Deportation Outcomes and the Institutional Embeddedness of Immigration Bureaucracies: The Comparative Cases of Germany and the United States

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**Introduction**

A comparison of deportation policies across liberal democratic states reveals a formal consensus on the question of who should be subject to expulsion: noncitizens who crossed borders without authorization or who violated the terms of their admission, foreign residents who committed crimes, and refugees whose asylum claims have been denied. While the legal provisions stipulating the deportation of these three categories of noncitizens vary somewhat in terms of their severity, this disparity is one of degree, not of kind. Given the crossnational convergence of deportation laws, then, it is puzzling to find that the qualitative outcomes of deportation policy—the distribution of actual deportations across these three immigrant groups—vary significantly across countries. Comparing the qualitative distribution of deportations in Germany and United States, we find that, while German bureaucrats target asylum seekers for deportation, U.S. immigration authorities focus on criminal offenders and undocumented immigrants at ports of entries instead.

In order to understand the puzzling divergence between formal deportation policies, on the one hand, and their empirical outcomes, on the other, we need to closer examine the politics of implementation. Over the past two decades an entire literature has proliferated examining the question of whether or not liberal democratic states have the capacity to exert meaningful control over international migration. However, like the larger comparative political science literature, migration scholars have so far paid little attention to the specifics of policy implementation. This is striking, because not only is implementation a key variable in accounting for control outcomes, it also is central to the understanding of state capacity, a concept fundamental to this literature. This paper, by studying deportation policy in the arena of implementation, not only reveals empirical variation in migration control invisible to analyses at the policy-making level, it also contributes theoretical insights to the study of executive capacity.

Because prominent explanatory approaches to the study of immigration control have largely focused on the legislative arena, they cannot account for those policy outcomes which are a function of implementation processes. For instance, scholars of public opinion have closely studied the electoral politics of legislating migration control. Accordingly, the conditions under which the broadly restrictionist preferences of electorates (Beck & Camarota, 2002) are translated into policies of control is determined by the interaction of electoral rules (Money, 1997; 1999), the institutional power of pro-immigration interests (Freeman, 1994; Gimpel &
Edwards, 1999), and the spatial distribution of immigrants (Money, 1997; 1999). However, while these studies can determine under what conditions electoral pressure will lead to legislative reform, they are silent on the question of whether and to what extent these policies will actually be implemented. Thus, given that California’s populist backlash against undocumented immigrants in 1994 did have important legislative repercussions in Washington two years later, we would expect immigration bureaucrats to target their deportation efforts at immigrants residing in the country illegally. However, as we will see, contrary to these expectations the deportation of undocumented immigrants largely stagnated throughout the 1990s.

The correlation between policy outcomes, on the one hand, and processes of implementation, on the other, has long been established by scholars of public administration (Kaufman, 1967; Wilson, 1978; Lipsky, 1983; Pressman & Wildavsky, 1984; Derthick, 1990). In the field of migration control, policy debates more often than not revolve around the problem of non-implementation, thereby implicitly acknowledging the significance of implementation in accounting for policy outcomes. Post 9/11, for instance, discussions on the failings of the U.S. Immigration and Naturalization Service to prevent the entry of foreign terrorists time after time underscored the agency’s failure to implement legislative mandates to establish entry-exit and foreign student databases.

Finally, it is important to bear in mind that the study of implementation is in fact the study of politics. Implementation does not connect policy input (immigration laws) and policy output (number of deportations) in a linear fashion. Rather, the sphere of implementation resembles a black box within which agreements reached at the legislative level are once again open to contestation and renegotiation.

This paper applies an institutional logic of analysis (Steinmo, Thelen & Longstreth, 1992) to the study of policy implementation. I argue that policy outcomes in large part depend upon the degree to which the immigration bureaucracy is institutionally insulated from the preferences of other political actors. The institutional configuration of a political system establishes the ground rules for interactions between executives, legislators, and street-level bureaucrats, thereby determining the institutional power of the bureaucracy. Consequently, it is the balance of power between these three sets of actors which most accurately approximates the “black box” which connects policy inputs to policy outputs. Unlike prominent rational choice theorists who regard legislative oversight as the sine qua non of effective policy implementation
(Niskanen, 1971; McCubbins & Schwartz, 1984; Moe, 1990; McCubbins & Kiewiet, 1991; Huber & Shipan, 2002; Strom, Müller & Bergman, 2003), this paper argues (without making a case against democratic accountability) that the implementation of legislative mandates is also contingent upon a modicum of bureaucratic autonomy.

The paper, which examine deportation outcomes in Germany and the United States, focuses on the role in policy implementation of one set of bureaucratic actors in particular: immigration executives. This bureaucratic elite is directly responsible for translating legislative mandates into operational directives for policy implementation. Before examining the institutional relationships which structure the interaction of German and American executives within their larger respective political system, and which ultimately shape policy implementation, I will briefly outline my research methods and the empirical deportation outcomes in the two country cases.

**Empirical Deportation Outcomes in Germany and the United States**

**Research methods**

Among the countries of Europe and North America, Germany and the United States are the “frontrunners” of deporting states: the numbers of deportations are comparatively high and have increased drastically since the mid-1980s: between 1985 and 2000, annual deportation figures quadrupled to 35,444 in Germany and to 99,187 in the United States. While these numerical developments cannot be used as reliable indicators of control capacity, they do reflect the administrative and political salience of deportation as a policy measure, thereby rendering them broadly comparable in terms of the political context of immigration control. While both country cases hold in common the political salience of deportation, they vary substantially on the institutional structures which, I argue, ultimately determine the nature of policy implementation. In general terms, immigration executives in Germany’s parliamentary system have a stronger degree of political insulation than do their counterparts in the American separation-of-powers system.

The paper draws on data gathered from over 180 interviews with street-level bureaucrats, immigration executives, elected officials, judges, lawyers, immigrant advocates and journalists. Because of the secretiveness of this almost unstudied policy field, little data is publicly available and data collection heavily relies upon primary research. Hence, personal interviews with
bureaucrats are indispensable in order to examine the implementation of deportation policy. I complement these data with a vast array of secondary data such as legislative documents, government statistics, government-issued reports, media coverage.

In both countries, I selected two jurisdictions for in-depth analysis: the German Länder (federal states) of Baden-Württemberg and Brandenburg, and the U.S. INS districts of Miami, Florida and San Diego, California. Selection of the subcases reflects variation at the bureaucratic street-level which, because of this paper’s focus on the *elite* bureaucratic level, is not directly addressed here. The data were collected between August 2001 and July 2002. As a result, the paper does not include recent institutional developments in the U.S. when in March 2003 the 62-year-old Justice Department’s Immigration and Naturalization Service (INS) was dismantled and broken up into three different agencies within the newly created Department of Homeland Security.

**Qualitative Deportation Outcomes**

*Germany.* Throughout the postwar period into the 1980s, deportations did not feature prominently as a policy measure in the Federal Republic. As Figure 1 shows, between 1977—the first year for which national data is available—and the late 1980s, the number of deportations conducted by (West) German authorities remained essentially constant, only occasionally surpassing the 10,000 mark. During this period, asylum seekers made up only a small fraction of deportees: data for the late 1970s shows that only approximately 5 percent of deportations affected rejected asylum applicants (see Figure 1). The numerical insignificance of asylum deportations can be attributed to the range of factors, such as the small number of asylum seekers, their quick absorption into the expanding postwar economy, and the political imperatives of the Cold War.

The late 1970s and early 1980s marked an end to the hitherto consensual and liberal period in German asylum politics. When in a context of economic stagnation the number of asylum seekers exceeded the 100,000 mark in 1980, at the same time as the national origin of asylum applicants visibly shifted in favor of non-white countries, the issue of political asylum quickly became construed as fundamentally one of migration control (Klausmeier, 1984; Münch, 1993; Höfling-Senmar, 1995). However, while the Bundestag and the federal ministry of the interior passed a series of laws and administrative regulations which aimed at deterring asylum
seeking and speeding up the clogged-up adjudication process, these control measures aimed at controlling the *inflow* of asylum seekers, rather than enforcing their *return* (Münch, 1993).

Figure 1: Germany, Deportations by Category, 1977-2000
(Grey columns represent total deportations where no breakdown available)

It was only in the late 1980s that deportation itself began to gain prominence in political debates on asylum policy. In 1989, deportation numbers for the first time significantly surpassed the 10,000 mark, jumping drastically to over 52,000 in 1994 and then settled between 32,000 and 38,000 annually for the latter half of the decade (Figure 1). This unprecedented increase has to be understood in large measure as the result of stepped-up asylum removals: the proportion of deportees who were asylum seekers increased from 24 percent in 1989 to 77 percent in 1993 and subsequently stabilized at around 52 percent. Significantly, the drastic increase in deportations cannot be accounted for by the null hypothesis which would posit that rising asylum removals are unrelated to the politics of implementation, but rather reflect a parallel increase in the number of deportable asylum applicants. Figure 2 examines asylum deportation in relation to a given year’s number of rejected asylum applicants. Accordingly, while in 1989 asylum deportations only represent 3 percent of that year’s rejected claimants, this proportion had grown to 13 percent in 1998.8
United States. In contrast to deportation trends in Germany which until the late 1980s were marked by stagnation, data from the United States present a long zigzag pattern of abrupt peaks followed by substantial drops in removals\(^9\) (Figure 3).\(^{10}\) Historically, deportation waves were often motivated by security concerns. As a wave of anti-Communism swept the country after the end of WWI, the notorious Palmer raids of 1919/1920 resulted in the deportation of hundreds of alleged Communists and labor unionists to Europe (Panunzio, 1921; Schrecker, 1997), a dynamic repeated three decades later under McCarthyism (Schrecker, 1997). Other deportation drives were economically motivated, such as the infamous “Operation Wetback” which responded to fears in the early 1950s that the employment of undocumented workers would undercut the dependability of Bracero labor (Calavita, 1992).\(^{11}\)

This zigzag pattern came to an end in the late 1980s, when deportations started to, first, rise steadily, and then increase precipitously to a 2002 high of over 114,200 (nearly 185,000 when including expedited removals). Once we disaggregate total number of removals into administrative categories, we observe a remarkable divergence in trends among the various groups of deportees (Figure 4).\(^{12}\) Considering the prominence of illegal\(^{13}\) immigrants both as the
object of control rhetoric and as the largest group of deportable immigrants, we would expect this group to account for the steep incline in deportations.\footnote{14} However, as Figure 5 shows, while until the mid-1980s variation in the removal of undocumented immigrants largely accounts for ups and downs in overall numbers, this is no longer the case after 1985. In fact, as deportations start to increase, the number of deported undocumented migrants remains constant. Instead, the rise in numbers during this period is solely attributable to the deportation of immigrants convicted of crimes. In a remarkable development, criminal removals increased 15fold (!) within 10 years and, in 1995, accounted for over 50 percent of total deportations. The emergence and subsequent prominence of criminal deportations is thus the single most striking development in U.S. deportation outcomes.

In purely quantitative terms, the most eye-catching development is the deportation wave of the late 1990s. As Figure 4 shows, the escalation of deportations after 1996 is largely attributable to expedited removals, a new provision instituted by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act which provided for the summary deportation at ports of entry of persons who do not have valid travel documents or who attempt entry through fraud. Thus, while expedited removals can be understood as a subset of non-criminal deportations, they distinguish themselves by the ease by which a person can be turned back at a port of entry.

Having established trends in deportation outcomes in the two country cases, I will now examine the comparative politics of implementation, paying particular attention to the capacity of immigration executive to shape implementation outcomes.

**U.S. Immigration Executives: Bureaucratic Decision-making under Institutional Conflict**

**Federal Bureaucrats in the American Constitutional Order**

Federal bureaucrats in the United States serve in agencies which do not occupy a clearly defined, constitutionally legitimated space in the political institutional universe. Because the federal administration was only poorly developed at the time of the nation’s founding, “the founding fathers had little to say about the nature or function of the executive branch of the new government. The Constitution is virtually silent on the subject and the debates in the Constitutional Convention are almost devoid of reference to an administrative apparatus” (Wilson, 1975, p.77). Operating within a constitutional order that neglects to provide for a
clearly-defined institutional space, senior executives are acutely exposed to turf battles between the President and Congress, both vying for control over administrators. While the Constitution charges the President to “take care that the laws be faithfully executed,” the separation of powers so fundamental to the U.S. political regime compromises the President’s right to exercise control over the administration (Derthick, 1990). The constitutional ambiguity over the question of who should control the federal bureaucracy further combines with a political tradition which exalts the role of elected representatives to create strong incentives for members of Congress to actively exercise control over agencies.

Not only are federal executive officers exposed to the competing exercise of oversight by Congress and the Presidency, but Congressional oversight itself is exercised by a plurality of actors. Martha Derthick in her study of the Social Security Administration juxtaposes “Congress as the legislator, “serving as policymaker for the country, with “Congress as the collection of individual representatives,” catering to the needs of millions of constituents (1990). This basic two-fold distinction, I will show, is a crucial factor when accounting for the impact of Congressional oversight on administrative behavior. Fundamentally, “Congress the legislator” and “Congress the collection of representatives” communicate two contradictory messages to immigration executives: one emphasizing rigorous law enforcement, the other asserting the service needs of immigrant constituents, as well as the preferences of organized pro-immigration interests. Importantly, this institutional role conflict within Congress is more defining of Congressional behavior than is partisanship.

The INS under Congressional Oversight

Beginning in the late 1980s, congressional immigration subcommittees started to systematically engage in oversight over the INS, thereby exerting substantial pressures on agency executives to aggressively enforce certain control policies. Significantly, congressional oversight was not restricted to “fire-alarm” activities, but included the exercise of “police-patrol” oversight. As a result, implementation decisions by INS executives have to a considerable degree taken into account anticipated Congressional reactions. I will closer examine two particular measures of Congressional police-patrol oversight: first, oversight hearings conducted by the House immigration subcommittee, and, second, investigatory reports of the General Accounting Office which were commissioned by Congressional committees.
Between February 1997 and June 2002, a period spanning the 105th-107th Congresses, the House Judiciary Subcommittee on Immigration and Claims held a total of 46 oversight hearings on the INS’ implementation of immigration statutes, the vast majority of which concerned enforcement—as opposed to benefits—measures. Relative to other law enforcement agencies, the INS is disproportionately exposed to Congressional oversight. Examining the hearing activities of the Judiciary Subcommittee on Crime, for instance, we find that, during the same time period, committee members conducted only 39 oversight hearings. Not only does this reflect a lower overall committee hearing activity, but, more importantly, the hearings of the crime subcommittee concerned a total of five law enforcement agencies, compared to the 46 hearings of the immigration subcommittee which solely concerned the INS. It follows that, in the 1990s, the INS has been subject not simply to high but disproportionate levels of police-patrol Congressional oversight.

Having established the prevalence of Congressional police-patrol over the INS, how can we account for Congress’ disproportionate interest in the performance of the immigration agency? Why has the INS been much more exposed to committee oversight than have other agencies within the same committee jurisdiction? Joel Aberbach investigated the politics of agenda-setting in congressional committees by asking legislators and their staffs to rank the importance of various factors in triggering oversight (1990). He found investigations were most frequently triggered by scandals, followed by policy crises, the reauthorization process, inefficient program management, and situations where administrators and legislators disagreed sharply. Considering the close relationship between politically salient implementation problems, on the one hand, and congressional oversight, on the other, it comes as no surprise that the INS has attracted a disproportionate share of congressional attention. I will briefly outline three factors that render the agency particularly vulnerable to oversight.

First, among federal agencies, the INS is widely considered to be one of the most dysfunctional and problematic of bureaucracies (Morris, 1985; Koulish, 1996; Malkin, 2002). The agency has had more than its fair share of scandals, many of which have attracted sustained and national media attention. Cases as diverse as Elian Gonzalez and Mohammed Atta/Marwan Al-Shehhi have left the agency discredited and embarrassed in the eyes of the public and of Congress. A second reason which predisposes the INS to Congressional scrutiny is the political salience and volatility of immigration politics. Counting the minutes which “CBS
evening news” devoted to topics falling within the various committees’ jurisdiction, Deering and Smith (1997) found that, in both houses of Congress, the judiciary committees are the second most policy-salient of committees. While Deering and Smith did not collect data on thematic subcategories, there is little doubt that immigration features among the most salient of policy fields under Justice jurisdiction.\(^{25}\) A third reason for why committees have actively engaged in oversight is the fact that, after decades of chronic underfunding, in the mid-1980s Congress began to dramatically increase the agency’s budget. From 1985 to 2002, the INS’ budget has increased over \textit{tenfold} to \$6.2 billion, while authorized positions more than tripled to 38,600.\(^{26}\) Consequently, as Congress authorized huge funding increases it has become invested into actively overseeing the fastest growing of federal agencies.

\textbf{Congressional Oversight and the Shaping of Implementation Incentives}

Congress, exercising oversight through committee hearings and investigatory reports, has vociferously criticized the INS for not exercising effective immigration control. The reports of the General Accounting Office consistently highlight serious shortcomings in the agency’s implementation of its enforcement mandates.\(^{27}\) While investigatory reports are not necessarily effective tools of oversight in the sense that they result in improved agency performance,\(^{28}\) what is of interest here is not so much the question of whether or not congressional oversight achieves its desired results. Rather, I ask, what are the administrative \textit{incentives} flowing from both the form and the substantive contents of congressional oversight activities? Examining the transcripts of oversight hearings and GAO reports, two relational patterns stand out which define the interaction between congressional committees and agency leaders. Each relational dynamic gives rise to a set of executive incentives which in turn significantly impact on implementation.

\textbf{Playing the Numbers Game}

The substantive nature of congressional police-patrol oversight creates significant pressures on agency leaders to rely on measurable indicators of immigration control. Whether we conceive of police-patrol oversight as principally motivated by electoral credit-claiming, or whether we consider committee oversight as a disinterested means toward bureaucratic accountability, in either case legislators will rely upon indicators of agency performance which can be measured easily. Once these measures are in place, legislators can appraise, chasten, and
communicate to colleagues and constituents the performance of bureaucracies. How, then, is one to measure an agency mandate as complex and as intangible as immigration control? As in other areas of public policy, numerical indicators of control activities most easily lend themselves to measuring agency output over time. Needless to say, enforcement statistics such as the number of annual apprehensions, detentions, and removals may not necessarily tell us anything about the efficacy of agency actions. More importantly, to legislators and executives alike it may not matter whether or not these indicators are valid measures of improved enforcement—what matters is that these indicators capture agency activities which can be portrayed as indicative of agency performance. 

When it comes to interpreting deportation statistics, effective enforcement bears little relation to the number of removals. Because the pool of deportable individuals is both vast and unknown while agency resources are limited, enforcement necessarily relies upon targeting. Effective enforcement strategies would presumably concentrate on deporting those individuals whose presence most clearly prejudices the well-being of local communities. This, however, is a resource-intensive standard of performance which requires the use of intelligence and surveillance resources. And, importantly, neither members of Congress nor executives have sufficiently strong incentives to prioritize effective over easy enforcement. Few officials, regardless of the strength of their ideological commitment to immigration control, can afford to focus on effective enforcement: because the goal of close-to-perfect immigration control is elusive, numbers play an important role as a means of credit-claiming. Importantly, a shift from easy to effective enforcement would reduce the number of deportations, at least in the short term. In contrast, a strong increase in the number of performed deportations reflects well not only on the INS, but also on committee members overseeing the agency.

A reading of oversight hearings transcripts clearly exposes the importance of numerical performance indicators. The tension between numbers and effective enforcement is illustrated in the following exchange between Lamar Smith, the chairman of the immigration subcommittee, and Mark Reed, INS Regional Director for the central region. The issue under discussion is the agency’s strategy to combat the employment of undocumented immigrants.

Mr. REED: The emphasis is on impact rather than numbers. We are trying to ask the field, before you go to that site, be sure that you are going to do something there that lasts longer than that 1 week period of time. […] A lot of the people in the field—[…] We get hung up thinking that our mission is arrest and removal, arrest and criminal prosecution.
Those are tools, but that is not the mission. What we are trying to do now is to challenge our agents in the field to figure out ways to stop the illegal activity. […]

Mr. SMITH. It is kind of amazing what we are listening to. There aren't many individuals and there aren't many government agencies that would equate fewer results with greater success, and we are going to come back to this subject a little bit more in a minute, but I am surprised by some of the concepts of this new policy.

House Subcommittee on Immigration and Claims oversight hearing, 1 July 1999, pp. 71-72 (my emphasis)

Similarly, during a 1997 oversight hearing on the institutional hearing program, chairman Smith defines bureaucratic accountability as a function of the number of deportations performed.

In order to make progress, all parties involved have to focus on several key factors. First, we have to focus on the percentage of eligible criminal aliens who are actually removed from the United States pursuant to IHP [Institutional Hearing Program]. The current rate of 25 to 30 percent must be increased. As a measure of accountability, we will have to see significant increase in this percentage.

House Subcommittee on Immigration and Claims oversight hearing, 15 July 1997, pp. 4-5, (my emphasis)

Congressional pressures to demonstrate bureaucratic accountability by means of ever increasing deportation numbers have resulted in a disproportionate emphasis on statistics as performance indicators. The following excerpt from the opening statement of Paul Virtue, Acting Executive Associate Commissioner for the agency in 1997, clearly indicates that the agency is party to the numbers game.

Over the last 4 years, Commissioner Meissner has brought renewed emphasis to the removal of criminal and other aliens unlawfully in the United States. With the strong support of the Congress and the administration, INS has raised the number of removals to record levels 3 years in a row, and has worked to restore the integrity of the deportation process. This fiscal year we'll see an increase in detention space to over 12,000 beds, and an unprecedented effort to remove at least 93,000 aliens ordered deported and excluded. That's a 37-percent increase over last year's total of 68,000.

House Subcommittee on Immigration and Claims hearing, 11 February 1997, pp. 17-18

Because top executives rely so heavily on enforcement statistics for evaluation purposes, resource allocation has also become based on the numbers of deportations performed. The number game pervades agency culture down to the field offices, as the following interview quote by a district mid-level manager illustrates.

Right now headquarters tell us that we have exceeded the aim of 102% criminal deportations. They give us certain numbers. We are at a pace of 172%!

Personal interview, senior INS deportation officer, Miami, May 2002

The logic underlying this numbers game has far-reaching implications for the implementation of deportation policy. Most basically, the number game strongly favors enforcement strategies which produce rapid increases in the number of deportations. As we will
see, this has resulted in the targeting for deportation of immigrants held in detention, foreign prison inmates, and migrants apprehended at ports of entry.

**Playing Cat and Mouse**

In the American institutional universe, Congress as the overseer and agency executives as “the overseen” coexist on highly unequal terms. Herbert Kaufman in his study of federal bureau chiefs argues that “even if you define autonomy more narrowly as the ability of chiefs and bureaus to bargain as equals with all those trying to tell them what to do, they were not autonomous. Congress clearly had the upper hand in dealing with them, and many other constraints on them sprang from that relationship” (1981, p. 161). This imbalance of power inherent in executive-legislative relations, I argue, renders the relationship between federal agencies and subcommittees highly conflictual. Unable to operate autonomously even in situations where policy complexity requires the exercise of administrative discretion, executives resort to a defensive mode of implementation which is driven by political crises, rather than policy goals, and characterized by blame avoidance, rather than accountability. Significantly, this culture of defensiveness permeates the agency from headquarters to the district level. Thus, even where immigration laws and regulations explicitly authorize street-level bureaucrats to use “prosecutorial discretion” in favor of immigrants, deportation officers relinquish their discretionary powers and instead opt for closely following the letter of the law.

INS officers have discretion NOT to pursue a case, settle a case, drop a case! But they refuse to exercise this discretion. They say: we are prosecutors! They don’t know, they have no idea how to negotiate. They are on a blood hunt. There is no other government agency like the INS with a reluctance as strong to make decisions – we always hear: I can’t decide this, I need to speak to my supervisor, they always need to ask for permission for everything. They check all the time. I say: “you are a prosecutor! You can make decisions!”

Personal interview, Lilia Velasquez, immigration lawyer and human rights advocate, San Diego, 24 July 2002

While conflict between agency leaders and Congress is a political fact across the universe of federal agencies, the relationship between Congress and the INS appears to be particularly frayed, at least in the view of Representative Sonny Bono (R-CA):

I would just like to comment that, whenever we have these hearings, it's very difficult. It always seems to be a game of cat and mouse as far as getting answers and getting correct data, and there's always extenuating circumstances to the data that we do receive. It's hard to keep asking questions and not get the total answer to the problems. It is discouraging. […] It seems like we have to pull teeth every time we have a hearing, and
you had to pull teeth to get responses to your letter. This is the ongoing way that we cooperate, and it won't work; it isn't working.
Sonny Bono (R-CA), House Subcommittee on Immigration and Claims oversight hearing, 11 February 1997, p.52.

From the perspective of the INS, however, its is Congress who undermines enforcement efforts: while committees fault the agency for insufficiently implementing legislative mandates, individual members of Congress—even sponsors of restrictionist legislation—also lobby the causes of organized interests and individual constituents. The following interview quote by a senior career executive at INS headquarters captures the double-bind the agency is caught in.

I give you an example about Congress and the INS: Grassley and another Midwest Congressman complained that there were too many illegal aliens. So investigations develops 2 operations, visits industries to verify workers. Our officers execute it. They find a lot of illegals. Two weeks later, the same Congressman calls up, asking us to stop it. And so the operation closed down. The industries most affected are meatpacking in the Midwest, the carpet industry in Georgia, agriculture in California, Tobacco and horse farms in Kentucky.
Senior INS official C, INS Headquarters, Washington, D.C., 27 August 2002

This lack of institutional autonomy combines with contradictory political pressures to set into motion a game of “cat and mouse,” to use Representative Bono’s words. Incapable of meeting congressional expectations, yet unable to escape congressional oversight, the agency adopts strategies of blame-avoidance. One such strategy is the manipulation and withholding of information pertaining to implementation. This strategy blew up into a massive political scandal following a visit of the Republican Congressional Task Force on Immigration Reform to the Miami INS district in 1995. Unbeknownst to Congressional delegates, senior managers of the Miami office had taken steps to hide the fact that the district was experiencing major difficulties in discharging its duties. INS managers ordered the temporary move of detainees to other detention facilities, artificially increased staffing at Krome detention center, and moved foreign nationals out of holding cells at the airport—steps which were designed to conjure up an image of the Miami district as “well-managed, efficiently run, and under control” (Bromwich, 1996, p.1). When, tipped off by a group of whistler-blowers, the Justice Department’s Office of the Inspector General started to investigate the incident, senior officials at regional and district levels attempted to slow and obstruct the investigation by, among other things, denying access to electronic correspondence.

To the district leadership, the visit of the Congressional taskforce was clearly perceived as a potential threat. The feeling of political vulnerability is clearly conveyed in the following
email excerpt, sent by Miami District Director Walter Cadman to several program managers and the Eastern regional director after meeting with INS Commissioner Meissner in Washington, D.C. to discuss the Taskforce’s upcoming visit.

During my one-day visit to HQ on Friday, one of the things I found out is that the above-referenced visit by the group of Congressional Representatives headed by Rep. Gallegly is considered EXTREMELY important by Commissioner Meissner. […]

Apparently, they did the San Diego border tour previously and it went well, but not without a few of the members of this Congressional Asylum Reform group pulling some employees to the side to get the “real story.” This, of course, carries with it some real risks.

_The Commissioner is concerned that it would take very little to put the kiss of death on their views toward INS, with significant adverse consequences for some time thereafter._ She wants ALL parties ready for this visit […] so that this influential group] would come away with the clear impression of competent, dedicated people doing the best they can with what they are given, and the ability to do significantly more if provided the resources by Congress to do so. […]

Bromwich, 1996, p.4, italic are mine, all caps in original

Importantly, while strategic details were ultimately worked out at district level, INS Director of Congressional Affairs Pamela Barry who was responsible for planning the taskforce’s trip for Commissioner Meissner in Washington also played an instrumental role. The Inspector General concluded, “Barry certainly played an important role in establishing a tone for the Delegation’s visit which discouraged candor. As is the case with other high-level INS managers, her own lack of candor during this investigation is also particularly disturbing” (ibid., p.194).

The congressional deception by the Miami INS district is exemplary in revealing the extent to which senior INS executives feel threatened by Congressional oversight and profoundly fear the political repercussions of negative Congressional review. The Miami scandal is particularly instructive because it contradicts the popular notion that, as a bureaucracy, the INS is primarily concerned with resource acquisition (Niskanen, 1971). Even though problems of bed space and understaffing at Krome detention center were at least partially the result of underresourcing, the district leadership considered it more important to avoid making a bad impression on members of the taskforce—what the district director termed “the kiss of death”—than to openly demonstrate the district’s need for more resources. I will now closer investigate how bureaucratic incentives arising from these sets of executive-legislative relations impact on the implementation of deportation policy.
Congressional Oversight and its Implications for Implementation Outcomes

Congressional oversight has, I have argued, generated incentives for immigration executives to prefer easy over effective forms of implementation. “Easy implementation” denotes enforcement strategies that aim at maximizing the number of overall deportations, regardless of their contribution to furthering the policy goal of immigration control. I will now offer empirical evidence for the claim that the disproportionate number of criminal deportations and expedited removals can indeed be understood as the result of the salience of easy enforcement. I will show that these two forms of deportation best meet the goal of easy enforcement for two crucial reasons. First, in contrast to deportations of undocumented immigrants from within the United States, criminal and expedited removals are unlikely to meet with political opposition. Immigrant advocates shy away from taking up the cause of criminal offenders for political reasons, while they have little control over the fate of migrants at ports of entry. The second reason for the salience of criminal and undocumented removals is the relative administrative ease with which individuals in prisons, detention centers, and ports of entry can be deported.

Targeting Immigrants Without Constituencies

U.S. senior executives, I have argued, do not possess the degree of political autonomy required for the successful implementation of contested policies. Faced with Congressional pressures for stringent implementation, while at the same time susceptible to simultaneous requests for non-implementation, executives respond by targeting for implementation individuals whose deportation is unlikely to engender political opposition. Immigrants who do not have constituencies who will mobilize on their behalf best fit this requirement, and two groups of noncitizens meet this criterion particularly well.

First, immigrants under deportation orders based on a criminal conviction rarely can fall back on the support of immigrant advocates. Just as in the legislative arena support for “criminal aliens” constitutes a serious political liability, advocates who mobilize on behalf of immigrants with deportation orders cannot rely on public support when taking on the cause of criminal immigrants. A useful test case for the mobilization potential of “criminal alien” cases is the aftermath of the passage of the Illegal Immigration Reform and Immigrant Responsibility Act
and the Antiterrorism and Effective Death Penalty Act of 1996. Not only did the acts radically expand the category of deportable crimes to include a multitude of non-violent crimes, even misdemeanors, but the acts also rendered these provisions retroactive. As a result, after 1996 significant numbers of legal permanent resident faced deportation who, despite the label “aggravated felon,” did not fit popular notions surrounding “criminal alien.” In fact, many of these individuals had lived in the U.S. since their childhood, were now facing deportation for non-violent crimes which they had committed many years ago, which at the time they were committed did not constitute grounds for deportation, and for whom they had already been punished. As a result, advocates in many cases did attempt to mobilize to prevent deportation of particularly “deserving” cases. While in some cases public and legal advocacy did result in the lifting of deportation orders, these mobilization successes were exceptional and did not reflect the overall experience of advocates, as the following quote by a San Diego advocate expresses.

Citizens and Immigrants for Equal Justice [a group supporting families impacted by deportation] in San Diego disbanded after 9/11. That had partially to do with 9/11, but also there was a feeling that we had done all we could, and wouldn’t achieve anything. There was a strong feeling of devastation. A sense of frustration. We took to the street, and we had one proposal after another – and it had made no difference. Nothing happened. No one wants to take on the cause of criminal legal permanent residents. […] It has to do with this country’s attitudes toward criminal aliens, and these have always been harsh. They contradict many liberal aspects of this society, on this issue this society is so conservative.

Personal interview, Lilia Velasquez, immigration lawyer and human rights advocate, San Diego, 24 July 2002

In fact, immigration officers have been able to capitalize on the stigma attached to the labels of “aggravated felon” and “criminal alien” and have used deportation as a way of claiming credit for purportedly effective law enforcement—even when the grounds for these claims were spurious, as reflected in the following statement by two Miami journalists.

James Goldman, the Head of Investigations after 1996, told us that they were being aggressive at picking up aggravated felons. They worked through local parole offices to identify people. So they publicized this, they wanted credit. They described the people they had picked up as dangerous, as, I quote, “the worst of the worst.” We then checked their criminal records. And there we saw that these people had only committed misdemeanors.

Personal interview, Alfonso Chardy & Andres Viglucci, staff writers, The Miami Herald, 6 June 2002

It follows that, even in cases where deportation does not constitute effective law enforcement—where its primary impact is the disruption of family and community life, rather than the promotion of public safety—implementing the “criminal alien” provisions of immigration law is
a bureaucratic strategy which carries a minimum of political risk and maximizes the political payoff of implementation—a condition which can be described as “politically compatible.”

The importance of political compatibility as a factor steering implementation is evident once we examine the relevant counterfactual: the deportation of undocumented immigrants from within the United States. Here implementation efforts consistently meet with political opposition. As the following two quotes demonstrate, not only does its social disruptiveness to local communities render this form of removal highly vulnerable to political backlash, but so does the visibility of physical coercion when removing individuals from their families and homes.

In Miami, there is a focus on criminal aliens. They are not that active in clamping down on employment enforcement because this would be too disruptive. There was a case where INS was clamping down on a flower business, and people were jumping on cars and everything. They stuck with that case but then tried to stay away from these type of cases.
Personal interview, Michael Bander, immigration lawyer, Miami, 10 July 2002

We used to go out to their [illegal immigrants’] homes and pick people up but were told off by the Clinton Administration. Congressmen had complained. They represent all residents in their districts, regardless of legal status. Even children get counted. […] Los Angeles started their own program maybe 6 years ago, and then an officer got shot by the grandmother of an alien, and this put an stop to it. We also used to have a program, in 1999 or 2000. Then some family member got pepper-sprayed by mistake, and this put an end to it.
Personal interview, Michael Magee, Deputy Assistant District Director, Detention & Removal program, San Diego, 23 July 2002

If the deportation of immigrant offenders rarely evokes widespread political protest, neither does the removal of migrants at ports of entry. Expedited removal—the deportation of migrants who arrive at ports of entry without travel documents or who attempt entry through fraud—was instituted by IIRIRA in 1996. Not only has expedited removal been devised as an administrative form of removal which is exempt from judicial review, but ports of entry are not only judicially, but also political insulated. Because access to ports is highly regulated, advocacy groups are not in a position to monitor removals and, in the vast majority of cases, only hear about removed individuals after the fact. As a result, as the following quote reflects, expedited removal officers operate in an environment marked by low levels of politicization.

We haven’t really had problems down here with the press. Or protest groups. They can get to the border, but not into the port – it’s federal property.
Expedited removal officer, Port Enforcement Team, San Ysidro Port of Entry, 6 August 2002
In sum, criminal offenders and migrants at ports of entries are particularly convenient subjects for deportation to an immigration bureaucracy which is acutely vulnerable to Congressional meddling. Because these two groups are least likely to elicit mobilization on their behalf they allow immigration bureaucrats to make the case that they are implementing Congressional mandates, without stepping on anyone’s toes in the process. However, the political capacity to implement policy is a necessary, but not sufficient condition for implementation. In addition to having at their disposal politically compatible strategies, bureaucrats also require the necessary infrastructural tools to physically remove individuals across the border.

Targeting Immigrants Within Infrastructural Reach

Deportation presents a fundamental challenge to the infrastructural capacity of the state. Michael Mann famously stated that “the unusual strength of modern states is infrastructural” (1993, p.60). Infrastructural power describes “the institutional capacity of the state […] to penetrate its territories and logistically implement decisions” (p.59). John Torpey’s study of infrastructural power exercised by the state through compulsory identity documents builds on Mann’s definition and argues that the infrastructural state embraces, rather than penetrates, the individual, suggesting a more comprehensive mode of control. The capacity of the state to “embrace” those under its jurisdiction is an essential condition for the implementation of deportation policy. Not only does deportation hinge upon the capacity of the state to locate and identify a particular individual, the state through the action of bureaucrats also has to retain its hold by surveiling and physically removing the deportee across the border.

Significantly, infrastructural capacity varies significantly across political systems. The American state in particular embraces society only loosely, relying upon much weaker internal population controls than the German state. In their efforts to locate individuals, American administrators do not have at their disposal the infrastructural tool of Germany’s mandatory registration system (Meldepflicht) which would require all residents to register with municipal police authorities. As a consequence, a poorly developed and weakly coordinated system of administrative population controls combines with the country’s geographical vastness to render locating potential deportees a particularly difficult infrastructural challenge. Given the difficulty of locating individuals within the United States, detention and incarceration provide crucial tools
of “embracing” deportable immigrants. And, in fact, the single most powerful predictor of the INS’ infrastructural deportation capacity is the question of whether or not a person has been placed in detention. In the last comprehensive evaluation of the INS’ deportation efforts before the agency’s incorporation into the Department of Homeland Security, the Office of the Inspector General concluded with two basic findings: “the INS remains effective at removing detained aliens,” and “the INS remains ineffective at removing nondetained aliens” (U.S. Department of Justice Office of the Inspector General, 2003, p.ii). The drastic divergence between the deportation rates of detained versus nondetained immigrants under deportation orders —92 percent and 13 percent respectively—clearly reflects the difficulty of removing immigrants from within the United States.

As a result of these challenges, deportation policy since the mid-1980s has been marked by three distinct policy developments. First, the INS has focused much of their deportation efforts on deportable immigrants within the criminal justice system, in particular through the Institutional Removal Program. Second, the detention of deportable immigrants has become the cornerstone of the American deportation regime. And, third, since 1996 expedited removals have come to account for a significant proportion of all removals.

The Institutional Removal Program. The Institutional Removal Program’s (IRP) legislative mandate originates with the 1986 Immigration Reform and Control Act which provided that deportation proceedings for criminal offenders be initiated as expeditiously as possible after the date of conviction. While the first IRPs were instituted in 1988, it was not until 1993 that the INS developed cost estimates of the resources that would be required to fully implement the program. Since the IRP became institutionalized in the mid-1990s, the number of criminal offenders deported through the program has increased substantially. As Figure 5 shows, not only did the number of IRP removals triple within five years to surpass the 30,000 mark, but the program has became the main tool for deporting “criminal aliens.” Whereas in 1996 IRP deportations accounted for 37 percent of all criminal deportation, by 2001 this share had increased to 76 percent.

What most distinguishes the institutional removal program from other forms of deportation is the extent to which it allows the INS to engage in “infrastructural piggy-backing.” By providing for the identification and processing of immigrants already firmly embraced by the
state, the IRP allows the agency to free-ride on existing criminal justice infrastructures. It is not surprising that, relative to other forms of removal, the IRP has been one of the most successful tools of deportation policy.

![Figure 5: Criminal Removals and the Institutional Removal Program, 1997-2002](Source: Internal INS Data)

**Detention.** The success of the institutional removal program, I have argued, rests in its ability to compensate the INS for its gaping lack of infrastructural capacity. At the same time as the agency has extended its reach into the criminal justice system, it has come to rely upon detention as a central pillar of policy implementation. Large-scale detention is a relatively recent development in INS policy. Until the 1980s, the agency used detention only toward those individuals considered either at risk of absconding or a security threat. In the 1990s, however, the agency’s detention capacity increased drastically, with the number of detention spaces tripling from 6,600 to 20,000 between 1995 and 2002. In FY 2001, the INS admitted close to 170,000 persons into detention, thereby surpassing the yearly intake of the Bureau of Prisons and the U.S. Marshals Service.

The rise of the “INS jail complex” (Welch, 2002) has to be understood as a result of the interaction of legislative reforms, on the one hand, with a shift in Presidential budget priorities,
on the other. Through a series of acts which mandated detention for an ever increasing number of deportable immigrants, Congress in the 1990s attempted to accomplish through legislation what the INS had hitherto failed to achieve administratively: removing immigrants by means of detention. Through legislative fiat, Congress compelled the immigration service to detain an ever increasing number of immigrants by, first, rendering compulsive the deportation of aggravated felons, second, drastically expanding the definition of aggravated felony, and, third, mandating the detention of all aggravated felons. During the same time period, detention space became one of the key Presidential budget priorities for the agency. From 1990 to 2001, the agency’s annual detention budget jumped from $366 million to $900 million (Rosenblatt, 2000; Welch, 2002).

Unable to provide sufficient bedspace through its own administrative infrastructure, the agency has used its enlarged detention budget to contract bedspace with existing criminal justice facilities. Today, the INS-run Service Processing Centers, which used to constitute the backbone of INS detention policy, only house about 20 percent of detainees. Instead, the majority of INS detainees (55 percent) are detained in local jails, 10 percent are in Bureau of Prison facilities, and 12 percent in private contract facilities (U.S. Immigration and Naturalization Service, 2001).

The infrastructural incapacity of the American state to sufficiently embrace its population to monitor the whereabouts of individuals under deportation orders has resulted in a policy focus on detention as the means most suited to compensate for this weakness. Through a complex web of contracts with county and private criminal justice facilities, the INS has vastly expanded its own capacity to detain immigrants in removal proceedings. The creation of a detention regime has effected a significant increase in the number of deportations, the high number of criminal deportations—all of which occur in the context of either incarceration or detention—indicate the significance of infrastructural variables in accounting for implementation outcomes. At the same time, mandatory detention has turned out to be not only an extremely costly policy measure, but it also has raised many questions concerning its human and social impact. In the absence of softer forms of surveillance, however, the INS has little choice but to use harsh, but easily available, means of implementation.

**Expedited Removal.** Finally, with the institution of Expedited Removal in 1996 the INS was offered an administrative tool which required a modicum of infrastructural capacity.
Unparalleled among the various forms of removals, the numbers of expedited removals stand in a close to linear relationship with the availability of processing personnel in what is called “secondary inspection.” As the following quote illustrates, the infrastructural ease of expedited removal made its employment particularly attractive to immigration officers, even in the absence of additional resources.

We remove 100-200 people a day, today we have already removed 6 people. In our heyday in 2000, we removed 200 a day. Our record was 247 in 24 hours! One person can do a maximum of 13 persons per shift per officer. [...] When expedited removal started, we initially were given no new positions. We tried to gain new positions, used the numbers to argue it. We got some training, but basically were thrown into it, with not very much supervision. The volume here is exceptional.

Expedited removal officer, Port Enforcement Team, San Ysidro Port of Entry, 6 August 2002

The drastic rise in the numbers of expedited removals in the late 1990s (see Figure 4) thus can largely be accounted for by the ease of its use. On the other hand, the decline in expedited removal numbers after 9/11 is the result of a shift away from “easy enforcement” toward more effective border controls: as expedited removal officers were moved from secondary to primary inspection—therefore allowing for more careful scrutiny of all arriving travelers—ports of entry lacked the necessary personnel to process those subject to expedited removal. Instead, these individuals were simply allowed to withdraw their applications for entry or else were sent back as “voluntary returns” across the border to Mexico.41

**German Immigration Executives:**

**Bureaucratic Decision-Making under Partisan Conflict**

**The Bureaucracy in the German Constitutional Order**

Where in comparative perspective the U.S. bureaucracy distinguishes itself by its relative lack of political autonomy and constitutional legitimacy, German civil servants operate in an institutional environment which endows them with substantial political autonomy, buttressed by a constitutionally-anchored mandate. Not only is the bureaucracy a constitutionally legitimated actor in Germany’s political universe, but it also fulfills a function which is clearly differentiated from the roles of both government and parliament. Constitutional doctrine has conceived of the permanent civil service as a steadying counterweight to the more transitory political executive (Goetz, 2000). This understanding is reflected in a ruling of the Federal Constitutional Court which defined the role of the civil service as “an institution which [...] should secure a stable
administration and thereby constitute a balancing factor vis-à-vis the political forces that shape the life of the state” (cited in ibid., p.66).

While its unequalled information-processing capacity, accrued since the institutionalization of the civil service in 19th century Prussia, has allowed senior bureaucrats to retain their elite position through the ups and downs of German political development, postwar democratization has had important ramifications for the self-conception of the civil service. With the rise of the party state (Parteienstaat), the policy process in Germany has become defined by the virtually unmediated influence of political parties (Goetz, 2000). As parties have permeated political institutions, the bureaucracy’s top echelons have not remained immune to party-politicization (Aberbach, Putnam & Rockman, 1981; Derlien, 1987; 1988). The resulting politicization of the civil service is most evident in the position of “political civil servants” (politische Beamte) who occupy the top federal bureaucratic posts. These senior executives are obliged to fully endorse the partisan goals of their government and can be temporarily retired without justification (Derlien, 1988).

While German senior bureaucrats share with their U.S. counterparts a degree of politicization not commonly found in other Western civil service systems (Aberbach, Derlien, Mayntz & Rockman, 1990), German political civil servants have little in common with Hugh Heclo’s “government of strangers” of U.S. federal executives. Not only is the number of political appointments in the German senior bureaucracy much smaller, but political appointees do not share the rather transitory public service of U.S. non-career bureaucrats (Derlien, 1988; Aberbach, Derlien & Rockman, 1994). Most fundamentally, however, the institutional position of U.S. senior executives operating in a separation of powers system starkly contrasts with that of senior officials in Germany’s parliamentary system. American senior bureaucrats are acutely exposed to scrutiny by Congressional subcommittees and operate under conditions of executive-legislative conflict which is inherent in separation of powers systems. In Germany, in contrast, executive officials are directly accountable only to the executive leadership, who in general can rely on the political support of the parliamentary majority. While parliamentary opposition parties try to exert bureaucratic control for partisan reasons, they have at their disposal only limited means of control. Whatever horizontal conflict lines exist, they run along partisan, rather than institutional lines.
Finally, a final factor which differentially impacts on the German and U.S. bureaucracies is the nature of federalism. Under German federalism, in most policy areas the powers of legislation and regulation rest at the federal level, while the Länder are charged with implementation. It follows that, while broad policy-decision on deportation policy are decided by the federal minister of the interior, lower-order decisions rest with the 16 Länder ministries of the interior. In situations where Länder are ruled by the opposition parties, then, this vertical division of powers introduces an element of vertical institutional conflict which is absent in the U.S. case, where the states play no role in the making and implementation of immigration policy. As we will see, policy implementation in Germany is frequently marked by political battles between the federal and the Länder bureaucracies. I will now closer examine the scope and the impact of parliamentary oversight on the executives of the federal ministry of the interior. In what ways, I will ask, does parliamentary oversight impact on bureaucratic decision-making?

The Federal Ministry of the Interior under Parliamentary Oversight

While the German Bundestag and the U.S. Congress hold in common a strong committee system—marked by a large number of committees structured parallel to the federal ministries (Schnapp, 2000)—there are striking crossnational differences in how committees have come to conceive of their chief responsibilities. Whereas legislative activity in both countries is largely concentrated in committees, the exercise of oversight over administrative agencies which is so clearly evident in the work of Congressional subcommittees is much less present in the committee work of the Bundestag. Nevil Johnson, in his study of Bundestag committees in the 1970s, found that only a small proportion of the interior committee’s conducted business was non-legislative in nature (Johnson, 1979).

While since there has been a trend toward more activist committee oversight—in particular the use of members’ constitutional right to compel the attendance of government ministers (Saalfeld, 2003)—these oversight activities still pale in comparison to those of Congressional subcommittees. This difference is the in part the result the much inferior resources of Bundestag committees: not only do committees lack a subcommittee structure, but they also do not possess the staffing and informational resources which are so fundamental to the exercise of Congressional committee oversight (Shaw, 1979). Moreover, regime differences have impacted on relations between executive officials and committee members. While American senior
executives interact with committee members largely in the conflict-ridden context of Congressional oversight. German ministers and their representatives routinely attend committee meetings in order to closely collaborate in the design of legislation. As a result, German executives appear in committees not primarily to accommodate requests for information or to account for administrative decision-making, but rather as “part of the deliberative group” (Schäfer, 1967, cited in Johnson, 1979, p.145).

If the Bundestag’s legislative committees only play a limited role in exercising oversight, parliamentary control of administrative actions is exercised most visibly on the floor of the Bundestag. Because of the political interdependence of government and the majority party group, however, parliamentary control of executive actions have principally become the task of the opposition. Accordingly, the politics of administrative control in the Bundestag can be broadly characterized as driven by partisan politics, where the opposition avails itself of those means of administrative control which are reserved for party groups, such as interpellations and parliamentary questioning. Control measures which require a floor majority, in contrast, are rarely employed because of the reluctance of the governing party coalition to engage in the public exercise of administrative control. As a result, means such as motions of censure of ministers and the summoning of members of government are rarely employed successfully by the floor because of the high hurdle of majority vote. Those measures which are conditioned on the vote of a parliamentary party group, in contrast, have been used with increasing frequency by opposition parties. This applies to the minor (Kleine Anfrage) and major interpellations (Große Anfrage), question hour (Fragestunde), topical hour (Aktuelle Stunde), and written questions by individual parliamentarians.

In what ways, then, do these oversight measures impact on the activities of the executive branch? Given that the parties in government rarely choose to employ these measures, does the exercise of oversight by the opposition provide significant checks on bureaucratic decision-making? A comparative analysis of executive-legislative verbal exchanges reveals two particularly striking differences between the two countries. First, whereas Congressional oversight hearings are characterized by a remarkable degree of scrutiny of bureaucratic performance by well-briefed legislators, members of the Bundestag not only enter into the exercise of oversight with relatively little data on bureaucratic performance, but they also do not stand to gain much information in the course of interrogation. Unlike their American
colleagues, German parliamentarians can neither draw on the investigative activities of bodies such as the Congressional Accounting Office, nor do they have access to executive databases. More significantly, executive officials as a matter of course get away with withholding relevant information from members of the Bundestag. A second substantive difference in executive-legislative oversight relations is the finding that, whereas U.S. executives take seriously Congressional preferences and requests for information, German executive officials regularly deflect responsibility for administrative shortcomings or openly disagree with parliamentary assessments and proposals.

These differences, I argue, reflect fundamental crossnational divergence in the institutional power of senior executives vis-à-vis the legislature. In Germany, parliamentary oversight as exercised by the opposition parties has only limited impact on decision-making by an executive that not only has at its disposal a far superior administrative and informational apparatus but also holds the political support of the chief executive and, by extension, the majority party. While executives are constitutionally obliged to “play the game of oversight,” legislative attempts at parliamentary control have no notable impact on executive decision-making. It comes as no surprise that, just as legislative initiatives by the opposition are seldom successful but instead are intended as appeals to public opinion (Mayntz & Scharpf, 1975), so is the exercise of parliamentary control on the Bundestag floor better suited to public attention-seeking than to executive control. Because of the institutional configuration of Germany’s parliamentary system, then, the exercise of effective control over the executive largely depends upon the willingness of the governing parties to proactively oversee administrative actions. As stated above, however, parliamentarians of the majority party have few incentives for scrutinizing administrative actions. It is only in the event of public political scandal that the governing parties are using their weapons of oversight. Before turning to the exercise of parliamentary control in the event of political scandal, I will examine the federal ministry of the interior’s response to the day-to-day exercise of parliamentary oversight.

Parliamentary Oversight under Routine Conditions

Parliamentary questions are the most visible tool for legislators, in particular members of the opposition, to hold ministers publicly accountable in-between elections (Bergman, Müller, Strom & Blomgren, 2004). An examination of questions submitted for both verbal and written
Table 1: Questions for Question Hour

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<tr>
<td></td>
<td>Christian Democrats (CDU/CSU), Liberals (FDP)</td>
<td>Social Democrats (SPD), Greens (Bündnis 90/DIE GRÜNEN)</td>
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<tr>
<td>Opposition parties</td>
<td>Social Democrats, Greens, Socialists (PDS)</td>
<td>Christian Democrats, Liberals, Socialists</td>
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<tr>
<td>Number of questions by party</td>
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<tr>
<td></td>
<td>Christian Democrats: 7</td>
<td>Social Democrats: 1</td>
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<tr>
<td></td>
<td>Liberals: 2</td>
<td>Greens: 0</td>
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<td></td>
<td>Total government: 9 (21%)</td>
<td>Total government: 1 (5%)</td>
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<tr>
<td>(Using identical search</td>
<td>Social Democrats: 13</td>
<td>Christian Democrats: 14</td>
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<tr>
<td>terms in reference to</td>
<td>Greens: 17</td>
<td>Liberals: 4</td>
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<tr>
<td>deportation. When</td>
<td>Socialists: 3</td>
<td>Socialists: 1</td>
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<tr>
<td>including addition terms</td>
<td>Total opposition: 33 (79%)</td>
<td>Total opposition: 19 (95%)</td>
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<td>for the 13th Bundestag—</td>
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<td>not available for its 14th</td>
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<td>session—the number of</td>
<td></td>
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<tr>
<td>questions increases to 71.)</td>
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<td>Question topics</td>
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<tr>
<td>Rights/protection of</td>
<td>Social Democrats: 10</td>
<td>National security and public safety (25%):</td>
</tr>
<tr>
<td>deportees: (74%)</td>
<td>Greens: 16</td>
<td>Christian Democrats: 5</td>
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<tr>
<td></td>
<td>Socialists: 3</td>
<td>Other: (10%)</td>
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<tr>
<td></td>
<td>Liberals: 2</td>
<td>Christian Democrats: 1</td>
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<tr>
<td>Implementation problems:</td>
<td>Implementation problems:</td>
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<tr>
<td>(11%)</td>
<td>(30%)</td>
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<tr>
<td>Christian Democrats: 4</td>
<td>Christian Democrats: 6</td>
<td></td>
</tr>
<tr>
<td>Social Democrats: 1</td>
<td>Liberals: 1</td>
<td></td>
</tr>
<tr>
<td>National security and public safety: (4%)</td>
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</tr>
<tr>
<td>Christian Democrats: 2</td>
<td>Other: (11%)</td>
<td></td>
</tr>
<tr>
<td>Greens: 1</td>
<td>Social Democrats: 2</td>
<td></td>
</tr>
<tr>
<td>Christian Democrats: 1</td>
<td>Asylum seekers/refugees:</td>
<td>Asylum seekers/refugees: 45%</td>
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<td>(86% of questions specifying a category)</td>
<td>(64% of questions specifying a category)</td>
<td>(29% of questions specifying a category)</td>
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<tr>
<td>Criminals: 10%</td>
<td>Criminals: 20%</td>
<td>Illegals: 5%</td>
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<tr>
<td>(14% of questions specifying a category)</td>
<td>(29% of questions specifying a category)</td>
<td>(7% of questions specifying a category)</td>
</tr>
<tr>
<td>Illegals: 0%</td>
<td>Asylum seekers/refugees:</td>
<td></td>
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<tr>
<td>Category of Non-citizens</td>
<td>57%</td>
<td>45%</td>
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<td>Asylum seekers/refugees: 57%</td>
<td>(86% of questions specifying a category)</td>
<td>(64% of questions specifying a category)</td>
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<td>(64% of questions specifying a category)</td>
<td>(29% of questions specifying a category)</td>
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<td>Criminals: 10%</td>
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<td>(14% of questions specifying a category)</td>
<td>(29% of questions specifying a category)</td>
<td>(7% of questions specifying a category)</td>
</tr>
<tr>
<td>Illegals: 0%</td>
<td>Asylum seekers/refugees:</td>
<td></td>
</tr>
<tr>
<td>Type of Government</td>
<td>No response (A): 7%</td>
<td>No response (A): 5%</td>
</tr>
<tr>
<td>Responses</td>
<td>No information (B): 17%</td>
<td>No information (B): 15%</td>
</tr>
<tr>
<td></td>
<td>Deflecting criticism (C): 14%</td>
<td>Deflecting criticism (C): 5%</td>
</tr>
<tr>
<td></td>
<td>Passing the Buck (D): 17%</td>
<td>Passing the Buck (D): 25%</td>
</tr>
<tr>
<td></td>
<td>Total responses A-D: 55%</td>
<td>Total responses A-D: 50%</td>
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reply during the 13th (1994-1998) and 14th (1998-2002) Bundestag on issues relating to deportation policy reveals three important characteristics (see Table 1). First, congruent with the literature on parliamentary oversight (Lichtenberg, 1986; Busch & Berger, 1989; Ismayr, 1992), this tool of parliamentary control is largely employed by the opposition parties (80 percent during the 13th, 95% during the 14th Bundestag). Second, debates on deportation policy are marked by clear ideological differences and policy preferences between the political parties which persist even after a change in government. Parties to the left of the political spectrum are
predominantly concerned with refugee protection and the human rights of deportees, while parties to the right are largely concerned with issues of non-implementation, national security, and crime control. Third, asylum seekers are the by far most politicized group of deportees. Among all questions which explicitly referred to an administrative category of deportees, 86 percent of questions asked mostly by the left-of-center opposition of the 13th Bundestag and 64 percent of questions posed mostly by the right-of-center opposition of the 14th Bundestag concerned the deportation of asylum seekers. Illegal immigrants, in contrast, did not feature notably during parliamentary questing while immigrant offenders only featured regularly during the 14th Bundestag when the conservative Christian Democrats engaged in opposition politics. In order to better define executive responses to parliamentary questioning, I analyzed all verbal and written exchanges during the 13th and 14th Bundestag. The findings can be grouped into four broad executive response strategy, all of which are attempts to evade oversight.

**Refusal to Respond.** While government officials are required by law to respond to parliamentary questions, written responses in particular can be merely perfunctory, some even bluntly refusing to address any substantive content—7 and 5 percent of answers on deportation issues during the 13th and 14th Bundestag respectively fit this category.

**Q:** In the absence of a German-Polish agreement on judicial cooperation, what policy measures will the federal government take to ensure that the border regime along the Polish border will uphold human rights? In particular, I am concerned with the need to prevent future assaults by the federal border police on Polish citizens as have taken place in the past weeks.

**A:** We decidedly reject the allegation that the policies and procedures of the federal border police violate human rights.

Written exchange between Socialist parliamentarian Rolf Kutzmutz (Q) and Christian Democratic state secretary Kurt Schelter (A); Bundestagsdrucksache 13/1999, p.20, my translation

**Withholding Substantive Information.** If senior executives at times refuse to answer parliamentarians’ questions, more common is a superficial reply which does not convey any substantive information—17 and 15 percent of questions of the two Bundestage fall into this group.

**Q:** Is it the case that Germany and Algeria are about to sign a readmission agreement and, if so, what mutual obligations will the two parties enter into?

**A:** I can only answer briefly: negotiations concerning a German-Algerian readmission agreement have not yet been finalized.

**Q:** My question did not aim at whether or not negotiations have been finalized. Rather, I asked about the state of these negotiations and what obligations are to be entered into in such an agreement.
A: Because the negotiations have not yet concluded, I cannot give you any information regarding any obligations which may be included in the final treaty.
Q: Can you give me any information about the direction these negotiations are taking?
A: We are trying to convince the Algerian government to take back their own nationals without delay.

Verbal exchange between Green parliamentarian Make Dietert-Scheuer (Q) and CSU parliamentary state secretary (ministry of the interior) Eduard Lintner (A); Bundestagsdrucksache 13/1708, p.7, my translation

Fending off Criticism. Parliamentary questions which express disagreement with executive policy decisions in the vast majority of cases elicit answers which deflect criticism and refuse to consider alternative political assessments. This patterns applies to 14 percent of answers during the 13th, but only to 5 percent of answers during the 14th Bundestag. The following verbal exchange between Liberal parliamentarian Burkhard Hirsch and state secretary Lintner concerns an assessment of the political situation in Croatia after the civil war. Hirsch expressed concern that the planned return of 60,000 refugees from Germany to Croatia would increase the risk of a renewed outbreak of war, given that rebuilding had not yet started.

Q: Is the federal government prepared to delay the return of refugees until foreign aid for rebuilding is available?
A: The federal government does not agree with the assessment that the return of Croatian civil war refugees would increase the risk of further war activities, even in the event that Croatia does not receive foreign aid. Civil war refugees only enjoy temporary protection in Germany from the specific dangers of war. The federal government therefore does not consider it appropriate to make the return of refugees dependent on the granting of development assistance, given there no longer is any danger of war.

20th Session, 13th Bundestag, 15. February 1995, p. 13-14, my translation

Passing the Buck. Germany’s system of layer-cake federalism lends itself particularly well to a political strategy of blame-avoidance Kent Weaver (1986) has termed “passing the buck:” the delegation of a particular task to another political actor. Because policy implementation lies within the jurisdiction of the Länder, questions pertaining to the execution of federal laws are particularly easily deflected toward lower levels of government. In fact, passing the buck is the most frequently used of all oversight evading strategies by senior executives: 17 and 25 percent of all executive replies during the two Bundestage fell into this category. The following written exchange between Max Stadler, a prominent home affairs expert of the Liberals, and two Social Democratic political civil servants, was sparked by the parliamentarian’s request for a detailed statistical breakdown of immigrants in government detention who had committed suicide.
According to the Basic Law, the implementation of immigration law falls with the jurisdiction of the Länder. [...] The federal government collects statistics neither on the age of detainees who commit suicide, nor on their distribution by state or detention center. The same applies to possible measures of suicide prevention by the Länder. Moreover we refer to previous answers of the federal government to questions by the Socialist party group [regarding detention].

Drucksache 14/257, 29 December 1998, p.5, my translation

What is particularly interesting about this exchange is the state secretary’s reference to a series of previous minor appellations by the Socialists. These written appellations, fielded by the PDS just three years earlier, requested similar categories of data on detainee suicides. In response, the federal ministry of the interior requested statistical information from the Länder ministries which it presented in its reply to the Socialists. Clearly, the above reply illustrates an unwillingness, rather than inability, to provide the requested information.

The above strategies—which collectively account for 55 and 50 percent of all responses to deportation inquiries during the 13th and 14th Bundestag—all hold in common executive attempts to evade effective parliamentary oversight. These findings closely correspond to Ismayr’s (1992) assessment of the control mechanisms available to the parliamentary opposition. The ministerial bureaucracy, Ismayr argues, discloses a modicum of information and frequently refuses to disclose information pointing to (self-defined) security grounds or a non-transparent “core area of executive ‘personal responsibility’ (Eigenverantwortung)” (1992, p.340). Problematically, senior executive take no risks when sharing data only selectively and inaccurately because the opposition party groups do not have the right of access to government files.

Parliamentary Oversight under Conditions of Political Scandal

On 30 May 1999, Sudanese national Aamir Ageeb died of asphyxiation during his deportation aboard a flight from Frankfurt to Cairo, wearing a motorbike helmet tightly strapped onto his head. Ageeb’s death led to a flurry of parliamentary oversight activity, both on the floor of the Bundestag and in the home affairs committee. In addition to a number of parliamentary questions and a series of minor appellations, the home affairs committee requested a report from the ministry of the interior and summoned Social Democratic minister of the interior Otto Schily and a number of senior civil servants to testify in front of the committee. The most detailed response to parliamentary oversight was the ministry’s report submitted to the home affairs committee: it included a detailed account of the events of May 30, measures taken...
by the ministry to prevent the occurrence of future deaths, and various statistics on air deportations, including on the use of helmets (Bundesministerium des Innern, 1999). Tellingly, the availability of this data had previously been denied by federal officials. More strikingly even, in its written reply to a minor appellation by the Socialist party group on the circumstances surrounding Ageeb’s death, the ministry stated once again that it did not collect data on the use of physical force.

While we cannot exactly determine the efficacy of parliamentary control in inducing Schily to suspend deportations and overhaul administrative regulations, we can reasonably exclude from the equation the activities of the opposition party groups and parliamentarians. In fact, while in this case executives could not resort to strategies of passing the buck to lower levels of government—Ageeb died in the custody of the federal border police—the ministry’s initial reply to the Socialists’ list of detailed questions stated that, because of the preliminary inquiry into the incident, the ministry was unable to answer any questions. When the Socialists challenged this response by filing another minor appellation, arguing that the ministry had violated the constitutional information and control rights of the parliamentary opposition, the ministry refuted this statement and provided a number of token answers.

Whatever the impact of parliamentary oversight, it was exerted through the governing parties: pressure for a “liberal” response was exerted by the governing (red/green) party coalition and the rather ineffective Socialists, while the Liberals kept a low profile and the Christian Democrats even pushed for a continuation of deportations. This corresponds to Stefan Heinzerling’s (1989) argument that the most effective form of oversight is most likely that exerted by governing parties, rather than the opposition. Control is exerted during closed meetings of the governing party group meetings, and, to some extent, in committee meetings.

Parliamentary oversight in the Bundestag, then, can have a visible impact on executive decision-making under conditions of political scandal, though this impact is the result of pressure from the governing, rather the opposition, parties. Because of the ideological leanings of the Social Democrats and especially the Greens, in this case political pressure was liberal in nature. However, while deportations were temporarily suspended and the resumption of removals made contingent on stricter regulations for escorting officers, the longer term repercussions of “the case Ageeb” were more complex. On the one hand, the new detailed guidelines have curtailed the discretion of federal border police officers and have sensitized law
enforcement officers to the risks of physical coercion. The following interview quotes—one from a senior border police officer, the other from an outside observer—both speak off an acute awareness of the risks of physically coercive deportations.

Since the case Ageeb we have become very careful. As soon as a deportees tells us that he won’t cooperate, we abort the deportation, provided the plane hasn’t taken off yet. We don’t want to get into trouble. We also have to protect our officers.

Personal interview, senior federal border patrol officer, regional federal border police office, October 2001

Since the Sudanese guy was killed, a lot has changed. First the federal border police will try to deport normally, without an escort. Recently we had such a case. We drive an African woman, Sandra, to the airport. As we enter the office of the border police, she says: “I don’t want to go.” And because the border police has become so careful, they just say “OK, you take her back.” So we try a second time, two weeks later. They put her into a dress that is buttoned at the back. She also gets handcuffed, but somehow—I have no idea, how!—she manages undress herself on the way to the plane. So then the border police aborts again! They succeed only at the fourth attempt, because they put her into a bodycuff.58

Personal interview, Tanja Neumann, director, central immigration authority, Eisenhuttenstadt (Brandenburg), 24 September 2001

These self-imposed constraints have occurred in tandem with a growing reluctance of European airlines to transport disruptive deportees. Following Ageeb’s death, and under pressure from a large-scale public relations campaign directed against Lufthansa,59 the airline’s board of directors decided to on a new corporate policy to refuse the carriage of resistant deportees (Wessel, 2001).

While on the one hand the political repercussions of the Ageeb’s death have served to curtail bureaucratic decision-making, it has also provided senior executives with a renewed impetus to aggressively pursue alternative strategies of deportation. Three strategies to deal with the issue of physical resistance during air deportations deserve particular mention. First, the German deportation bureaucracy increasingly relies upon private employees for air escorts, in particular foreign airline personnel. This strategy conforms to larger trends in immigration control which Aristide Zolberg has called “remote control” (2003) and Virginie Guiraudon and Gallya Lahav have referred to as the “shifting outward” of control (2000): the delegation of implementation tasks to non-state actors. Accordingly, after the case Ageeb, we observe an increase from 13.9 percent (1999) to 20 percent (2000) for those air deportations which were escorted by foreign airline personnel.60

A second strategy for dealing with physical resistance has been the use of charter planes for group deportations. The most important characteristic of charter removals is their taking place out of public view. Because there is no third party that could be mobilized on behalf of
deportees, charter deportations not only render physical resistance to deportation less effective, but also allow for a more demonstrative exercise of physical force by deportation officers.

Of course there is the issue of group deportations. Some time ago we sent 30 deportees, escorted by 60 border police officers and a medical doctor, to Rumania. In these cases we can exert more force, I can openly admit to this, the deportees get shackled at their hands and feet and can also get pushed down, but of course not in a way that could lead to asphyxiation.

Personal interview, senior federal border patrol officer, regional federal border police office, October 2001

Finally, in 2000 the conference of interior ministers decided to make use of small charter planes (so-called Lear-Jets) when faced with the deportation of individuals considered particularly violent. Even more than is the case with charter group deportations, the rationale of invisibility justifies the enormous fiscal costs of this strategy.

We started with small charter planes in 2000. We use those with really difficult cases, for one or two persons. Mostly we use them for safety reasons. [...] A smaller charter flight costs at least DM 70,000-80,000 [€35,790-40,900], to Africa even around DM 100,000 [€51,130]. But the advantages are clear: the pilot will definitely cooperate, and there is no public which can take the side of the deportee.

Federal ministry of the interior, group interview with senior civil servants from sections deportation, policy development, federal border police, Berlin, 13 November 2001

To conclude, an examination of the impact of parliamentary oversight on the decision-making capacity of German immigration executives reveals substantial divergence from the experience of U.S. senior officials. While members of the Bundestag opposition are proactive in employing oversight means, the impact on executive decision making is limited. Because of the community of interest between the government and the parliamentary majority—joined by party discipline and the imperative of staying in power—German senior officials not only have the political support of a comparatively unified executive, but are also safe from powerful blocs of the Bundestag intervening in ways that might undermine government policy. To put it somewhat simplistically, while American executive officials struggle to serve the two masters of the presidency and Congress who, in turn, are divided internally, German officials serve only the one master of the governing party.

Whereas the horizontal institutional conflict of American institutions is largely absent in the German case, German immigration executives are—unlike INS officials—confronted with vertical institutional conflict. This conflict surfaces in interactions between the federal ministry of the interior, on the one hand, and the Länder ministries, on the other. When, just over three weeks after Ageeb’s death, federal interior minister Schily decided to resume deportations, he did
so in large part in response to mounting pressure from the Länder interior ministers who, at their conference in mid-June, had requested that Schily withdraw his directive. In direct contradiction to Schily’s embargo on deportation, the Länder Baden-Württemberg and Hamburg both continued removals of potentially violent individuals, employing state civil servants as escorts instead. While all Länder ministers were concerned about the precedent-setting consequences of Schily’s directive, the most vocal pressure to rescind was exerted by representatives of the Christian Democratic Länder, in particular by Bavaria. In what ways, then, does Germany’s vertical separation of powers impact on the implementation of deportation law?

**Länder Executives and the Question of Oversight**

Among the various types of federalism, German intergovernmental relations distinguish themselves by the disproportionate political power of the Länder administrations. The strength of the Länder executives rests on two basic conditions: first, the powers of implementation which are constitutionally reserved for the Länder have come to include important decision-making responsibilities. Second, the policy-making influence of the Länder is institutionally secured through their representation in the Bundesrat (the legislature’s upper chamber). Political developments since the late 1970s have given renewed significance to the role of the Bundesrat, as the Länder and the federal government struck a series of bargains in which the former surrendered parts of their legislative jurisdiction in exchange for federal funding and an expansion of the Bundesrat’s veto power (Lehmbruch, 2000). In consequence, the position of the Länder bureaucracies—represented in the Bundesrat and collectively able to veto decisions—has been augmented at the expense of the Länder parliaments. As a result, the imbalance of power between the executive and the parliament at the federal level is considerably more pronounced at the Land level. Before turning to the crucial question of federal-Land executive relations, I will briefly revisit the issue of parliamentary oversight at the Land level.

**The Länder Ministries of Interior under Parliamentary Oversight**

What is true for the efficacy of federal parliamentary oversight also holds for the Landtage (Land parliaments): parliamentarians, in particular members of the political opposition, who avail themselves of the tools of oversight are largely wielding a blunt sword. A content analysis of parliamentary questions on deportation during the 12th Landtag (1996-2001) of Baden-
Württemberg shows that, out of a total of only 9 questions by the opposition parties, the minister of the interior and his representatives deflected criticism in their replies to 8 questions. Nevertheless, the relationship between senior executives and parliamentarians at the Land level is less hierarchical and marked by a greater exchange of information than is the case at the federal level: it is the minister of the interior himself who fields questions, ministerial replies as a rule acknowledge the legitimacy of questioning and tend to provide substantive information.

Despite these differences, there is no doubt that in these exchanges the member of the executive has the stronger hand. The following example illustrates the coincident use of both information-sharing and political deflection typical of ministerial responses, even when this concerns administrative blunders. The case in question concerned a Pakistani asylum seeker who had mistakenly been issued a deportation order and, when the police arrived at his home, persisted that he was not subject to removal. According to bureaucratic accounts, even though he was informed by an officer that his case would be looked into once he was at the police station, the asylum seeker jumped out of a window, as a result injuring himself. When asked to account for this incident, Christian Democratic interior minister Thomas Schäuble gave a detailed account and identified the responsible immigration agency in charge of the case. However, when asked whether he would consider establishing a bureaucratic hotline in order to avoid similar incidents in the future, Schäuble refused to acknowledge the need for new procedures.

No. We have the correct procedures in place. In this particular case, had the asylum seeker not decided to regretfully jump out of the window, and had he been taken to the police station and remained there until the case was sorted out, nothing would have happened. Thus even this incident shows that our procedures are adequate.

Plenarprotokoll 12/11, 17 October 1996, p.510

While the constitutional means of oversight provide members of the parliamentary opposition with the opportunity to force issues onto the agenda and to go on record as having challenged government policy, they are ill-suited for the pursuit of substantive policy change. Among the various means of oversight, the filing of motions (Antrag) is explicitly designed to effect a change in governmental policy. However, motions filed with parliamentary committees by an opposition party group regularly fail because the governing parties’ bloc vote prevents majority support. During the 12th legislative session (1996-2001) of the Baden-Württemberg Landtag, one of the most prominent political topics pertaining to deportation was the return of civil war refugees from the former Yugoslavia. Three motions were filed demanding a change in regulations, all of which were denied by either the home affairs committee or the floor of the
Landtag: a motion by the opposition Green party group requesting the extension of temporary residence permits for Bosnian refugees,\textsuperscript{65} a motion to extend residence permits for Bosnian apprentices filed by the Social Democratic opposition,\textsuperscript{66} and a further Social Democratic motion requesting a stay of deportation for Kosovar refugees.\textsuperscript{67} The motion to exempt Bosnian apprentices from deportation is particularly instructive because it concerns an Social Democratic issue position which was also shared by the Liberals, the smaller partner of the governing coalition. Significantly, when the motion was debated on the Landtag floor the Liberals opposed the proposal and, as a result, the motion was defeated by a floor vote.

In a striking policy reversal, however, in January 2001 the Land ministry of the interior issued regulations concerning civil war refugees from the former Yugoslavia (\textit{Bleiberechtsregelung}),\textsuperscript{68} in effect exempting from deportation qualified workers who had worked in a medium-sized firm (\textit{mittelständisches Unternehmen}) for over two years. This policy turnaround was a concession by the Christian Democrats to their Liberal coalition partner who had been advocating the case of one of their key clienteles—medium-sized business—for some time in conjunction with the return of civil war refugees. An insider recounts the regulation’s political history:

\begin{quote}
The \textit{Bleiberechtsregelung} […] in Baden-Württemberg was forced by the Liberals. In December 2000, the cabinet decided to interpret §8 AAV [a federal regulation] in a way that took into account regional economic interests. […] Here in the vicinity it is difficult for certain sectors to find workers. As a result, employers argue that foreigners are good workers, always arrive on time, are never ill and so on. Of course, they have a point, but this is because the residence permits of these workers are contingent on being gainfully employed. And of course, they also work for low wages, Germans won’t do that. […] The Liberals can afford to engage in client politics because they only have to get 11 or 12 percent of the vote.

Personal interview, advisor to the CDU, Landtag Baden-Württemberg, January 2002
\end{quote}

In sum, executive policy change at the Land level is the result of the influence of political actors \textit{within} the governing coalition. Opposition parties, in contrast, have little leverage when it comes to forcing administrative change. This pattern largely mirrors the politics of oversight at the federal level. However, whereas federal opposition parliamentarians have the possibility of affecting administrative change by way of negotiating legislative compromises in standing committees, at the Land level parliamentarians end up empty-handed because immigration law is legislated exclusively by the Bundestag. Having established the parliamentary oversight by the opposition has at most a moderate impact on executives, both federally and at the Land level, I
will now return to the issue of federal executive oversight and examine the ways in which Germany’s vertical separation of powers impact on the implementation of deportation law.

**The Länder Ministries of the Interior under Federal Executive Oversight**

Even though vertical intergovernmental arrangements in Germany have given rise to the term “cooperative federalism,” denoting a strong degree of interconnection (*Politikverflechtung*) between the federal government and the Länder (Scharpf, Reissert & Schnabel, 1976), federal executives have a limited degree of control over policy implementation. Four reasons in particular fundamentally constrain the influence of federal immigration executives over lower levels of government. First, the federal minister of the interior does not have the right of detailed supervision over the Länder ministries. Civil servants at the Land level, charged with policy implementation, are primarily accountable to their Land governments and therefore the Land parliaments, rather than the federal ministry of the interior (Mayntz & Scharpf, 1975). Second, federal executives do not have at their disposal an administrative infrastructure which reaches into the sphere of implementation (with the important exception of the federal border police, who conduct air deportations, and the Federal Office for the Recognition of Foreign Refugees who decide on asylum claims).

A third reason curtailing the bureaucratic influence of federal executives is the fact that Germany’s “foreigner policy” (*Ausländerpolitik*) has historically been executive-driven, operating within an only loosely formulated legislative framework. While this has provided federal executives with significant powers when deciding on broad policy issues, it at the same time deprived them of influence over lower-level implementation decisions. As Thomas Saalfeld (2003) has argued, given the limited control federal executives can exert over the details of implementation, it is in their interest to reduce administrative discretion by putting into place strong *ex ante* controls in form of detailed legislation. Finally, the federal minister of the interior has to share his powers of decision-making with the “third level” of German federalism (*dritte Ebene*)—the biannual conference of Länder heads of government and their interior ministers (Laufer & Münch, 1998). As we will see, it is the representatives of the Länder governed by the opposition that are the biggest threat to the decision-making autonomy of the federal executive.
I will now briefly consider two political strategies employed by the federal government aimed at curtailing the decision-making power of the Länder government. I will further examine how these policy changes have impacted on implementation outcomes.

**Curtailing the Discretion of Länder Governments.** Until 1990, the biggest bone of contention between the federal ministry of the interior and the Länder was the question of deportation stays (*Abschiebestopps*). The more liberal (Social Democratic/Green) Länder governments regularly used their discretion and unilaterally suspended deportations to countries where political and economic conditions were such that they were considered a danger to the physical well-being of returned deportees. The conservative (CDU/FDP) federal government under Kohl (1982-1998) and the Christian Democratic Länder, in contrast, opposed the imposition of categorical deportation stays. The conservative Länder feared that the presence of communities of refugees protected from deportation would increase their own foreign populations, while the federal government regarded stays of deportation as a key obstacle to the pursuit of a rigorous and uniform deportation policy. In response, when in 1990 the country’s “foreigner law” was fundamentally overhauled, the federal government included a provision which limited unilaterally imposed deportation stops to six months, making their extension contingent upon the unanimous agreement of all the 16 Länder and the federal minister of the interior. By using their majority in both the Bundestag and Bundesrat, the Christian Democrats curtailed the scope for liberal administrative decision-making by the Länder and enforced a more restrictionist deportation policy. In a consequential policy turn-around, the requirement of unanimity has literally eliminated the use of long-term deportation stays by the Länder.

**Curtailing the Discretion of Non-Federal Agencies.** A second case of federalization concerns the transfer of a range of responsibilities concerning rejected asylum applicants from municipal foreigner authorities—under the jurisdiction of the Länder ministries—to the Federal Office for the Recognition of Foreign Refugees. While, prior to 1990, the Federal Office only decided on applicants’ eligibility for political asylum, it now became additionally responsible for deciding on whether rejected applicants should be granted temporary protection from deportation—a decision amounting to an individual stay of deportation. Finally, the Federal Office’s rejection letter now included the notice of deportation. This transfer of responsibilities not only was designed to speed up the decision process but also served to streamline the issuing
of deportation notices by virtually eliminating the discretion of municipal foreigner authorities (especially those of the Social Democratic Länder) to refrain from issuing deportation orders to rejected asylum applicants. 72

To what extent, then, have these reforms lessened the significance of partisan conflict between the federal government and the Länder? As far as decision-making below the level of federal regulation is concerned, there has been trend toward uniformity und increasing restrictionism across the Länder. Not only have Social Democratic Länder had their capacity to issue liberal directives curtailed, but the pronounced restrictionism of public opinion during the 1990s has increased the potential electoral costs of unilateral liberalism. Even more importantly, at the institutional level, the locus of decision-making has shifted from the individual Länder governments to the conference of interior ministers. Today, the Conference is the most important actor in shaping both the contours and the specifics of deportation policy. In 1993, the Conference decided to establish a working group “removal” (“AG Rück”), chaired by the Interior Ministry of North Rhine-Westphalia and consisting of representatives of the Länder, the federal ministry of the interior, the federal border patrol, and the Federal Foreign Office. The working group is charged with the organizational planning and implementation of policy goals and has since become a central actor in the making of deportation policy. Through the interior ministries and the Bundesrat, its proposals also shape legislative reforms. 73 In 1998, the Working Group decided to set up two additional subgroups, dealing with issues of “air deportation” and “travel documents.”

This institutional shift has had important implications for the administrative politics of decision-making. The conference enjoys a high degree of political insulation: its meetings are closed and only a brief summary of approved resolutions are made publicly available. The conference meetings are further sheltered from parliamentary oversight, as the following statement illustrates.

As far as the conference of interior ministers is concerned, it is really difficult to find out what really gets discussed there. Our problem is that there are no Liberal (FDP) interior ministers, and therefore we simply have no access. That’s an immense strategic disadvantage.

Personal interview, staff member, FDP parliamentary party group, Berlin, 28 November 2001

Decision-making in the conference takes place in an atmosphere reflecting executive pragmatism rather than political partisanship, because not only are the left-leaning Greens not represented,
but its membership consists of executives acutely aware of the details and problems of on-the-ground implementation (Grunenberg, 2001).

This is not to argue that deportation policy is no longer influenced by partisan considerations; partisanship remains a particularly prominent factor in the legislative arena (in particular under conditions of divided government between Bundestag and Bundesrat). As far as those executive decisions still under the jurisdiction of the Länder governments are concerned, we observe an interaction of partisan considerations with the number of the refugees. When the Länder started to enforce the return of civil war refugees from the former Yugoslavia in 1996, those Länder with the largest refugee populations—North Rhine-Westphalia, Bavaria, and Baden-Württemberg—pursued the most aggressive and comprehensive return policies (Jäger & Rezo, 2000). While Bavaria and Baden-Württemberg have long been hardliners on all matters pertaining to deportation, North Rhine-Westphalia’s position can be better understood as a response to the substantial fiscal costs (and related public pressures) arising from the size of its refugee population. Moreover, as public opinion on asylum issues became increasingly restrictionist in the early 1990s, the Social Democrats responded by shifting their issue positions accordingly. This shift was further institutionalized when the party came to power in 1998 and soon was faced with the realities of political compromise when dealing with a Christian Democratic controlled Bundesrat while also appealing to a broadly restrictionist electorate. Even though partisanship continues to define legislative debates on immigration, there has been a notable shift toward restrictionism on part of the Social Democrats, most clearly personified by law and order minister of the interior Schily.

The deportation of asylum seekers, as has been abundantly illustrated, has been at the center of political discussions on deportation policy. This issue focus closely mirrors public opinion which is far more concerned with the presence of “bogus asylum seekers” than illegal immigrants—illegal immigration being an issue which is still relatively absent in German public debate. Senior immigration executives throughout the 1990s have continued to pursue the deportation of rejected asylum seekers and succeeded in raising their (approximate) deportation rate from 3 percent in 1989 to over 13 percent in 1998 (see Figure 2). The change in administrations in 1998 did not result in any significant adjustment of deportation policy. This continuity has to be understood in the context of previously outlined developments concerning the conference of interior ministers as key policy actors, the shift toward restrictionism on part of
the Social Democratic party itself, and, finally, the infrastructural legacy of the 1990s, which I will briefly outline.

**Infrastructure-Building Instead of Piggy-Backing**

Where U.S. executives have employed infrastructural piggy-backing to compensate for some of the administrative weaknesses of American bureaucratic institutions, German bureaucrats have undertaken infrastructure-building in order to more efficiently pursue the deportation of asylum seekers. At their conference in June 1989 the interior ministers of the Länder accepted the proposal of then federal minister of the interior, Wolfgang Schäuble, to establish central immigration authorities in all Länder according to the “Karlsruhe Model” (*Karlsruher Modell*[^74]) ([Nuscheler, 1995](#)). The model central authority would include an immigration authority, a satellite office of the Federal Office for the Recognition of Foreign Refugees, a reception center for asylum applicants, and a satellite office of the regional administrative court. By combining these offices as part of one single institution, it was argued, all administrative tasks pertaining to asylum applicants—their registration, initial housing, the asylum hearing and decision, court appeals, and, in cases of rejection, their deportation—could be performed with a minimum of delay.[^75] While the implementation of the Karlsruhe Model has varied significantly between the Länder, today all states have central institutions of some kind and have centralized at least some deportation tasks. Moreover, some Länder[^76] have instituted “departure centers” (*Ausreisezentren*) on a pilot basis. These centers attempt, through regular interviews and sanctions, to secure the cooperation of deportable individuals, in particular to compel them to disclose their true identity and cooperate in obtaining travel documents.[^77] As I have argued elsewhere,[^78] the establishment of these new centralized institutions has significantly increased the capacity of bureaucrats to deport asylum seekers, not only by providing streamlined and more efficient infrastructures, but by also politically insulating bureaucrats from grass-roots opposition to the deportation of refugees. Significantly, once in place, these infrastructures are likely to remain in place for years to come, regardless of electoral turnover.

**Conclusion**

This paper has pursued the argument that empirical differences in qualitative deportation outcomes—the distribution of deportations across different groups of noncitizens—can be
accounted for by crossnational variation in political institutional arrangements. In particular, I have argued that it is the relationships between immigration executives and those charged with their political control that most strongly shapes the direction policy implementation takes. Whereas German immigration executives enjoy a degree of autonomy from horizontal political control which their American counterparts can never hope to attain, vertical inter-bureaucratic conflict has in some limited measure hindered the pursuit of a uniform deportation policy. These differences in political autonomy can account for the fact that American executives have opted for “easy enforcement” and targeted for deportation those immigrants without political constituencies—immigrant offenders and migrants at ports of entry—even though public pressure remains focused on illegal immigrants. German executives, in contrast, in keeping with public opinion, have tenaciously pursued the return of asylum seekers, even though this is the migrant group with the strongest support lobby and the highest level of politicization concerning deportation. At the same time, infrastructural weaknesses of the U.S. bureaucracy has further affirmed the need to focus on easily “embraceable” migrants—noncitizens in prisons, detention, and at ports of entry—in the process largely piggy-backing on existing infrastructures. German bureaucrats, equipped with greater administrative resources, have instead created new institutions specifically designed to facilitate the deportation of asylum seekers.

Finally, a few preliminary observations concerning September 11th, 2001. First, the impact of 9/11 on German deportation politics appears to be minimal. Apart from current legislative negotiations which suggest that in the future deportation orders may also be issued to individuals merely suspected of terrorist activity, September 11th has not fundamentally changed the already restrictionist dynamic of the country’s immigration politics, much less left behind an institutional legacy. The war on terrorism may, however, have a stronger impact at the level of the European Union where the pursuit of a communitywide deportation policy is still in its infancy and thus particularly prone to the impact of external shocks.

In the United States, in contrast, September 11th not only has had a palpable impact on the public discourse of immigration, but it has sped up the demise of the old INS and given rise to a newly configured immigration bureaucracy within the new Department of Homeland Security. Not only has the reform raised the profile of the immigration bureaucracy—the former “stepsister” of the FBI—and given it a stronger law enforcement ethos, but the change in political climate has also given renewed policy impetus to previously fledgling policy initiatives
such as pursuit of some 400,000 “absconders” who had been issued deportation orders and never reported for deportation. For instance, under an initiative termed “Endgame” which started 8 months ago to date over 7,000 of these absconders have been located and detained across the U.S. The success of policy initiative such as “Endgame,” however, will depend mostly on whether or not they will leave behind an infrastructural legacy which may in future be able to partially compensate immigration bureaucrats for declining levels of public support for strict enforcement. While currently there is a strong political consensus on the need for immigration control, the political pendulum at some point will swing back toward those who in favor of increased immigration and concerned with immigrant rights. The fact that, just over two years after 9/11, president George W. Bush and Mexican president Vincente Fox have officially resumed their talks on a legalization program for undocumented Mexican workers in the United States points to the continued strength of pro-immigrant interests. Even after their organizational move into the newly created Department for Homeland Security American immigration bureaucrats will likely continue to operate in a political environment characterized by contradictory legislative mandates and volatile policy positions.
References


*CDU/CSU-Fraktion online* (1 June 1999). Abschiebestop für Aufklärung nicht nötig.


3 This paper is part of a larger dissertation project on the comparative politics of deportation policy and its implementation in Germany and the United States.
4 The role of street-level bureaucrats is examined elsewhere in the dissertation.
5 This figure excludes 85,836 expedited removals from the U.S. in 2000. Expedited removals—the removal of migrants at ports of entries who arrive with fraudulent or without travel documents based on an administrative, rather than judicial decision—are by nature much closer to expulsions (the denial of admission at the border) than to deportations (removal from within the country). Statistical sources: INS Statistical Yearbooks, German Federal Border Patrol, German Federal Ministry of the Interior.
6 Deportation figures are the result of a multitude of factors. For instance, a key variable in accounting for numbers of deportations is the nationality of deportees—a variable that is exogenous to bureaucratic capacity as discussed in this paper. The smaller the geographical distance between two countries, and the closer diplomatic relations between the two states, the easier it is to deport individuals. The concept of capacity assumes the ability to overcome obstacles. Thus, deporting a small number of migrants from the United States to, for instance, a West African country, can be a better indicator of deportation capacity than is the removal of large numbers of migrants to Mexico.
7 Because of its particular variety of federalism, the German case provides additional subnational variation: whereas some Länder governments have centralized implementation at the regional level, others have retained municipal implementation structures. This provides for institutional variation in the degree of political insulation: municipal agencies are the least politically insulated because they are directly accountable to elected mayors, while regional agencies answer to appointed civil servants who do not provide constituency services. As subnational cases, I therefore selected the Land Baden-Württemberg as the most centralized of all regional administrations, and Brandenburg because of its decentralized municipal implementation structures. In the United States, where administrative structures do not allow for within-country variation, I selected two INS districts which, while both serving some of the largest immigrant populations in the country, operate in divergent local political milieus. Whereas the Miami district operates in an environment distinguished by a well-organized, activist immigrant community, immigrant advocacy networks in San Diego are relatively underdeveloped.
8 This, of course, does not include the already existing stock of deportable migrants. Unfortunately, we cannot trace these figures over a longer period of time. Initiated in the late 1908s, the passing-on of asylum deportation figures from the Länder interior ministries to the federal ministry of the interior turned out to be highly contentious to the point that the federal ministry abandoned the effort after 1998.
9 INS removal statistics until the early 1960s have to be treated with considerable caution as to their reliability.
10 Because deportation figures until 1960 are only available aggregated by decade, we cannot examine annual variation during this early period. Moreover, these early figures have to be treated with considerable caution. For instance, the Wickersham Report (National Commission on Law Observance and Enforcement, 1931) which examined the enforcement of deportation laws, states significantly higher numbers for the 1920s.
11 The INS claimed that during “Operation Wetback” some 1,300,000 undocumented immigrants had been apprehended—a figure likely to be vastly exaggerated (Garcia, 1980), but nevertheless significant given the agency’s previous (and subsequent) laissez-faire attitude toward undocumented workers in the Southwest.
In contrast to Germany, where data collection discriminates between asylum and non-asylum cases, the INS breaks down its figures primarily between criminal and non-criminal deportations. Asylum seekers, when deported, are included in the non-criminal category.

Throughout the paper, I use the terms “illegal” and “undocumented” interchangeable when referring to noncitizens present in a country without administrative authorization. Despite the stain of political incorrectness that has become attached to the notion of “illegal immigrant,” I consider the term particularly useful for the study of deportation where the formal status of “illegality” becomes the trigger of state intervention.

I still have to complement these data with annual voluntary returns under docket control. While the inclusion of these returns will increase the number of undocumented deportations, I do not expect it to alter the trends described here.

The paper is still missing a detailed empirical account of Presidential preferences and their impact on senior executives (sorry!)

The Office of Justice Programs, Drug Enforcement Administration, FBI, Bureau of Prisons, and the U.S. Marshal’s Service.

This finding is substantiated when we examine the investigatory activities of the Justice Department’s Office of Inspector General (OIG). Between 1998 and 2003, of the 28 Congressional testimonies of the Department’s Inspector General, 13 (46 percent) concerned the INS. Even more strikingly, of the OIG’s 1994-2003 evaluation and inspection reports, 38 targeted the INS, in contrast to other Justice agencies (Bureau of Prisons, Drug Enforcement Administration, U.S. Marshal’s Service, FBI) which collectively were the subject of only 12 reports. Likewise, the reports of the General Accounting Office reflect an equally intense interest in the performance of the INS: in the course of 7 years (1996-2002), the agency issued a staggering 39 reports on the immigration agency.

The 6-year-old Cuban boy who was rescued of the coast of Miami in November 1999 and, after a protracted political and judicial tug of war, was eventually returned to Cuba in June 2000.

Six months after 9/11, the INS sent out a notification confirming an affirmative change of visa status for the two hijackers.

For instance, Cain, Ferejohn and Fiorina’s (1987) study of constituency service found that immigration issues were the second most frequently reported examples of casework for federal legislators—a salience which today is likely to be even higher. Importantly, what may start out as fire-alarm oversight in response to constituents’ complaints can develop into systematic police-patrol oversight if issues are raised sufficiently frequently (Kerwin, 2003).

Aberbach found that Congressional support agency program evaluation, while ranking second as most frequently used oversight technique, is only rated 8th in terms of effectiveness (Aberbach, 1990).

James Q. Wilson in this study of the FBI made a similar observation regarding Congressional reliance on statistical indicators (1978).

Later renamed the Institutional Removal Program. The program provides for the deportation of incarcerated noncitizens at the completion of their criminal sentence.

One of the most high-profile cases was that of German national Mary Anne Gehris who had moved to the U.S. as an 18-month-old adoptee in 1965. When in 1988 Gehris pulled another woman’s hair in a quarrel, she was placed on one-year probation for a misdemeanor conviction of simple battery. A decade later, under the retroactive deportation provisions of 1996, the INS initiated deportation proceedings against Gehris. In 2000, the state of Georgia granted her a full pardon after an intense national media campaign, thereby averting her deportation.

An important condition impacting on implementation which I examine elsewhere in the dissertation.

Evidence that in the mid-1990s INS Commissioner Meissner and President Clinton decided to enforce the criminal deportation provisions for political reasons is forthcoming.

In a similar vein, public employees in the U.S. are not obligated to inform immigration authorities if they come across individuals without papers, nor can immigration bureaucrats benefit from a computerized system of cross-checks between labor permit and social security data when combating illegal employment (Vogel, 2000).

Originally called the Institutional Hearing Program.

A notable exception is INS policy toward the Mariel Cubans and the Haitian boat people in the 1980s, when the Reagan Administration used blanket detention as a measure to deter illegal immigration (Welch, 2002).


In FY 2000, the INS admitted 167,342 individuals into detention, compared to 138,531 admissions by the U.S. Marshall’s Service and 39,072 by the Bureau of Prisons (U.S. Immigration and Naturalization Service, 2001).

The Anti-Drug Abuse Act of 1986 first introduced the category of “aggravated felony” as a deportable offense into immigration law.

With the passage of the 1996 Illegal Immigration Reform and Immigration Responsibility Act, the definition of “aggravated felony”—which was to be applied retroactively—included any offense which could be punished with a sentence of one year and above (even if suspended).

Personal interview, statistician, INS headquarters, Washington, D.C., 27 August 2002

Parliamentary secretary of state, secretary of state, and ministerial directors.

Governments have made ample use of this means of political control over the bureaucracy. Hans-Ulrich Derlien (1988) in his study of bureaucratic turnover found that on average, from 1949 to 1983, after each change of government, about 50 percent of state secretaries and one-third of division heads were temporarily retired. This pattern still holds today as is evident in the fact that, after the 1998 electoral turnover, the majority of top officials were temporarily retired within the first few weeks after the Social Democratic/Green coalition government took office (Goetz, 2000).

A more detailed analysis of executive branch oversight over the INS is forthcoming.

With the exceptions of the petitions and appropriations committees, as well as the non-standing investigatory committees.

Routine (and more amicable) exchanges of information between the bureaucracy and committees takes mostly place between staff members.

Between 1949 and 1990, the Bundestag voted in favor of summoning a member of government (Zitierrecht) 14 times—about once every three years. Even more pronounced, of the 20 motions of censure (Missbilligungsanträge) put forward by the opposition during this period, not a single motion was passed (Ismayr, 1992).
With the entry of the Greens as a second opposition party (to the Social Democrats) into the Bundestag in 1983, the use of these measures increased notably as a result of the advent of electoral competition within the opposition (Ismayr, 1992; Saalfeld, 2003).

Parliamentarians can only gain access to bureaucratic files if a qualified minority of a committee of investigations or else a majority of members of the committee of petitions votes accordingly (Ismayr, 1992).

State secretary Claus Henning Schnapper and parliamentary state secretary Cornelic Sonntag-Wolgast

In the same legislative session, see Drucksachen 13/3801, 13/3802, 13/7330.

Access to government files requires a majority vote of the (standing) committee of petitions or a qualified minority vote by a committee of investigation instituted to examine XXX see Ismayr, 1992.

Helmets are used to, first, protect escorting officers from biting deportees and, second, to prevent deportees who physically resist deportation from injuring themselves.

Ageeb was not the first person to die in the custody of the federal border police: in 1994 Nigerian national Kola Bankole died on his flight to Nigeria after having received a large dose of sedatives. While Bankole’s death had only minor political ramifications, the death of Aamir Ageeb attracted extensive media coverage and resulted in a temporary suspension of all escorted air deportations from Germany, a substantial revision of federal regulations, and the prosecution of the three escorting federal border police officers. What turned “the case Ageeb” into an immediate political scandal was for one fact that it occurred in the wake of two deportation deaths in neighboring countries. Less than a month before, the death of a Nigerian asylum seeker in the custody of Austrian authorities triggered a political scandal in Vienna, while in September 1998 the death of a Nigerian refugee in Belgium even forced the resignation of interior minister Louis Tobbach (Fekete, 2003). The German interior ministry therefore was acutely aware of the potential political costs of this latest deportation death. In a second difference between the incidents of 1994 and 1999, Bakole’s death took place under Christian Democratic hardliner interior minister Manfred Kanther, whereas “the case Ageeb” transpired under Social Democratic minister Otto Schily. Schily, though considerably to the right of his party, nevertheless represented a red-Green party coalition which had run on a platform of a liberalized immigration policy. Political pressure to take measures to prevent a similar incident was therefore particularly pronounced.

When in 1996 Green delegate Manfred Such asked for statistics on the use of physical means of coercion during deportations, parliamentary state secretary Horst Waffenschmidt replied: “The repatriation by the federal border police of foreigners who physically resist deportation in individual cases requires the use of physical force. Because we do not collect statistical data on the use of physical force, we cannot provide answers to your question.” Bundestag, 85th session, 7 February 1996, p. 7476, my translation

Drucksache 14/1477

See, for instance, the statement of the CDU/CSU speaker on home affairs, Erwin Marschewski (Marschewski, 1999).

A restraining devise, developed by law enforcement officers in the U.S. to prevent “positional asphyxia”—Ageeb’s cause of death—which since 1999 is increasingly employed by the federal border police.

For details, see www.deportation-class.com

Bundestags-Drucksachen 14/2462, 14/5734.


Personal interview, Federal Border Police Directorate, group interview with senior civil servants from sections deportation and police issues, Koblenz, 6 November 2001.


5 questions by the right-wing Republikaner, 3 by the Greens, 1 by the Social Democrats. Legislators from the ruling parties (Christian Democrats and Liberals) asked no questions regarding deportation.

Landtags-Drucksache 12/296

Landtags-Drucksache, 12/1582

Landtags-Drucksache, 12/2637


Phone interview, Burkhard Hirsch (FDP), former minister of the interior and deputy governor of North Rhine-Westphalia, member of the Bundestag, Berlin, 29. November 2001

Personal interview, advisor to the CDU, Landtag Baden-Württemberg, January 2002

Telephone interview, member of “Arbeitsgruppe Rückführung” of the conference of interior ministers, 27 March 2002
Foreigner authorities still decide whether or not there are grounds for temporary protection from deportation based on the present situation of the individual in Germany (e.g. illness), provided the asylum applicant is no longer living in a central reception center (Erstaufnahmeeinrichtung).

Personal interview, Dietmar Martini-Emden, Chair, sub-working group Passbeschaffung at the conference of the interior ministers, director, Clearingstelle für Passbeschaffung, Trier (Rheinland-Pfalz), 26. February 2002.

Named after the establishment of Germany’s first central immigration authority in Karlsruhe, Baden-Württemberg, in 1997.


Braunschweig and Oldenburg in Niedersachsen, Ingelheim in Rhineland-Palatine, and Lübbecke in North Rhine-Westphalia (presently closed).


I recognize, of course, that the relationship between government policy and public opinion is not as unidirectional as presented here, i.e., government policy also has the capacity to shape public opinion.