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Politically Minded: The Case of Aussiedler as an Ideologically Defined Category

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1 Introduction

Germany is often portrayed as a state with an outdated and ethnically-determined citizenship law.[1] Its citizenship law, however, requires only that one or both parents hold German citizenship.[2] Ethnicity does not play a factor, either as an inclusive or an exclusive factor. Since 1 January 2000, a limited form of *jus soli* has also been added. One category of German citizens, *Aussiedler*, does, however, receive its citizenship in part thanks to ethnicity. They are thus used as the "proof" for the ethnic basis of German citizenship and its restrictiveness. In this article, I challenge this argument as well as the one that *Aussiedler* only have access to Germany because of their German ethnicity and contend, instead, that they are a category defined by the Cold War. Their inclusion is not due to a centuries-long reliance upon ethnicity, but rather due to ideological reasons.

Precisely speaking, it is due to the ethnically-determined discrimination they are assumed to have suffered in the East Bloc as Germans, and not to their presumed German ethnicity per se, that they are offered refuge in Germany. This article examines the history of citizenship in Germany and the legal basis for *Aussiedler* acceptance in Germany since World War II, showing that the laws which were developed to privilege the *Aussiedler* after World War II were in place to assist only those Germans living in Communist regimes, and not, for instance, those Germans in North or South America. At the same time, asylum regulations were particularly open to asylum seekers of any ethnicity from Communist states.

If these "privileging" laws were, in fact, based upon ideology, namely an anti-Communist reaction, then these laws should have been repealed or at least weakened at the end of the Cold War and the fall of Communism. This article shows that this has, in fact, occurred. Likewise, asylum acceptance figures from those formerly Communist states have dropped dramatically. Thus, this article argues for a move away from the assertion that Germany has an ethnically or "blood-based" citizenship law and, argues, instead that, during the Cold War period, anti-Communist ideology played a crucial role. Now, in the post-Cold War era, significant moves are being made away from the laws put in place during that period.

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2 The views and opinions expressed in this article are those of the author and are not attributable in any manner to the International Organization for Migration.

2 Citizenship Policy in Germany: Historical Overview

From the Middle Ages on, Germany was not a unified state, but instead a collection of German-speaking states, with hereditary rulers offering varying degrees of freedom. For various reasons – the search for land, for freedom from strict sovereigns, or for religious tolerance – the Germans were known as a migratory people; as merchants, farmers and skilled workmen, Germans migrated to Eastern and Central Europe over the centuries as well as to the United States. In 1763, Catherine the Great of Russia, herself German, issued an invitation to Germans to come cultivate the land. In just the next three years, nearly thirty thousand Germans responded. Likewise, German migrants had settled in what is today Romania and Poland since the twelfth century, with more coming in various waves over the intervening years.

Germany first became a unified state in 1871; prior to that, the many individual states were unified only by a common language and culture – for instance, literature and music. Each state had an individual citizenship law. Slowly, over the course of the nineteenth century, larger alliances of German states evolved, and with them, a common citizenship policy. Generally based upon jus soli, citizenship in Germany first took on the principle of descent – still independent from ethnicity – in the Prussian citizenship law in 1842. According to §2 of the Act Regarding the Acquisition and Loss of the Status as Prussian Subject as well as Entry into Service of Foreign Governments (*Gesetz über die Erwerbung und den Verlust der Eigenschaft als preußischer Untertan sowie über den Eintritt in fremde Staatsdienste*), any child born to a Prussian received Prussian citizenship (Franz 1992, 238). Ethnicity was not mentioned.

Taken up by the 1870 North German Confederation Act on the Acquisition and Loss of Federal and State Citizenship (*Gesetz über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit*), descent remained the primary basis for the acquisition of citizenship. The purpose of introducing descent was to clarify inclusion and belonging. In the early eighteenth century, before the introduction of descent, "the position as subject ... ended when the subject left the territory, regardless of whether the territory was left with permission or without permission, voluntarily or through forced deportation" (Grawert 1973, 90). Thus, any subject who was either forced to leave or who chose to leave his home city was rendered stateless. This status was particularly catastrophic in the case of poor relief, which was under municipal jurisdiction. According to laws based on domicile or residence, each city, town or village was responsible for the poor relief of its residents. Should a resident move to another city or state, then, the new state was under no obligation to naturalize him or, subsequently, to support him. Despite the introduction of clauses to counteract this situation, we note that both the 1842 law and the 1870 law still include in their titles the concept of the loss of citizenship. Citizenship was not yet regarded as a status that, once achieved, remained permanent, as it is in the post-war German Basic Law and in most other contemporary states.

The addition of descent as the basis for citizenship acquisition was not a panacea. The age of mobility was marked not only by Germans moving from one city to the next, or from one state to the next, but by Germans leaving German lands altogether. While Germans had a long history of traveling as merchants, farmers or hired soldiers, according to the 1870 law, any persons who left Germany – or the North German Confederation – for more than ten years without having registered at a German consulate lost their citizenship (1870 Act on the Acquisition and Loss of Federal and State Citizenship, §13). Thus, farmers who had left Germany during a difficult economic period and, perhaps answering Catherine the Great's invitation in 1763 and a promise of a better life in Russia, remained away from Germany for ten years or more without registering would automatically lose their citizenship.

These Germans conceived of themselves as settlers, and were generally seen as such by the German states. Indeed, they were known as *Auslandsdeutsche*, or Germans in foreign lands. They did not reject the idea of returning to a more economically robust Germany, or a Germany which might offer more freedom of religion. However, according to the North German Confederation's citizenship law of 1870, any German who lived abroad for more than ten years would return as a foreigner (Hansen 1999); his home city was under no obligation to re-naturalize him and provide him with welfare. This German could consequently find himself stateless with no means of financial support. While citizenship was granted on the basis of descent, this status was by no means permanent. Once having lost his citizenship, a North German had no claim to re-naturalization in his home state, and naturalization in other states was a long and involved process, including a fifteen-year minimum residence in some states, and was not always successful (Fahrmeir 1997, 745). The end result was that a German could lose his citizenship in ten years, but not be eligible for another one for another five years.

The citizenship situation prior to 1913, then, was a precarious one. As migration among the German states increased, the possibility increased that a German residing in another German state would have no formal citizenship anywhere, having lost his citizenship in the first state by non-residence and not yet acquired the citizenship of the second state. Nor had the German states yet all acquired the same basis for granting citizenship and naturalization – there was, as yet, no common citizenship law. According to Rogers Brubaker,

> "Before 1913, German citizenship law was internally inconsistent. It stood between two models – an older model of the citizenry as a territorial community, and a newer model of the citizenry as a community of descent, the former a product of the absolutist territorial state, the latter of the emerging national state" (Brubaker 1992, 115).

That is, some states based their citizenship upon jus soli and others upon jus sanguinis. The passage of the first all-German citizenship law, the *Reichs- und Staatsangehörigkeitsgesetz*, or RuStaG (Imperial and State Citizenship Act) of 1913, then, was an attempt to minimize loss of citizenship. Not surprisingly, the ultimate decision to base the 1913 law on descent was not a straightforward one, indeed, "[t]his ethnocultural understanding of nationhood was not the only or even the dominant one in Imperial Germany" (Brubaker 1992, 126). Even in the states which did use the principle of descent (what Brubaker refers to as the "ethnocultural understanding"), however, the Germans were by no means consistent: "While Germans appealed to the principle of nationality to justify the incorporation of ethnocultural Germans in Alsace-Lorraine, they flouted this principle in the Prussian East" (Brubaker 1992, 127). This situation speaks not only of different policies in different parts of Germany – Alsace-Lorraine and Prussia – but also of a lack of clarity as to the policy that was to be followed.

The selection of descent as the criterion for citizenship acquisition was historically appropriate. Like Italy, Germany had a late national unification – Germany unified in 1871, Italy in 1870 – while France and England had emerged as nation-states by the Middle Ages. Even then, Germany remained a jigsaw puzzle created from several large pieces, as did Italy. Italy and Germany both subsequently developed descent-based citizenship laws. The link between a late national unification and a reliance upon descent, rather than territory, for citizenship attribution is clear. With a fractured political state, the Germans turned to other criteria to indicate belonging. Language, music and literature, including the Grimm Brothers' fairy tales, and Germanic myths, handed down from generation to generation, remained elements in common. Denied a common political existence, Germans drew upon cultural aspects as a means of identification. As legislators sought to draw the loosely-unified

Germany ever closer together, they needed some means by which to mark belonging. Descent became that marker.

2.1 The 1913 Imperial and State Citizenship Act and its Maintenance Today

The prevalent notion that the RuStaG has been maintained in the post-war era because of a wish to include ethnic Germans and exclude all others is simply false or, at the very least, quite exaggerated. The RuStaG makes no mention of ethnicity. It is clear that the citizenship law that was valid until 31 December 1999 (the RuStaG) stated that one or both parents must hold German citizenship in order for a child to acquire German citizenship at birth. As of 1 January 2000, the old RuStaG, now renamed simply *Staatsangehörigkeitsgesetz* (StaGt, or Citizenship Act), introduced a limited *jus soli*; children of foreign parents, of whom at least one has lived for eight years or more in Germany and possesses a valid residence permit, now also acquire German citizenship at birth. Ethnicity, whether German or any other, is not relevant, either as an inclusive or as an excluding factor.

While this aspect of German citizenship cannot be said to be ethnically-determined, the granting of citizenship to *Aussiedler*, however, is based upon German *Volkszugehörigkeit* – ethnicity or German descent, literally, "belonging to a people". While critics contend that this ethnic component arises from a centuries-old ethno-cultural German tradition, I argue that geopolitical considerations have played a greater role in the introduction of ethnicity in the post-war era. The ideologically-charged Cold War was crucial in determining the creation of the post-war *Aussiedler* policy. Given its post-war division and the task of coming to terms with its previous national-socialistic dictatorship,[3] Germany was affected by the Cold War more than any other country. Far from ethnicity being an integral part of the history of German citizenship, it was

> "[t]he division of Germany in the aftermath of World War II and the founding of two German states, west and east, [which] laid the foundation for an ethnically-inclusive notion of citizenship, which included East Germans who were geographically not inhabitants of the West German state" (Lemke 1998, 214).

The ideological considerations of providing residents of the Communist German Democratic Republic a way out from under Communism, while not granting legitimacy to the East German state, were paramount in post-war citizenship deliberations and resulted in the maintenance of the German citizenship law from 1913 – as long as a new citizenship law was never passed, West Germany could claim that all East Germans were still West German citizens. Upon German unification, discussions began about the passage of a new citizenship law, but these were, it has been argued, roadblocked by domestic politics (Green 1997).

2.2 Post-War Legislation Introducing Ethnicity: Ideological Considerations

The German settlers of previous centuries, who had settled primarily in Russia, Poland and Czechoslovakia, had become at home in Eastern Europe, and were accepted and even respected as Germans, renowned for their bread in Russia and their craftsmanship in Romania and Poland as well as for their strong work ethic. For the most part, they had remained in Eastern and Central Europe throughout the years, even into the Second World War. However, they suffered discrimination during and after the

3 This task was added to the German language, identified by its very own word: *Vergangenheitsbewältigung*.

war because of their German ethnicity. The provision of 16 million East Germans with the possibility of refuge in West Germany prompted maintenance of the RuStaG, but there were also two other populations of concern to the new Federal Republic of Germany: the post-war expelles and the Germans who still remained in Eastern and Central Europe.

At the close of World War II, the Polish border was shifted some 240km west, so that Poland lost territory in the east and gained it in the west, regaining Silesia for the first time since the Middle Ages. About 3.5 million ethnic Germans living in Poland were expelled westward, to Germany. Many remained, however, either having escaped expulsion by speaking Polish, being married to a Polish spouse, or having a skill which post-war Poland felt was needed. Likewise, in Czechoslovakia, Germans were expelled, but some did manage to remain. Altogether, some 12 million Germans were expelled from Central and Eastern Europe to Germany. The decision taken by the Allies at Potsdam sanctioning these expulsions was based upon an attempt to promote ethnic homogeneity in an attempt to avoid further ethnic tensions, and was based purely upon ethnicity.

In Russia, as World War II approached, the Germans' situation became increasingly uncertain. Hitler's declaration of war against Stalin in 1941 was the final impetus to destroy completely the German community within Russia. Stalin feared not only that ethnic Germans might side with Hitler against the "Russian Motherland", but also that they might incite ethnic Russians to the same goal. Consequently, Stalin's initial response was to remove the Germans as far away as possible as quickly as possible. In the interests of creating a reason to deport the over 600,000 ethnic Germans, the Presidium issued an announcement claiming that among the German population many thousands of spies were hidden, just waiting to carry out sabotage. In order to avoid having to take punitive measures, the Presidium decided to pre-emptively transfer the German population into other areas.

This decree resulted in the forced deportation of over 600,000 ethnic Germans from various parts of the Soviet Union to internment camps in Kazakhstan and Siberia. Meanwhile, Germans who had been in the Soviet armed forces were removed and put to work in the so-called "Labor Army" (*Trudarmee*). The 100,000 men in this "army" built railroads, canals and roads and worked in factories and mines during the war. The ethnic Germans remained in internment camps during World War II. Restricted to these camps during this time period, the Germans were also prohibited from owning land or from publicly speaking German. They were released only in 1955, when a government decree was issued, setting them free. However, the decree neither acknowledged wrongdoing on the part of the Soviet government, nor offered any compensation for suffering. The Germans continued to suffer discrimination and marginalization throughout the postwar period. Again, this policy was based upon German ethnicity – or *Volkszugehörigkeit*.

Finally, a third group of Germans – those who had suffered because of the actions of the German Nazis during World War II and still remained in Eastern and Central Europe – were to be included as beneficiaries of this post-war policy. Some areas (Romania, Hungary, Soviet Union) were not subject to the widespread expulsions. In addition, as already mentioned, a number of ethnic Germans were able to escape expulsion in Poland and Czechoslovakia; those who were of use to the Communist governments, such as miners or skilled craftsmen, were not permitted to leave, and those who had Polish or Czech spouses could often avoid expulsion.

These three groups of Germans, then – the East Germans, the post-war expellees, and the Germans still in Eastern Europe who suffered discrimination because of their ethnicity – were those provided for in the post-war laws. These legal instruments were Article 116, Paragraph 1 of the Basic Law

1949 and the *Bundesvertriebenen- und Flüchtlingsgesetz* (Federal Expellees and Refugees Act, or BVFG), 1953. These laws were drafted to include the expellees in post-war Germany and to provide options for the estimated three to four million ethnic Germans remaining in the East Bloc. Germans not living under Communism were not included, whereas those Communist countries in which even a few Germans lived were included, such as Bulgaria, Albania and China. A *Bundesverwaltungamt* official pointed out the element of ideology, rather than ethnicity, when he said that the policy of admission is not for all ethnic Germans: the policy is "independent of German ethnicity, when you think, for instance, that in Chile or Namibia there are German minorities; in the USA, too. The law does not even take the admission of such persons into consideration. So the policy is not simply about German ethnicity" (Interview, 2 October 1997).

Article 116

In the wake of the 1945-1949 expulsions, the citizenship status of the eight million ethnic German expellees in the FRG was legally unclear. Three distinct groups of Germans made up the membership of the expellees: *Reichsdeutsche*, or those who had been German citizens in the territories since ceded to Poland or the Soviet Union; *Sudetendeutsche*, those Germans from the Sudetenland who had become German citizens by the annexation of the Sudetenland in 1938; and so-called *Volksdeutsche*, ethnic Germans, but not German citizens, who had been expelled from their Eastern European homes (Schoenberg 1970, 36). While the citizenship status of the 4.4 million *Reichsdeutsche* was clear – they were indubitably German citizens – the status of the 2 million Sudetendeutsche and 1.6 million ethnic Germans had to be resolved. Article 116, Paragraph 1 of the Basic Law clearly included all expellees as full members in the German polity, setting expellees equal to native Germans with no differentiation between them. To assure the legal equality of the expellees, the phrase "deutscher Volkszugehöriger" (a person of German ethnicity, or "belonging to the German people") was explicitly introduced into the text of Article 116, Paragraph 1 (Parlamentarischer Rat, Hauptausschuß; 19 January 1949, 45th session, 596): "A German in the sense of this Basic Law is – pending other regulation – a person who possesses German citizenship or who, as an ethnically German refugee or expellee, spouse or child found refuge in the area of the German Empire in its borders of 31 December 1937." This phrase is not a proactive introduction of the term on the part of the drafters of the Basic Law, but is a direct result of Stalin's and the Allies' use of "deutsche Volkszugehörigkeit" as the determining factor for deportation in 1941 and expulsion in 1945. Thus, to include all of those who had been affected by these policies toward ethnic Germans, it was entirely logical and the best possible solution to use the same terminology in the legislation reacting to these events.

As noted above, the expellees were not the only population of concern, but the Germans remaining in Eastern Europe (estimated after the war at 3 to 4 million) and in East Germany (16 million) were as well. West German parliamentarians felt that both these groups of Germans were owed a special debt, particularly as they continued to suffer ethnically-based discrimination within the East Bloc, directly resulting from the Nazi activities in the East. In the *Parlamentarischer Rat*, in the debates over the drafting of the Basic Law, prior to the founding of the Federal Republic, this topic arose from the SPD ranks: "I propose here and now that we insert the words 'all Germans,' so that it is quite clear that we do not want to differentiate between Germans on that side and this side of the Iron Curtain" (Parlamentarischer Rat, Hauptausschuß 6th sitting, 19. November 1948, p. 574); the ideological conflict is mentioned quite clearly here. Consequently, West Germany provided a safe welcome to all of these ethnic Germans as a means of registering political protest against the East Bloc. Indeed, with this reg-

ulation, all East Germans and German minorities in Eastern and Central Europe were regarded as Germans, and, if they came to Germany, their citizenship status was recognized.

While the 1949 Basic Law (Art. 116) had established that expellees were set equal to full German citizens and, as such, subject to all rights, obligations and privileges of German citizenship, the Basic Law did not address the issue of integration nor did it actually grant them citizenship. Article 119 of the Basic Law clearly provides the basis for additional legislation, stating that "...the Federal Government may, with the consent of the *Bundesrat*, issue regulations having the force of law, pending the settlement of the matter [of expellee integration and distribution among the Länder] by federal legislation." The BVFG was this federal legislation, serving many purposes in one, providing for the integration of the expellees as well as the continued acceptance of (including the granting of West German citizenship to) ethnic Germans remaining in East-Central Europe and refugees from East Germany. The BVFG fulfilled this role and was in force until 1993, when it was replaced by the Act Dealing with the Consequences of the War (*Kriegsfolgenbereinigungsgesetz*, or KfbG).

BVFG: Acceptance

The BVFG established a legal basis for the integration and equality of the expellees in all spheres – economic, professional, social, educational and residential. Their integration was to be aided where necessary, even if it appeared that expellees were privileged over native Germans.[4] One of the means of aiding the expellees was to distribute them more evenly throughout Germany. This distribution would be fully voluntary (§27) and was intended to help them find housing and jobs in the destroyed Federal Republic. Expellees were explicitly set equal to native Germans in all *Sozialversicherung* (social insurance) issues; pensions, unemployment and health insurance were to be paid as if the expellees had been born and had worked in the Federal Republic all their lives. Explicit means of integration, such as language courses or job retraining programs, were not emphasized. Rather, emphasis was placed on equal representation of expellees in all spheres of German society. Ultimately successful in promoting integration, the BVFG provided a legal framework which enabled the expellees to take control of their own future.

Provisions for the continued acceptance of *Aussiedler* and refugees from East Germany, again reflecting West Germany's political positioning during the Cold War, were contained in the BVFG. Again, like Article 116, the BVFG was not a proactive law, but was the West German reaction to expulsion and discrimination. The term *Volkszugehörigkeit* figures more prominently in the BVFG than it did in the Basic Law, even being explicitly defined (§6). This definition of German ethnicity, which is a legal definition, provides a clear legal basis for the acceptance of ethnic Germans. The Basic Law had merely provided the basis for a new clause of citizenship in the Federal Republic, whereas the BVFG specifically addressed the integration of the expellees and continued acceptance of ethnic Germans.

The 1955 Act for the Regulation of Questions of Citizenship (*Gesetz zur Regelung von Fragen der Staatsangehörigkeit* or StaReG) explicitly draws on Article 116 of the Basic Law, stating that "whoever is a German in the sense of Article 116 without being a German citizen must be naturalized upon his application," unless his naturalization would compromise the domestic or external security of the Federal Republic (§6). German law distinguishes between two types of naturalization: *Ermessens-*

4 Among the *Bundestag* members, great concern was exhibited that the expellees not be treated as second-class citizens in any way. See, e.g. Stenographische Berichte, 12th Session, 20 October 1949, p. 285ff; 250th Session, 25 February 1953, p. 11971ff.

einbürgerung, or discretionary naturalization, and *Anspruchseinbürgerung*, a legal right to naturalization. The 1955 StaReG indicates that Germans in the sense of Article 116 have a legal right to naturalization with the use of the phrase "must be naturalized." Together with two later amendments, the StaReG is the last of the post-war regulations that explicitly include the post-war expellees and ethnic Germans remaining in the East Bloc.

BVFG: Integration

The BVFG was written with the intent of helping former German minorities achieve higher living standards, culturally, politically and economically. By enabling ethnic Germans to return to West Germany, then experiencing rapid economic growth, the German government fulfilled its duty. As persecution of ethnic minorities was widespread in post-war Communist countries, the German government was justified in fearing for the well-being of ethnic Germans. Furthermore, there was a second element that other ethnic minorities did not have to contend with: the reprehensible actions of German Nazis in Eastern Europe during World War II. The post-war German government suspected, correctly, that some measure of revenge would be taken against ethnic Germans for the atrocities committed in the name of the German Reich against the populations of Eastern Europe (Delfs 1993, 5; Kurthen 1995, 922). Consequently, the Bonn government put a great deal of effort into "rescuing" ethnic Germans from Eastern Europe, as was succinctly expressed in the *Bundestag* by a CDU member "[t]he acceptance of these people is not only a moral commandment, but a consequence of our self-understanding. ... Who would, world-wide, come into question as a place of refuge for these Germans, if we don't do so in the Federal Republic of Germany" (Deutscher Bundestag, StPr, 11/179, 13813). Although these ethnic Germans had, in some places, been resident in East-Central Europe for centuries, the two-fold factors of Communism and the aftermath of Nazism made the post-war situation quite different. Indeed, to cite Kay Hailbronner, "Some of the intricacies of German citizenship law and immigration policy, then, are products of World War II and the imposed division of Germany" (Hailbronner 1989, 73).

The 1913 citizenship law was written in the interests both of allowing Germans to return to Wilhelmine Germany and of avoiding non-German immigration to Germany. As we have seen, however, the 1913 law was maintained in post-war Germany for political-ideological reasons rather than nationalistic ones. The 1953 BVFG is, likewise, not based upon a deep-seated belief that all Germans could only fully realize their German identity by coming to Germany. Rather, so the argument went, ethnic Germans could avoid ethnically-based persecution and find a home with other Germans. The German state acknowledged a responsibility for all Germans in Eastern Europe, in part necessitated by the actions of the Nazi and Wilhelmine governments, but the BVFG was not central to the continued existence and development of Germany as a nation-state. Based in part upon the option provided in the RuStaG for *Auslandsdeutsche* to return to Germany, the BVFG continues in the tradition of regarding *Auslandsdeutsche* as settlers. Nonetheless, it is clear that the Cold War is the singlemost important factor in the return of these ethnic Germans.

3 *Aussiedler* Policy in Germany

These laws, then, are not, as is argued, primarily driven by ethnicity, but rather by a more ideological perception. The more political, rather than practical, nature of the policy is supported, for example, by the inclusion of the small number of ethnic Germans in China in the BVFG after 1957. The non-in-

clusion of other dictatorships in other parts of the world shows that the *Aussiedler* policy is restricted to Communist states in regions adversely affected by World War II. Although the term "expellee" was no longer used after 1950, the assumption continued to be that *Aussiedler* were leaving their homes in Central and Eastern Europe involuntarily, as a result of ethnically-based pressure to immigrate, or *Vertreibungsdruck*. Ethnic Germans in the United States suffered no such pressure, being accepted as immigrants in an immigrant culture and were, and are, thus not eligible for *Aussiedler* status. Averaging no more than 40,000 per year from 1950 to 1986, it is clear that, numerically, the immediate post-war *Aussiedler* migration flow was secondary to the eight million expellees who settled in West Germany within the four immediate post-war years. Toward the end of the Cold War, however, the numbers begin to rise until they were at a level ten times that of the 1950s.

Table 1: Numbers of Aussiedler entering Germany

Year	(Average) Number	Year	Number
1950-1954	23,293	1990	397,073
1955-1959	64,351	1991	221,995
1960-1964	17,814	1992	230,565
1965-1969	26,489	1993	218,888
1970-1974	24,909	1994	222,591
1975-1979	46,264	1995	217,898
1980-1984	48,816	1996	177,751
1985	38,968	1997	134,419
1986	42,788	1998	103,080
1987	78,523	1999	104,916
1988	202,673	2000	95,615
1989	377,055		

Source: *Info-Dienst Deutsche Aussiedler*, August 1996; March 1998.

While the number of *Aussiedler* who succeeded in coming to Germany during the Cold War was comparatively low, the legal framework accepting and incorporating *Aussiedler* into Germany was seen not only as a means of providing ethnic Germans with an escape valve, but was also an important tool in regulating treatment of ethnic German minorities in Central and Eastern Europe. By maintaining the policy of accepting ethnic Germans, West Germany forced the Communist regimes to accept that minority rights, including language rights and emigration permission, were of major concern. The 1975 Helsinki Final Act, for example, was certainly influenced to some degree by the German policy.

Although many believe that the basis for acceptance as an *Aussiedler* in Germany is merely German ethnicity, it is, in fact, *Vertreibungsdruck* arising as a result of German ethnicity in particular countries: "The KfbG has the straightforward purpose of bringing to Germany people, and in some cases their children also, who experienced particular adversities because of their German nationality as a result of the Second World War," (Interview, 2 October 1997). Thus, the potential *Aussiedler* must have seen himself in his home as a German, represented himself as a German to others and, as a direct

result, have suffered ethnically-based discrimination. The distinction between ethnicity and ethnically-based discrimination is a crucial one and one that is generally not well understood in scholarly and journalistic literature. Indeed, the case of the *Aussiedler* is often incorrectly used to "prove" that Germany is a racially-based, exclusionist state. For example, Miriam Feldblum makes the following comment:

> "In Germany, citizenship traditionally has been based on lineage criteria or the rules of *jus sanguinis*, whereby one is automatically attributed German citizenship if one's parents or ancestry are German; if not, then a procedure of naturalization must be undertaken. Thus, 'ethnic Germans' from Russia and other parts of eastern Europe are granted citizenship automatically upon entry into Germany." (Feldblum 1998, 246).

In the quote above, there are several errors. If one's ancestry is German, one is **not** automatically attributed German citizenship, as Americans of German descent seeking an EU work permit must reluctantly acknowledge. The person in question must come from the former Soviet Union or, until 1993, Eastern Europe and have suffered ethnically-based discrimination. Furthermore, ethnic Germans are not automatically granted citizenship, but must fill out a complicated application form, fulfill several prerequisites and pass a language test. However, Feldblum is by no means the only author, academic or otherwise, who improperly uses the case of the *Aussiedler* to argue for Germany's exclusivity. A *Washington Post* article in 1996, for instance, incorrectly states that Germany "grants naturalized citizenship to only about 10,000 non-ethnic Germans a year" (Atkinson 1996). The number of *non-Aussiedler* naturalizations in 1993 was 29,108, in 1994 42,984 and in 1995 53,383 (*Daten und Fakten*... 1997, 33). In addition, many more non-citizens are eligible for naturalization than apply for naturalization. An article in *The Nation* also incorrectly argues that

> "By law and tradition, German citizenship is based on jus sanguinis - or blood - which means that if you were born in Germany to a Turk brought there under the guestworker program of the 1960s, attended German schools, speak fluent German with a Bavarian accent and think of yourself as at least as German as you are Turkish, you are not entitled to German citizenship; whereas, if you were born in, say, Kazakhstan and retain only the most vestigial ties to Germany and its language but can prove your German ancestry (by means, for example, of your father or grandfather's Nazi party card), then you are entitled to German citizenship" (Talbot 1994, 834).

A Turkish citizen can certainly apply for and receive German citizenship; in 1997, there were 82,900 naturalizations of foreigners. In 1993, Germany created easier citizenship requirements precisely for children of guestworkers who had been born in Germany and attended school there – such as the hypothetical individual mentioned above.[5] The misconceptions remain.

4 The Post-Cold War De-Ethnicization of German Citizenship

In the post-World War II period, the West German government provided the opportunity to its co-ethnics to "return" to Germany from the Communist regimes. While proponents of Germany's policy as an ethnically-based policy would argue that it is still the co-*ethnics* to whom this privilege was extended, the return policy for *Aussiedler* was only one example of Germany's ideologically-determined policy – at the same time, asylum regulations were particularly open to asylum seekers from

5 For those aged 16 to 23, citizenship was in 1993 made essentially automatic upon application if the individual had eight years' residence in Germany and six years' attendance in German schools.

Communist states of any ethnicity – and it is thoroughly logical, according to this principle, that ethnic Germans living in Communist states be offered a "return" to Germany. Similarly, for the logic of an ideologically-determined, rather than ethnically-determined, policy to hold, it would mean that, when the ideological polarization of the Cold War began to break down, the post-war ideologically determined policies should, likewise, be restricted.

This shift in policies is indeed the case and, indeed, as Communist governments moderated their stances during the Cold War, German responses changes as well. During the Cold War overall, Germany was remarkably open to those who were persecuted under Communism. However, with the end of the Cold War, even in the mainstream American press, the curtailment of the *Aussiedler* privileges is being recognized and associated with the restriction of other post-war policies: "[Germany] has curtailed one of the world's most liberal asylum policies [and] discouraged the resettlement of ethnic Germans from eastern countries" (Drozdiak 1997). The *Aussiedler* policies have been, in the time period since 1989, severely curtailed to the point that we can talk about an impact on the concept of German citizenship. The laws passed and policy decisions made have been constructed so that they can continue to have an ever-more restrictive impact on *Aussiedler* migration. The assumption that ethnic Germans in Eastern and Central Europe needed protection from ethnic discrimination is now an assumption of the past.

The basis for acceptance as *Aussiedler*, although it has changed significantly over the years, has generally been understood as the following: a German citizen or ethnic German who fled from one of the Eastern and Central European countries and sought refuge in Germany. An ethnic German is defined "in the sense of this law [BVFG] as someone who let himself be known as a German in his home, insofar as his letting himself be known as a German was confirmed by certain characteristics such as descent, language, upbringing, culture" (§ 6 BVFG). In the legal literature, these requirements are composed of two components: the subjective acknowledgement of being German and certain objective characteristics proving that acknowledgement. Both components need to be present in order for an individual to receive *Aussiedler* status and, furthermore, the individual must suffer ethnically-based discrimination. While this requirement consisted largely of policy and court cases rather than actual legal language, in §13 BVFG it is made clear that "anyone who is integrated into economic and social life [in his home in Eastern and Central Europe or the former Soviet Union] at a level corresponding to that of his previous conditions" may not be accepted in Germany as an *Aussiedler* since it is clear that he is not suffering in his current home.

However, until the late 1970s, in keeping with the ideological climate of the time, ethnically-based discrimination was generally taken for granted by the German authorities. No proof needed to be offered as to whether each ethnic German was suffering on the basis of being a German. Thus, during the height of the Cold War, it could be said that ethnicity and ethnically-based discrimination were indeed essentially synonymous; any ethnic German from the East Bloc could be virtually guaranteed admission as an *Aussiedler*. At the same time, however, it is clear that Germany was committed to providing refuge for any individuals suffering persecution under any regime. In 1971, a full 57 per cent of those who applied for asylum (the majority from Eastern Europe or the Soviet Union) were accepted in Germany, and those who were not granted asylum were granted a temporary stay of deportation – renewable indefinitely. The message was that no one should be forced to return to a life under Communism. As the Cold War neared an end, the acceptance numbers dropped to single digits (Andersen and Woyke 1995, 710). Germany's commitment to persecuted individuals, however, particularly with regard to those suffering ethnically-based discrimination, remains strong. In the

Kosovo crisis in spring 1999, Germany accepted more Kosovo Albanian refugees fleeing from the ethnic persecution of the Serbs than any other country.

Germany, however, like every other country, has its limits. Where no true need exists, Germany does not see the need for acceptance. Hence, Germany's contested policy of returning Bosnian refugees in 1995 and Kosovars in 1999. This policy persists not only with asylum-seekers, but also with ethnic Germans. In the post-Cold War world, they are no longer as threatened as during the Cold War. Not only did the concept of whether ethnic discrimination was required for entry shift in the legal texts but the concept of what constituted being a German changed as well. As noted above, in order to be admitted as an *Aussiedler*, the "subjective acknowledgement of belonging to the German *Volk*" (*Bekenntnis zum deutschen Volkstum*) was required, as were certain confirming "objective characteristics," such as the following: German descent, language, upbringing or culture – as expressed in the retention of certain German dishes, songs, fairy tales or religious practices – (§6 BVFG). Until the late 1970s, this requirement was also interpreted rather loosely. Not only was ethnically-based discrimination taken for granted, but the subjective acknowledgement and objective characteristics were as well. In general, documents showing German descent were regarded as sufficient and, furthermore, knowledge of the German language was not required (Ruhrmann 1994). The courts and other relevant authorities saw the situation in the following light: one of the distinguishing characteristics of the ethnically-based discrimination in Central and Eastern Europe was that Germans, as part of the forced assimilation policy of the Central and Eastern European governments, were not permitted to speak German. Consequently, therefore, it was not reasonable to ask that they be conversant in German (Ruhrmann 1994, 108). Various court cases establish what sorts of documents were and were not acceptable to show German ancestry; belonging to the Waffen-SS is not acceptable, since non-Germans were permitted to become members; likewise, marrying a German proves nothing. Merely going to German organizations once in a while proves nothing; really becoming involved in the life of the association would be required (Ruhrmann 1994, 90-91).

Starting in the late 1970s, however, the situation shifted somewhat, not owing to any change in the laws, but rather to court decisions altering the interpretation of the relevant laws in reaction to changes in the political landscape (Ruhrmann 1994, 108). Rather than *Vertreibungsdruck* being taken for granted in all situations, certain factors were now regarded as a refutation of *Vertreibungsdruck*. These included an active turning away from German *Volkstum*, a high-level political or professional employment which implied supporting the (Communist) political system, and an application for asylum in Germany that would imply a reason for migrating to Germany, such as general political persecution or an economic basis, other than ethnically-based discrimination (Ruhrmann 1994, 111). Thus, the connection is made: if a German wishes to migrate to Germany because he is German and wishes to be in a country where he will not be persecuted on an ethnic basis, then he may be accepted as an *Aussiedler*. If he is simply seeking relief from poverty, no *Aussiedler* status can legally be granted. The link between admission and ethnic discrimination is, thus, strengthened.

When Gorbachev came to power in the Soviet Union in 1985, the political landscape of Eastern and Central Europe began to change even more. In recognition of this shift in the poles of the Cold War, the German Federal Administrative Court decided in 1986 that there could be exceptions to the rule: the legislature should develop new regulations to adapt to the new political developments (Ruhrmann 1994, 111). However, in practice, the policy was the following: if the investigating authorities could not explicitly disprove the assumed *Vertreibungsdruck*, then the potential *Aussiedler* had to be accepted into Germany. This generous admission policy continued along roughly these lines until the

end of 1992 and the passage of the 1992 *Kriegsfolgenbereinigungsgesetz*, or Act Dealing with the Consequences of the War, henceforth KfbG. The KfbG severely curtailed *Aussiedler* migration as of 1993, and will be discussed in a later section.

Devolution of Privilege

As emigration restrictions were eased in Central and Eastern Europe in the late 1980s, the *Aussiedler* migration flow rose correspondingly steeply (See Table 1). On a purely practical level, West Germany was simply not equipped to accept the ca. 380,000 *Aussiedler* who arrived in 1989 and the 400,000 *Aussiedler* who arrived in 1990. In addition, as the East Bloc opened up, the situation for ethnic minorities improved and opportunities for ethnic Germans to remain in their homes increased as ethnic discrimination lessened. Germany signed bilateral agreements also providing for the protection of ethnic minorities with Russia, Poland, Romania, Hungary and the Czech and Slovak Republics in the early 1990s (Haberland 1994c, 21).

Dissenters might argue that, if *Aussiedler* policy is so strongly ideologically-defined, why was it not simply removed at the end of the Cold War? Two factors played, and continue to play, a significant role in this matter. As noted earlier, during the years of the Cold War, relatively few ethnic Germans succeeded in receiving permission to emigrate from their homes in Eastern and Central Europe to Germany. There were points in time at which emigration for some ethnic Germans was made possible, such as through the 1975 Helsinki Final Act (Interview, 19 Feb 1997). However, even then it was more difficult for ethnic Germans than others to receive even a visitor's visa to Germany. Thus, in large part, the German government's *Aussiedler* policy, like the West German policy of considering all East Germans to be holders of West German passports, was more a symbolic move than an actual policy of admission. Nonetheless, this symbolic move undoubtedly helped improve the situation of the ethnic Germans in Eastern and Central Europe. When the Iron Curtain began to rust and holes began to appear, *Aussiedler*, some of whom had been raised on fairy-tale-like stories of the German "homeland," came to Germany in a largely unanticipated flood. At a time when Germany was scrambling to adapt and expand *Aufnahmelager*, or reception centers, previously used for East German refugees in the pre-1961 era, the most the German government could do in 1988 (202,673 *Aussiedler* came in 1988) was to appoint as *Aussiedlerbeauftragter* (Commissioner of *Aussiedler* Affairs) Horst Waffenschmidt, who held the post until the election of the SPD in September 1998, when he was replaced by MdB Jochen Welt (SPD), to begin to create policy to deal with the influx of ethnic Germans. It was simply not practically possible to close the gates at the precise moment in time when ethnic Germans first had the opportunity to take advantage of the generous *Aussiedler* policy, and came in the largest numbers since the 1940s.

The second, inter-linked, factor which made the immediate removal of the *Aussiedler* policy impossible was domestic politics. The constellation in the *Bundestag* which prevented the passage of a new citizenship law (Green 1997) also prevented the outright abandonment of the *Aussiedler* policy. The more conservative elements in the *Bundestag* firmly believed that ethnic Germans should at all costs be permitted to continue coming to Germany, while other political elements pulled for a restriction on the *Aussiedler* migration, saying that the time for protecting ethnic Germans was past. Ultimately, the political situation came to a head in 1992, and was resolved in what became known as the asylum compromise:

> "On the basis of the asylum compromise of 6 December 1992, the mediation committee agreed on the following points: the number of *Aussiedler* admissions per year will be limited; a final date for cutting off applications is not established; anyone born after the passage of the

> KfbG can no longer be a *Spätaussiedler*; for applicants from the former Soviet Union, the *Kriegsfolgenschicksal* [fate of suffering the consequences of the war] will be legally assumed; all others must prove *Kriegsfolgenschicksal*." (Haberland 1994b, 55).

Although *Aussiedler* policy could not be abolished completely, nonetheless, starting in 1989, a number of laws were passed which began to control and restrict the acceptance and integration of *Aussiedler* without wholly abolishing the practice. The *Wohnortzuweisungsgesetz* (Residence Assignment Act, WoZuG) of 1989 was the first law affecting *Aussiedler* and called for the even distribution of *Aussiedler* within West Germany according to a quota system; each *Land* receives a percentage based upon area and population. The *Länder* are then responsible for distributing the *Aussiedler* evenly within each *Land*. When the quota is filled for the year, even if it is in June, the *Land* is not required to accept any more Aussiedler.

Table 2: Acts Affecting Acceptance and Distribution of *Aussiedler*

1989	**Wohnortzuweisungsgesetz**: §1 "In the interests of achieving a sufficient standard of living for Aussiedler ...," §2 "Aussiedler and Übersiedler ... can be assigned to a temporary residence." Intended to remain in effect until 5 July 1992.
1990	**Aussiedleraufnahmegesetz**: Requires potential Aussiedler to apply for admission from their countries of origin. In conjunction with WoZuG, Aussiedler are assigned to a particular Land. This Land must also agree that potential Aussiedler fulfill all admission requirements.
1992	**Kriegsfolgenbereinigungsgesetz:** §4: Creates new legal category: "Spätaussiedler" (late *Aussiedler*); not all spouses or children are included in this category. §5: Lists grounds for exclusion from Spätaussiedler category. §6: Creates new "definition" of German ethnicity: "(2) Anyone born after 31 December 1923 is an ethnic German if: 1. he is descended from a German citizen or an ethnic German, 2. his parents, one parent or other relatives have passed confirming characteristics, such as language, upbringing on to him, **and** [my emphasis] 3. he declared himself, up until he left the area of German settlement, to be of German nationality, or recognized himself as German in some other manner or belonged to the German nationality according to the law of his country of origin. The requirements according to Number 2 are seen as fulfilled if the passing on of such confirming characteristics was not possible, or cannot be seen as reasonable because of the conditions in the country of origin. The requirements of Number 3 are seen as fulfilled if the recognition as a German would have endangered life and limb, or would have been connected with grave professional or economic disadvantages..." §27: Sets limit at an average of the numbers of *Aussiedler* migration of 1991 and 1992 ± ten percent
1992	WoZuG extended until 5 July 1995
1995	WoZuG extended until 5 July 2000
1996	WoZuG altered; Non-residence in assigned Bundesland for the first two years of residence in Germany now results in non-payment of all benefits from Work Promotion Act, Federal Welfare Act for that time.

1996	Language test introduced as fully institutionalized method of checking "objective characteristics;" nearly one-third fail.
1999	WoZuG: restriction in effect until 2009; this means that it can affect some *Aussiedler* up to four years.
2000	1 Jan 2000: yearly quota of *Aussiedler* reduced to 100,000.

Unlike the distribution of expellees, this distribution is not voluntary, but is required for both *Länder* and *Aussiedler*.[6] Initially valid for three years, this law was intended to lessen the impact of *Aussiedler* migration on any particular *Bundesland*. The *Aussiedler* migration had concentrated primarily in Lower Saxony, Northrhine-Westphalia, Baden Württemberg and Bavaria, largely due to family-determined network migration and higher possibility of employment. The WoZuG did not, however, take into account the negative impact that this law would have on *Aussiedler* integration, concentrating instead on the good of the state and native Germans. The WoZuG was revised and strengthened in successive versions (will be addressed later in this section). The WoZuG bears a striking resemblance to a law passed in the mid- to late 1970s restricting percentage of non-citizen children in schools to 20 to 30 percent, and of non-citizens in residential areas to 9 to 12 percent. One of the main reasons cited for this law was "protection of the social infrastructure from the costs of foreigners" (Wilpert 1991, 52) which is the same argument used in the case of the *Aussiedler*. In neither case were the needs or best interests of the affected group considered.

The *Aussiedleraufnahmegesetz* (AAG) (*Aussiedler* Acceptance Act) of 1990 shifted part of the burden of determining *Aussiedler* status outside the borders of Germany. As of 1990, potential *Aussiedler* were required to fill out a form establishing both information about the applicant and their families. In the official motivation for the bill (*amtliche Begründung*), we read that any *Vertreibungsdruck* which was supposed to exist does not exist any longer, and that therefore it is not unreasonable to ask ethnic Germans to wait in their countries of origin to apply for *Aussiedler* status. They are no longer fleeing for their lives, and so do not need to be accepted immediately upon their application (Drs 11/6937, p. 5).

In this application, the applicant must supply detailed information on his family including the maintenance of German language and customs. Applicants are also asked to provide information on German language knowledge (Bundesverwaltungsamt 1993). The application is handed in at a German consulate in the country of origin, then forwarded on to Germany for the decision-making process, which can take three or more years. Starting in 1996, potential *Aussiedler* must also pass a German language test. Upon arrival in Germany, the statement of language ability is tested in a brief oral exam consisting of a simple conversation – also maintained after 1996. If it appeared that the potential *Aussiedler* had misrepresented his German abilities in the application form, he could be denied entry and returned to his country of origin.[7] No statistics are available on the number of potential *Aussiedler* rejected. The AAG and its necessary application proved effective immediately; the numbers of *Aussiedler* dropped by fifty percent from nearly 400,000 in 1990 to around 222,000 in 1991. While the number of 222,000 was apparently not a set number, but rather the number of applications "which the civil servants could feasibly process" in one year (Interview, 2 October 1997), this was the num-

6 As noted earlier, §27 of the BVFG calls for a distribution of expellees within Germany and notes that the distribution is voluntary on the part of the expellees as well as of the *Länder*.

7 The applicant is, in fact, warned of this possibility on the application form that the permission to settle in Germany can be taken back if it is determined that the information given is untrue or incomplete.

ber that was ultimately used to set a quota, although the actual numbers admitted were consistently well below 200,000. As of 1 January 2000, the quota was further reduced to 100,000, the change hidden in the Act establishing the Federal Budget (*Haushaltsgesetz*) to avoid any discussion. As of 1990, ethnic Germans who migrated to Germany on tourist visas, rather than follow the prescribed path, forfeited their *Aussiedler* status.

The passage of the KfbG in 1992 (to take effect in 1993) as part of the so-called asylum compromise marks the end of the era of loose regulations on *Aussiedler* admission. During the late 1980s and in the early 1990s, Germany was a haven for three groups of migrants: East German refugees (*Übersiedler*) or, later, simply moving from East to West, asylum seekers and *Aussiedler*. These three groups resulted in a total migration to West Germany of nearly 6 million within 9 years. In the table below, the impact of the restrictive laws as well as of German unification can clearly be seen.

Table 3: Migration to Germany

	Aussiedler	*Übersiedler*	Asylum-seekers	Total
1987	78,523	22,838	57,379	158,740
1988	202,673	43,314	103,076	349,063
1989	377,055	388,396	121,318	886,769
1990	397,073	395,343	193,063	985,479
1991	221,995	249,743	256,112	727,850
1992	230,565	199,170	438,191	867,926
1993	218,888	172,386	322,599	713,873
1994	222,591	163,034	127,210	512,835
1995	217,898	168,336	127,937	514,171
Total	2,167,261	1,802,560	1,746,885	5,716,706

Sources: *Info-Dienst Deutsche Aussiedler* September 1998. Pp. 4-5; *Datenreport* 1998, 43-45; Zimmermann 1998, 522-523.

While the asylum debate was raging loud and furiously in the *Bundestag* and the German media, little was said in the media about the proposed restrictions on *Aussiedler* rights. Indeed, the *Aussiedler* law was passed on 22 December 1992, late at night – too late to go into the newspapers the next day – to go into effect just 8 days later, on 1 January 1993. This method ensured that no Polish or Romanian Germans would realize that their permission to enter as *Aussiedler* was about to be withdrawn and would not storm the border between Christmas and New Year (Münz 1999). The CDU would have preferred to maintain the *Aussiedler* policy as it was, but the SPD exerted great pressure to reduce the influx of *Aussiedler* (Hämmerle 1994, 125). Even so, there seems to have been more consensus on the *Aussiedler* issue than on the asylum issue. In what has come to be known as the asylum compromise (*Asylkompromiß*), both the right to asylum and the rights of *Aussiedler* to migrate to Germany were restricted starting in 1993. The CDU recovered quickly, however, stating that the KfbG was for the good of *Aussiedler* and Germany alike (Waffenschmidt 1994, 129).

The 1993 KfbG includes a revised version of the BVFG, replacing any previous version. The most significant change in the law is a restriction of countries of origin. The law accepts only ethnic Germans from the former Soviet Union, who are still said to be suffering under *Vertreibungsdruck* and

who, furthermore, suffered the most under Communism, having been deported eastward to Siberia or Kazakhstan. In the *Begründung* for the 1992 KfbG, it is noted that the German language and self-identification as German are important, however, not as a means of determining that someone is "German enough," but that they suffered ethnically-based discrimination. All others, from other Eastern and Central European countries, must prove explicitly that they **still** suffer ethnically-based discrimination or the after-effects of earlier such discrimination, as minority rights have been significantly improved in the Eastern and Central European countries. The data since 1993 show that only a few ethnic Germans from other formerly Communist countries can prove ethnic discrimination to the satisfaction of the examiners in the *Bundesverwaltungsamt*. Ethnically-based discrimination is no longer taken for granted in Eastern and Central Europe, and is certainly not synonymous with ethnicity. After 1992, only some ethnic Germans from the former Soviet Union are eligible for *Aussiedler* status. Not even all Soviet Germans are eligible for *Aussiedler* status. In a significant procedural change, the KfbG now specifically lists bases for exclusion from *Aussiedler* status (§5). Having aided the national socialist or other totalitarian government is now grounds for not receiving *Aussiedler* status, as is having acted in a manner contrary to basic human rights. Likewise, anyone who used his position to his own advantage or to others' disadvantage is excluded, as is anyone who held a high-level position, such as could have only been achieved through a personal connection with the totalitarian system (§5 BVFG 1993). The KfbG also sets an end to *Aussiedler* migration, stating that those who were born after 1992 may not enter as *Aussiedler* after 2010, although they may come as family members.

In June 1996, a more elaborate language test was introduced, to be administered in the country of application. Whereas previously, the applicant only had to state his level of German ability, as of 1996, he had to demonstrate this ability. Before the introduction of these tests, the language tests took place only in Germany. While passing the language test does not guarantee admission as an *Aussiedler*, passing the test is required for entry. Partially explained by the increase in mixed German-Russian marriages, the German language competence of the post-Cold War *Aussiedler* is at a much lower level than that of their predecessors. Thus, these tests are a means of ensuring that ethnic Germans have the linguistic tools to ease their integration into contemporary German society; forty percent do not appear to a scheduled test and, of those who appear, between thirty and forty percent fail the language test ("Aktuelle Daten zur Aussiedlerpolitik" 1997, 1; "Jahresbilanz Aussiedlerzahlen 1998).

The official reasoning for the language tests is that too many potential *Aussiedler* were misrepresenting their knowledge of German on the application forms and, as a result, "having" to be sent back to their country of origin ("Nicht mehr stumm wie ein Fisch" 1998, 65; "Rauhe Sitten" 1996, 60). A Federal Administrative Court (*Bundesverwaltungsgericht*) ruling in November 1996 lent extra support to this decision, declaring that ethnicity or descent alone does not suffice for claiming *Aussiedler* status; some basic grasp of the German language must also persist: "[a]nyone who has only inadequate German knowledge and speaks Russian as a mother tongue or prefers to speak Russian as the colloquial language generally belongs to the Russian cultural circle" (BVerwG 9 C 8.96) and is, thus, not eligible for *Aussiedler* status. Furthermore, the court argues, the subjective acknowledgement as a German is the crucial element of being admitted as an *Aussiedler*. In the case of Germans from the former Soviet Union, the entry in the so-called domestic passport is a crucial piece of evidence: if a German had his nationality[8] entered as "German," he is halfway to *Aussiedler* status. On the other

8 While in the language of international law, "nationality" is interchangeable with "citizenship," in Eastern and Central Europe, "nationality" is essentially interchangeable with ethnicity. It is in this sense that I use the word.

hand, if his nationality was listed as "Russian," in almost all cases, he will be denied entry (BVerwGE 9 C 392.94; BVerwGE 9 C 391.95). The reasoning is two-fold: first, the BVFG (and, later, KfbG) states that entry is granted to those who acknowledged themselves to be German, and, second, entry is offered to those who suffered ethnic discrimination as Germans. If a person is officially listed as Russian, he can hardly have suffered ethnic discrimination on the basis of his official nationality. In this particular *Bundesverwaltungsgericht* (Federal Administrative Court) case, an ethnic German from the former Soviet Union had been denied admission as an *Aussiedler* and was claiming that his rights had been violated. However, as the case moved to the highest level, his case was lost on the basis that he did not fulfill the requirements as cited in the law. This court decision, which even went a step beyond the law in requiring knowledge of the German language, has been hailed by politicians and *Aussiedler* case workers as a significant step toward integration.

There is some dispute among officials as to the exact purpose of the language tests. According to some, the German tests determine whether the potential *Aussiedler* learned German as a native language. In this set-up, only German learned as a native language is acceptable; therefore, an individual who speaks fluent German learned from a year abroad at Tübingen could theoretically fail the language test. An Interior Ministry official maintained that of course the examiners – trained by the Foreign Ministry – can tell if the applicant learned German as a native language or as a second language (Interview, 10 October 1997). The purpose of the language test is allegedly to determine, particularly in the face of the emergence of forged documents, true German identity. However, in the confusion which marks the German government's *Aussiedler* policy, others agree that the language tests will have a substantial effect on the *Aussiedler's* integration into German society and may have been instituted for this purpose (15 October 1997). Either dialect or high German learned as a non-native language suffices. However, although *Aussiedler* themselves must take this test, accompanying family members must not; the current Aussiedler numbers are composed of ca. 25 per cent *Aussiedler* and ca. 75 per cent family members, who receive either a foreigner's residence visa in Germany or are eligible for German citizenship as the spouse of a German citizen.

According to official publications ("Informationen zur Duchführung von Sprachtests" 1996), the language tests do not represent a restriction of *Aussiedler* entry, but are simply a new way of processing entry. This is not entirely true; while the knowledge of German language has been one of the confirming characteristics of the subjective acknowledgement of German ethnicity since the passage of the BVFG in 1953, earlier it was not required, but knowledge was assumed or ignorance excused (Ruhrmann 1994). An examination of court cases shows that the knowledge of the German language has played an increasingly central role over time, particularly since the end of the Cold War (BVerwGE 9 C 9.86), with the knowledge of German often being a decisive factor in admission. Furthermore, *Aussiedler* counselors have indicated in interviews that, prior to the institution of language tests, many *Aussiedler* spoke little if any German (Interviews, 19 February 1997; 27 February 1997; 10 February 1998). I would argue that the institution of language tests can be interpreted as testing for integration capacity rather than ethnic identity. There are many contradictions in the German policy for *Aussiedler*, and this is but one of them.

The shift in time toward language exams, taken together with court cases and evidence collected in interviews, suggests that the German government has used the introduction of language tests to restrict the numbers of *Aussiedler* entering Germany. Despite the claim that the language test does not represent a shift in policy, the fact remains that fewer applications are being sent in and fewer are being accepted than before the institution of the language tests (See Appendix, noting difference in admission after 1996). The press also sees the introduction of language tests in this way: "The govern-

ment has long regretted what it once set in motion. Officially they still announce that the gate remains open for Russian Germans. In reality, they are trying to stop the flow of those seeking to come "Heim ins Reich" (home to the empire) – and any deterrent will do" ("Nicht mehr stumm wie ein Fisch" 1998, 65). The German government has restricted entry, on the basis of integration, to those who can best integrate into Germany society. The emphasis once placed on language as a carrier of identity has shifted to an emphasis on the significance of language for integration and communication.

By the late 1990s, it became apparent that the 1989 *Wohnortzuweisungsgesetz* (extended in 1992 until 1995, in 1995 until 2000 and in 2000 until 2009) was not working according to plan; *Aussiedler* would be assigned to a *Land*, but promptly move to, for instance, Lower Saxony to be near family or friends. Accordingly, a new version of the WoZuG was passed in 1996 which linked social services to place of residence. For two years after entry to Germany, the *Aussiedler* must remain in the *Land* of assignment, or else forfeit all social services such as language courses, welfare, unemployment benefits, job retraining programs, etc. Since the majority of *Aussiedler* are on some form of public assistance during their first two years, this law has been successful in ensuring that *Aussiedler* remain in the assigned *Land*, thus evening out the burden on the *Länder*.

However, this law raises questions about restrictions of the basic civil rights of *Aussiedler*, since their freedom of movement, as guaranteed in Article 11 of the Basic Law for all Germans, is no longer guaranteed within the German border. On this issue, one of the government officials who drafted the law claims that no one is forcing the *Aussiedler* to remain in one place (Interview, 2 October 1997). In the WoZuG itself, §2 does state that the freedom of movement of the *Aussiedler* is restricted; however, this restriction by law is permitted in Article 11, Paragraph 2 of the Basic Law "if sufficient living conditions are not available and specific burdens would arise for the general population." Article 19 of the Basic Law further regulates restrictions of the basic rights by saying that rights cannot be restricted on a case by case basis, but must be generally valid. Thus, the question arises as to whether the *Aussiedler* are a single case, or are seen as a general situation. Article 3 of the Basic Law, moreover, prevents discrimination on the basis of, among other criteria, "home and origin." While the freedom of movement of the *Aussiedler* is being legally restricted, they are also possibly being discriminated against as a single group, such as is prohibited in Article 3 of the Basic Law. The Basic Law specifically restricts freedom of movement to Germans; asylum seekers, for instance, are placed where the government wishes. In this case, the *Aussiedler* are not treated as the Germans the government steadfastly maintains them to be, but in the same manner as asylum seekers.

In legal literature, no debate has emerged over this restriction of a basic right that should be available to all Germans. The literature has been far more concerned over the possibility that *Aussiedler* might be overly privileged in contrast to indigenous Germans or to East German refugees with respect to pensions and other monetary benefits (Binne 1991, 493; Preis and Steffan 1991, 12). Some authors make an attempt to convince readers that *Aussiedler* are not overly privileged (Löffler 1989, 139), while even the previous Commissioner for *Aussiedler* Affairs, Horst Waffenschmidt, said in a 1992 address to the *Bundestag* that all appearances of privileging *Aussiedler* over the regular German citizen should be avoided (Waffenschmidt 1994, 130). This treatment suggests that *Aussiedler*, in fact, constitute a group that is declining in importance in Germany and whose admission is being maintained for reasons other than those of ethnic privilege.

5 Conclusion

In many ways, it is only with the end of the Cold War that World War II has truly been concluded. Some elements in post-war Germany were based upon a wish to "make up" for the atrocities committed during the Nazi regime, while others sought to avoid such a regime re-emerging. Certain basic measures such as the introduction of a 5 per cent clause to hinder splinter parties entering the *Bundestag* were introduced, along with other measures designed to limit the probability of "another Hitler" coming to power. Likewise, ethnic Germans in Communist regimes who suffered ethnic discrimination largely because of the Nazis' atrocities in Eastern and Central Europe were welcome in Germany, as outlined in Article 116, Paragraph 1 of the Basic Law. The less-quoted but equally valid Paragraph 2 of Article 116 also offers German citizenship to individuals, and their children, stripped of German citizenship between 30 January 1933 and 8 May 1945 for political, racial or religious reasons, who have returned to Germany after the end of the war – primarily Jews. More recently, as of 1990, Jews from the former Soviet Union are permitted to migrate to Germany where they receive widespread benefits including language training, welfare payments, job re-training and access to German citizenship (Harris 1997). Likewise, anyone suffering persecution at home, primarily Communist countries, could come to Germany under its liberal asylum law, Article 16 of the Basic Law, which was judged to be the most liberal in all of Western Europe. This liberal asylum law, enshrined in the constitution, sought to provide a refuge to those in need of it – such as Jews sought during the Nazi regime in Germany. Even today, after the more restrictive version of the law passed in 1993, Germany still receives 50 per cent of all asylum applications in the EU.

All of these post-war laws or policies were designed with the two-fold goal of compensating for the Nazi past and providing an escape from totalitarian governments. The ideological component is thus a more fundamental defining characteristic of post-war citizenship policy than the ethnic component. It can be seen that the German acceptance of ethnic Germans shifted as policies in Eastern Europe shifted; the post-Cold War period has seen many changes in these post-war policies. No longer is the ideology of the Cold War a factor in the admission of *Aussiedler* or of refugees from East Germany and *Aussiedler* policy is being dismantled step by step.

References

"Aktuelle Daten zur Aussiedlerpolitik." Info-Dienst Deutsche Aussiedler. October 1997. Pp. 1-3.

Andersen, Uwe and Wichard Woyke, eds. (1995). Handwörterbuch des politischen Systems der Bundesrepublik Deutschland. Opladen: Leske & Budrich.

Atkinson, Rick. (1996). "200-Year-Old Ties Pull Ethnic Germans Back: Return of Vast Numbers From Former USSR Strains Bonn's Preferential Immigration Policy." The Washington Post, A Section, p. A20.

Beauftragte der Bundesregierung für Ausländerfragen. (1997). Daten und Fakten zur Ausländersituation. Bonn: Beauftragte der Bundesregierung für Ausländerfragen.

Binne, Wolfgang. (1991). "Unterschiedliches Rentenniveau für Aussiedler und Übersiedler - ein Verstoß gegen das Gleichheitsgebot des Grundgesetzes?" Deutsche Rentenversicherung (7):493-503.

Brubaker, Rogers. (1992). Citizenship and Nationhood in France and Germany. Cambridge, MA: Harvard University Press.

Bundesinnenministerium. (1999). "Pressemitteilung vom 04.01.99. Jahresbilanz Aussiedlerzahlen 1998." 4 January. Bonn: Bundesinnenministerium.

Bundesverwaltungsamt. (1996). "Informationen zur Durchführung von Sprachtests." Köln:

Bundesverwaltungsamt.

Bundesverwaltungsgericht. 15 July 1986. BVerwGE 9 C 9.96. Berlin: Bundesverwaltungsgericht.

Bundesverwaltungsgericht. 13 June 1995. BVerwGE 9 C 392.94. Berlin: Bundesverwaltungsgericht.

Bundesverwaltungsgericht. 29 August 1995. BVerwGE 9 C 391.95. Berlin: Bundesverwaltungsgericht.

Bundesverwaltungsgericht. 12 November 1996. BVerwGE 9 C 8.96. Berlin:

Bundesverwaltungsgericht.

Delfs, Silke. (1993). "Heimatvertriebene, Aussiedler, Spätaussiedler: Rechtliche und politische Aspekte der Aufnahme von Deutschstämmigen aus Osteuropa in der Bundesrepublik Deutschland." Aus Politik und Zeitgeschichte (48):3-11.

Drozdiak, William. (1997). "Germany Begins to Accept Changing Ethnic Makeup; Naturalization Process May Be Eased." The Washington Post, A Section, p. A01.

Fahrmeir, Andreas. (1997). "Nineteenth-Century German Citizenships: A Reconsideration." The Historical Journal 40(3):721-52.

Feldblum, Miriam. (1998). "Reconfiguring Citizenship in Europe." In Challenge to the Nation-State: Immigration in Western Europe and the United States, ed. Christian Joppke. Oxford: Oxford University Press.

Franz, Fritz. (1992). "Das Prinzip der Abstammung im deutschen Staatsangehörigkeitsrecht." In Rassismus und Migration in Europa. Berlin: Argument.

Grawert, Rolf. (1973). Staat und Staatsangehörigkeit: Verfassungsgeschichtliche Untersuchung zur Entstehung der Staatsangehörigkeit. Berlin: Duncker & Humblot.

Green, Simon. (1997). "Reforming Citizenship Legislation: The Case of the Federal Republic of Germany." Paper presented at the annual meeting of the Social Science History Association, Washington, DC.

Haberland, Jurgen. (1994a). Eingliederung von Aussiedlern: Sammlung von Texten, die für die Eingliederung von Aussiedlern aus den osteuropäischen Staaten von Bedeutung sind. Leverkusen: Heggen-Verlag.

Haberland, Jürgen. (1994b). "Der Asylkompromiß vom 6. Dezember 1992 - Ein Jahr Danach." Zeitschrift für Ausländerrecht und Ausländerpolitik (2):51-59.

Hämmerle, Gerlinde. (1994). "Weder Bevorzugung noch Benachteiligung." In Ausländer, Aussiedler, Asyl in der Bundesrepublik Deutschland, ed. Klaus J. Bade. Hannover: Niedersächsische Landeszentrale für politische Bildung.

Hailbronner, Kay. (1989). "Citizenship and Nationhood in Germany." In Immigration and the Politics of Citizenship in Europe and North America, ed. W. Rogers Brubaker. Lanham, MD: University Press of America.

Hansen, Georg. (1999). "Deutschsein als Schicksal. Ein aktueller Rückblick: Das Reichs- und Staatsangehörigkeitsgesetz von 1912/13." Frankfurter Rundschau. Available from http://www.fr.aktuell.de/fr/160/160001.htm.

Harris, Paul. (1997). “The Politics of Reparation and Return: Soviet Jewish and Ethnic German Immigration to the New Germany.” Ph.D. diss. Auburn University.

Kurthen, Hermann. (1995). “Germany: National Identity and the Challenge of Immigration.” International Migration Review 29(4):914-39.

Lemke, Christiane. (1998). “Citizenship and European Integration.” World Affairs 160(4):212-17.

Löffler, Siegfried. (1989). “Die höheren Renten der Aussiedler.” Sozialer Fortschritt (5-6):139.

Münz, Rainer. (1999). “Germany and its Ethnic and Other Migrants: A Challenge to Nation and State.”Paper Presented at Diasporas and Ethnic Migrants in 20th Century Europe, 20-23 May, Berlin, Germany.

“Nicht mehr stumm wie ein Fisch”." Der Spiegel. 1 March 1998. Pp. 64-66.

Preis, Ulrich and Ralf Steffan. (1991). “Harmonisierungsbedarf im (Fremd-) Rentenrecht.” ZRP (1):12-17.

“Rauhe Sitten.” Der Spiegel. 26 November 1996. Pp. 60-61.

Ruhrmann, Ulrike. (1994). Reformen zum Recht des Aussiedlerzuzugs. Berlin: Duncker and Humblot.

Schoenberg, Hans W. (1970). Germans from the East: A Study of their Migration, Resettlement and Subsequent Group History since 1945. The Hague: Martinus Nijhoff.

Waffenschmidt, Horst. (1994). “Rede zum Entwurf eines Kriegsfolgenbereinigungsgesetzes.” In Ausländer, Aussiedler, Asyl in der Bundesrepublik Deutschland, ed. Klaus J. Bade. Hannover: Niedersächsische Landeszentrale für politische Bildung.

Wilpert, Czarina. (1991). “Migration and Ethnicity in a Non-immigration Country: Foreigners In a United Germany.” New Community 18(1):49-62.