PPUA 7244, Paper 6

Administrative Reform and the New Public Management:
Germany / Immigration / BMI-BAMF

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What reforms have been implemented for the public

bureaucracy in your chosen country and policy area (if

any) – what was the goal? Given your policy goals

(problems), which reforms would be more appropriate for

your policy/agency, and why?

For this assignment, my challenge is to relate the administrative experiences of 2015–2017 with new public management developments and other internal/external factors and to provide recommended reforms. Adolino (2011) notes, "No single set of factors emerged as the dominant influence on policy-making in the second half of the twentieth century. Cultural, economic, political, and institutional influences all played roles. Although each policy area has its own particular context and dynamics, the national context for policy-making forms an essential element of the backdrop that shapes policy-making on each issue." [i] In my view, internal/external political, economic and social forces have played the strongest roles of changing immigration policy over the decades. Political reforms and legislation have caused the most change. Administration has remained remarkably stable, based on a Rechtsstaat or legalistic approach, at least up until 2015-2017 when the federal leadership forced changes upon the BMI-BAMF bureaucracy.

Conventions adopted by EU nations overlap and influence German policy, in particular the Dublin Regime signed in June 2015, and since modified several times. The Dublin Regime holds that the first Member State where finger-prints are stored or an asylum claim is lodged is responsible for a person's asylum claim. This is intended to bring order and to prevent simultaneous, multiple-filings in different nations by refugees, but critics have held that asylum seekers were often unable to obtain asylum rights in the first country of entry. In July 2017, the European Court of Justice upheld the Dublin Regulation declaring it still stands despite the high influx of 2015, giving EU member states the right to deport migrants to the first country of entry to the EU.[ii] With this backdrop, the goals of Germany in regards to immigration have shifted over the decades, from encouraging immigration to aid in economic growth, to slowing it down when millions were unemployed and when national sentiments turned against immigration,

to encouraging immigration for humanitarian reasons. The goals of BMI-BAMF have been to implement policy as dictated by law, within this changing set of priorities. So in summary, the history of policy development and reform has been twisting and complex, and especially so since the refugee crisis of 2015.

Peters (2014) notes that culture exists at three levels: Societal, political and administrative (**Figure 1**). The interplay of the three levels acting on public administration influences the conduct of public policy.[iii] Peters (2014) begins the discussion of dimensions of political activity of public administrators with a model describing internal / external (or policy survival) vs. formal / informal (**Figure 2**). [iv] "The importance for comparative research is that we can use the different outcomes of these common stimuli as means of looking at how different political and administrative systems respond to demands change, and respond to the need to interpret a set of policy and management ideas. The good news is that reforms have been creating a whole new laboratory for understanding public administration around the world. One useful way of understanding political and administrative processes comparatively is to observe the ways in which various countries respond to the common stimuli for change."[v]

Reichersdorfer, et al (2013) determined that Germany has weak control of parliamentary ministers; a great loyalty to administrative leadership, a strong ex-post control of government, little control over professional civil servants and that social perceptions can lead to resignations or other consequences. In analyzing immigration administration in Germany in relation to the 2015 refugee crisis and "Angela Merkel's open door policy" it seems to me that Reichersdorfer, et al (2013) had a very good framework that seems to help explain events.[vi]

Germany is a decentralized form of public administration, so there is significant separation from the makers of policy (Chancellor Angela Merkel, BMI-BAMF) and implementers of policy,

the individual state agencies that deal directly with clients. What this means in practice is that implementation of national policy is fragmented, and the state bureaucracies may implement policy in different ways than was intended. But at the same time, Germany is recognized for incorporating interest-groups into its policy-making machinery. [vii]

Angela Merkel's "open door policy" during the 2015 refugee crisis is a classic case of fragmented implementation of policy. In a 2015 report, the Council of Europe Commissioner of Human Rights welcomed Germany's leadership role in accepting refugees (and overriding the Dublin Regime) but had a number of recommendations and cautions, including: the need for increased staffing of agencies to process migrants and the need to protect migrants' human rights.[viii] Legitimate and illegitimate pressure groups, social movements and networks, and the public at large have combined to strongly influence policy as exercised by BMI-BAMF, to the extent that through the adoption of measures intended to reduce immigration to Germany 600,000 fewer immigrants arrived in 2016 than in 2015. At the same time, pro-immigration groups pushed for faster (more reasonable) immigration decisions, as wait-times and wait-lists ballooned under the tide of new immigrants. By contrast, nearby Norway averaged 5 days to process asylum applications, while processing times in Germany were on average 5 ½ months.[ix] The BAMF responded after much public criticism and quadrupled staff to decrease processing times and processed 2 ½ times as many immigration decisions in 2016, compared to 2015. In this process, BAMF agency chief Manfred Schmidt resigned for "personal reasons", and new agency chief Frank-Juergen Weise took control, and hired international consultants McKinsey & Co. to assist with streamlining and process improvements.[x] "Some 62 percent of all asylum applications in 2016, or about 434,000 people were decided favorably. Syrians remain the most common country of origin for asylum applications, followed by Afghanistan, Iraq, Iran and Eritrea." [xi] It is

important to note that there is a difference between "asylum applications" and the total number of "immigrant arrivals". Some immigrants in 2015 delayed their applications for asylum, and others chose to remain in Germany without filing applications.

In this evolution of public administration policy, the bureaucracy (state immigration offices) may have had "an agency ideology or culture" that prevented them from faster processing of immigration decisions (e.g., this is the way it has always been done) and resisted the calls for more production. At the states levels, the immigration offices interact directly with immigrant clients, but may also be aware of "anti-immigration sentiments" of the local populations, and that too may have played a role.[xii] The largest factor was likely the national administration's failure to react effectively to the challenge of this refugee influx, and that it did not readily provide the resources and staffing needed at the states level to handle the workload.

In this case-study, the national level (Chancellor Merkel, BMI-BAMF) was forced to react and made a change of the BAMF agency chief, and at the same time called-in "air support" by reversing the "open door policy to asylum seekers" and by hiring outside international consultants McKinsey & Co., which had proven results in Sweden, though some argue that "more efficiency" generated "harsher standards and less humane results".[xiii] That same view may well apply to the immigration policy of Germany. Lizzie Dearden (2017) notes, "The number of refugees arriving in Europe dropped dramatically last year after the EU struck a controversial deal with Turkey aiming to prevent crossings over the Aegean Sea. That had been the main route for the vast majority of migrants reaching Germany. Border closures and security crackdowns along the route have since left thousands of people trapped in squalid camps, with at least three asylum seekers dying in sub-zero temperatures in recent days. 2016 was the deadliest ever year for refugees, after the EU-Turkey deal made the main route revert to the far wider and more

treacherous Central Mediterranean Sea. More than 5,000 asylum seekers died in sea crossings, either by drowning, fuel inhalation or suffocation in overcrowded and unseaworthy boats." [xiv]

Hammerschid, et al (2013) found that Germany has a strong legalistic Weberian tradition in public administration and a more incremental approach, but also shows a significantly higher adoption and institutionalization of performance management and stronger reform intensity in the employment sector and a positive assessment of these reforms. Data also shows that the increased use of management instruments is associated with a more positive assessment of administrative performance. This is true while not having negative impacts on work satisfaction, social capital and organizational commitment. "From an international comparative view, Germany has a similar reform agenda with most other EU countries, but also a more hesitant adoption- especially of performance management." The 'Networked and Transparent Administration' (Vernetzte und transparent Verwaltung) was implemented in 2010. This program intends to increase administrative efficiency, transparency and responsiveness by three dimensions: human resources, organizational optimization, and ICT. Projects such as the "open government" initiative are in early pilot stages.[xv] A fairly simple GOOGLE web-search indicates that Germany has embraced e-Government, with the process for immigration and helpful information to be found posted online. But an effective website is just a piece of the complex puzzle of immigration law for migrants.

Adolino et al (2011) give a good summary of German immigration policy from prior to WWII (emigrant nation), and on to the highest immigrant nation in Europe in the 1990's and 2000's. [xvi] Erkut (2016) provides a very good summary of the forces and reasons against immigration (economic, citizens' concerns for safety and national identity). [xvii] German immigration policy has been in serious political contention from the 1990's onward, with the most recent

complications derived from "Angela Merkel's open door policy towards refugees" initiated in 2015.

Immigration policy in Germany has gone through a number of iterations and reforms. "Asylum seekers and refugees are admitted to Germany under Article 16 of the Basic Law (the German Constitution), 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."[xviii] In 1973 the German government put a stop to the recruitment of foreign workers as a response to the economic downturn. "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."[xix] The number of asylum seekers entering Germany peaked at 440,000 in 1992. Germany reformed its asylum process in 1993, through an amendment to the Basic Law. The constitutional right to asylum was protected. 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. 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.[xx]

The 2015-2017 reforms or new public administration in regards to BMI-BAMG are largely the impact of powerhouse international consultant McKinsey & Co. McKinsey's projects have included the development of fast-track arrival centers that can process claims within days. Experts in international law provide critiques of McKinsey's "outcomes" for immigration law. "In particular asylum decisions that are now handed-down by the federal migration office come faster but are leaving an increasing number of migrants with fewer rights, above all the right to family reunification, triggering hundreds of thousands of appeals that have created a new backlog - not in asylum centers, but in German courts."[xxi] "Legal experts said the shift to limited protection, accompanied the introduction of fast-track asylum centers and expedited denial for certain classes of migrants, is inseparable from the overall drive toward administrative efficiency and control of the movement of migrants — goals championed by the firm. 'This is a very sensitive area of law where you can't just streamline things, and I'm not sure that McKinsey's approach is one that systematically takes human rights concerns into account,' said Nora Markard, a professor of constitutional law at the University of Hamburg and director of its refugee law clinic. Markard observed that more efficient procedures were introduced at the same time that the federal migration office began granting only subsidiary protection — a status that recognizes an asylum seeker may suffer serious harm in his or her country of origin but doesn't qualify as a refugee — to an increasing number of migrants from Syria, thereby allowing them only a one year residence permit instead of the three allowed refugees, and denying them the right to family reunification. 'It's not coincidental that these changes happened at the same time,' Markard said."[xxii]

Recommendations

It seems to me that more policy developments associated with participatory government and transparency would be beneficial. And that Germany may be headed in that direction, even if "at a tortoise pace". The next-wave problem area seems to be the court-system now awash with appeals triggered by "more efficient processing of immigration decisions". So while one part of the immigration machinery (input, processing of decisions) has been expedited, the legal system will now be the measure left for migrants to pursue human rights of asylum. Germany has been a leader both in the EU, and the world at large in the efforts to accept and settle refugees. After the "tidal wave" of refugees entering Germany in 2015, Germany's political leadership has responded to the public and pressure groups, and "tightened the spigot" in order to slow the number of refugees. With President Trump's "America First" approach to global issues, the US seems to have abdicated its leadership role in this policy area and in other global matters as well. That may leave Germany in a world leadership role, as the largest and wealthiest nation in Europe.

In this leadership role, it becomes important for Germany to espouse a humanistic and curative approach to asylum seekers that is in very clear need of an effective global effort. On balance, political events and factors enter the equation, as both the recent US presidential election and the UK and "Brexit" indicate populist trends that lean against "global reform efforts" aimed at economic and political well-being. France in its most recent election of President Emmanuel Macron seems still to embrace global solutions. In Germany, Chancellor Angela Merkel remains popular, but she and her party may lose favor in the election of October 2017. Clearly the refugee crisis we are experiencing today and solutions for it extend beyond the borders of Germany, and beyond German policies of immigration. The North-South divide

seems to grow wider, and so we continue to see crisis management in active engagement. I will summarize by saying that "political power" was exercised over bureaucracy in Germany, and that the results show a mixed-blessing.[xxiii] The refugee crisis is not going away soon. But fewer migrants are landing in Germany.
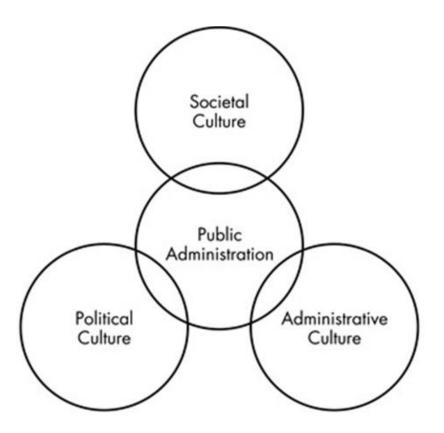
Figure 1

Figure 2.1 Culture and public administration

Peters, B. Guy. 2014. *The Politics of Bureaucracy: An Introduction to Comparative Public Administration* Routledge.

Figure 2

Figure 5.1 Types of bureaucratic politics

Peters, B. Guy. 2014. *The Politics of Bureaucracy: An Introduction to Comparative Public Administration* Routledge. Kindle Edition, 3703.

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