

**Immigration, refugee, asylum, and settlement policies
as political issues in Germany and Australia**

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Abstract: This paper calls attention to the influence of politics on German and Australian immigration policies, which by extension include refugee, asylum, and settlement policies. It traces the evolution of German immigration policies, recounts the debates surrounding the SPD-Green government 1998-2002, and with reference also to Australia, draws some conclusions about politics and immigration policies. Germany's refugee policies, traditionally among the most liberal in Europe, were gradually tightened in the 1990s in response to a rising foreigner population, social tensions and political pressures. A vigorous debate in 1999-2000 led to a major study by the Süßmuth Commission and then to policy changes introduced by in the SPD-Green government's Immigration Act. But questionable passage in the Bundesrat led President Rau to delay his signature and the opposition parties to challenge the law in the Constitutional Court. CDU opposition leader Edmund Stoiber attempted to make immigration an election issue by threatening to annul the Act if his party won the 2002 election. He did not win, but the Act was annulled in December by an adverse Constitutional Court ruling, and the government and opposition are manoeuvring to adjust and resubmit it. Australia too has been riven by controversy, particularly over interception, deflection, and detention of asylum seekers. The two countries are found to be comparable with regard to the tensions between immigration specialists and advocates on the one hand and politicians on the other. Building bridges over the conceptual gap from both sides is the most promising endeavour.

Introduction to Germany: Four Immigration Streams

German immigration policy is seldom out of the news or free from political and public controversy these days. This has not always been the case, and this paper begins by showing why immigration became a major issue in public discourse in the 1990s and how in the period 1998-2002 the German political leaders debated and dealt with this complex issue. The focal point is the lead-up to the September 2002 general election but it will be shown that the issue both preceded and succeeded that event.

From the time of the establishment of the Federal Republic of Germany in 1949 its leaders have welcomed Germans from East Germany and assisted ethnic Germans living (*Aussiedler*) in the communist countries of Central Europe and the Soviet Union to return to the homeland.¹ This was primarily a political posture reflecting a deep-rooted pan-German sentiment and at the same time an expedient policy to undermine the legitimacy of the East German regime by attracting its population to desert. These policies inadvertently brought major economic benefits to West Germany by providing human capital and stimulating consumer and construction demand. The East German leaders pursued a similar German-return policy and in addition made entry easy for migrants from Third World states, principally those of communist or anti-Western persuasion. This latter too was a political posture, adopted to complete ideologically with the West Zone.

In subsequent decades the German economic miracle unfolded, economic growth accelerated, and demand for labour grew. Both German governments set up systems to attract *Gastarbeiter* or guest workers. The need for labour was patent and the benefits of foreign labour obvious, so officials enjoyed public acceptance of the policy for many years. Those Germans who objected were few and scattered; most Germans were either uninformed or unenthusiastic but politically acquiescent, regarding it at worst as a necessary - but temporary - evil. As the economy in the West evolved from primary and secondary to tertiary emphases and demand for mass labour reached a plateau and then declined in the 1980s, the guest worker schemes were discontinued. But foreigners already resident were allowed to remain, as were those in East Germany upon reunification in 1989. Forced repatriations were not politically palatable, given the deep aversion to such policies practiced by the Nazi regime within living memory. And many had legitimate claims to tenure by virtue of EU citizenship, marriage to nationals, children born in country, schooling, and employment. This transformed a temporary economic

¹ The evolution of German immigration policies is sketched in Dietrich Thränhardt, "Germany's Immigration Policies and Politics" in Grete Brochmann and Tomas Hammar, eds., *Mechanisms of Immigration Control: A Comparative Analysis of European Regulation Policies* (Oxford: Berg, 1999), Heather Booth, *The Migration Process in Britain and West Germany* (Aldershot: Avebury, Ashgate Publishing, 1992), and Lydia Morris, *Managing Migration: Civic Stratification and Migrants' Rights* (London: Routledge, 2002, especially Ch 2 on Germany). Useful observations and statistics may be found in Tito Boeri et al eds., *Immigration Policy and the Welfare System* (Oxford: Oxford University Press, 2002) and Ruud Koopmans and Paul Statham, eds., *Challenging Immigration and Ethnic Relations: Comparative European Perspectives* (Oxford: Oxford University Press, 2000).

development policy into a massive permanent settlement problem, as policy-makers grappled with the uncomfortable fact that nearly ten percent of Germany's population was non-German-born and most without German citizenship.

Adherence to the ideals of a unified Europe and to the obligations of the Schengen Agreement brought a third category of foreigners to Germany: citizens of other EU states. These were allowed to reside and work in Germany, although not to become citizens unless naturalisation requirements were fulfilled. The EU citizens were mainly workers and students (who also worked part time) and were estimated to comprise a quarter of the 7.3 million foreigners resident in 1996.²

In the 1990s a fourth stream of immigration surged from a trickle to a flood, that of refugees from the countries of the former Yugoslavia, and then of Iraq and Afghanistan, driven out by tyranny and civil war. Germany, for decades rivalled only by France as a haven for the persecuted, now bore the brunt of the new wave of asylum-seekers. The wave was strengthened by the rise of the number of refugees world-wide to over 20 million as a result of conflict, drought, and other "push" factors in the Third World, particularly Africa and the Middle East, and the former Soviet Union, and the urgent pleas of the UNHCR for assistance, to which Germany proved receptive.

Rise of Controversy

These four streams converged in the 1990s with rising unemployment (over four million or 10 percent of the labour force), welfare costs, and crime to provoke rising anti-foreign and anti-immigrant sentiment in sections of the German population. Skin-heads and neo-Nazi groups appeared, anti-Semitism flared, and a wave of abuse and fire-bomb attacks on foreigners shocked German leaders. Political parties of a neo-rightist and anti-immigration persuasion such as the Republicans and the German People's Union appeared in the 1990 and 1998 election respectively and the National Democratic Party which had contested elections since 1965 adopted a more explicit anti-immigration posture in the 1990s. While these parties combined garnered less than 3 percent of the Bundestag vote in 1998,³ their effect was magnified by the concern of moderate and idealistic German leaders to avoid any taint of prejudice or inhospitality and thus to address the intertwined immigration, refugee, and settlement issues bequeathed by their predecessors. German leaders were also sincerely committed to the ideals of human rights and freedom of movement within Europe and international norms of refugee protection. This obliged the mainstream political parties to think seriously about the issues and to address them in their policy platforms.

² German Labor Ministry figures from "Auslandere in Deutschland" released 8 January 1998, cited in *Migration News*, Vol 5, no. 2 (February 1998) found at <http://migration.ucdavis.edu>

³ Rachel K. Gibson, *The Growth of Anti-Immigrant Parties in Western Europe* (Lewiston: Edwin Mellen Press, 2002), p. 31. In January 1998 a new political party with an anti-Europe, anti-immigration platform, the Alliance of Free Citizens-Offensive for Germany, was launched but made little electoral impact.

Party Differences

However this did not produce a policy consensus, for the parties diverged on fundamentals from the start. The parties of the centre-right – the Christian Democratic Union and its Bavarian partner the Christian Social Union, sometimes called the Union parties – tended to conceive of the issue as an immigration problem, that is, immigration was too permissive, to which the solution was a restriction of immigration. The CSU leaders and Bavarians in general tended to be particularly nationalistic and unsympathetic to foreigners and immigration, whereas northern and urban Germans tended to be more tolerant. The parties of the centre-left – the German Social Democratic Party and its partner in government since 1998 the Greens (*Bundniss 90-die Grünen*) tended in contrast to see the issue as a settlement problem, to which the solution was to liberalise the citizenship process and subsidise German language schooling and settlement programmes. The small centrist Free Democratic Party adopted varying viewpoints depending on which major party it was oriented towards, that is, the SDP in the 1980s and early 1990s, the CDU-CSU from the later 1990s to the present.

The 1998 Election

This picture, painted only in black and white, is useful as a backdrop to the political events of the late 1990s but is obviously shallow, and needs shades of grey to deepen it. The next passage turns to the period 1998, when the SPD-Green government was elected, and the traces the issues as they were debated during the next four years in the run-up to the 2002 Bundestag election. The first observation is that immigration was already an issue in the 1998 election, second only to, but obviously linked with, unemployment. The CDU-CSU's election manifesto presented a section entitled "Effective Stemming of Undesired Immigration" and its leader, Chancellor Helmut Kohl, stated that densely populated Germany could absorb no more foreigners and Germany could not reduce poverty by taking in the world's poor. The CSU was narrowly deflected from injecting the phrase "Germany is not an immigration country" into the manifesto, but that phrase continued to be a manta for the centre-right sceptics of immigration. Turkish newspapers urged a vote against the "anti-foreigner" CDU-CSU but at the same time 13 percent of polled Germans said they were sympathetic to the three right-wing anti-immigration parties.⁴

The SPD in contrast promised to liberalize immigration policy by means of transparent quotas and to provide for dual citizenship and birthright citizenship, that is, automatic citizenship for children of foreigners born on German soil. This principle, *jus soli*, stood in contrast to the principle of *jus sanguinis* that had underpinned Germany's immigration laws since the time of the Second Reich. The Greens, too, advocated birthright citizenship and ridiculed the CDU-CSU policies by claiming that Jesus would not be permitted to immigrate to Germany and if he appeared he would be deported.

⁴ *Migration News*, Vol 5, no 8 (August 1998), at <http://migration.ucdavis.edu>. A FORSA poll in 1998 found 52 percent of respondents believed there were too many foreigners in Germany and 10 percent who would vote for an extreme anti-immigration party. *Migration News*, Vol 5 No 10 (October 1998), at <http://migration.ucdavis.edu> In the 1998 election, however, the combined vote for the extreme right barely exceeded 3 percent, with most of the protest vote going, ironically, to the ex-Communist Party of Democratic Socialism.

By the eve of the election, however, the two major parties converged. The SPD condemned crime among foreigners and pledged rapid deportation of those convicted. Its leaders also pledged to limit immigration, making its stance almost indistinguishable from that of the government. On the CDU side, Chancellor Kohl proposed to reduce the naturalisation waiting period from fifteen to ten years, stealing some of the opposition's wind. But he rejected birthright citizenship, and the two parties continued to differ on this issue.

The new SPD-Green coalition government in October 1998 announced its intention to reform the naturalisation law, which dated back to 1913, to give children of foreigners born in Germany a right to citizenship. And it would streamline immigration and asylum procedures. In the first authoritative enunciation of this non-traditional and controversial notion, it declared that Germany was a country of immigrants. But new figures showed that Germany now had 7.5 million foreigners and also 4 million ethnic Germans newly arrived from the former Soviet Union, many unable to speak German well and largely living on welfare. This realisation, plus strong resistance in the Bundestag by the centre-right opposition parties, joined by the ex-Communists from the East zone, obliged the government to reconsider. The new Interior Minister Otto Schily, subsequently backed by the new Chancellor Gerhard Schröder, declared that Germany had reached its absorptive capacity and that future immigration quotas should be set at zero. Therefore a new immigration law was not an urgent priority, and the emphasis would be placed on naturalisation, settlement and integration of existing resident foreigners. Some intra-coalition strife arose when the Greens, complaining that Schröder and Schily had broken the coalition agreement, made public their advocacy of an immigration quota of 200,000.

Demographic Trends and Policy Adjustments

But the issue was wider than a party-political squabble. The new Foreigners Commission and the Council on Migration, backed by government statisticians, academic and think-tank demographers, and employers associations, had begun to document and call attention to a looming demographic problem. Emigration by Germans, and low birth rates and aging among those remaining, pointed to a long-term fall in population and a consequent slow-down in demand, shortage of skilled workers, and decline of economic activity generally. According to one estimate made by Freiburg University Professor Dieter Oberndorfer, 300,000 to 400,000 new migrants were needed every year to maintain Germany's economic vitality and sustain the welfare state. But the demographers' reasoned arguments did not convince everyone, for at the same time, a *Die Woche* newspaper poll found 75 percent of Germans wanted immigration to be reduced, not increased.⁵

⁵ *Migration News*, Vol 5, no. 4 (December 1988), at <http://migration.ucdavis.edu> The president of the Federal Statistics Office subsequently cited a net immigration level of 310,000 as necessary for Germany to retain its current population level of 82.2 million. *Migration News*, Vol 7, No 8 (August 2000), <http://migration.ucdavis.edu>.

In January 1999 the government introduced an amendment to ease naturalisation and permit dual citizenship. Children born in Germany or to a parent who had arrived legally by age 14 were to be entitled to citizenship. This enshrined *jus soli* for the first time and, creditably from a human rights point of view, virtually removed ethnic or national discrimination from the law (with the exception of the ready acceptance of ethnic Germans from abroad, which was to terminate in 2010). Residence time for other applicants was reduced from 15 to 8 years (and down to 3 years for spouses of German citizens of 2 years duration). But those eligible were restricted to those who could pay an application fee, pass a German language and a civics test, were not on welfare, did not have a prison record, and pledge to support the German constitution. Dual citizenship was permitted for Germans from Russia and a few other countries but in most cases the previous citizenship had to be surrendered at age 23...a further retreat by the SPD from its election promise. According to some estimates, these requirements reduced those eligible in foreign population by half, to less than four million.

Even with these restrictions, the proposed law was decried by the opposition parties for dissolving German cultural and social cohesion and legitimising unemployment and ghettoisation. The CSU launched a petition against it that gained five million signatures. The CSU also threatened to challenge the new law in the Constitutional Court. Hesse state's CDU leader took up the cry and, bolstered by the anti-immigrant publicity, won the election, reversing the normally liberal trend in the state centred on Frankfurt.⁶

Opposition notwithstanding, the Bundestag passed the amendment in May 1999, whereupon it became effective on 1 January 2000. During the next three years nearly one million foreigners naturalised, but this was less than a third of those eligible. Half were allowed to retain dual citizenship because their state of origin would not cancel their passports or charged prohibitive fees to do so, for example Iran and Turkey respectively.

The Green Card Issue

The major issue of 2000 was the so-called "green card" proposal. It was put forward by the BITKOM, an information technology peak association, who claimed there were 75,000 openings for computer programmers and engineers that would cripple the industry if not filled, and many German enterprises would have to move abroad to find qualified staff. BITKOM suggested that the government offer temporary residence to qualified persons in a scheme similar to that operated by the United States. The proposal was well received by the government for several reasons. First, there was a demonstrable need. Second, the persons admitted would be immediately employed in a key industry. Third, it would boost Germany's leading edge technology establishment. And fourth and fifth, from a political point of view the new policy would cast the government as a champion of the glamorous information

⁶ The populations of Frankfurt, Munich and Stuttgart are more than one-fifth foreign, 28 percent, 22 percent, and 24 percent respectively.

technology industry and at the same time popularise the notion of immigration, with the intake of white-collar professionals offsetting the stereotype of non-German-speaking welfare recipients and smugglers.

Nevertheless the proposed policy provoked controversy throughout the first half of 2000. The opposition CDU-CSU spoke against it as a new guest worker scheme, with the same risks as the old one, and as a hasty stop-gap not well thought out. The CDU premier candidate of North Rhein-Westphalia earned notoriety by coining the phrase “children instead of Indians”, denoting his wish to promote training of young Germans rather than importing trained foreigners, most of which were predicted to be recruited from India’s burgeoning IT establishment. They in turn were criticised by employers associations, who normally supported the centre-right parties, for their failure to come up with an alternative that would ease the computer worker shortage. Other industries took up the call for green card immigrants to fill their specialist vacancies and universities requested that foreign students not be required to return to their countries of origin upon completion of studies. But again political obstacles loomed when polls found up to 65 percent of Germans were against the scheme.

Among government ministers opinion was divided. The Minister of Education and Research and the Minister of the Economy backed the green card scheme enthusiastically. Green ministers and their party supported it, although with some idealistic misgivings about a brain drain, stripping third world countries of their experts for Germany’s economic benefit. The Minister of Labour cited unemployment and took a stance similar to the “children not Indians” notion, but more nuanced and diplomatically phrased. The Minister of Interior Otto Schily, whose job it was to implement the scheme, pledged to block a second generation of guest workers from settling in Germany. The result was a policy compromise. The government decided in May 2000 to offer green cards to 10,000 qualified persons (not 30,000 as initially requested by the IT industry) for a three-year work period, renewable for two more years, after which repatriation would be expected. Simultaneously it awarded training grants to the IT industry for training of indigenous computer specialists, expecting that demand would be met from domestic sources by the end of the five year green card period. By mid-2000 the green card programme was up and running, and generally accepted.

SPD Reconsideration of Immigration Policy

But the green card episode had an unexpected consequence. It provoked a serious reconsideration by German leaders of all aspects of immigration, asylum, and settlement policies, a reconsideration the government had hoped to avoid by responding piecemeal to specific problems within the existing framework. In May 2000 the opposition FPD introduced to the Bundestag for the third time a draft comprehensive immigration law. They and other opposition parties pointed out that of 300,000 newcomers each year, one third were ethnic Germans, one-third were asylum-seekers, and one-third were family reunion migrants. None was necessarily good for Germany’s high-tech economy. A

comprehensive law should take into account Germany's needs, not just the needs of the immigrants. The conservatives' particular target was the asylum policy, which they found too liberal. Over 95,000 persons applied for asylum in 1999. Reducing the length of time to process applications and the number of acceptances, and deterring new applicants by adopting strict requirements, would in effect free up spaces for economically qualified immigrants. This notion assumed a reapportioning of numbers accepted in different categories under an intake ceiling somewhere between 300,000 and 500,000, in other words a de facto quota system that would shift the balance to favour economically useful migrants. All parties agreed that the fundamental right to asylum guaranteed in the Basic Law would be respected, but they disagreed on how to interpret and administer that right in balance with other needs and obligations.

At the time, Minister of Labor Otto Schily rejected opposition proposals out of hand, saying if there were a new law, its quotas would be zero. But lobbying by industry leaders, worsening economic and demographic trends, and criticism by the Greens and liberal opinion leaders and NGOs persuaded the government to reconsider. In June Schily unexpectedly reversed himself, acknowledged the value of a comprehensive law, and appointed a high-level commission chaired by the former CDU speaker of the Bundestag Rita Süßmuth, to conduct studies, receive submission, and make recommendations. This took the pressure off the government, but the debate continued sporadically for the next year, until July 2001 when the Commission issued its final report.⁷

The recommendations of the Süßmuth Commission were less than "historic" as eulogised by Schily inasmuch as they mainly reviewed and reiterated policies initiated piecemeal during the prior several years. For example, they acknowledged Germany's need to admit a growing number of economically qualified immigrants, reaffirmed the green card programme, and proposed renewed funding of facilities to help new immigrants to learn German and settle more quickly. They retained the traditional open door for family reunion, refugee and asylum-seeker entry but sensibly urged streamlining of their administrative procedures. The Commission's major innovation lay in proposing a series of six "doors" for labour market immigrants, catering for skilled persons, apprentices, students, and entrepreneurs, with individuals to be selected by a points system. A quota of 50,000 persons a year was suggested.

Draft Immigration Law

In September Schily presented a draft immigration law to Cabinet. This was to be Germany's first-ever comprehensive immigration law, consolidating the ad hoc policies and amendments dating back to the 1913 law when Germany was an expanding mini-empire, and establishing Germany as an immigration country for the first time. It was contested by the parties of the pragmatic right for opening the human floodgates to inundate four million unemployed Germans, and by those of the idealist left as too restrictive and economically self-interested. Compromise was necessary because the

⁷ The full text may be found at http://www.bmi-bund.de/dokumente/Artikel/ix_46876

SDP did not have majorities in either the Bundestag or the Bundsrat, but depended on the votes of the Greens in the former and some opposition party-affiliated *Land* deputies in the latter to secure legislative passage. Inter-party negotiations took place in late 2001 and early 2002 to fashion a law that would garner the necessary votes. The SPD compromised initially with the Greens by widening the grounds for asylum to include non-state and gender-based persecution and allowing children to join their parents resident in Germany up to age 14 (having initially proposed 8 then 12 years of age). But the Greens were obliged to accept in return a tightening of asylum eligibility determination procedures and acceleration of deportation proceedings for failed applicants, and support the overall economic thrust of the new law.

On the other hand, CDU opponents rejected the non-state and gender persecution provisions for asylum, demanded coercive detention of failed asylum-seekers who refused to leave and restrictions on welfare and work available to refugees, wanted a further lowering of the age limit by which children had to join immigrant parents or lose their claim to immigration, demanded that skilled migrants have a guaranteed job as a prerequisite for entry regardless of their points score, called for a ceiling on overall entries, demanded that the federal government subsidise the states to provide the required new language, settlement and integration programmes, and wanted the law renamed the “immigration reduction law”.⁸

Interwoven with the behind-the-scenes inter-party negotiations on these issues were the electoral strategies of each party, with the September 2002 Bundestag election already in view. The Greens were eager to portray themselves to their potential voters as still able to secure idealistic concessions from the SPD. The conservative opposition parties were too, but were curiously ambivalent. They had foreshadowed their strategy of making immigration a major election issue, so concessions now by the government might steal their election campaign thunder later. Consequently they did not press their case as vigorously as they might have. Schily played skilfully on this ambivalence by courteously displaying a willingness to discuss, but never explicitly conceding the validity of, the opposition’s demands. Nevertheless he did modify the bill twice, and in his explanatory summary stated the law would be an instrument for “demand-oriented management *and limitation* [my italics] of immigration”, and stressed that deportees would be confined to “facilities” (*Ausreisezentrum*) until they departed.⁹ Paragraph 1 of the law specifies its aim is “*to control and restrict* [my italics] the immigration of foreigners into Germany”. Meanwhile as time passed and the legislative decision loomed, public opinion, shaped by business associations, unions, churches, and migration and refugee support NGOs

⁸ The opposition made varying numbers and combinations of demands, but the core four were: 1) reducing the age at which children had to join their immigrant parents or lose their right to residency, 2) making labour-migration rules more restrictive, 3) dropping the widened criteria for asylum advocated by the Greens, and 4) changing the emphasis of the law to restricting rather than encouraging immigration. Johannes Leithaeuser, “The Shifting Site of the Immigration Showdown”, *Frankfurter Allgemeine Zeitung* (19 February 2002).

⁹ The official release “Information on the Immigration Bill and Statement on Individual Critical Points” 7 September 2001 may be found at www.eng.bmi.bund.de

such as Caritas, warmed increasingly to the proposed law.¹⁰ This further blunted the opposition's challenge.

Contested Passage

On 1 March 2002 the Bundestag passed the Immigration Law by a comfortable margin of 320 to 225, vindicating the government's initiative. The vote in the Bundesrat on 22 March was much closer, 35-34. The winning two votes were cast by the state of Brandenburg. But that state was governed by a red-blue coalition of SPD and CDU party members, and the state's two-person delegation to the Bundesrat was similarly composed. When the state's name was called out in the chamber, the SPD delegate called out "yes" and the CDU delegate called out "no". Because Article 51 of the Basic Law requires states to cast a unanimous vote, the speaker requested the governor of Brandenburg Manfred Stolpe to clarify his state's vote. The governor, a SPD member, replied "yes". The CDU members of his delegation objected and persuaded other CDU leaders to walk out in protest.

The law was then laid before President Johannes Rau for signature. The CDU urged him not to sign on grounds of its questionable passage in the Bundesrat and threatened to take the issue over his head to the Constitutional Court if he did. Some of its members hinted that if he did sign, he would be displaying partisanship (he was formerly a politician affiliated with the SPD). The government urged him to sign so the law could come into effect at the beginning of 2003 for Germany's economic benefit, and hinted it was the obligation of a president to comply with the policy of the elected government of the day. President Rau rejected the importuning of both parties and retorted publicly with almost unprecedented bluntness: "I do not expect the office of the German president to be drawn into party-political wrangling, as people have attempted to do in recent weeks".¹¹ Rau's role appeared to be two-fold, to decide whether the content of the law was constitutional, and whether the law's passage was legitimate. On 20 June he signed the law on the grounds that its content was constitutional. But he indicated that he did not have a presidential opinion on its method of passage and would welcome a Constitutional Court ruling on that issue. The CDU state leaders then requested the Constitutional Court to annul the law because of improper passage. In December 2002 the Court agreed, preventing the Law from coming into effect as scheduled.

Meanwhile the SPD-Green coalition government was narrowly re-elected in September 2002. Its re-election against all predictions was attributed not to its immigration or economic policies but rather to Chancellor Schroeder's vigorous leadership in response to the disastrous floods of Western European rivers prior to the election, and to Schroeder's forthright resistance to US President George Bush's

¹⁰ In March 2002 a poll for ARD television found 51 percent of Germans in favour of the law and only 30 percent against. Just two years previously the proportions favouring a quota immigration system were the reverse. *Migration News*, Vol 9, No 4 (April 2002), at <http://migration.ucdavis.edu>

¹¹ Guenter Bannas, "Rau Raises a Reprimanding Voice Towards Germany's Parties", *Frankfurter Allgemeine Zeitung* (21 June 2002), p. 2.

belligerence towards Iraq, which struck a receptive chord among German voters. Despite its generally favourable view of the now-annulled Immigration Law the public remained as ambivalent about immigration and foreigners as ever. A poll in November 2002 found that 52 percent of men and 58 percent of women agreed that Germany had too many foreigners.¹²

Prognosis

Interior Minister Schily in December announced he would reintroduce the Immigration Law in January 2003. The opposition parties immediately countered that they would demand concessions. Their threat carried weight, for state elections had by then given the CDU, CSU, and Free Democratic Party (FPD) coalition a clear majority in the Bundesrat, allowing them to block legislation. In February the SPD heavily lost two state elections, and its general popularity continued to decline. Its ability to push through legislation weakened correspondingly.

A CDU spokesman stipulated “four clear conditions” for passage of the immigration law:

1. strict limits on the numbers of immigrants;
2. limitations on access to the social security system by new immigrants and asylum applicants;
3. guarantees of qualifications and jobs before economic immigrants are admitted; and
4. measures to facilitate, subsidise and ensure the integration of foreigners already resident in Germany.¹³

It is probably that the SPD will be obliged to make adjustments to its draft law to take these conditions into account, if it is serious about passing it. But no fundamental changes will be made, for the opposition parties and the public have accepted that the new law is far from radical, their disagreements with it are marginal, and indeed much of serves Germany’s economic interests. The main question besides what changes will be made is whether it will be passed this year or delayed by partisan wrangling until a CDU-led coalition returns to power.

A Brief Comparison with Australia

Australians may recognise a number of the migration issues and policies sketched above, and realise that their country is not generically different from Germany in these regards. True, a century and a half ago Australia was an isolated continent of immigration and relatively peaceful settlement (save for the displacement of the Aborigines) when Germany was collection of varied states struggling for amalgamation and military security in a hostile Europe. In 1848 while Australia was importing people, German states after the conservative reaction were exporting them, mainly to America but some to Australia. Germany’s Prussian, imperial, Nazi, and communist experiences obviously differ from

¹² *Migration News*, Vol 10, No 1 (January 2003), at <http://migration.ucdavis.edu>

¹³ Kristina Merkner, “Immigration Back on the Agenda: Opposition Using Bundesrat Majority to Put Tight Controls on Number of Newcomers”, *Frankfurter Allgemeine Zeitung* (19 December 2002).

Australia's more peaceful constitutional evolution and more gradual emergence into the international arena, chaperoned by Great Britain.

Nevertheless, after 1949 one finds convergence, and more so in the 1990s. Their immigration principles and policies now appear more similar than different. Each government has accepted the international humanitarian obligations imposed by the UDHR, the ICCPR, and the Refugee Convention. Each has variegated policies accommodating refugees, asylum seekers, hardship cases, and families in addition to "normal" immigrants, and settlement programmes to integrate those who are accepted. Each country needs immigrants to offset emigration and declining birth rates and to acquire specialist skills and capital for economic growth.

More significantly in light of recent controversy in Australia, each has policies to discourage illegal migrants, to apprehend, detain, and interrogate those who arrive, and to deport those who are found unacceptable, but only after a legal procedure, during which detention may be imposed. Each has entered into international negotiations and collaborations to combat people smuggling and people trafficking, and to persuade by diplomacy and cash subsidies governments abroad to hold or take would-be illegal entrants. Germany's "Polish Solution" might be compared with Australia's "Pacific Solution".

It might be argued that Germany is like Australia also in the growing politicisation of immigration policy in the 1990s. This paper has made clear the interweaving of party and electoral politics with German immigration policy-making in recent years. The same could be said of Australia, particularly if one focuses on the political controversies surrounding asylum-seeker detention, interception, and deflection, epitomised by the *Tampa* episode and the Pacific Solution. These issues have been considered at length elsewhere.¹⁴ This paper will conclude by posing a contrast between experts, practitioners, and advocates on the one hand, and political parties and government coalitions on the other, that characterises both Germany and Australia.

¹⁴ A selection of books representing a growing body of academic and media analysis and polemics would include Peter Mares, *Borderline: Australia's Treatment of Refugees and Asylum Seekers* (Sydney: University of New South Wales Press, 2001), Mungo MacCallum, *Girt By Sea: Australia, the Refugees and the Politics of Fear* (special issue of *Quarterly Essay* (Melbourne), No. 5, 2002), Don McMaster, *Asylum Seekers: Australia's Response to Refugees* (Carleton South: Melbourne University Press, 2001), and Mary Crock, ed., *Protection or Punishment? The Detention of Asylum Seekers in Australia* (Sydney: Federation Press, 1993). My own summary of the issues may be found in my chapter 'Illegal Migration: Australian Dilemma or Worldwide Problem?' In: Sonia Benson (ed.) *History Behind the Headlines: The Origins of Conflicts Worldwide*. Detroit, Gale Publishing Group, 24-37, 2002. The Australian Government makes its position clear in releases found at <http://www.immi.gov.au/> Amongst its most vigorous critics is the Refugee Council of Australia, whose webpage may be found at <http://www.refugeecouncil.org.au/>

Specialists vs Politicians?

Let us begin with the oft-heard claim that politicians are the problem, clumsily intruding and distorting policy, and that experts and implementers should be left alone to get on with the job, rallied and overseen by advocates. Consider the following assertions and apply them to both Germany and Australia. Demographers have calculated an optimum immigration rate to sustain the population of Germany or raise the population of Australia. Industrialists have specified the types of skilled people they need to fill vacancies. International treaties and humanitarian and national commitments have imposed obligations regarding refugees, asylum-seekers, family reunion and citizenship applicants, and hardship cases (and returning ethnic Germans and citizens of Schengen-land). Laws and administrative practises have induced orderly induction. Social agencies, local bodies, and charities facilitate effective settlement. NGO advocates keep watch to ensure fulfilment of human rights and humanitarian criteria.

In stark contrast, in this view, the public in both Germany and Australia display ignorance, prejudice, and meanness. The political parties compromise with each other while in government and pander to the demagogues and the media at election time. Immigration policies were politicised during the Australian election of 2001 and would have been during the German election of 2002 had not other issues overshadowed them. Sensible adjustments, such as the passage of the German Immigration Act and the easing of Australian interception and detention policies, are blocked by political posturing.

Conclusion

To underscore the theme of this paper, the above passages have exaggerated the virtues of specialists, administrators and advocates, which can often be grounded unsteadily on wishful thinking, and denigrated the contribution of politicians, which is the devising and legitimising of workable policy from the raw material of conflicting demands and scarce resources. Nevertheless the contrast is a useful framework onto which to cast the immigration policies of Germany and Australia in order to make the point that they are comparable in many respects. I would argue that most democratic countries could be cast onto this framework, if sensibly adapted, and that performing this exercise would further illuminate the theme of this paper: immigration policies are inextricably linked to immigration politics.

This leads to a cautionary statement: an ideal immigration policy abstracted from processes of politics and governance is a chimera. The reformer should not try to eliminate politics from policy-making, for to do so is to undermine democracy. Nor should the policy-maker dismiss specialists and advocates as dreamers, thereby denying their vision and hampering adaptation to change. Better to advocate and facilitate dialogue between politicians and specialists so as to educate both about the exigencies of the other, thereby producing policy that is legitimate and sustainable as well as humane. I urge specialists and advocates at this Conference to keep in mind the political context and practical policy implications of their analyses, and I urge politicians to listen and reflect on what is desirable as well as expedient. If

we all attempt to build conceptual and informational bridges between vision, advocacy and analysis on the one hand and legitimation, legislation, funding, administration and enforcement on the other, we will be raising the prospects for both relevant scholarship and enlightened policy.