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pp. 5-19

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1

West Germany and migration 1945–89

After the Second World War Germany experienced several waves of population movements, the largest of which was the influx of refugees and expellees from the east. This was followed in the 1950s and 1960s by 'guestworkers', by ethnic Germans and, mainly from the late 1970s onwards, by asylum seekers. Throughout this period there was also a steady trickle of resettlers, i.e. Germans moving from the GDR to the Federal Republic of Germany (FRG). Immigration in all categories increased dramatically after the opening of the Iron Curtain in November 1989.

An analysis of West German migration policies therefore has to deal with five different categories of 'migrants' although their legal status was quite different. Refugees and resettlers were German and although ethnic Germans entered the Federal Republic with foreign passports they were entitled to German nationality. As Germans they were entitled to all available services and support for their integration. 'Guestworkers' and asylum seekers, on the other hand, came into the country as foreigners and have remained so as 'migrants who stayed' (Castles and Miller, 1993: 79). They were basically not welcome, as Germany officially considered itself a 'non-immigration country'.

Although the migrants coming into Germany were quite distinct from each other, they are dealt with together in this chapter because they were all entitled to some kind of housing benefits and a modicum of tolerance from the authorities and the German population.

Refugees and expellees

Between 1945 and 1949 about fifteen million Germans either fled or were expelled from those formerly German territories which became part of the former Soviet Union, Poland, Czechoslovakia, Hungary and Yugoslavia (Benz,

1985; 1993). German civilians experienced the terrible revenge of East Europeans and Soviets for the barbarities in their countries perpetrated by the National Socialist regime. About two million Germans lost their lives. The 'humane and orderly population transfers', as decided by the Allies at the Yalta and Potsdam conferences, remained a paper resolution (Wheeler-Bennett and Nicholls, 1972). The first post-war population census of 29 October 1946 showed 9.6 million refugees in all four German occupation zones of which 3.6 million were in the Soviet, 3.1 million in the British, 2.7 million in the American and 60,000 in the French Zone with 100,000 in Berlin. The influx into Germany continued and soon a process of internal migration from east to west began. The next census on 13 September 1950 revealed that there were now 7.9 million refugees in the FRG and 4.065 million in the GDR. The share of the refugees in the FRG's population went up from 13.5 per cent in 1946 to 16.4 per cent in 1950. This migration from East to West Germany ended only with the construction of the Berlin Wall in 1961.

The refugees presented the occupation forces and the German authorities with daunting problems concerning accommodation, food and employment. As housing stocks in larger conurbations were frequently destroyed, refugees were initially allocated to rural areas. Thus in Bavaria refugees made up 21.1 per cent of the population, in Lower Saxony 27.2 per cent, in Schleswig-Holstein 33 per cent and in Mecklenburg (in the Soviet Zone) even 42.5 per cent. However, as these rural areas had been the economically weakest before the war, they were, therefore, least suitable for the integration of refugees. Few suitable jobs were available and unemployment among them remained high. A reallocation of refugees to more vibrant areas became necessary and took place in subsequent years. According to the statistics every refugee moved at least once between 1949 and 1960 (Bundesministerium des Inneren (BMI), 1996).

Despite (or because of) the comparative absence of war damage and the initial compassion with destitute refugees, tensions between them and the receiving population rose once it became clear that the refugees had come to stay. Their integration became one of the most difficult tasks for both Allied and German authorities. In order to facilitate this the Allies promulgated a Refugee Law on 20 May 1946 which prohibited the forceable employment of refugees in work for which they were over-qualified. In the countryside this meant that they could not be recruited into agricultural work. The shortage of suitable jobs remained a problem for some time to come. After the setting up of the Federal Republic in 1949 statistics showed that despite Allied efforts refugees were disproportionately employed in menial work. This reflected the social decline which the Allies had tried to prevent.

Refugees were also disproportionately hit by the Currency Reform of 1948 which rewarded owners of property but penalised savers (O'Connor, 1989). Subsequently, a series of laws addressed the refugees' equality and further integration. Article 116 of the Basic Law of 1949 guaranteed this in the political and legal fields. In order to facilitate financial help a *Soforthilfegesetz* (SHG) (Law for

the Immediate Assistance) was passed on 8 August 1949, which was supplemented by the *Flüchtlingssiedlungsgesetz* (Refugee Settlement Law) of 10 August 1949. In 1952 the SHG was replaced by the more comprehensive *Lastenausgleichsgesetz* (LAG) (Law for the Equalisation of Burdens). The aim was to **compensate refugees for damage and losses suffered in the course of the war**, expulsion and post-war period. In all about DM 114 billion was paid out and large resettlement schemes inside the Federal Republic ensured the refugees' more balanced distribution. The LAG came to an end only with the *Kriegsfolgebereinigungsgesetz* (KfbG) (Law to Settle Consequences of War) of December 1992 (see below). More important in the long run, however, was the fact that the **refugees were able to benefit from the economic upturn in the FRG**. Not only that, they **represented a large pool of highly trained and motivated workers and, as such, made a huge contribution to it**.

The integration of the refugees into West Germany was remarkably successful. Many factors contributed: the **Allied ban on separate refugee organisations** not only prevented the emergence of militant refugee pressure groups in the volatile conditions of the immediate post-war era but also forced the emerging political parties to take refugee interests on board, thus **reducing the refugees' isolation**. After 1950 the federal government set up a Ministry for Refugees and co-ordinated refugee affairs. Although the refugees set up their own political party when able to do so in 1951, which throughout the 1950s was popular as a coalition partner at federal and *Land* levels, it lost much of its influence by 1961 and dissolved itself shortly thereafter. In August 1950 the leaders of the various refugee and regional groups (*Landmannschaften*) together launched the 'Charta of the *Heimatvertriebenen* (Germans expelled from their Homelands)' in which 'conscious of their responsibility before God and Men' they announced the refugees' '*Recht auf Heimat* (Right to [their] Homeland)' as 'a God-given Basic Right of Mankind' while at the same time 'renouncing revenge and retribution' (Benz, 1992: 385). However, this latter point seemed often lost in official refugee-rhetoric on the occasion of their annual meetings. In general their political objective was to keep the 'German question' open. It was therefore not surprising that they vehemently **opposed any attempt to change the German foreign policy stance such as Willy Brandt's *Ostpolitik*** in the early 1970s with its open recognition of 'certain facts which the Second World War had created' (Marshall, 1996), i.e. the irretrievable loss of the formerly German territories in the east. However, in the long run most refugees accepted the inevitable. It was only in 1985 that, with Chancellor Kohl, a leading political figure began to attend the annual meetings of the Silesian refugees. Although refugee concerns thereby regained publicity this did not reflect greater activism on the part of the refugees. The episode has to be seen more in the context of Chancellor Kohl's attempts to refocus the interpretation of German history in the light of his claim that with his coming to office a new 'normality' was beginning in Germany's development (the '*Gnade der späten Geburt*', the 'grace to have been born late'). That he also hoped to mobilise the refugee vote for the

Christian Democratic Union (CDU) was revealed again when in the autumn of 1990 he hesitated over the new Germany's recognition of its borders with Poland, despite widespread indignation both inside Germany and abroad. It was only after the first all-German elections of December 1990 were safely over that recognition followed in March 1991.

On balance German society benefited from refugees in many ways. As mentioned above, their contribution to Germany's 'economic miracle' was essential for the country's rapid recovery. Moreover, refugees introduced an element of social mobility and provided a 'Modernisierungsschub' (push towards modernisation) (Klessmann, 1982: 243) for West Germany. They broke up the religious predominance of Protestants in the north and Catholics in the south while Germany's overall religious balance remained unchanged (Nicholls, 1997: 10). Refugees thus contributed to opening up the country and to overcoming some of its provincialism and narrow conception of 'Heimat', which up to the Second World War had been centred on an individual's immediate surrounding areas and which the National Socialists had been able to exploit by linking it to 'blood and soil' with its racial overtones.

The influx of refugees thus had an invigorating impact on West Germany and some observers have seen in the relative ease of their integration a blueprint for dealing with the more recent influx of migrants. However, as has also been pointed out (Herbert, 1986: 1), there were exceptional circumstances which made the case of the refugees unique: they were German nationals with similar cultural affinities and social composition to the receiving population. Moreover, the refugees arrived at a time when large numbers of Germans were themselves moving; indeed at no time in the country's history was the population as mobile. This facilitated the integration of refugees and it is no accident that this was most difficult in rural areas where the host population was most settled. None of these factors apply to the present generation of migrants coming into Germany.

Ethnic Germans

Not all Germans from the former eastern territories were able to flee west. Indeed, about four million either could not, refused to do so or were prevented from doing so by the advancing Soviet troops. Many also suffered deportation to the far corners of the Soviet Union during and after the Second World War as part of Stalin's revenge against anything 'German'. Subsequently, there were heavy restrictions on emigration in all Eastern Bloc countries and the relaxation of this regime had been a standard Western demand in the propaganda battle of the Cold War. Part of Willy Brandt's *Ostpolitik* had been to negotiate the exodus of ethnic Germans from Poland but agreement proved difficult (Marshall, 1996). The Poles were reluctant to honour their side of the bargain and co-operated only after renegotiations under H. Schmidt with improved

financial inducements. This effectively meant the 'buying-out' of ethnic Germans. In 1975 Poland received large loans and in 1978 Romania was paid a fixed amount of DM 5,000 per ethnic German allowed to leave. In 1983 this was increased to DM 7,800 and to DM 11,000 in 1988 (Groenendijk, 1997: 465). Between 1950 and 1988 about 1.6 million ethnic Germans arrived in the Federal Republic at a steady average flow of about 40,000 per year not only from Poland, but also from the Soviet Union and Romania. This movement increased dramatically after Gorbachev came to power in the Soviet Union and a law liberalising legal emigration was passed in 1986. When the process of democratisation got under way in the central European countries the figures for 'ethnic migration', i.e. of ethnic minorities such as Jews or ethnic Greeks and Germans to their 'home countries', shot up. From 42,788 in 1986, numbers rose to 78,523 in 1987, followed by 202,673 in 1988 and 400,000 in 1989 (see Table 2.2).

As long as the numbers coming in remained small the general public did not show much concern. Controversy began to arise from 1988 onwards, particularly after the government passed a law authorising DM 2.2 billion for the construction of cheap housing for ethnic Germans (*Migration News Sheet* (MNS), October 1988: 6). Increasingly the easy reception of ethnic Germans in the Federal Republic and the legal framework which made this possible were compared with the difficulties resident foreigners faced with their integration or those of asylum seekers who often fled to Germany for fear of their lives, and whose need for access seemed therefore greater.

The German government used three arguments, one legal, one historical-political and one socio-economic for its continued welcome of ethnic Germans. First, it interpreted Article 116 of the Basic Law to mean that ethnic Germans were Germans who had suffered disproportionately during and after the war for their connection with Germany. They therefore had a legal claim to residence and support in Germany. For Chancellor Kohl this was 'a challenge of national proportions which the Federal Republic is morally obliged to take on' (Schröder and Gärtner, 1989). This was disputed by many experts (Otto, 1990b). In their view Article 116, paragraph 3, defines as German 'who possesses German nationality or who as refugee or as *Vertriebener deutscher Volkszugehörigkeit* (expellee of German descent) or as their spouse or descendant has found *Aufnahme* (residence) in the territory of the German Reich in its borders of 31 December 1937'. In other words, it is their reception in Germany which makes them Germans. No prior claim to German nationality or justification for their special reception in Germany existed. Different objections were also raised concerning the use by the government of paragraph 1 of the Federal Expellee Law of 1953 which defined an ethnic German as a person 'who as *deutscher Volkszugehöriger* (ethnic German) or as *deutscher Staatsangehöriger* (German national) after the end of the general expulsion measures left or leaves those eastern territories which at present are under foreign administration (Gdańsk, Estonia, Latvia, Lithuania, the Soviet Union, Poland, Czechoslovakia, Hungary, Romania, Bulgaria, Yugoslavia, Albania or China ...)'. Paragraph 6 of the same

law defined *Volkszugehörigkeit* as persons 'who in their home countries showed commitment to their German *Volkstum* (heritage), as far as this commitment is confirmed by specific characteristics such as descent, education, language and culture'. Many ethnic Germans came from areas which had been occupied by German troops in the course of the Second World War and where many Poles had been made German citizens in order to serve in Hitler's army. This military service was now taken to mean a 'commitment to Germanism' when decisions were taken in the Federal Republic as to whether these individuals and their family members deserved to be treated as 'German'. It seemed ironic to many that those who had been loyal supporters of National Socialist Germany thus found belated reward. This near *völkisch* discourse reminded many observers of the not-too-distant National Socialist past (*Der Spiegel*, 52, 23 December 1989).

Second, the government argued that ethnic Germans migrated because of the continued repression of their lifestyle, culture etc. due to their German background. A *Vertreibungsdruckrichtlinie* (directive concerning expulsion pressures) was adopted by the Ministers of the Interior as late as 1986; i.e. the assumption that there was pressure on ethnic Germans to migrate remained the basis for official policy. This administrative rule was not changed because, it was alleged, of its negative effect on the expellee vote (Gugel, 1990: 112). This seems a plausible explanation as the real situation of ethnic Germans in their areas, at least from 1987 onwards, was greatly improved. Moreover, opinion surveys among them showed that they migrated increasingly for economic reasons. Whereas in 1976 5.3 per cent gave this as their reason the figure had grown to 25 per cent by 1985 (Diakonisches Werk, 1989; Otto, 1990b: 43).

Third, the government argued that ethnic Germans were on average younger than the resident German population and that their presence would therefore have a beneficial effect on, for example, the financing of the German pension funds or health insurance. Again criticism was voiced that the government effectively treated ethnic Germans as immigrants and that if it developed a proper immigration policy it could choose exactly whom it wanted to attract (Bade, 1993). However, the principle of 'Germany – not an immigration country' meant that this option could not be pursued. As it was, many ethnic Germans arrived with unsuitable or no qualifications and their economic integration became increasingly problematical (see Chapter 2, p. 55).

The reservations in the German population also grew. As many of the ethnic Germans spoke little or no German and their different cultural background became apparent many Germans could not see much evidence that the new arrivals were really German.¹ These concerns were shared by all political parties. The right feared that a majority of ethnic Germans were exploiting their status to gain access to the country as economic migrants who would compete with Germans for jobs and accommodation. The left saw in the conservative and nationalistic values of the new arrivals a possible reinforcement for certain reactionary tendencies in the Federal Republic (Angenendt, 1997: 103).

Foreigners

Despite the large influx of refugees at the end of the Second World War, labour shortages appeared in some sectors of the German economy as early as 1953 when the Farmers League of Baden-Württemberg began to recruit workers in Italy (Braun, 1995).² These informal contacts were replaced by intergovernmental contracts between the FRG and Italy (1955), Spain and Greece (1960), Turkey (1961), Portugal (1964), and Tunisia and Morocco (1965) as well as Yugoslavia (1968). Following the examples of the agrarian *Wanderarbeiter* of the German Empire and the labour recruitment practised in Switzerland, workers were to be employed for a clearly defined period on the 'rotation principle'; i.e. they were to be replaced by new arrivals. No integration was intended, as the name 'guestworkers' suggested (Bade, 1993: 395).

The economic importance of these foreign workers grew even more when the construction of the Berlin Wall cut West Germany off from the continuing flow of labour in the form of refugees from the GDR which had reached a total of 1.8 million by the time it stopped in 1961. Between 1960 and 1973 the foreign population grew from 280,000 to 2.6 million. That the 'rotation principle' functioned as intended was indicated by the fact that during the recession of 1966/67 the number of foreign workers declined by 30 per cent from 1.3 to 0.9 million. Foreign workers were mainly unskilled labourers and their purpose was to serve as a buffer between the effects of economic growth and decline on the German workforce. The flexibility provided by foreign workers emerged particularly clearly from developments in the construction industry, which tends to respond most directly to economic crises: the number of redundancies among German workers between 1973 and 1976 was 15 per cent but that among foreigners was 41 per cent (Bade, 1993).

German policies towards foreigners were, therefore, predominantly concerned with economic and employment considerations. Prospective employers filed their needs with the local labour exchange, which would forward them to the 'German Commission' in the sender country, which, in turn, would select suitable candidates for employment in Germany. This system of institutionalized segregation (Collinson, 1994: 23) functioned without state interference. It was only in 1964 that the federal government began to legislate for minimum standards in accommodation and social provisions for foreign workers. But, overall, foreigners were perceived as a threat and this spirit emerged from the first Foreigners Law, which was passed in 1965. Paragraph 2 stipulated that 'a work permit can be granted if the presence of the foreigner does not damage the interests of the Federal Republic'.

The 1970s brought a decisive change in the migration policies of all West European states. Ostensibly the oil crises after 1973 and 1978 with the subsequent downturn in economies necessitated a ban on further labour recruitment from abroad in order to alleviate growing unemployment. However, the economic argument only disguised the more profound official unease with the

social and political problems which immigration had already created and which would get worse if they were allowed to continue unhindered (Collinson, 1994). In Germany the relevant law was passed in November 1973. Its effect was tangible in the decrease in the foreign workforce by 22.7 per cent to 597,300 in 1978. However, the ban turned out to be problematical for Germany because with it the rotation system came to an end. Numerous foreign workers who normally would leave to be replaced by others, and who could plan for their return to Germany at a later date, found themselves cut off from this option and so decided to stay and brought their families into the country. Thus while the number of workers declined as noted above the percentage of foreigners among the German population continued to increase, albeit more slowly after 1980. It grew from 1.2 per cent in 1960, to 4.9 per cent in 1970, to 7.2 per cent in 1980 and 7.3 per cent in 1988 (Bade, 1993: 395). What had changed was the structure: with legal immigration of (mainly male) workers no longer possible new immigrants were predominantly women and children and hence on average younger than previous migrant cohorts. Over time, moreover, their age, social structures and consumption patterns would become similar to that of the German population, which would remove the benefits which the German state originally had derived from a young and mobile foreign population. A further problem specific to Germany was a shift in the national composition among the immigrants, away from South European immigrants to Turks. Whereas the latter's share among all foreigners remained stable between 1980 (about 33 per cent) and 1989 (32.2 per cent), those of other nationalities declined: Yugoslavs from 14 per cent in 1980 to 12.5 per cent in 1989 and Italians from 13.9 per cent to 10.7 per cent in the same period (Bade, 1993: 395). Turks were perceived to be culturally more distant from the German population and therefore represented a far greater challenge than other nationalities.

By the late 1970s Germany had effectively become an immigration country where immigrants settled together in certain areas, notably in cheaper sections of the big cities. This was not unlike German immigrants in New York earlier in the twentieth century who had set up 'little Germanies', i.e. areas in which they could continue their own traditions abroad – a typical behaviour of first generation immigrants which often served as a later transition to full integration in the host society (Harzig, 1993: 157). Faced with this situation the German government's response was inadequate. While Article 73 of the German Constitution gives the government the right to legislate for emigration and immigration, there had only been laws regulating emigration. As far as immigration was concerned the official tenet that Germany was 'no country of immigration' precluded any constructive thought in this policy area. Somewhat predictably, therefore, a first reaction to the continuing influx of foreigners in the 1970s consisted of the attempt to strengthen the recruitment ban in 1974 by not allowing newly arrived wives and families to work. This was rescinded in 1979, at a time when the government tried a different approach and began to give some serious thought to the integration of its foreign minority. On

1 December 1978 the post of a *Beauftragter zur Förderung der Integration der ausländischen Arbeitnehmer und ihrer Familienangehörigen* (Ombudsman for the Advancement of the Integration of Foreign Workers and their Families) was created. Its first incumbent was the Minister President of North-Rhine-Westphalia, Kühn (Social Democratic Party of Germany (SPD)). His report of September 1979 identified Germany as a country of immigration and argued for far-reaching integration measures, **including the right to naturalisation for second generation foreigners and the right to vote in local elections.** However, the report was published at a time of (temporarily) rising unemployment and anti-foreigner public opinion, which the CDU's Chancellor candidate in the 1980 federal election campaign was trying to exploit. A too 'generous' approach to foreigners might lose the government votes in the 1980 and subsequent elections. Only one of Kühn's recommendations was therefore taken up: the introduction on 2 December 1981 by the re-elected SPD-Free Democratic Party (FDP) coalition of a bill granting second generation foreigners the right to naturalisation (see Chapter 5). It was opposed by the CDU/Christian Social Union (CSU)-controlled *Bundesrat* and eventually became a victim of the change of government in 1982. However, the SPD-led government at the same time introduced measures to reduce the numbers of those foreigners who entered Germany under the principle of 'family reunion' and it was this restrictive approach, rather than the emphasis on integration, which was continued by the new CDU/FDP cabinet.

Kühn, frustrated by the lack of support for his proposals in government circles, resigned in 1979 and was replaced by Liselotte Funke (FDP).³ This signalled another change of tack in official policy, away from the short-lived emphasis on integration to a **three-pronged approach: exclusion of as many new arrivals as possible, repatriation of those already in the country by the payment of inducements and integration of those foreigners who had definitely settled in the FRG.** In response to a wave of xenophobia, particularly among SPD-followers in the German working class, the Social Democratic federal government declared the following in February 1982:

There is unity [in the government] that the Federal Republic ... is not a country of immigration and that it should not become one. The cabinet agrees that a further influx of foreigners from outside the European Community should be prevented by all possible legal means ... Only by a consistent and effective policy of limitation can the indispensable agreement of the German population for the integration of foreigners be secured. This is essential for the maintenance of social peace. (BMI, 1989: 3)

For the first time in the history of post-war Germany asylum seekers were included in the category of undesirable aliens (see below).

Despite these displays of government 'toughness' it lost the 1983 elections to the CDU, which had made an even harder stance on the foreigner issue one of its election platforms. This crystallised into official legislation, the Act to

Promote the Preparedness of Foreign Workers to Return of 28 November 1983 (BMI, 1991a). However, only relatively few immigrants took advantage of the offer partly because with DM 10,000 the financial inducement was probably too low but partly also because returns were to take place on a voluntary basis only. This reflected the fact that by the early 1980s it had become legally impossible to force repatriation and that it was unacceptable to a large section of the German public. Among the political elites the perception grew of the moral obligation which Germany owed its guestworkers and their families. However, it is noteworthy that there was no federal legislation to tackle these issues and the 1965 Foreigners Law was only replaced in 1990. In the mean time it was left to the Foreigner Offices of the *Länder* to implement administrative regulations as to residence entitlement, family reunion etc. They varied widely, with Baden-Württemberg in the south the most restrictive and Bremen in the north the most liberal.

Decisive contributions to the opinion-forming process came from the courts and particularly from the Constitutional Court in three famous cases: in the Arab case (1973) concerning deportation, the Indian case (1978) in matters of residence entitlement and the Turkish and Yugoslav case (1987) on family reunion. However, in general, official thinking seemed unaffected by these developments. This emerged particularly from the new version of the Foreigners Law which was drawn up by Minister of the Interior Zimmermann (CSU) in 1988. It was so steeped in anti-foreigner *völkisch* ideology that it forced the minister's resignation and his replacement by the more moderate Schäuble (CDU) during a cabinet reshuffle in January 1989.

Towards the end of the 1980s 60 per cent of the foreigners in the FRG had been born there and official thinking favoured the process of **gradual adaptation**. This was reflected in the new Foreigners Law of 1990 which came into force on 1 January 1991. Faced with growing votes for the right-wing *Republikaner* it was characterised by a pragmatic approach which involved the liberal FDP and the foreigner support groups such as the churches. This resulted in the rapid passage of the bill through both houses of parliament by April 1990. (The simultaneous drama of German unification also helped it to remain low key.) Moreover, there was **no reference to the mantra-like confession of 'Germany – not an immigration country', nor was the return of the foreigners demanded. In other words, immigration had taken place and was tacitly accepted**. In essence the law followed the preceding rulings of the courts. In particular, it reduced the discretion of the state in granting residence entitlements or in allowing family reunion. **Women and children were granted their own residence rights, independently of the head of the household**. 'These measures indicate the independent workings of moral obligations, not just of legal constraints' (Joppke, 1999: 84). **However, it still maintained the fundamental distinction between Germans and foreigners, and continued the reference to the recruitment of guestworkers as a unique event in the past which must not be repeated**. The law therefore did not represent the beginning of an official migration policy.

Article 16, paragraph II, of the Basic Law granted 'every politically persecuted individual the right to asylum' in the Federal Republic as one of the Basic Rights of the constitution. They are especially protected by law (Article 19, Basic Law) which involves access to the German courts at all levels, including the Constitutional Court. It can only be changed by a two-thirds majority in both the *Bundestag* and *Bundesrat*. There was thus no doubt that the 'fathers of the Basic Law' when drafting the document in 1948 attached special importance to the right to asylum. The asylum provision was to be proof of the new Federal Republic's commitment to humanitarian values. The unrestricted right to asylum was designed to be an 'act of generosity' (Schmid, 1948), a symbol of Germany's preparedness to atone for the crimes committed by the National Socialist regime: many more Jews could have been rescued if there had been nations prepared to open their frontiers to them. This moral link between the granting of asylum in the Federal Republic and the country's National Socialist past meant that as this past was being reassessed in the 1980s, so the commitment to the asylum provision began to be questioned – long before the numbers of asylum seekers actually coming into Germany created serious practical problems.

Between 1949 and 1973 asylum remained the 'forgotten Basic Right' (Wolken, 1988: 32); indeed, between 1958 and 1972 the issue was mentioned only thirty-five times in the *Bundestag* and then mainly in connection with individual refugees or the reception of special refugees such as those fleeing from the Greek colonels in 1968. (By comparison, there were forty discussions in 1980 alone.) Numbers coming into Germany were small with 4,500 in 1963 and 5,500 in 1973 and most refugees came from Eastern Europe. In other words, they were white and their flight could be used for political purposes.

A change came in 1973 when the then Minister of the Interior, Genscher (FDP), for the first time used the term *Asylmißbrauch* (abuse of the asylum provision). As the numbers of asylum applications were low he could only have referred to a change in the composition of the new arrivals: whereas in 1972 58 per cent had come from Eastern Europe, 18 per cent from the Near East and 1 per cent from Asia, these figures by 1973 had shifted to 51 per cent from Eastern Europe, 26 per cent from the Near East and 2 per cent from Asia. In 1974 the figures were 31 per cent, 38 per cent and 3 per cent respectively (Wolken, 1988: 58). This increase in the numbers coming from non-European areas caused concern, particularly when seen against the background of the murder of eighteen Israeli athletes by Palestinian extremists at the Munich Olympic Games in 1972. From 1974 onwards official policy moved from a 'refugee-welcoming' approach to one of 'control' of numbers coming in. Thus visa requirements were introduced for those countries which produced most refugees, such as Palestine (1974), Afghanistan, Ethiopia, Sri Lanka and Turkey (all 1980). Moreover, also in 1974 the Permanent Conference of Ministers of the Interior decided on a

distribution formula for asylum seekers whose applications were pending, which indicated that asylum seekers were beginning to be seen as an administrative **'burden'** to be shared by all *Länder* while actual numbers, 9,400, still remained very small (Table 1.1).

Table 1.1 Distribution of asylum seekers according to Section 45, Asylum Procedure Law

<i>Land</i>	<i>Percentage</i>
Baden-Württemberg	12.2
Bavaria	14.0
Berlin	2.2
Brandenburg	3.5
Bremen	1.0
Hamburg	2.6
Hesse	7.4
Mecklenburg-Vorpommern	2.7
Lower Saxony	9.3
North-Rhine-Westphalia	22.4
Rhineland-Palatinate	4.7
Saar	1.4
Saxony	6.5
Saxony-Anhalt	4.0
Schleswig-Holstein	2.8
Thuringia	3.3

Source: Asylum Procedure Law (since 1 July 1992).

From the late 1970s the numbers increased and the search began in earnest for means to control them. However, policy-makers were constrained by the constitutional provision, and a range of legislative measures which were produced between 1977 and 1982 therefore aimed at speeding up the asylum procedures. These went hand in hand with a reduction of the overall benefit provisions, a ban on the permission to work, initially for one year, which was extended to two years in September 1981, and increased accommodation in communal centres. **From the end of 1980 asylum seekers also lost financial support for language classes.** This was seen as 'preventing integration', in line with the new policy of deterring refugees. With the numbers coming in for the first time exceeding 100,000 in 1980, an election year, the alleged 'abuse of asylum' was exploited by the opposition and put the government under continuous pressure to introduce ever tougher measures. Perhaps the most significant measure of this period was the **Asylum Procedure Law of 1982** which legalised the social deterrence practised already by the *Länder* and which separated the Geneva Convention from the granting of

asylum under Article 16/II of the Basic Law. This narrowed the right to asylum to the concept that persecution had to be carried out by state organs whereas the Geneva Convention allows a 'subjective fear' of persecution. But the *non-refoulement* of the Convention, i.e. the protection from deportation to countries where the safety of the refugee was not guaranteed, remained. This has allowed numerous asylum seekers to stay in Germany on an inferior legal basis, the so-called 'little asylum'.

However, as in the case of foreigners, policies agreed at federal level had to be implemented by the *Länder* and this gave ample scope to the more conservative among them to treat refugees in a way which would deter further arrivals. Indeed a veritable 'deterrence competition' between individual *Länder* and local communities within them was taking place (Münch, 1992: 140). The southern states of Bavaria and Baden-Württemberg were particularly harsh so that the authorities of Hamburg talked of a 'north-south gradation of deterrence' (Münch, 1992: 140). Conditions for asylum seekers in Germany deteriorated to such an extent that UNHCR in an internal report of early August 1983 concluded that the Federal Republic had created deterrence mechanisms against asylum seekers which were unique in Europe' (Holborn, 1975). When a Turkish asylum seeker who was awaiting expulsion back to his country of origin committed suicide public scandal broke loose. This event and UNHCR's exposure of the treatment of asylum seekers 'on the ground' conflicted with the official image of the FRG both abroad and at home as a 'humanitarian country'.

In a later version of its report UNHCR softened its criticism (it depended on financial contributions from national governments) and German officials played down the 'asylum scandal'. But from the end of 1984 local and *Land* authorities began to demand changes to Article 16/II of the constitution as the only way to gain control of this migration process. These demands were regularly turned down at federal level, not least because it was feared that this would adversely affect Germany's image abroad. There was thus a certain schizophrenia at the heart of German asylum policies. What the Germans wanted was the 'right to asylum without asylum seekers' (Münch, 1992: 141).

In this situation the German government began to 'externalise' the asylum issue in the sense that it enlisted the help of the Europeans and of other governments to solve its problems. Thus in 1987 visa requirements were harmonised at European level. The Soviet government was enticed to introduce stricter controls on its airline. The GDR was persuaded to plug the 'East Berlin hole' through which numerous asylum seekers had entered West Berlin. With the 1987 federal election approaching there was even competition among the two big parties as to which of them had induced East Berlin to comply: Bonn and its good relations with East Germany (sweetened by large credits) or the SPD as a result of its 'second *Ostpolitik*', which, the party claimed, had improved contacts with the East German elite (Marshall, 1996; Potthoff, 1995).

At the same time 'asylum' became part of the so-called '*Historikerstreit*' ('historians' dispute') (Evans, 1989; Maier, 1988) about the interpretation of National

Socialism. Could Nazi crimes be compared with those committed by other regimes such as that of the Soviet Union and would this not *verharmlosen* (belittle) the uniqueness of National Socialist atrocities? As noted above, Chancellor Kohl had signalled early on after becoming Chancellor that he represented a generation untainted by the past and that West Germany was entering a 'normalisation' phase where the National Socialist past had become part of the country's history. In the mean time forty years had passed since the end of the war; West Germans had achieved a great deal of which they could be proud.¹ The time for atonement was over. With this, Article 16/II lost much of its moral justification.

Moreover, it was argued, the asylum provision had not been designed to deal with thousands of 'economic migrants'. In Kohl's words:

we were the only country which adopted such a formula [for asylum] – for reasons which have to do with the historic guilt of the Germans and the crimes which were committed in the name of our people in the Third Reich ... That the Federal Republic would one day be confronted with 'Wirtschaftsasyllanten' (economic asylum seekers) nobody could foresee in those days. (Bulletin, 1986)

With this speech he began to demand a change of Article 16/II – the all-party taboo not to touch the asylum provision which had already been undermined over the previous two years was officially broken. While the CSU, large sections of the CDU and individual FDP members welcomed this approach it was vigorously opposed by the SPD and the Greens. The latter saw in the preservation of an unrestricted right to asylum the symbol of Germany's continuing commitment to atonement for the past and to humanitarian values in the treatment of the persecuted of the day.

'Asylum' thus went to the heart of Germany's political and moral identity. But raising the issue to a matter of such stark principle also meant that no political solution to practical problems could be found. On the contrary, the very passionate and public debates helped fuel xenophobia. When the Iron Curtain opened and German unification occurred the numbers of 'migrants' of all kinds streaming into Germany increased to an extent that was unimaginable in the 1980s. Under the circumstances the country coped admirably with the practical consequences but the underlying question, how to deal with the asylum provision and migration generally, involved further huge arguments.

In conclusion, the 'old' Federal Republic's migration policies revealed the absence of any well considered, comprehensive approach. There was considerable confusion in this policy area and the country was ill prepared for the new challenges which unification would bring.

Notes

- 1 Jokes appeared that the most 'German' quality of the ethnic Germans was their German shepherd dog (*Der Spiegel*, 52, 23 December 1989).
- 2 Note that the situation in this *Land* went against the development in the Federal

Republic overall where there tended to be surplus labour in agrarian areas and labour shortages in the big cities.

- 3 Overall foreigner and migration issues continued to play an inferior role, as the development of the office of Ombudsman for Foreigners illustrated. Thus Kühn's successor, the FDP politician Liselotte Funke, also resigned in frustration in 1991, having had numerous reports and policy suggestions ignored. Moreover, few resources were made available for her office, which lingered in the Ministry for Labour without access to the cabinet. It took many months before a successor to Funke was appointed in November 1991 (Cornelia Schmalz-Jacobsen, FDP) and although her office was slightly better resourced, membership of the cabinet was again denied. Shortly before her resignation Schmalz-Jacobsen in a final report of August 1998 criticised the continuing lack of political will to improve the integration of the foreign population in Germany (*Zeitschrift für Ausländerrecht und Ausländerpolitik* (ZAR), November 1998).
- 4 Note the different approach by President von Weizsäcker in his speech to the *Bundestag* in May 1985 commemorating the end of the war.