2000, another commission, the Advisory Commission for the Objectives of Japan in the 21st Century (21世紀日本の構想懇談会) promoted to increase the number of skilled immigrants and even the creation of a more multi-ethnic Japanese society⁷³⁶ which was criticized strongly by conservative voices.⁷³⁷

As a consequence of the administrative reforms, the debate shifted even stronger from the ministries to councils under the jurisdiction of the Prime Minister, the Cabinet or individual politicians.⁷³⁸ The aspired improvements in coordinating policy positions between ministries was less successful: an inter-ministerial cooperation council was created to discuss immigration reform, but no consensus could be found. However, small groups *within* the ministries that were often led by politicians were in the vanguard of formulating bold proposals even when they contradicted official positions. In effect,

⁷³¹ Ministry of Justice, *Basic Plan for Immigration Control*, March 2000, 2nd edition, <http://www.moj.go.jp/ENGLISH/information/bpic2nd-01.html#pageBody>.

⁷³² Ministry of Justice, *Basic Plan for Immigration Control*, March 2010, 4th edition, 5.

⁷³³ Chiavacci, *Japans neue Immigrationspolitik*, 200.

⁷³⁴ Milly, *New Policies for New Residents*, 73.

⁷³⁵ Yukiko Katsumata, “The impact of population decline and population ageing in Japan from the perspectives of social and labour policy,” *Population Bulletin of the United Nations* 44/45 (2002): 208–227, 212.

⁷³⁶ 「21世紀日本の構想」懇談会からのお知らせ, <http://www.kantei.go.jp/jp/21century/houkokusyo/0120yousi.html>. Chiavacci, *Japans neue Immigrationspolitik*, 222.

⁷³⁷ See for instance 麻生有朋「革命か沈没か」東京.文芸社、2008、68.

⁷³⁸ Chiavacci, *Japans neue Immigrationspolitik*, 231.

proposals and initiatives became highly dependent on the opinions of individual politicians in executive positions and thus supported the tendency of inter-ministerial and intra-ministerial fragmentation.⁷³⁹

In 2001, a project group within METI contributed to the debate by proposing a genuine guest worker program for low qualified foreign workers.⁷⁴⁰ In 2006, another project group within the conservative MOJ under the Vice Minister and LDP politician Tarō Kōno designed an immigration program to increase “medium-qualified” labor immigration and included the possibility of permanent settlement and family reunification.⁷⁴¹ On the other hand, Kōno also continued to reject low-skilled immigration and intended to introduce mandatory language tests for *nikkeijin* immigrants as well as stricter penalties for illegal immigrants.⁷⁴² This line was followed through by the Minister of Justice Nagase in 2007 who actively promoted the initiation of a guest worker program for low-skilled labor migrants – again against the opinion of most MOJ bureaucrats. However, due to a political scandal, Hatoyama replaced Nagase and continued the traditionally restrictive immigration policies of the MOJ – thus showing the high volatility of policy proposals.⁷⁴³ Other sometimes far-reaching proposals came from the Special Committee on Foreign Workers in the LDP in 2006, two different competing immigration-related LDP councils under Nakagawa *and* Nagase, a committee within the House of Councilors, the Center for National Strategy under Koizumi, and the Institute for Immigration Policies. This demonstrates the broadness, but also the fragmentation of supportive ideas for immigration reform that were opposed by more conservative actors.⁷⁴⁴ Newspapers such as the Asahi Shimbun and various scholars also contributed to the debate in the 2000s.⁷⁴⁵ Even politicians of Germany such as Rita Süßmuth or Otto Schily were invited to participate in scholarly discussions as representatives of a nation that is not a classical immigration country, but has successfully managed to integrate immigrants into society.⁷⁴⁶

Within this climate of national debate, immigrant associations, employer organizations, the Solidarity Network with Migrants, and other groups such as the Japan Federation of Bar Associations have

⁷³⁹ Chiavacci, “Indispensable future workforce or internal security threat? Securing Japan’s future and immigration,” 132.

⁷⁴⁰ Chiavacci, *Japans neue Immigrationspolitik*, 224.

⁷⁴¹ *Ibid*, 232.

⁷⁴² Vogt, “Facing the Challenge of Immigration?” 22f.

⁷⁴³ Chiavacci, *Japans neue Immigrationspolitik*, 233ff.

⁷⁴⁴ Milly, *New Policies for New Residents*, 76, 79. Chiavacci, *Japans neue Immigrationspolitik*, 234ff.

⁷⁴⁵ Keizo Yamawaki, “Debates on Japanese immigration policy,” <http://www.kisc.meiji.ac.jp/~yamawaki/gmj/debates.htm>.

⁷⁴⁶ Behaghel and Vogt, “Arbeitsmigration nach Japan,” 135.

been most vocal in promoting change.⁷⁴⁷ In the party system, the *kōmeitō* and parts of the LDP also lobbied for improving the access to social services and introducing more targeted educational policies for foreign children.⁷⁴⁸ A network of cities and municipalities hosting a high proportion of immigrants such as Osaka or Kawasaki joined these efforts and formed the “Council of Cities with High Concentration of Foreign Residents” (外国人集住都市会議) in order to influence the national government, and exert pressure to receive more national support for immigrant incorporation measures.⁷⁴⁹ Its number of members increased from 13 cities in 2001 to 28 member cities in 2009. The council was successful in pressuring national ministries to draft a first guideline for integration defined under the concept of “mutual coexistence” (多文化共生) although it is questionable if this concept has an actual substance.⁷⁵⁰ Other incremental measures included an increase in language support for immigrant students in Japanese public schools, the development of a “Japanese as a second language” curriculum and the provision of language classes for 5,000 *nikkeijin* immigrants among other assistance.⁷⁵¹

Although the volume of proposals coming even from more conservative actors shows that a significant part of Japanese elites began to argue in favor of liberalizing immigration policies, this pressure that was mostly developed in advisory and study groups has not been sufficient to form a general elite consensus. As MOJ and MOSA continue to emphasize the security and labor market issues that would follow from opening up immigration and the LDP remains split, the selected and fragmented voice of pro-immigration actors has not been substantial enough to cause immigration reform. Unlike Germany, the Japanese government has thus not rejected the assumption that it is a country of no immigration and a major part of its (non-)policies (including the dearth of integration measures) continue to affirm this paradigm.

Pressure to allow for more low-skilled immigrants in the nursing and care worker sector originally came from labor-exporting countries such as Indonesia, the Philippines and Thailand with which Japan intended to conclude bilateral EPAs/FTAs.⁷⁵² Although the immigration-averse interest groups and ministries did not change their position and a reform seemed unlikely, Koizumi used his executive

⁷⁴⁷ Milly, *New Policies for New Residents*, 72.

⁷⁴⁸ *Ibid.*, 79.

⁷⁴⁹ Yamanaka, “Civil Society and Social Movements for Immigrant Rights in Japan and South Korea,” 636. 外国人集住都市会議「外国人労働者の受入れに関する意見書」2014年2月28日.

⁷⁵⁰ 北脇保之「日本の外国人政策：政策に関する概念の検討および国・地方自治体政策の検証」『多言語文化—実践と研究』1巻 2008年3号: 5–25, 15.

⁷⁵¹ Haig, “Japanese immigration policy,” 232. Kingston, *Contemporary Japan*, 171.

⁷⁵² Kuboyama, “The Transformation from Restrictive to Selective Immigration Policy in Emerging National Competition State,” 15f.

power to enforce immigration possibilities for Indonesian and Filipino care workers under strict certification requirements in order to conclude the EPAs. They were especially promoted by METI and MOFA against the opposition of MOJ, MHLW and the Japan Nursing Association.⁷⁵³ Similar to Schröder in Germany who used his executive power to initiate a selective Green Card program for IT specialists, Koizumi concluded the labor chapter in the EPAs under the circumstances of a debate on economic reform and the participation of his own Council for the Promotion of Regulatory Reform (or *Deregulation Council*) and Council on Economic and Fiscal Policy that did not incorporate any ministerial representatives.⁷⁵⁴ Similarly, the relatively small and informal network *Initiative 21* in Germany that consisted of representatives of private businesses and politicians could directly communicate with Schröder and was leading in lobbying for a selective labor market opening. Due to the high formal requirements for nurses and care workers, however, the actual number of immigrants has been below expectations (e.g. only 205 of 500 scheduled workers in the year 2008).⁷⁵⁵ Moreover, due to the more restrictive treatment of entertainer visas the total effect on increasing the immigration rate is actually negative, considering the decrease of Filipino immigrants with an entertainer visa from 82,741 (2004) to 8,608 (2006).⁷⁵⁶ Other incremental reform measures comprised the reform of the trainee system in order to prevent its misuse and exploitation, the reform of the alien registration system introducing tougher requirements and higher monitoring possibilities of government agencies, as well as the introduction of a point system exclusively for high-skilled professionals.⁷⁵⁷

The latest trends in Japan's immigration policy-making have shown that an institutional window of opportunity has grown to change immigration policies by using strong executive leadership in order to overcome the lack of consensus on both the level of ministries and interest groups. The same strategy has been used by Schröder to import labor and stimulate a societal debate in preparation for the formulation of a new and comprehensive immigration law. When it comes to the formulation of new immigration *legislation*, however, the ministries will necessarily be involved in the drafting and commenting of legislation, thus the need to produce a societal and ministerial consensus remains. The

⁷⁵³ Gabriele Vogt, "Care-Giver Migration to Greying Japan," in *Demographic Aspects of Migration*, ed. Thomas Salzmann, Barry Edmonston and James Raymer (Wiesbaden: VS Verlag für Sozialwissenschaften, 2010): 327–348, 340ff.

⁷⁵⁴ Kuboyama, "The Transformation from Restrictive to Selective Immigration Policy in Emerging National Competition State," 13ff.

⁷⁵⁵ Hisashi Uemura, "Acceptance of Foreign Nurses and Care Workers: A Potential Panacea for Resource Shortage?" *Yomiuri Shimbun*, http://www.yomiuri.co.jp/adv/wol/dy/opinion/society_080922.html.

⁷⁵⁶ Chiavacci, *Japans neue Immigrationspolitik*, 259.

⁷⁵⁷ Milly, *New Policies for New Residents*, 78. Ministry of Justice, *Immigration Control Report 2011*, 72f.

consensual orientation of interest groups (especially unions), higher foreign pressure and strong executive leadership have produced a guest worker program in the post-war environment of Germany. Decades later, the German government opened its borders again and introduced a comprehensive integration concept that re-defined Germany as a country of immigration. This paradigm change based upon a consensus among societal elites was only limited by the necessity to recognize regional and conservative interests in Germany's consensual political system. Japan's attempts to reform immigration reform have been stuck at the level of societal and ministerial debates, instead, where no consensus could be established. The substantial involvement of various ministries fragments the debate among different players while in Germany only one ministry dominated the formulation of legislative proposals that remained largely unopposed by other ministries. Even if there was conflict, the debate centered more around the necessity to reach an agreement between *parties* rather than between ministerial interests. There is thus a clear necessity in Japan to centralize immigration policy-making in one ministry and clearly define its jurisdiction before another debate on immigration can commence.

4. Conclusion: Institutions and political coalitions in ethnic nation-states

When it comes to explaining the differences between German and Japanese immigration policies, cultural and economic reasons are only one part of the story. While both are important background factors that influence political decision-making, a closer look at the political process of immigration policy-making revealed the structure and motives of political and societal actors that interacted with each other in a given institutional environment. From this perspective, the substance of immigration reform cannot be derived from an abstract rule, but evolves in the negotiation and bargaining process of political and societal actors that follow their own interests. This paper contributes to the study of historical institutionalism by demonstrating the importance of critical antecedents in defining different trajectories in immigration policies and showing the interactions of political coalitions with institutions in explaining both the forces for change and resistance to change in two "ethnic nation-states".

Historical forces played an important role as critical antecedents since the very foundations of the nation-states in Germany and Japan. Both countries were traditionally "countries of emigration" in their long history, but Germany's earlier experience as a de facto "country of immigration" led to the establishment of centralized immigration institutions that served as a model of enforcing the seasonal rotation of foreign workers in order to prevent their settlement corresponding to powerful agrarian interests. After WWII, the historical constraints were clearly stronger in Germany that experienced a full critical juncture of its institutions and was governed under an agenda of reconciling with Europe

and closely partnering with the US. The founding of the ECSC symbolizes Germany's renunciation of full sovereign rights over all aspects of its foreign and defense policy as well as over the immigration movements within the ECSC's member countries. The guest worker program was also primarily created as a foreign policy measure and only secondarily due to the estimated labor market and macroeconomic effects. In addition, the historical experiences of Germany with temporary workers from Poland after the foundation of the nation-state might have served as an example of how labor immigration could be regulated. In Japan, the normalization and reconciliation with other countries took a much longer time while immigration movements into Japan were limited. Quite the contrary, the Japanese government did not even recognize those immigrants that remained in Japan as a residual of its colonial empire and deprived them of their Japanese citizenship until a first solution for their residence status was found after the normalization with South Korea in 1965.

Historical reasons thus partly explain while the baseline between Japan and Germany was different. They do not explain why Japan has continued to reject the creation of a guest worker program several decades later or why Germany concentrated on policies that facilitated the long-term settlement of its immigrant population even though it officially continued to define itself as a "country of no immigration". In Germany, we can distinguish three different phases of interactions between institutions and interest groups:

(1) *Executive dominance and the initiation of the guest worker program (1953–1973)*: The recruitment program was initiated without the involvement of the parliament, parties or public opinion. Unions agreed to a temporary program under the condition that no wage discrimination would take place clearly underestimating the actual consequences of the scheme. Employer organizations could convince the *Bundesregierung* to not enforce the rotation of foreign workers in order to avoid the costs of constantly training new workers. A significant part of these immigrants thus settled in Germany with their families.

(2) *Interest group formation and the consolidation of immigration (1973–1999)*: After the recruitment program was suspended, the responsibility for immigration policies changed from the BMAS to the BMI. In spite of the halt, immigrants continued to arrive in Germany due to the legal possibilities of family reunification. Conservative attempts to limit this stream failed because of splits within the government coalition and between conservative and moderate parts within the CDU. The political paradigm of expecting the return of foreigners to their home countries continued to exist until the early 1980s when monetary incentives were given for the repatriation of foreign workers. Integration

was similarly only seen as a temporary measure to facilitate the coexistence between foreigners and Germans while leaving the major part of integration measures to the municipalities.

But while the institutional surface remained relatively constant, the political positions of interest groups and parties on immigration and integration became more pluralistic. Turkish immigration associations became highly active in forming labor groups and campaigned for equal opportunities and rights in the German labor market, education system and society. They received the opportunity to participate in municipal politics by forming foreigner councils and were represented by the federal and state Commissioner(s) for Foreigners. The main union umbrella organizations of unions also slowly began to transform their positions, recognizing the potential of representing immigrants within their organizational structures and became an important voice of support for the demands of immigrant associations.⁷⁵⁸ Churches and NGOs – especially the well-connected *Pro Asyl* network – represented the interests of refugees against restrictive federal policies. The powerful, tax-sponsored welfare organizations had a vested interest in increasing immigration and improving integrative measures in order to expand their services.

Until the new Alien Act was ratified in 1990, all parties and ministries agreed on the necessity of improving the integration of foreigners, thus practically accepting Germany as a country of immigration. But while slow improvements were made with respect to naturalization requirements or family reunification, policies continued to be piecemeal and ambiguous as a whole. After the Fall of the Berlin Wall, the party system further differentiated into five parties including the leftist Green party and the PDS. Under the CDU-led government of Kohl, however, the party and interest group efforts to legitimate a more multi-cultural society stalled and the CDU/CSU, SPD and FDP agreed upon a new, restrictive asylum policy. Political coalition on immigration and integration were formed along the following lines: between the SPD and unions; the FDP, parts of the CDU and employers; and between the Green party, parts of the SPD and NGOs. Immigrant associations were a somewhat independent force although generally tending towards social-democratic or leftist policies while almost all parties and welfare organizations founded their own immigrant organizations. Conservative attitudes were represented by the CSU, parts of the CDU and outsider right-wing parties.

(3) *Elite consensus and limited paradigm change*: With the inauguration of a new social-democratic/Green coalition government, the political circumstances were created to reform immigration

⁷⁵⁸ Torben Krings, “Bewegungsfreiheit in einem Ungleichheitsraum: Gewerkschaften und transnationale Arbeitsmobilität in der erweiterten Europäischen Union,” in *Horizontale Europäisierung im Feld der Arbeitsbeziehungen*, ed. Susanna Pernicka (Wiesbaden: Springer VS, 2015): 87–110, 93.

Ethnic nation-states at the crossroads

and integration policies. Employer organizations led the discussions on the Green Card initiative for IT specialists with the powerful, public-private *Initiative 21* network. The program was established without a parliamentary debate under the leadership of Chancellor Schröder, who won the tacit agreement of unions after promising the temporariness of the stay of skilled labor and additional investments in the training of German labor. Accordingly, the Green Card initiative stimulated a societal debate on immigration and led to the formation of the Süßmuth commission in preparation for a new immigration reform. The final report included proposals for a point system, the liberalized treatment of asylum cases, and far-reaching integration measures. It was representative for a consensus on immigration and integration policies between the SPD/union coalition, the FDP/CDU/employers coalition, immigrant associations, and the NGOs/SPD/Green party coalition. This elite consensus was opposed only by conservative parts of the CDU/CSU and parts of public opinion.

Ultimately, however, the institutional and federal constraints were strong enough to make the ratification of the law dependent on the position of state CDU branches who could block legislation within the *Bundesrat*, supported by an ambiguous public opinion. Therefore, the final version of the law by the SPD-led BMI was more restrictive than the original elite consensus would have suggested. The law was additionally modified in 2004 in order to win the agreement of key CDU-led states even though it also recognized some of the demands from the Süßmuth commission. Both government and CDU representatives later regarded the law as a success for each respective party.⁷⁵⁹

Under Merkel, integration and the inter-religious dialogue finally became a national priority although the outcomes remain still ambiguous today in a climate of new conservative forces. The recent re-organization of public opinion in new conservative groups and parties due to the disappearance of conservative elements within the CDU might influence future government policies to restrict refugee policies again and promote a more assimilationist view on the coexistence of foreigners and Germans.

In sum, it becomes clear that an elite consensus among all major interest groups has not been sufficient to enforce a paradigm change in immigration and integration policies. Instead, the federal structure of Germany's political system has encouraged the populist opposition of regional, conservative interests with the support of public opinion in order to limit change. A relative consensus, however, has been found on the general necessity to integrate immigrants into the German society after all attempts to support the repatriation of foreign workers have proven illusory. What continues to be debated around parties and public opinion is the question is the goal of integration: Should it lead to

⁷⁵⁹ Müller, *Flucht und Asyl in europäischen Migrationsregimen. Metamorphosen*, 178.

the assimilation of foreigners? Or is a multi-cultural coexistence acceptable, too? The various answers to these questions still splits the German population and the party landscape.

Comparing the development in Germany with that in Japan reveals a different experience of a country with a strong ethnic tradition that faced similar challenges of reconstruction after the war and the adverse consequences of an ageing society several decades later. While the contents of discussing immigration policies were quite similar in both Germany and Japan, the outcome clearly diverged.

First of all, the structure and institutional embedment of interest groups was not conducive to exert pressure on the Japanese government. Employer organizations were fragmented between associations of SMEs that were strongly affected from labor scarcities and large corporations that had a sufficient pool of labor. Both organization types have not acted with one voice until the 2000s. Furthermore, the main umbrella organizations of the enterprise unions that were later unified in the *rengō* constantly opposed the admission of low-skilled labor immigrants and only recently formulated general goals for the integration of immigrants. While their political power was generally limited, the consensual negotiation style within businesses might have additionally prevented the employer organizations from taking a proactive stance on immigration as long as the unions' organization rate was high enough. Korean immigrant associations were strongly oriented towards protecting their identity in Japan and acting as quasi-representative organizations for the South and North Korean governments rather than advocating the protection of their political or civil rights. Only since the 1980s, the South Korean *mindan* began to take a more political voice together with grassroots *zainichi* organizations. But even then, their political success on the national level was limited, in accordance with the restrictive rules for NGOs in Japan. Instead, NGOs and immigrant associations mostly worked through the local level where they could achieve a better political representation and improved services.

Secondly, political coalitions between interest groups and parties either did not form or were formed only loosely and relatively late in the mid-1990s. The party that campaigned early for the rights and the proactive integration of foreigners and mirrored some of the mainstream proposals in Germany was the JCP – a party from the very outskirts of Japanese politics. Until the foundation of *rengō*, unions were split between two different social-democratic parties (JSP/DSP and SDP, respectively) and found themselves in both the government coalition and in the opposition after the 1996 parliamentary elections. Even though *rengō* is now loosely associated to the DPJ, the DPJ only recently articulated a position on immigration supported by the *kōmeitō* and leftist parties while the LDP remains split between different factions. Coalitions between parties and interest groups have been loose, ad hoc and generally less important than the associations of interest groups to ministries.

Thirdly, bargaining and negotiating processes have mainly taken place amongst ministries instead of amongst parties as in Germany. But even under these circumstances, there have been no long-term coalitions between ministries in order to encourage or prevent immigration reform, but rather a fragmented structure of ministerial interests. The MHLW and MOJ, for instance, which represent a rather negative perspective on immigration, have competed with each other on proposals for immigration reform in 1990. Similarly, METI and MOFA have not been consistently involved in the debate. This disunity left backdoors for low-skilled labor immigration such as the entertainer and trainee visa open until foreign pressure accumulated to demand reforms and prevent exploitation. The *nikkeijin* system was only ex post legitimized as a labor market measure while the original proposal of MOJ was drafted due to foreign policy considerations without seriously reflecting on the possibility of long-term settlement. Refugee policies did not even exist until foreign pressure was exerted and they are still severely restrictive today. Even the administrative reform has not led to an improved consensus-finding between the ministries. Moreover, similar as in Germany every progress in specific areas of immigration policies was usually complemented with restrictions in others such as the campaign against illegal immigrants in Japan or against refugees in Germany.

In the 2000s, similar to Germany, immigration policies were debated extensively amongst different actors within the ministries, the LDP, universities and interest groups. The proponents for immigration reform found themselves fragmented in different commissions and working groups, but could not formulate a common position. In Germany, the Süßmuth commission was instead created actively by the BMI to channel the different interests even though the final draft of the law only partly recognized their opinions. Without the support of the MOJ, the MHLW or a clear majority within the LDP, the proposals of the highly decentralized commissions in Japan did not find enough resonance to be considered. Instead, the main immigration program of the 2000s took place within bilateral agreements between Japan and Southeast Asian labor-exporting countries and arose essentially out of foreign pressure. Institutionally, Japan's position was outsourced from the ministries to centralized commissions under the Prime Minister that essentially ignored the concerns of the ministries in order to make a decision. Centralized executive decision-making was also a strategy of Schröder to enforce the Green Card initiative, but a broader societal consensus was necessary to reform legislation.

This lack of an elite consensus in Japan contrasts with Germany where the neo-corporatist inclusion of societal groups in government institutions, the necessity to compromise between the federal and the state level and between the coalition government itself, the lack of conflict between ministries with respect to their jurisdiction, and the close formation of political coalitions between interest

groups and parties prepared a more consensual orientation in immigration and integration policy-making. Local, regional and federal interests were coordinated closely in commissions and through the federal structure of the German political system. The limited outcomes in Germany ultimately arose out of a combination of party competition and federal veto players. In Japan, on the other hand, the fragmentation of interest groups and ministries led to a variety of either reactive (entertainer visa, trainee system, refugee policy) or foreign policy-related (*nikkeijin* system, guest worker policies within EPAs) immigration policies without a proactive vision of immigration or integration. Due to the fragmentation of interests and the resistance of MOJ, political coalitions in favor of immigration reform were often only strong enough when immigration received an “international” dimension. This result is especially striking when we consider that the majority of the Japanese public was never consistently opposed to the admission of low-skilled labor immigrants for economic reasons. Skepticism rather arose out of recent concerns related to public security.⁷⁶⁰ Even though there are only few veto players in the Japanese political system under the conditions of LDP dominance, it is this lack of an elite consensus rather than the somewhat ambiguous public opinion that constraints the possibilities of introducing significant reforms. Indeed, this lack of a “national consensus” was mentioned by the government itself as one of the central reasons why reforms could not be introduced.⁷⁶¹

It thus becomes evident that depending on the structure of interest groups and the institutional conditions in ethnic nation-states, policy-making outcomes can diverge even though the economic or historical pressures seem similar on first sight. The view on the political process in both countries has shown that ethnic arguments have surely played a role, but also that these played a rather small part in the negotiations amongst the interests of labor, employers, NGOs, immigrants, parties, ministries, public opinion and individuals that interacted with each other within a historical and institutional environment. While this view does not allow for the summarization of both countries’ immigration policies in an abstract concept, it demonstrates the indeterministic and open nature of democratic policy-making that can change and adapt depending on the relative circumstances of political coalitions and institutions in a specific country. The immigration and integration policies of Germany and Japan show the constraints that each country faces: While Germany could establish a consensus on the elite level, institutional factors in the ratification phase limited the change. On the other hand, while Japan did not face any severe institutional constraints due to the dominance of the LDP, the lack of an elite consensus similarly prevented change – but even more substantially.

⁷⁶⁰ Tsuda and Cornelius, “Japan: Government Policy, Immigrant Reality,” 472.

⁷⁶¹ Milly, *New Policies for New Residents*, 73.

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