

Chapter 5 Immigration Policy

The question of what to do about immigration and immigrants is on the systemic agendas of most industrialized countries today, as a reflection of changing patterns of population movement and settlement, continuing labor shortages, demographic change and national security concerns. In addition to addressing how much immigration to allow, governments construct policies about asylum seekers and refugees, about residents without papers, and about foreign temporary workers—many of whom have resided in these countries for years. New political organizations and initiatives among immigrants have emerged that call for government responses to their concerns. At the same time, electorally relevant anti-immigration political parties have been formed that call for more restrictive policies. Since 2001, terrorist attacks in the United States, the United Kingdom, and Spain have highlighted the nexus between immigration and national security, while demographic change and labor needs further complicate the reform picture. In response to these developments, reformation of immigration control systems is a political priority. Most notably, governments are modifying policy instruments, or inventing new ones, to address the questions of who, how many, and why?

Common Policy Problems

Immigration in most industrialized countries takes one of three forms: **legal immigration** (usually as a result of family reunification or labor importation schemes), **humanitarian immigration** (involving asylum seekers or refugees), and **illegal immigration** (typically through clandestine entry or visa overstaying). Despite the introduction of substantial control mechanisms since the 1970s, legal immigration continues to constitute the bulk of immigration into most industrialized countries. The vast majority of legal immigrants arrive as a result of **family reunification** that is usually limited to the spouses and children of legal residents and citizens. A second major source of legal immigration is employment based, in which individuals are admitted on the basis of their specialized skills. Entry to a country through such legal means is often referred to as **front door immigration**.

Legal, employment-based immigration has been especially important in European countries. Following World War II, many of these countries instituted **guest-worker programs**, in which foreign workers were given temporary work and residence permits. These workers were expected to return to their home countries when their services were no longer needed; however, most of them remained in the countries to which they emigrated, and often

their families were subsequently permitted to join them. The result is the presence of significant immigrant populations that lack a clearly defined status. Most European countries banned foreign workers in the mid-1970s but continue to allow limited employment-based immigration in sectors of the economy where labor is scarce. Today, this immigration focuses on the recruitment of highly skilled migrants and temporary, often seasonal, low-skilled immigration. Entry to a country through a temporary labor program is often referred to as **side door immigration**, because these immigrants are not intended as permanent settlers.

The problem of humanitarian immigration encompasses the issue of what to do about asylum seekers and refugees. **Asylum seekers** are typically individuals who are already present in the country where refuge is sought or are at the border requesting entry. **Refugees** are usually found outside their home country (typically in refugee camps), where they are usually interviewed by a country's immigration officials before being given entry permits (see Box 5-1). Humanitarian immigration is often considered side door immigration.

Preventing illegal immigration is perhaps the most difficult problem for policymakers to address effectively. In this case, the term **back door immigration** is frequently used. An increasing problem for most industrialized countries, illegal immigration is often the result of a variety of mechanisms. Some illegal immigrants enter a country legally and then remain after their visas expire; others cross clandestinely over relatively open borders. Illegal immigration has increasingly been a problem for European governments, as a result of their effective end to legal immigration by the mid-1970s and the more recent tightening of asylum policies, both of which forced would-be immigrants to find other means of entry. Until recently the bulk of European illegal immigrants were rejected asylum seekers who did not leave the country after their claims were refused.

A final area of concern is a government's ability to control so-called push and pull factors. In the immigration context, **pull factors** refer to a country's characteristics that make it attractive to immigrants. These factors include existing family ties, job opportunities, and the availability of public services and social welfare benefits. The nature of industrialized countries' labor markets—with abundant low-wage, low-skill jobs that these countries' populations are either unwilling or unavailable to fill—is another strong pull. National immigration policies usually attempt to modify or eliminate such pull factors, in the hope of reducing the incentive to immigrate. At the same time, **push factors** affect individuals' decisions to emigrate from their home countries. These factors include overpopulation, poverty, unemployment, natural disaster, and war. The ability of immigrant-receiving countries to control push factors is far more limited than is the case with pull factors. Industrialized countries attempt to control these push factors primarily through development assistance to the countries that provide them with substantial immigrant flows.

Box 5-1 **In Depth: The International Refugee Problem**

The United Nations High Commissioner for Refugees (UNHCR) defines a refugee as a person who has fled his or her country because of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group and who cannot or does not want to return. Some refugees flee from acts of terror perpetrated by their governments; others may be seeking refuge from violence resulting from ethnic conflict that does not involve the government or from other forms of oppression that the government can no longer control. Under existing international agreements, refugees have a right to safe asylum—defined as the right to seek and receive refuge from persecution or war. In this sense, refugees differ from other migrants in that they need protection because their own government has failed to protect their rights or physical security. Migrants applying for refugee status, or asylum, in a country are required to establish that their fear of persecution is well founded. Having done so, receiving countries are bound to afford refugees the same rights and assistance as any other foreigner who is a legal resident, including the extension of civil, social, and economic rights. Under these same agreements, receiving states may not forcibly return refugees to a country where they may face danger.

The problem of refugees increased significantly in the 1970s. At that time, a worldwide refugee crisis emerged as hundreds of thousands fled from such far-flung places as Vietnam, Cambodia, Laos, Lebanon, and Afghanistan—all of whom were seeking to escape repression, persecution, or civil war. By the 1990s refugees were moving across the globe, fleeing ethnic conflict in particular. The global refugee population peaked at nearly 18 million in 1993. In 1997–2001 the number of refugees worldwide fell by 24 percent compared to the previous five years. The global refugee population fell to its lowest level since 1980 in 2005, to 8.4 million. This significant drop was accounted for in part by the voluntary return home of more than 6 million refugees since 2001, as well a significant drop in the mass movement of new refugees, with the arrival of only 136,000 new refugees to neighboring states in 2005—the smallest number in twenty-nine years. However, in 2006, for the first time in five years, the global refugee population increased, to 9.9 million, in large part because of the growth of the Iraqi refugee population to an estimated 1.2 million (by September 2007, this number had grown to well over 2 million). In addition to Iraq, there were large new outflows from the Central African Republic, Chad, Sri Lanka, Sudan, and Somalia. Outflows from Afghanistan were the most significant, with 2.1 million refugees (20 percent of the entire global refugee population) distributed across seventy asylum countries.

Worldwide, the number of asylum applications has been dropping steadily since the early 1990s. Across fifty industrialized countries, asylum claims dropped for the fifth year in a row in 2005 to their lowest level in nearly twenty years. In Western Europe the number of asylum applications rose from under 170,000 in 1985 to more than 690,000 in 1992. Owing to stricter policies, the number of applications has declined steadily since 1992, to about 299,000 (or half the worldwide total) in 2006. France now receives more asylum applications than any other European country, with nearly 30,750 applications in 2006. Asylum applications in the United States increased from about 20,000 in 1985 to almost 148,000 in 1995 and dropped to just over 41,100 in 2006. Of all the major industrialized countries, Japan receives the fewest asylum applications, only about 950 in 2006.

SOURCE: Data are from UNHCR (2006, 2007).

Major Policy Options

The most basic policy choice in the area of legal immigration involves the task of establishing who may legally enter a country for long-term or permanent residence. Beyond this, countries must also plan and manage the inflow of migrants to best serve national goals, whether economic, social, or demographic. The most common policy instrument is the **preference system**, which allocates a certain number of visas for categories of immigrants per year. Such systems may employ strict quotas, targets, or ceilings to regulate the flow of immigrants. Restrictions on the type of family reunification permitted have also been a common policy tool to control the flow of legal migrants. Family reunification policies have proven to be a rather ineffective control mechanism, largely because there is no accurate way to predict how many claims for entry on the basis of family ties will be made in any given year. Countries that permit employment-based immigration usually identify particular skills or economic sectors experiencing labor shortages for which immigration will be allowed. Some countries officially ban foreign workers entirely but continue to allow employment-based immigration on a smaller scale based on workers' skills and employment needs in particular economic sectors. These countries often have an immigrant labor quota, and governments reserve the right to deny work permits as they see fit, usually based on changing labor conditions.

In addressing asylum and refugee problems, governments generally are not completely free to develop policy unilaterally due to international treaties and agreements that reduce their range of options. Most countries' asylum and refugee policies reflect the provisions of the United Nations Convention Relating to the Status of Refugees, which calls for the admission of refugees and asylum seekers "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." The treatment of asylum seekers is a particularly difficult problem for democratic states to resolve because denying asylum is viewed by many citizens as compromising democratic values and a concern for human rights.

Despite these constraints, since the 1990s industrialized countries have responded to unprecedented flows of migrants with increasingly restrictive asylum policies. Most countries sought to regulate flows through policies making it more difficult for asylum seekers to enter countries and obtain resident status. These policies involve what are known as preentry (or external) and postentry (or internal) controls. Designed to prevent asylum seekers from making it across a country's borders, **preentry controls** may include sanctions against airlines for transporting individuals who lack legal documents, stricter visa requirements for citizens of countries known to be sources of asylum applicants, the invention of so-called international zones in airports to detain undocumented foreigners, or the streamlining of asylum procedures. Many countries signed bilateral agreements with other countries that

permit the return of asylum seekers at the border to the first so-called safe country they passed through before they arrived at the nation where they are seeking asylum. (Safe countries have asylum processes of their own, meet international standards, and are not themselves a source of asylum seekers.) Finally, many countries increasingly used the standard of **manifestly unfounded claims** to assess requests for asylum. Claims may be rejected as such because of insufficient evidence of persecution or false evidence presented by the applicant.

Postentry controls attempt to control the rights and activities of asylum applicants who are already within a country's borders, including limiting access to social welfare benefits, denying work permits, and using computerized registration systems to prevent asylum seekers from disappearing into society before a decision is reached or after an application is rejected. Many European countries have also created government-run reception centers in which asylum applicants must reside until a decision is reached on their status. These policies are intended to reduce asylum claims by making life more difficult for applicants once they are in the country.

The task of managing illegal immigration is clearly the most difficult problem in this policy area, because it involves controlling individuals who are deliberately attempting to avoid detection. Policy responses to illegal immigration generally take one of three forms: internal controls, external controls, and regularization programs. **Internal controls** allow for the legal supervision of immigrants to be sure they leave when their visas expire and that they do not work without authorization. Such policies include deportation programs for those with expired visas and sanctions against employers who hire illegal immigrants. **External controls** usually involve measures designed to prevent foreigners from entering the country without permission, such as more effective policing of borders and airports or installation of elaborate fences and surveillance devices. **Regularization programs** provide legal amnesty (and usually naturalized citizenship) for illegal immigrants who satisfy certain conditions such as entry into the country before a certain date, good health, regular employment, or a valid passport. Regularization measures are usually adopted jointly with increased enforcement efforts to prevent additional inflows of illegal immigrants.

Explaining Policy Dynamics

The politics of the immigration policy-making process is an area of research that lacks any broadly comprehensive theorizing. In surveying the literature, we find relatively few attempts to clarify this process across the industrialized countries. The vast majority of empirical explanations are based on studies of a single country (or occasionally two or three countries). Based on this existing work, we can offer a set of potential explanations—cultural, economic, political, and institutional—for immigration policy reform.

Cultural Explanations

Cultural factors influence immigration policy reform. One cultural thesis focuses on a country's historical experiences with immigration. According to this view, immigration policy in countries that have longer histories of population inflows from abroad and larger immigrant populations overall (the so-called countries of immigration) differs from policy in countries that have experienced immigration for shorter periods of time and have smaller immigrant populations. In these latter countries, immigration is often unwelcome, particularly as immigrants become a permanent part of the population. More specifically, if immigration is incorporated into the country's "founding myth," that country is less inclined to favor more restrictive or exclusive immigration policies (Freeman 1998; Joppke 1998, 1999). Joppke (1999) argues that where immigration coincides with the nation-building process (in that immigration occurs as the nation is developing its self-identity), one finds a belief that immigration is a good thing and stronger support for continued immigration. National myths and self-images can be particularly important for understanding policy reform because they allow political leaders to portray their preferred policy outcomes as consonant with a nation's self-identity. In countries where immigration is not a crucial aspect of national identity, more exclusive immigration policy reforms are more easily adopted and implemented.

Other historical explanations for immigration policy reform consider the nature of the relationship between immigrant-receiving and immigrant-sending states. Immigrant-receiving states have less control over immigration policy relative to immigrant-sending states with whom they have strong historical ties. Often this argument points to the importance of past colonial relationships between countries that create special immigration obligations, although it may point to other aspects of a country's experiences as well, such as its record during World War II (Layton-Henry 1992; Rich 1990).

Pressures for immigration policy reform also may be explained by trends in public opinion. Today most governments face pressure to pass laws to slow or end immigration. Public opinion is often far more restrictionist than that held by political parties or government officials. Baldwin-Edwards and Schain (1994), for example, observe that most Europeans feel that there are too many immigrants in their countries. They note that the effects of these opinions on public policy are largely contingent on other factors. In particular, where political parties that specifically represent these negative views exist, reform tends to be more reflective of public opinion. In other contexts, these negative public sentiments do not dictate public policy. For example, Gimpel and Edwards (1998) argue that in the United States immigration is not usually an issue that motivates people to vote (unless the economy is weak), which they say explains an observed gap between public opinion and policy.

A final cultural explanation found in the literature on immigration policy reform concerns the effects of liberal political values on reform. These

values are embedded in the fabric of industrialized countries, as well as in the international system in which they operate, and include nondiscrimination, political equality, and civil rights. Where rights-based liberalism figures prominently in policy making, it is difficult for states to treat immigrants in ways that violate these fundamental tenets (Gurowitz 1999; Heisler 1986; Hollifield 1992, 2004; Jacobson 1996; Joppke 1999, Soysal 1994). Because stricter immigration policies often require a rollback of civil and human rights for noncitizens, the prevalence of these norms can impede more restrictive reform.

Economic Explanations

Changes in a country's employment patterns also influence immigration policy reform. Schnapper (1994) notes that industrial restructuring has meant that there are fewer such jobs for both native populations and immigrants in industrialized countries. In response, immigrants (who until the early 1970s had been accepted in most industrialized countries because of their economic contribution) are argued to cost more (in social welfare benefits) than they contribute to national economies. Support for more restrictive immigration policies is then mustered more easily among the general public, notably among the unemployed. Feelings of economic deprivation are frequently used to explain support for extreme right-wing parties and the more restrictive reforms they advocate (Money 1999). Economic depression, long-lasting unemployment, and budget deficits may all have an impact on the demand for immigration policy reform, especially where foreign workers are seen as unwanted competitors who take away jobs from native workers or who live on social benefits for which others have paid.

Short-term trends in economic growth can stimulate fluctuations in the focus of immigration policy, or its tendency to oscillate between restrictionism and liberalization. Some researchers claim that a close connection exists between business cycles and so-called admissionist or restrictionist reforms. Immigration is tolerated or even encouraged during periods of economic growth and prosperity. During bad times, immigrants are targeted as scapegoats for conditions they may have no part in causing, and immigration policies may become more restrictive (Brochman and Hammar 1999; Freeman 1998; Hollifield 1992, 2004; Kindleberger 1967).

A final economic explanation for policy reform concerns the effects of economic globalization and interdependence. Here, reform is viewed as a function of the connections between economic internationalization and labor market demands. In a world in which economic change is in the direction of deregulation and liberalization, countries are pressured to keep their borders open. Sassen (1999) argues that it simply is not possible for countries to have an open policy for circulating capital and a very different regime for circulating people. The free movement of people is an integral part of the

movement of trade and investment across borders. Transnational economic processes become key factors influencing immigration policy. Policy reform reflects the wishes of governments and private economic actors in immigrant-receiving countries that are concerned with creating economic linkages with immigrant-sending countries—such linkages naturally serve as bridges for immigrants.

Political Explanations

Research points to several important political explanations for immigration policy reform. The first explanation emerges from studies of the growth and success of anti-immigration, extreme right-wing parties in European countries. These parties, which base their appeals to the electorate on anti-immigration, racist, and xenophobic views, have disrupted traditional party systems by creating opportunities for the political expression of such sentiments. They increasingly influence public debates on immigration and immigrants. Perhaps more important for immigration policy reform, these right-wing movements also have forced the more moderate established political parties, on both the right and left, to place these issues high on their own agendas and to favor tougher reforms. Often these xenophobic, anti-immigration parties can force traditional parties to rearrange their policy platforms, their priorities for government, and ultimately the very nature of immigration policy reform (Brochman and Hammar 1999; Hollifield 1992; Messina 1995). The ideology of parties beyond the extreme right is also an important influence on immigration policy preferences. Lahav (2004) finds that ideology is a better indicator of immigration preferences than national or cultural values: parties of the left are more likely to amend social inequalities and to extend immigrant rights and to be open to increased immigration than are parties of the right.

A second explanation, the role of public opinion more generally in immigration policy today, is the subject of scholarly debate. Some argue that liberal immigration policies have emerged because negative public opinion is not factored into elite decision making (Apap 2004; Beck and Camarota 2002; Hansen 2000; McLaren 2001). Still others contend that public opinion influences policy far more than previously thought; the public's opinions are much closer to elite views than most would believe, and the public is much more rational and informed than typically assumed (Fetzer 2000; Freeman 1995; Guiraudon 2000; Hansen 2000).

A third political explanation is based on research into the role of interest groups in immigration policy reform. Freeman (1995, 2001, 2006) advanced what he calls a client politics thesis in his examination of ethnic and economic interest group pressure on the immigration policy process. In his view, client politics involves a number of small and well-organized groups that have a strong influence on the policy-making process. He argues that such client

politics is oriented heavily toward expansive immigration policies because of the more organized and effective efforts of interest groups (employers, ethnic advocacy groups, or human rights organizations) that favor more liberal policies. In Freeman's view, governments may pay more attention to these interests than to public opinion because of the fear of promoting right-wing extremism if these issues are debated publicly. Thus governments seek to reach an early and private consensus to avoid the emergence of these issues on the national systemic agenda, where they may quickly spiral out of control. This tendency for the major parties to try to defuse the immigration issue while responding to interest group pressure offers one explanation for situations in which policies do not reflect public opinion.

Institutional Explanations

Freeman's client politics perspective generated considerable debate among scholars in this area. Perlmutter (1996) responded that Freeman's model applies only when a strong political party controls the institutional agenda in a relatively unitary political system. In many other situations, the declining strength of mass parties creates the opportunity for other actors—dissident regional politicians, dissatisfied small parties in governing coalitions, or radical parties—to pose real challenges to immigration policy reform. Perlmutter argues that in multiparty or federalist polities, there are more chances to politicize immigration and only limited ability to keep these issues off the institutional agenda. In his view, the nature of immigration policy reform will be influenced strongly by the location of power in a political system. Perlmutter contends that because federalism allows for the regional expression of demands (which then often reach the national political agenda) and because immigrants tend to be concentrated in specific regions, the ability of advocates for change to influence policy reform could be increased in a federal system. More recently, Statham and Geddes (2006) and Schain (2006) also challenge Freeman's arguments, with research that suggests that pro-immigrant groups may capture policymakers' attention less, and anti-immigration groups more, than previously thought.

Many scholars make similar arguments about the effects of the long-term erosion of political parties and other traditional political institutions as policy-making bodies and as vehicles for political representation in industrialized countries. They note that as traditional actors lose influence, immigration policy falls increasingly within the jurisdiction of national courts or becomes the preoccupation of pro-immigrant welfare groups and activists or of anti-immigration extremists on the right. Hence, an area of public policy that was once controlled by executives and bureaucracies (and took place outside the domain of legislatures and electoral politics) becomes increasingly politicized and more difficult for governments and political parties to develop and implement (Betz 1991, 1994; Messina 1989, 1990; Schain 1987, 1988).

Other research describes an important role for the judiciary in immigration policy reform. In countries where the judiciary is inclined to (and empowered to) hold legislation to constitutional norms via judicial review, more restrictive immigration policy reforms are less likely to survive (Shapiro and Stone 1994). In many countries, courts also have limited the ability of governments to restrict or stop asylum seekers from crossing national borders (Cornelius, Martin, and Hollifield 1994; Guiraudon 1997, 2001; Hollifield 1992; Joppke 1998, 1999; Sassen 1998). In some states, however, governments may attempt to circumvent judicial constraints by delegating authority over immigration policy to subnational or supranational authorities (Guiraudon 2001; Guiraudon and Lahav 2000; Messina 1989).

International Policy Making

Immigration policy is one of the least developed areas of international policy making because decision making in this area is most likely to take place at the national government level. Countries have demonstrated a marked reluctance to surrender their sovereignty and policy-making flexibility to a higher-level authority on this matter. This is true with respect not only to the European Union (EU) but also to broader international policies intended to govern population flows.

The most important international agreement affecting many countries' asylum and refugee policies is the 1951 Geneva Convention. Article One of the agreement calls on signatory nations to grant refugee status to any person who, owing to a well-founded fear of persecution on racial, religious, political, or other grounds, is unwilling or unable to return to his or her home country. This article, along with the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol (which made the Convention more comprehensive), imposes both legal and moral obligations on countries not to reject foreign asylum applicants if such rejection entails their being returned to a place where they are in danger of being persecuted. This is known as the **non-refoulement principle**. Countries that have signed these agreements are to establish procedures for evaluating asylum and refugee claims and are obligated to admit those who qualify as refugees and have nowhere else to go. In practice, we observe considerable variation in how countries interpret their individual obligations under these commitments. Most industrialized countries have adopted more restrictive asylum and refugee policies than in the past; however, in keeping with their international commitments, they maintain that real refugees will not be turned away.

EU member countries have made progress on immigration and asylum policy coordination in only two areas: movement of EU nationals within the union and visa requirements. The elimination of borders between EU member countries was first proposed in a European Commission consultation in

1988, and by 1995 the removal of border controls had been largely implemented. Progress has been made on the adoption of EU-wide visa policies through the development of a common list of non-EU countries whose citizens require visas to enter any EU country. The 1992 Maastricht Treaty officially acknowledged for the first time an EU vision of immigration as an area of “common interest” for member states. Until 1997 immigration policy fell primarily under the third pillar of the treaty, justice and home affairs, although these matters were also addressed in the first pillar on economic integration (in particular concerning visa policies). In the 1990s the most limited policy activity in the EU occurred in areas that fell under the third pillar. The 1997 Treaty of Amsterdam moved the area of justice and home affairs to the first pillar and fully committed the EU to creating a common “area of freedom, security and justice.” Under this treaty, EU member states agreed in principle to develop common immigration and asylum policies. The treaty introduced community decision-making procedures to immigration policy and increased the role of the European Commission in this policy area.

The 1999 Tampere Program involved the first binding EU-level agreements on asylum policies. These included a policy about temporary protections for persons displaced by conflicts, a common understanding of refugee status and “subsidiary” protection, minimal procedural guarantees, minimum conditions for the reception of asylum seekers, and a regulation on deciding which member state is responsible for assessing which asylum claim. Tampere was based on four themes: partnerships with countries of origin, a common European asylum system, fair treatment of third-country nationals, and the management of migration flows. The Hague Program, introduced in 2004, aimed to improve the EU’s ability to guarantee fundamental rights, procedural safeguards, and access to justice; fight organized crime; repress the threat of terrorism; provide protection to refugees; and regulate migration flows and control external borders of the union. The program is divided into five parts: a common European asylum system, legal migration and the fight against illegal employment, integration of third-country nationals, the external dimension of asylum and migration policy, and the management of migration flows. The Hague Program was not intended to lead to an EU-wide immigration system but was nonetheless wide ranging in perspective and set out an ambitious agenda. Whether its long-term goals are achievable is a matter of some debate.

In recent years European countries have been shaping their national immigration policies to reflect international agreements developed beyond EU institutions. The most important of these is the Schengen Agreement, which was implemented in 1995 among the Benelux countries, France, and Germany. The 1997 Treaty of Amsterdam fully incorporated the Schengen Agreement into the existing EU structure (with a five-year phase-in period)

as the Schengen *acquis*. The Schengen Agreement abolished internal EU border controls and instituted common policies on visas and asylum applications. More specifically, the agreement was intended to allow for the freedom of movement of EU nationals within the EU. The agreement also introduced a single computer system for maintaining immigration information that encourages customs policy cooperation (known as the Schengen Information System). At the end of 2008, twenty-five countries had signed on to the Schengen Agreement. This included all the EU countries with the exception of the United Kingdom and Ireland, which reserved their rights to maintain border controls with other Schengen countries. Although the agreement is technically open only to EU member states, three non-EU members, Iceland, Norway, and Switzerland, are parties to the agreement. These countries were part of an older passport-free agreement among the Nordic countries and were thus allowed to join the Schengen area.

The 1993 North American Free Trade Agreement (NAFTA) signed by the United States, Canada, and Mexico does not directly mention immigration issues (beyond minor attention to the temporary movement of business persons). Unlike EU policies, NAFTA neither guarantees the right to free movement for workers between its signatory countries, nor does it impose strict requirements on member states' immigration policies or behaviors. In fact, NAFTA supporters argued before its signing that the agreement was likely to decrease immigration flows as increased trade flows would reduce immigration push factors. However, Mexican-U.S. migration in fact increased in the 1990s and early 2000s, in particular as demand for labor increased in the United States in the face of falling unemployment rates and strong economic growth. In North America, immigration policy is solely the province of national governments.

The Security and Prosperity Partnership of North America (SPP) is a trilateral alliance adopted in 2005 by Canada, Mexico and the United States. The SPP covers two major areas—development and security. With reference to immigration, the SPP includes provisions for shared technology, access to databases, special clearances for border residents, coordinated visa policies, the exchange of intelligence information on persons of “special interest,” and fast-track lanes for travelers.

United States

Background: Policy Process and Policy History

Immigration policy making in the United States is controlled at the federal level of government. This control is relatively comprehensive, particularly because the Supreme Court has prohibited states from passing any laws that contradict federal policies in this area. At the federal level, policy making is led more by Congress than by the executive branch. There are two important

congressional committees for immigration policy making: the House and Senate Judiciary Committees. Since 2002 immigration policy development, implementation, and enforcement has been the responsibility of the cabinet-level Department of Homeland Security (DHS). The threat to U.S. national security posed by terrorism prompted the creation of the DHS through the merger of twenty-two federal agencies. This merger abolished the Immigration and Naturalization Service, which had been the Department of Justice's agency responsible for immigration matters. The DHS division of the U.S. Citizenship and Immigration Services now handles immigrant visa petitions, naturalization applications, and asylum and refugee applications, whereas the Customs and Border Protection division oversees admission of all people and goods at all ports of entry. Other federal agencies may be involved in specialized areas of immigration. For example, the Departments of Labor and Commerce may determine appropriate levels of foreign worker inflows. The judiciary also plays an important role in determining the constitutionality of many policy decisions in this area.

Because Congress plays a greater role in immigration policy making than do the executive or judicial branches, interest groups also figure prominently in the immigration policy-making process. Congress is very sensitive to immigration interests, and interest groups sometimes determine the political agenda or propose legislation that members of Congress will introduce and advocate. Prominent interest groups in this policy arena include ethnic, business, human rights, and community groups as well as trade unions.

Historically, the United States has been considered by many to be a country of immigration, so much so that it is often referred to as a melting pot. Until 1875 the United States had no national restrictions on immigration. In the nineteenth and early twentieth centuries, policymakers viewed immigration as important to national economic growth and constructed policies to maximize the flow of immigrants. As a result, the vast majority of the U.S. population today are descendants of immigrants from the 1800s or early 1900s who came to the United States in search of economic opportunities. The total foreign-born population in the United States in 2000 was nearly 36.5 million, or 12.4 percent of the population overall.

The United States' legal immigration policy has been largely independent of the dictates of the labor market. The Immigration and Nationality Act of 1990 and its amendments are the basis for most of the immigration policies in place today. U.S. law provides for legal immigration (or legal permanent resident status) for family reunification, employment preferences, and diversity immigration (for foreign nationals of countries with low levels of immigration to the United States), and for refugees and asylum seekers. Permanent immigration rose sharply in 2006, with a 13 percent increase over 2005 levels, to the highest level since 1991. Consistent with past trends, legal immigration in 2006 was primarily for family reunification (70.3 percent); only about 5.6 percent of population inflows consisted of skilled labor. Currently,

all immigrants are admitted under a preference system that allocates a certain number of visas for each category of immigrant. Since the late 1990s the number of temporary worker visas authorized has fallen far short of the demand—the annual cap for these visas is filled soon after the beginning of each fiscal year. The American Competitiveness in the Twenty-First Century Act of 2000 and the Real ID Act of 2005 increased the number of temporary work visas available per year.

The last significant new restrictions on legal immigration were introduced in 1924. In marked contrast to the other countries examined in this book, in the United States almost all organized pressure related to immigration policy in the 1990s was on raising immigration levels. In this period, a rapidly growing economy generated, for example, an increasing need for skilled and unskilled workers. Historically, support for continued legal immigration clearly reflected a belief that restrictions on legal immigration were antithetical to the U.S. immigration tradition. Early in the twentieth-first century, however, pressure for increased immigration to meet labor shortages has been counterbalanced by demands that immigration be restricted because of the presumed connection between immigration and terrorism and rising illegal immigration.

The Refugee Act of 1980 sets targets for humanitarian immigration to the United States. Refugees and asylum seekers accounted for 17 percent of all persons granted legal permanent residence status in 2006. Under the 1980 law, the number of applicants admitted per year is determined jointly by Congress and the president, with an annual recommended inflow of 70,000 refugees (although actual inflows are far below this level—48,300 in 2006). Refugees living in the United States are authorized to work and may apply for legal permanent resident status after one year of residence in the country. The number of refugees granted immigrant status has increased in recent years but remains well below pre-September 11 levels (28,000 in 2003, compared to 72,143 in 2000 and 68,925 in 2001). The United States' asylum program was reformed in 1995 to reduce application backlogs, to recognize legitimate claims within 180 days, and to improve the process of identifying fraudulent claims. In 2006, 41,101 persons were granted asylum. Asylees must wait one year after they are granted asylum status to apply for legal permanent residence. Until 2005 the number of persons authorized to adjust their asylum status was capped at 10,000. The Real ID Act 2005 removed this limit.

Among the industrialized countries examined in this book, the United States faces the largest illegal immigration problem, mostly because of the country's vast geographic area. The country's long borders—over 2,000 miles with Mexico and 3,000 miles with Canada—as well as innumerable points of entry at airports and along an extensive coastline present a logistical nightmare for immigration officials. Estimates of the illegal immigrant population in the United States vary. The DHS Office of Immigration Statistics estimates that nearly 11 million illegal immigrants were in the United States

in January 2006, whereas in March 2006 the Pew Hispanic Center estimated this population at between 11.5 and 12 million, or 30 percent of the foreign-born population in 2005. The DHS estimates that an additional 408,000 illegal immigrants entered the country each year during 2000–2004—amounting to nearly 1,400 people a day, whereas the Pew Center estimates that the illegal population has averaged more than 500,000 a year since 2000. The Pew Center further estimates that in 2005 nearly two-thirds of the unauthorized population had been in the country ten years or less and that 40 percent had been in the country five years or less. Mexicans make up the largest proportion (roughly 57 percent) of illegal immigrants.

In the early twenty-first century, illegal immigrants have spread to nontraditional settlement regions in the United States, such as the Midwest and the South. Whereas 88 percent of the illegal immigrant population was concentrated in six states (California, Florida, New York, Texas, Illinois, and New Jersey) in 1990, today these six states hold only 61 percent of that population. The rising presence of immigrants in nontraditional settlement areas has generated a political backlash among some citizens. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act provides the framework for the country's approach to the problem of illegal immigration. Externally the act was designed to assist the then-Immigration and Naturalization Service by increasing the number of border patrols, strengthening enforcement abilities, improving detection technology and improving barriers along the Mexican border. Internally the act restricted the rights of illegal immigrants already in the country and strengthened the ability of immigration officials to deny entry to the country or deport those who had already entered. Since the terrorist attacks of September 11, 2001, many people in the United States have come to view illegal immigration as a national security matter. The terrorist acts catalyzed the passage of a series of laws that affect not only suspected terrorists, but all immigrants. Included among these are the USA PATRIOT Act of 2001, which strengthened border enforcement; the Enhanced Border Security and Visa Entry Reform Act of 2002, which tightened visa screening, border inspections, and the tracking of foreigners; and the Real ID Act of 2005, which blocks states from issuing driver's licenses to illegal immigrants. More recently, the Secure Fence Act of 2006 endorsed plans to build a 700-mile fence along the U.S.-Mexican border and to further strengthen border patrols.

Contemporary Dynamics

U.S. policymakers face a continual challenge: to balance effectively the economic necessity of continued labor immigration expansion with rising anti-immigration pressures and popular calls for an end to immigration entirely. The conflict between expansionists (usually business leaders and immigrants' rights groups) and restrictionists (such as governors and citizens in states with large immigrant populations) flares up repeatedly. Since 2001 the approach

to immigration policy has been more restrictionist, as many members of Congress, and particularly many Republicans, view as a threat to national security the presence of a large illegal immigrant population, whose size, composition, and movements cannot be monitored effectively. As such, they are intent on reducing illegal immigration and opposed to further opening the country to immigrants. At the same time, because immigrants continue to play an important role in the U.S. economy, especially in the agricultural, construction, and information technology sectors, the pressure from some quarters to maintain an open immigration stance continues to be significant. Hence, immigration politics in this period has been characterized by an increasingly contentious debate over the effects of immigration on the U.S. economy, society, and security.

Agenda setting for the most recent immigration policy reform effort began with President George W. Bush's 2004 declaration that the current immigration system was "broken" and that repairing it was one of his top priorities. To fix the system, he proposed a temporary worker program for both undocumented workers already in the country as well as new foreign workers, but not a path to full legal status or citizenship. The introduction of specific legislative proposals to achieve these ends was left to members of Congress. Anti-immigration forces viewed the president's proposal as an amnesty program that would do nothing to stem the flow of illegal immigrants. Conservative Republicans believed a temporary worker program would reward those who entered the country illegally and encourage more illegal immigration. They further argued that existing border control and interior enforcement policies were inadequate and unable to deter future illegal immigration. Many Democrats, immigrant advocacy groups, and human rights organizations also voiced concerns about the president's proposal, saying that it did not go far enough to protect temporary workers and provided too few incentives for undocumented workers to come forward. Trade union leaders also argued that illegal immigrant flows could not be reduced without a clear path to citizenship.

Few, if any, issues divided Republicans in the 109th Congress (2005–2007) more than immigration, especially the question of what to do about illegal immigration. Consequently the decision-making phase of the immigration reform was highly contentious. In late 2005 and early 2006, vastly different immigration reform bills were introduced and passed in the Senate and the House of Representatives, with subsequent efforts to reconcile the two measures failing. HR 4437, sponsored by House Judiciary Committee chair James Sensenbrenner, R-Wisc., focused on border security and tougher workplace enforcement of immigration laws. The centerpiece of the bill was a mandatory employee verification program and tamperproof identification cards for all workers. The bill also included provisions that would have made illegal immigration a felony punishable by jail, eliminated the possibility of legalization, funded a fence along much of the U.S.-Mexican border, and

punished those who assisted illegal immigrants (including clergy and humanitarian workers). The Sensenbrenner bill in no way conformed to the agenda set by the president in 2004; it passed in the House in December 2005 by a vote of 239 to 182.

The approval of the House bill prompted a swift and strong reaction among those who wanted to stop illegal immigration, employers who wanted to legalize the employment of unauthorized workers, and church and immigrant groups that wanted to legalize unauthorized foreigners. The legislation was praised by most opponents of illegal immigration because it would send resources to the border and would require employers to screen employee documents against federal databases, without rewarding illegal immigrants with a path to U.S. citizenship. A coalition of business groups, religious leaders, and immigrants' rights advocates complained that the bill would make felons out of illegal immigrants caught working in the United States and those who assist them for humanitarian reasons and did not address the fact that illegal immigrants provide a vital labor pool for some industries. Dissatisfaction with the bill became the catalyst for mass protests across the country. In March and April 2006, hundreds of thousands of immigrants in more than 100 U.S. cities marched against the proposed House reforms. Trade unions and the Catholic Church provided much of the organizational support for the marches. May 1, 2006, was designated as "A Day Without Immigrants" or the Great American Boycott of 2006. This protest was intended to demonstrate immigrants' economic importance to the country; nearly a million immigrants and their supporters boycotted workplaces, schools, and stores. To counter these demonstrations, members of Minuteman border watchdog groups launched a month-long campaign on the Arizona border to call attention to continuing illegal immigration.

Senate debate on its immigration reform legislation took place in the midst of the April and May protests against the House bill. The Senate took a different approach to immigration reform, with an unusually large number of Republicans joining Democrats in supporting a bill closer to that proposed by the president in 2004. The Comprehensive Immigration Reform Act, introduced by the chair of the Judiciary Committee, Arlen Specter, then-R-Penn., combined border security and worksite enforcement with a temporary worker program and a path to citizenship for most illegal immigrants already in the country. After two weeks of contentious floor debate on the bill and six Judiciary Committee markups, the bill passed in May 2006 on a 62–36 vote (with 22 members of the 55-member Republican majority voting for it). House Republicans immediately dismissed the Senate measure as too lenient on illegal immigrants, labeling it "amnesty" and the work of Democrats.

In June 2006 the House and Senate bills should have moved to a conference committee to be reconciled (the normal step when both chambers pass nonidentical measures). In an election year, however, it was soon clear that a

compromise was unlikely. House Republicans refused to convene a conference, choosing instead to hold field hearings around the country in a systematic effort to undermine the Senate legislation—at the hearings the Senate legislation was attacked on grounds ranging from its being too costly to its likely detrimental effects on U.S. national security. The Senate held its own hearings. When Congress reconvened in the fall, House Republicans held to their original position that the Senate measure was unacceptable, and both immigration bills died at the end of the session. In an attempt to salvage something from this contentious reform process in the lead-up to the 2006 midterm elections, House Republicans passed a series of narrowly cast bills based on their failed legislation. In September 2006 only one of these measures was approved in the Senate: Congress passed the Secure Fence Act. However, Congress appropriated only a small proportion (\$1.2 billion) of the funds required for implementation of the law. Subsequent attempts to pass similar, although pared down, immigration reform failed in the 110th Congress (2007–2009), and immigration is not expected to be among the first issues tackled by Barack Obama’s administration.

Throughout the 2006–2007 debates, the American public was clearly divided in its views on immigration in general and the two policy proposals more specifically. Bolstering supporters of the more moderate Senate legislation, public opinion polls indicated that a majority of Americans supported a path for legalization of illegal immigrants if they had a job, were made to pay back taxes, and had been living in the United States for a number of years. However, Republicans tended to take a somewhat tougher approach to the question of illegal immigration: in 2006, 49 percent of Republicans thought illegal immigrants living in the country for at least two years should be given a chance to keep their jobs and eventually apply for citizenship (compared to 59 percent of the general electorate), and 45 percent said they should be deported immediately (compared to 36 percent of the general electorate). At the same time, a small majority of both Republicans and the general population believe that all forms of immigration should be decreased. Complicating matters further, in an election year both parties were concerned with appealing to the growing Hispanic electorate, for whom a more open and tolerant immigration policy obviously was a key issue.

The policy process just described reveals the importance of cultural, economic, and political explanations for immigration policy reform. First, the intensity of the congressional and national debate over immigration reflects the power of immigration as a national symbol. Even in an environment in which national security concerns entered into the debate, for many citizens the founding myth of the United States as a country that values immigration played an important role in preventing the adoption of a noticeably more restrictive policy. Second, the business community’s strong opposition to reducing immigration flows revealed the influence of economic considerations. This policy decision occurred at a time when the demand for highly

skilled and unskilled workers was rising; hence, employers were motivated to block any additional restrictions on immigration. Third, the ability of interest groups to mobilize their supporters for mass action and to involve themselves directly in the decision-making process resulted in a highly politicized policy debate and stalemate. Finally, Congress's failure to approve the 2006 and 2007 reforms reflected a high degree of partisanship on the issue and the difficulty of reconciling major differences of opinion between the parties in an election year.

Japan

Background: Policy Process and Policy History

Immigration policy making in Japan involves a number of cabinet-level ministries. There is no ministry specifically organized around immigration issues. Instead, the following ministries play specific roles: Justice (through its Immigration Bureau, which is responsible for border controls), Labor, and Construction. All immigration policy decisions are discussed and debated among these ministries, with input from relevant governing officials and no meaningful opportunity for public input. Policy making in this area is often characterized as a tug-of-war, with the various departments and ministries involved struggling to represent the distinct interests of their constituencies. The prime minister and cabinet perform a coordinating rather than initiating role.

Historically, Japan was not a country of immigration. It still has the smallest foreign population of any industrialized country, but immigration into Japan increased substantially during the 1990s. Between 1950 and 1988, foreigners made up only 0.6 percent of the total population, and by the end of the 1990s the foreign-born population had grown to just over 1.0 percent, rising further to 1.7 percent by 2007. The largest immigrant group in Japan is from Korea, and many others are from China, Brazil, or Southeast Asia. The number of immigrants in Japan has grown by half since the late 1980s, but their proportion of the population remains well below that of any other industrialized country.

Japan is known for its preference for cultural, racial, and ethnic stability that reflects a traditionally homogenous population. Japan in the postwar period was the only major industrialized country that was not forced to import foreign workers to fill low-level employment gaps. Guest workers were not needed because of a large rural labor supply and the massive use of labor-saving technologies by large industries. The situation had changed markedly, however, by the mid-1980s. Japan faced its first labor shortage as a result of a low fertility rate, a declining labor supply from rural areas, and government policies that encouraged employers and workers to reduce their working hours. A growing reluctance among younger Japanese to take so-called 3K jobs—*kitsui*, *kitanai*, *kiken* (dirty, dangerous, and demanding)—as well as the greater availability of higher skilled jobs, also spurred the labor

shortage. This shortage, in a time of economic boom in the late 1980s to early 1990s, created a strong pull for immigrants from other Asian countries. Today, some social and economic factors are pushing Japan toward a more open immigration policy. In particular, faced with labor shortages resulting from an aging and shrinking population, many in the business community have stepped up their call for reducing labor-based immigration controls. However, despite these pressures, increasing public concerns about rising crime rates and international terrorism have prompted the country to adopt even stricter immigration controls and Japan remains a low legal entry country. As yet, there are few, if any, signs of an increasing recourse to immigration to satisfy labor needs.

Currently, Japanese immigration policy is based on the 1990 Immigration Control and Refugee Recognition Act and its amendments. This policy is organized around three defining principles. First, the entry of foreign workers should be allowed only as a last resort in response to severe labor shortages. Second, under no circumstances will unskilled labor be admitted. Third, all foreigners will be admitted as temporary, not permanent, settlers, regardless of their reasons for entry. The 1990 law limited legal foreign labor immigration to a supplementary role only when absolutely necessary and created a number of new categories, mostly professionals and those with specific expertise, who could enter and remain in the country legally. Japan discourages family reunification as a general policy. Today, government policy is centered on the acceptance of a limited number of foreign workers in highly skilled occupations, control of illegal immigration, and caution with respect to the admission of low-skilled workers. There were approximately 590,000 legal foreign workers in Japan in 2004. Most immigrants enter only as short-term residents; permanent residency is typically granted only after ten years of problem-free residence in the country.

Despite these restrictionist principles, side mechanisms exist through which unskilled foreign labor is imported, often on a permanent basis. One such mechanism permits descendants of Japanese emigrants to Latin America (known as *Nikkeijin*) to immigrate and settle permanently in Japan. Since 1990 these individuals have had essentially unrestricted access to the Japanese labor market. In 1990, 56,000 foreigners entered under this status, by 2004 their numbers had risen to 286,000. This policy is widely accepted on the grounds that these individuals, being of Japanese descent, are not viewed as upsetting Japan's ethnic and cultural homogeneity.

The government also allows the entry of foreign workers through two other side door immigration policies: corporate trainee programs and student visas. These programs are basically legal labor importation programs the government has not formally recognized (and that it does not attempt to end) and through which a substantial number of foreigners flow into the country. Small and medium-sized enterprises use this mechanism to import cheap, unskilled foreign labor in the name of training. Foreign workers who

enter the country as trainees are not protected under Japanese labor laws, resulting in their poor treatment. In 2004 the number of trainees entering the country reached a new high, at 75,000. The government introduced stricter review procedures in 2005 in response to a sense that these flows were now too high. The decision to use these side and back door mechanisms allows the Japanese government to import labor to meet an economic need without stirring up Japanese public opinion in opposition to the immigrant presence. These practices undermine the government's overall policy of restricting immigration.

Despite its participation in the major international agreements concerning humanitarian immigration, there are essentially no asylum seeker or refugee problems in Japan because the government is generally hostile to applicants. From 1982 to 2004, Japan accepted 3,544 asylum applications and granted asylum to only 313 (9 percent) of them. The prime exception was the acceptance of about 8,000 Southeast Asian refugees who were accepted as political refugees from the Vietnam War in the 1970s and early 1980s. This situation clearly reflects a lack of support for accepting refugees, particularly economic refugees, as well as the principle that no foreigners should be admitted for permanent settlement. Any limited movement toward the acceptance of refugees has been in the interest of maintaining an image of international cooperation and humanitarianism rather than a wholehearted commitment to fulfilling Japan's international obligations. Although Japan's asylum rules were somewhat liberalized in 2006, only 34 of 954 applicants for asylum were recognized as refugees in that year.

A large part of the illegal immigration problem in Japan currently consists of foreigners who were allowed into the country on short-term visas (such as tourists, students, or those employed in the entertainment industry) but who did not leave when their visas expired. The estimated number of foreigners who overstayed their visas increased threefold to nearly 299,000 between 1990 and 1993. By 2006, however, this figure declined to 171,000 (a 43 percent drop since 1993) through better enforcement of border controls and the use of more sophisticated detection systems. It is further estimated that over 90 percent of these illegal immigrants are participating in the workforce. This increase in illegal resident foreigners followed the implementation in 1990 of a more restrictive immigration law that involved severe employer and immigration broker sanctions and the extension of visa requirements to immigrants (primarily from Southeast Asia) known to be likely to remain in the country illegally. The government introduced in 2003 an "Action Plan for the Realization of a Society Resistant to Crime" intended to reduce the number of illegal foreign residents through increased cooperation between the government and the police to halve the number of illegal immigrants by 2008. This plan was greeted with skepticism, however, because the government is seen as having little political will for a strict immigration crackdown, given Japan's economic dependence on its illegal workforce. According to official

estimates, illegal immigrants made up about 0.2 percent of the total population in 2006, one of the lowest rates among industrialized countries.

Contemporary Dynamics

Immigration policies in Japan have not been reformed significantly in recent years. Japan has continued to pursue a closed-door immigration policy despite persistently strong demand for foreign workers in several key areas of the economy. To the limited extent that Japan has opened to additional foreigners, it has done so grudgingly. The last notable immigration reform in Japan was a revision of the Immigration Control and Refugee Recognition Law in 1990, which simplified immigration procedures and strengthened existing restrictions on employment of foreign labor. Japan's struggle to develop a comprehensive immigration control policy continues.

Since implementation of the 1990 law, only incremental changes have been made. The lack of comprehensive reform reflects in part a lack of governmental consensus about basic policy directions. The prime minister's office exercises little control over the immigration policy process, leaving agenda setting largely to the competing bureaucratic agencies. The bureaucracy continues to dominate the immigration policy-making regime and is relatively insensitive to lobbying by the small and medium-sized employers that have the most pressing labor needs, or by pro-immigration groups. Similarly, although political parties have study groups or ad hoc committees to develop policy positions on immigration, they generally do not affect the immigration policy agenda. The Diet has little active participation in immigration policy-making; it generally rubberstamps legislation handed down by bureaucrats after pro forma debates. Instead, the immigration debate is dominated by unelected bureaucrats in the Ministries of Justice and Labor. The Ministry of Labor supports legal immigration in economic sectors facing labor shortages, but only at very restricted entry levels. Such positions tend to be supported by ministries involved with globalization (Foreign Affairs and International Trade and Industry) and by those involved with labor-scarce industries (Construction, Fisheries, and Transportation). In contrast, the Ministry of Justice regularly argues against expanding legal immigration on the grounds that it is harmful to Japanese workers and that immigrants are more likely to engage in criminal activities than are native Japanese. The ministry continues to push for additional employer sanctions against those who hire illegal immigrants. To date, the bureaucracy has been relatively unresponsive to pressure from employers and business owners, and because bureaucrats are not publicly accountable or elected, they have no incentive to respond. Further, the separate ministries compete for power rather than coordinating or cooperating, often resulting in policy incoherence.

As unemployment rates rose through the early 1990s, the demand for foreign workers diminished. Declining population growth, an increasingly aged population, rising economic growth, and mounting demand for skilled

and unskilled labor suggest that, from early in the twenty-first century, Japan will need at least a half million new workers each year, clearly indicating a need for an expansion of legal immigration. Despite such expectations, significant public pressure for reform is lacking and a coherent or comprehensive national immigration policy framework has not been developed. However, recognition of the challenges presented by a declining workforce appears to be changing once-fixed views about immigration in the country. In 2008, for the first time, an eighty-strong group of economically liberal politicians in the Liberal Democratic Party (LDP), led by Hidenao Nakagawa, a former LDP secretary general, began promoting a dramatically different approach to immigration policy. This group called for the number of foreigners in Japan to rise to 10 million through 2050 and for many of these immigrants to become nationalized Japanese citizens. In addition, they supported entry for entire families, not just individual foreign workers. Small and medium-sized companies are increasingly calling for more immigrant workers, and *Keidanren*, a large manufacturers' association, has indicated its support for immigration policy reform designed to attract highly skilled workers. However, in the current political environment, the government seems unlikely to heed such calls and pursue comprehensive immigration reform.

Public opinion in Japan weighs heavily on immigration policy and pushes against substantial reform in the direction of greater openness, despite the pressures described above. There is a growing feeling in the country that foreigners, particularly those in the country illegally, are responsible for increasing crime rates and an overall decline in public security. In 2003, 92 percent of Japanese did not want more foreigners allowed into the country, fearing rising crime rates. Such feelings have been exacerbated by the media, which tend to be conservative and nationalistic in outlook and, as such, opposed to more open immigration policies. Both politicians and the media regularly assert the certainty of social instability should the number of foreigners rise. Most policymakers view the public's strong anti-immigration sentiments as a significant impediment to major reform. To the limited extent that we find human rights or immigrant advocacy groups in Japan, they exercise little influence. In the absence of public pressure for change or effective interest group activity, immigration issues are unlikely to be propelled on to the country's systemic agenda.

The absence of significant reforms to Japanese immigration policies in the early twenty-first century reflects the country's rejection of immigration as an aspect of Japanese social or economic life. This is not a country with a historical pattern of immigration. Reflecting this legacy, a strong commitment to excluding foreigners continues today, despite evidence that such foreign labor is already in high demand and will be even more necessary in the future. Further, there appears to be little interest in policies that allow immigrants to settle in Japan and become citizens. Finally, the absence of effective immigrant interest groups or political parties concerned with these issues also eliminates other sources of pressures for reform. Generally speaking, then,

reform has failed to occur in Japan because no one with any capacity to influence the policy agenda is particularly interested in pursuing policy change.

Germany

Background: Policy Process and Policy History

German immigration policy is developed at the central level but is implemented and enforced at the state level. Multiple institutions at the federal, state, and local levels are responsible for immigration policy making and implementation. The federal Ministry of the Interior is most involved with immigration policy making, although the Ministry of Foreign Affairs has several subdepartments that also address immigration issues. Each of the sixteen German states (*Länder*) has an aliens authority charged with carrying out national immigration policies. Federal offices are responsible only for the initial reception of ethnic Germans (foreigners who share blood lines with Germans) and for deciding whether asylum seekers should be accepted as refugees. States decide, under federal guidelines, about family reunification, naturalization, and deportation. Little policy coordination occurs between individual states and the federal government, even though a working group that includes the federal interior minister and the interior ministers of each of the states has been created to coordinate policy enforcement. This distribution of authority means that immigration is governed by a variety of ad hoc rules and policies rather than a single overarching policy.

In the 1990s Germany received more immigrants than any other European country. Immigration, however, has not been part of Germany's national self-definition, and preventing further immigration continues to be the country's first principle of immigration policy making. Immigration policy reform trends echo the increased calls for immigration restrictions observed elsewhere. As a result, since the mid- to late 1990s, immigration has declined steadily. By 2006 the foreign-born population was 6.7 million, or 8 percent of the total population. This population consists primarily of immigrants from Turkey, Yugoslavia, Italy, and other European countries from which Germany used to recruit workers, as well as central and eastern Europe.

Germany was traditionally a country of emigration, although it had a small foreign worker population prior to World War II. Immediately after the war, until the early 1960s, the majority of immigrants to Germany were ethnic German refugees. However, reflecting postwar labor shortages, Germany's guest-worker population rose from 1 million to 2.6 million, or from 5 percent to 12 percent of the German workforce, by 1972. In the early years of guest-worker importation, immigrants were largely of European origin, but by 1972 Turkish workers formed the majority of the immigrant worker group.

Amid the economic downturn of the early 1970s, the German government in 1973 put a stop to the recruitment of foreign workers. Policies tripled the employer-paid recruitment fee and banned all further foreign recruitment.

This ban was highly ineffective in controlling immigration flows because of continued and increasing rates of family reunification. The 1990 Aliens Law had three objectives: to promote the return of foreigners to their home countries, to restrict further immigration, and to facilitate the integration of those who remained. The law made it more difficult for foreigners to obtain permanent residence rights and made a clear distinction between EU nationals and non-European citizens (the former did not need work permits to enter the country and had complete freedom of movement within the country). The 1990 law did not, however, establish standards or categories, or numerical targets, to control population inflows. After labor recruitment came to a stop, the primary form of legal immigration was family reunification and refugees. By early in the twenty-first century, Germany had yet to adopt comprehensive policies that attempted to restrict the number of persons eligible to enter (except for ethnic Germans) or that disallowed family reunification. Nor had it attempted to stem the tide of immigration by reducing push factors through development assistance. Until recently, the situation in Germany was unusual: the government announced that the country was closed to immigrants, but few official policies ensured that this was the case.

Among the industrialized countries, Germany has one area of population inflow that is unique: the return of ethnic Germans. In the 1980s and early 1990s these individuals claimed full rights to German citizenship. German citizens tend to view these returning Germans as foreigners who speak different languages, who observe different customs and traditions, and who have no real right to German residence. In reaction, a 1993 law was implemented that restricts the number of entering ethnic Germans, limits the cash payments they can receive on arrival, restricts their access to language training programs, and provides funds for development and cultural assistance to discourage their emigration to Germany. By 2006 the migration of persons of German origin from the successor countries of the former Soviet Union had dropped dramatically (to less than 8,000, compared to more than 35,000 in 2005 and between 100,000 and 230,000 in the 1990s).

Germany's 2005 Immigration Act reduced the number of legal residence permits from five to two (one with limited duration and one with unlimited; the duration varies according to the permit's purpose). Under the new law, entry depends on the immigrant's skill level: highly qualified persons are given the full right to work upon arrival, whereas unskilled and low-skilled workers are still banned. Admission to work is based on a priority check to ensure that positions cannot be filled by a German or EU national. Family reunification is still permitted, and those admitted in this way now have the same labor market access as the relative they are joining (they previously had to wait one year to work). Family migration reached its lowest point in more than a decade in 2006. Most analysts view the new law as falling short of what is needed to meet Germany's current and future labor and demographic challenges.

Asylum seekers and refugees are admitted to Germany under Article 16 of the Basic Law, which, in an explicit commitment to human rights, states that “persons persecuted on political grounds shall enjoy the right of asylum.” Before 1993 the number of asylum applications was not restricted, and applicants were entitled to social welfare benefits and housing until decisions were made about their applications. Such liberal policies made Germany the primary destination for asylum seekers among all the industrialized countries. Between 1945 and 1993, Germany attracted half of all applications for asylum in Europe. The number of asylum seekers entering Germany began to increase significantly in the mid-1980s and peaked at 440,000 in 1992. In response, and after lengthy political debate, Germany reformed its asylum process in 1993, through an amendment to the Basic Law. The constitutional right to asylum was protected in the reform process. However, asylum applicants who arrive in Germany through safe countries are required to return to these countries and make their asylum claims there. Since 1992 the number of asylum seekers has fallen consistently: in 2006 asylum seeking continued to decline, to about 21,000, its lowest level since early 1980s.

Traditionally, illegal immigration was not as significant a problem in Germany as in other industrialized countries (reflecting the effective policing of its borders), but today it presents a growing policy challenge. The size of the country’s illegal immigrant population has increased since 1993, particularly as rejected asylum applicants manage to remain in the country. The number of illegal immigrants has also risen because of criminal trafficking operations that smuggle people in and because some foreign workers remain in the country after their work permits expire. Germany has traditionally resisted regularization programs for illegal immigrants on the grounds that such programs would encourage further illegal immigration. However, a new policy was introduced in 2007, making it easier for some unauthorized immigrants to remain in the country. Foreigners whose deportations had been suspended and who had resided in Germany for many years were granted a right to stay “on a trial basis” for a period of two and a half years with the possibility of extension. These individuals have to be self-supporting; under the new policy, after four years they are given unlimited access to the labor market. Germany has yet to develop comprehensive policies in response to the illegal immigration problem, and the country has devoted insufficient resources to border control and internal enforcement. German political leaders have been unwilling to act more strongly to control illegal immigration due to opposition from employers and business leaders who are concerned that stringent controls will hurt the economy, as well as from pro-immigrant groups.

Contemporary Dynamics

Immigration policy has been one of the most politically significant areas of policy reform in Germany since the late 1990s. Although through the early

years of the twenty-first century many German political leaders (especially conservative leaders) have continued to state that Germany was not, nor would it become, a country of immigration, in reality the country had a substantial permanent immigrant population, and immigration inflows continued to grow. A key challenge, therefore, was how to develop an immigration policy for the country that accurately reflected the problem at hand—namely, that further reduction in immigration inflows appeared unlikely because the country's large resident immigrant population makes family unification growth inevitable, economic and demographic changes make foreign labor a necessity, and Germany remains an attractive destination for immigrants.

By the end of the twentieth century, German political leaders were confronted with a public that believed widely that the government had lost control over immigration and that was clamoring for a more realistic and effective policy regime. At the same time, the country was faced with vast demographic and market challenges that could not be denied. The Social Democratic Party (SPD)–Green Party coalition elected in 1998 promised a new approach to immigration by first acknowledging that Germany was an immigration country. However, the new government held only a slim majority in the lower house of parliament and was initially fearful of pushing comprehensive immigration reform in the chamber. To build an immigration consensus, the Social Democratic minister of the interior, Otto Schily, created an independent commission chaired by a prominent leader of the opposition Christian Democratic Union (CDU) and including representatives of trade unions, employers' associations, churches, local governments, and all political parties. In its 2001 report the commission drew attention to the rapidly aging German population, the country's low birth rate, and the future labor market gap that would emerge as a result. To address these problems, it recommended the active recruitment of qualified immigrants based on a skills-based point system, the promotion of integration, and an overhaul of the country's asylum rules.

With its agenda thus set by the commission's report, the government in 2002 introduced Germany's first comprehensive immigration policy. In introducing the bill, SPD chancellor Gerhard Schröder said that Germany needed immigrants and a new law to regulate their entry and integration. Interior Minister Otto Schily said that the proposed new law would give Germany "the most modern immigration legislation in Europe. With this law, Germany shows itself to be an open country." The CDU-CSU (Christian Social Union) stridently opposed the legislation in both the Bundestag and Bundesrat, even though many of the party's members served on the 2001 commission. The opposition parties argued that Germany should not increase immigration at a time of high unemployment; that accepting more foreigners, a large proportion of whom could be expected to be unemployed, would add to the country's welfare costs; and that the law would entice more

immigrants to enter Germany. The CDU also questioned German society's capacity to integrate more foreigners. However, most business, trade union, humanitarian, and church groups supported the law. A 2002 poll showed that 51 percent of Germans were in favor of the law, 30 percent against. Many of these key stakeholders were dissatisfied with some aspects of the legislation, but they viewed it as an important step toward a modern immigration policy. These groups supported the bill in hopes that it would pave the way for future reform more in line with their own preferences. After heated debates, the law passed in July 2002 by a vote of 320–225 in the Bundestag and 35–34 in the Bundesrat. The opposition parties immediately shot back, however, challenging the law in the German Constitutional Court on accusations of procedural voting errors in the Bundesrat. The court subsequently overturned the law, finding that the vote had been conducted improperly.

Immigration was a major issue in the 2002 parliamentary election campaign. The opposition CDU-CSU parties argued against liberalizing immigration and persistently held to the position that Germany was not a country of immigration. CDU leader Edmund Stoiber asserted that “Germany cannot handle any more immigrants . . . where there are more than four million jobless, then it is irresponsible to open up the job market to everyone.” A CSU minister accused the SPD government of compromising Germany's economic future with its immigration policy, as well as threatening Germany's national identity by engineering a multicultural society. The Social Democrats and Greens responded that their opponents were desperate and would use any issue to “find a topic with which one can arouse emotions.”

In fall 2002 the narrowly reelected SPD-Green government reintroduced its 2002 immigration legislation unchanged in the parliament. The CDU characterized this as a “provocation”—saying that the new bill would never get a majority in the upper house, where, following the elections, partisan control had shifted to the CDU-CSU. CDU leader Edmund Stoiber stated flatly that the CDU wanted a law that would restrict immigration, not increase it. As fears of terrorism increased citizens' concerns and as the country's unemployment rates continued to rise, the CDU's strong opposition to any proactive migration policy began to garner widespread public support. The bill passed in the lower house in May 2003 but was voted down in the upper chamber, where the opposition parties controlled the majority. The legislation thus entered into a protracted period of legislative gridlock, as a parliamentary conciliation committee tried to reach a difficult compromise behind closed doors. It took direct talks between the chancellor, the minister of the interior, and opposition leaders to engineer a compromise. The resulting law, passed in June 2004, was diminished significantly relative to the law passed in 2002. Its central measure, the skills-based point system for labor migrants, was lost during the bargaining process, and, as such, the recruitment ban on labor immigration by and large remained intact. Ultimately, a

drawn-out, highly politicized and polarized decision-making process resulted in a law that did not introduce a dramatically new framework for immigration policy.

Implementation of the country's new immigration policy proceeded smoothly regarding the legislation's primary goals. Although many German political leaders (especially conservative leaders) continue to state that Germany is not, nor will it become, a country of immigration, the country has a substantial permanent immigrant population, and immigration inflows continue. A remaining key challenge, therefore, is how to develop an immigration policy for the country that accurately reflects the problem at hand. Further reduction in immigration inflows appears unlikely, primarily because the country's large resident immigrant population makes family unification growth inevitable, the demand for skilled and unskilled labor is rising, and Germany remains an attractive destination for immigrants. In 2009, the CDU-led governing coalition had no plans for a new immigration law and continued to support a zero-immigration policy, whereas its then-coalition partner, the SPD, wanted a new immigration law along the lines of the legislation originally introduced in 2002.

The most recent reform to Germany's long-standing restrictive immigration policies can be explained in large part by cultural factors. The German population's response to a continuing inflow of foreigners continues to be conditioned by a widespread and deep-seated belief that Germany is not (and never should be) a country of immigration. As the country experienced ever-increasing population inflows and in particular as national security concerns increased, public opinion strongly opposed changes in the direction of liberalizing the country's immigration policy regime. Although the bill enjoyed the support of business and immigrant rights' groups, their ability to influence the decision-making process was ultimately overridden by changing public opinion on the issue. Political and institutional factors also played a role in the decision-making process: in particular, the nature of Germany's federal political system was instrumental in assisting the opposition parties in blocking the second version of the government's policy. When the opposition CDU took control of the upper house of the parliament in 2002, it gained significant influence over the policy-making process. During the 2002 election campaign, the CDU had successfully politicized immigration at the state level. With public opinion shifting in its favor by 2004, the opposition was able to gain the upper hand in negotiations with the government over policy content, producing a very different immigration law than the government intended. The CDU did not have this sort of political leverage in 2002 when the law first passed. At that time the SPD government controlled both houses of parliament and public opinion was disposed toward a more open policy. As national security and immigration became connected more closely in the public's minds, a more restrictive immigration policy regime was able to gain ground.