

The Concept of Minority and Minority Policy in Germany¹

ドイツにおけるマイノリティ概念とマイノリティ政策

KIMURA Goro Christoph

「マイノリティ」が何を意味するかは、国や言語圏によって異なる。ドイツにおいては、言語をはじめとする民族的とされる指標を共有するドイツ民族からなるものとして「ドイツ国民(Nation)」がとらえられてきた。そして民族的な主流集団から外れる少数民族が「マイノリティ」(Minderheit)とされてきた。ドイツの文脈におけるマイノリティとは、とりわけドイツ国外の中東欧地域に住むドイツ系住民およびドイツ国内の旧来の少数民族をさす。第二次世界大戦以前は、国外のドイツ系住民を保護することをうたう反面、国内の少数民族に対しては同化政策がとられてきたが、現在では、国際人権法の基準をとりいれたマイノリティ保護政策が行われている。英語圏における拡散的なマイノリティ概念の影響もあり、マイノリティ概念の意味範囲を移民やさまざまな「社会的マイノリティ」を含む方向で拡大する傾向もみられるが、ドイツ政府や学界においては、マイノリティ概念の意味範囲を限定する主張が目立つ。その背景には、異なる要求や課題をもつさまざまな人々を同一の概念でくくることがの弊害への認識がある。

1. What are “Minorities” in Germany?

This paper considers the concept of minority and related policies in contemporary Germany from historical, social, and political perspectives. Amidst the considerable scholarship on minorities in Germany, there seem to have been no attempts to consider

1 The basic ideas of this paper were first presented in Kimura 2007. The structure and content were heavily revised and actualized for this English version.

comprehensively the characteristics and transformations of the concept itself.

The word *Minorität* entered the German language around the French Revolution, from the French *minorité*. From the early nineteenth century onwards, the German equivalent *Minderheit*, formed by attaching the abstract noun ending *-heit* to the adjective *minder* (fewer), took root (Kluge and Mitzka 1967) and remains the more common term.

Of the eighty German-language books published in the five years 2011-2016 that contain *Minderheit* in their title,² seventy-six focus on specific groups: Fifty-seven books cover autochthonous minorities, i.e. national minorities and religious minorities; ten cover immigrants; five cover both national minorities and immigrants; and four examine social minorities such as LGBT groups. The remaining four are about those who turn out to be a minority in terms of opinion or standpoint in a given situation.

These results are consistent with German government policy, which recognizes four ethnic groups that have traditionally lived in Germany as national minorities. These groups are the primary focus of “minority policy,” although immigrants have become a major social issue, and the question has been raised to expand the concept of minority to additional social groups.

This paper seeks to understand the German view of minorities by asking three questions: (1) In what circumstances and based on what criteria are autochthonous ethnic groups publicly recognized and protected as national minorities? (2) To what extent are immigrants treated as minorities? (3) To what extent has the concept of minority expanded to include various social groups? The aim is to present the

² I searched for books with *Minderheit* in the title in the catalogue of the Deutsche Nationalbibliothek and published in 2011-2016. Then, to ensure that newer books were included in my figures, I similarly searched Amazon.de for ones published in the last year of this period 2015-2016.

major characteristics of the concept of minority and related policies in Germany.

2. The Recognition and Promotion of National Minorities

2.1 Autochthonous Ethnic Groups as Minorities

In the nineteenth century, the German-speaking world, which was divided into dozens of territorial states, experienced heightened momentum toward the formation of a unified state based on the German nation. Although *jus sanguinis* was promoted as the basis for its formation, in reality language served as the major indicator. This was apparent in the 1849 Frankfurt Constitution, which aimed to become the constitution of a unified Germany. Its so-called minority provision proclaimed rights for “non-German speaking peoples in Germany” (*nicht deutsch redenden Volksstämmen Deutschlands*) (Article 13, Paragraph 188). The German language demarcated group boundaries and identified non-German speaking peoples as groups different from the majority.

In 1871, the German Empire was established under Prussia’s leadership. In Prussia there were many different ethnic populations (Poles as a result of Poland’s partition, Lithuanians, Danes, and Sorbs) and Saxony included areas traditionally inhabited by the Sorbs. Before the unification of Germany, since the constitutive principle of states was the area over which the sovereign held territorial rights, the ethnicity of residents did not necessarily hold primary importance. However, after the German Empire’s establishment as a nation-state, policies toward different ethnic groups became increasingly assimilationist in nature. Whereas Germanization policies were adopted towards existing non-German-speaking residents, policies excluded new immigrants from the nation based on *jus sanguinis*. In accordance with this commitment to assimilation and exclusion, the German Empire’s constitution did not provide for the rights of non-

German-speaking individuals.

The category of minority groups vis-à-vis Germans (the German state-constituting nation or *Staatsnation*) truly came into existence after German unification. However, it was only the time of the Weimar Republic, which formed after World War I, that the concept of minority came to be widely used. As the German, Austro-Hungarian, Russian, and Ottoman Empires dissolved, various new nation-states formed throughout Central and Eastern Europe based on the principle of self-determination. Groups within these countries with different linguistic or cultural characteristics and identities from the majority were seen as minorities that could threaten the new order of these new states. This led to an international regime for the protection and appeasement of minority groups. As Germany lost approximately twenty percent of its territory, the German populations living in the various new Central and Eastern European countries became a primary political issue. On the other hand, Germany still contained populations who spoke different languages. These international and domestic national minorities became the focus of the “minority issue” for Germany.

The Weimar Constitution (1919), following the Frankfurt Constitution, included provisions guaranteeing the right to ethnic development of “residents who speak a different language,” especially the right to use their mother tongue (Article 113, the so-called “minorities article”). However, rather than representing a policy shift from the German Empire, this was intended as a diplomatic card to seek the protection of people of German ancestry living outside Germany. It did not carry substantial meaning for domestic national minorities (Pastor 1997, 28). A parliamentary proposal to use the term “national minority,” with stronger implications regarding rights, was rejected (Pallek 2001, 138; Rink 2004, 82).

On the national minorities’ side, the Association of National Minorities in Germany (*Verband nationaler Minderheiten in Deutschland*) was formed in 1924 under Polish leadership along

with organizations of Lithuanians, Danes, Frisians, and Sorbs living in Germany, all of whom aimed to protect their own languages and cultures by cooperating. Activists of the association estimated that up to 1.56 million of these national minorities were living in Germany as of 1929 (Elle 2003, 133).

The minority issue reached a tragic climax during the Nazi era. The Nazis' invasion of Poland—using the presence of inhabitants with German ancestry living there as a pretext for territorial expansion—led to World War II; meanwhile, Jews, Sinti and Roma, and others within Germany were persecuted and massacred. At the end of World War II, Germany shrank to approximately three-fourths of its previous size, and its eastern territory, which had the largest minority population (primarily Poles), was lost, resulting in a drastic decline in the overall proportion of minorities. Currently, the total population of national minorities recognized by the German government is around 200,000, less than 0.5% of the total German population. Furthermore, toward the end of and after World War II, about 12.5 million residents of German ancestry living outside the country's new national borders evacuated or were deported from Central and Eastern Europe to Germany (Bade and Oltmer 2004, 53). The Allies tried to solve Germany's minority issue, which stunned modern Europe, through ethnic homogenization via the shrinking of Germany's territory and the transfer of residents.

In the Federal Republic of Germany, which came into existence in 1949, Danes were clearly recognized as minorities. After plebiscites in 1920, some Danish residents had remained on the German side of the newly established Germany-Denmark border, and these people became recognized as a minority group. Until the 1980s, West German encyclopedias referred only to them when discussing minorities in the country. The same kind of recognition for people with German ancestry exists on the Danish side. The Danes in Germany are the only minority group in Germany that corresponds to the narrowest understanding

of a national minority: a non-immigrant group living outside a kin state in which they would be part of the major ethnic group. Of the recognized minorities in Germany, they are the only group explicitly called a minority (*dänische Minderheit*) in legal and other official documents.

In the territory of the German Democratic Republic (GDR), the only people to acquire officially recognized minority status were the Western Slavic ethnic group of Sorbs living in Lusatia, near the Polish and Czech border. Sorbs were recognized during the GDR's existence as a national minority (Schiller 1989, 122) but were referred to in the 1968 constitution as *sorbische Nationalität*. Here, *Nationalität* describes an ethnic group smaller than a nation, in contrast to minorities like the Danes, who would be a majority group if the lands where they live had not become separated from Denmark by historical circumstances. This term differs from the English *nationality* and has the same meaning as *narodnost* in Russia. The present-day German government uses the expression *sorbisches Volk* (Sorbian people).

The rights of the Germanic ethnic group of Frisians were recognized in the constitution of the northern German state of Schleswig-Holstein (1990). They primarily live on its coast and islands. The Sinti and Roma (gypsies), the last ethnic group to be recognized among those who have traditionally lived in Germany while retaining their own non-German language and cultural traditions, were included among the national minorities protected under the Council of Europe's 1995 Framework Convention for the Protection of National Minorities (FCNM). The German government calls Frisians *friesische Volksgruppe* and Sinti and Roma *deutsche Sinti und Roma*. The latter term is used to distinguish them from such individuals living outside Germany or with non-German citizenship.

The German government presents the following five criteria for

recognition as a national minority covered by the convention:³

- they are German nationals;
- they differ from the majority population in having their own language, culture, and history and thus their own distinct identity;
- they wish to maintain this identity;
- they have traditionally been resident in Germany (usually for centuries);
- they live in Germany within traditional settlement areas.

Based on these criteria, Sinti and Roma—who live scattered and without traditional settlement areas—should not be recognized as a national minority. However, since they have lived in Germany for hundreds of years, they are treated as an exception.

Jews have traditionally lived in Germany yet are not recognized as a national minority. Before Nazi control, they were often regarded as Jewish Germans. When Hitler took power, hundreds of thousands of them lived in Germany. Most of them went into exile or were killed in the Holocaust, leading to the destruction of the German Jewish community. Today, many German Jews come from Central and Eastern Europe and do not necessarily carry on the original German Jewish community. The major organization of Jews in Germany sees itself as a religious community in the country, not a national minority (Hofmann 2015, 87-88).

Outside Germany, whereas people of German descent are far fewer in number than before World War II, Germans remain a major minority group (along with the Roma and Russians) in more than ten Eastern European countries (Hofmann et al. 2015, 5), totaling an estimated 1.2 million people.⁴ The German government has regarded these people as part of the German *Nation* and has recognized the

3 <https://www.bmi.bund.de/EN/topics/community-and-integration/national-minorities/national-minorities-node.html> (29.11.2019)

4 http://www.aussiedlerbeauftragter.de/AUSB/DE/Themen/deutsche-minderheiten/deutsche-minderheiten_node.html (29.11.2019). See also Kühl 2005a.

existence of “German minorities.” Since ethnic groups covered under the FCNM are called national minorities in the legal sense in Germany, the German government officially uses the phrase “national minority” only for German minorities in countries that have ratified the FCNM and consider such people as objects of the framework’s protection.

Although the government thus recognizes the existence of German minorities in Eastern Europe, since World War II it has not officially viewed German speakers in Belgium, France, or Italy as German minorities. This view matches the self-perception of German speakers in these countries, who do not see themselves as Germans. Denmark’s residents of German descent are a special case because based on reciprocity with Danes in Germany, they are recognized as a minority.

2.2 Promotion-Oriented National Minority Policy

Let us now examine the current minority policy based on the above-described recognition of national minorities,⁵ first by considering the national-level legal protection afforded to them. Article 3 of Germany’s Basic Law, the country’s constitution, disallows discrimination in its third paragraph: “No person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavored because of disability.”

Germany has accepted related international agreements, ratifying the International Convention on the Elimination of All Forms of Racial Discrimination in 1969 and the International Bill of Human Rights in 1973 (Cordell 2004, 105). Furthermore, in 2006 a law (*Allgemeines Gleichbehandlungsgesetz*) barred unequal treatment of individuals based on various reasons, including their ethnic background (Hofmann 2015,

5 For a simple introduction to traditional minorities in Germany today, see the website of the Federal Ministry of the Interior (www.bmi.bund.de), Kühl 2005b. The current situation surrounding them is described in detail in reports submitted to the Council of Europe by the German government regarding the FCNM (2000, 2005, 2009, 2014, 2019; <http://www.coe.int/en/web/minorities/germany>).

93).

However, unlike under the Weimar Republic, there is no “minorities article.” Since the former GDR constitution provided for Sorbs’ rights, after German reunification there was a debate whether to include an article stating that “the country will respect the identities of ethnic, cultural, and linguistic minorities.” However, the prevailing view held that in federalist Germany, where states’ rights are strong, legislation for minority protection was adequate on the state (Land) level, and that such a clause would mark a shift toward a multicultural society, which would inhibit the integration of immigrants into society. Therefore, the Basic Law was not revised and the concept of minority is not explicitly present in the national constitution.

Until the 1990s, the only federal laws directly dealing with national minorities were the election and political party laws, which exempted national minority political parties from the “five percent clause” that requires political parties to receive five percent of votes across the federation to win seats in the Bundestag. However, since no national minority party is strong enough to win even one seat, this provision has no actual meaning. The Südschleswiger Wählerverband (in Danish, Sydslesvigsk Vælgerforening), a national minority party representing the Danes, has not participated in Bundestag elections since 1961. In the late 1990s, Germany signed and ratified the FCNM (which took effect February 1, 1998) and the European Charter for Regional or Minority Languages (January 1, 1999). In response to the former, the country enacted the Act on Name Changes by Minorities (1997) enabling the use of minority language names in official documents.

As for government institutions responsible for minority issues, the Federal Ministry of the Interior established a liaison committee in 1965 for issues related to Danes. Similar committees were later created for Sorbs (2002) and Frisians (2004). All include representatives of the relevant national minority group. In 2005, the Minority Council (Minderheitenrat) and the Minority Secretariat

(Minderheitensekretariat), which exchange information and opinions between the four national minorities and represent their interests to the federal government and Bundestag, were created. The former organization comprises representatives from the four national minority groups; the latter, which carries out duties to assist the former, is also led by individuals with minority backgrounds. The Federal Government Commissioner for Ethnic German Resettlers (Aussiedlerbeauftragter), established in 1988 as many ethnic Germans from Eastern Europe and the Soviet Union were entering Germany (see below), also became responsible for national minorities in Germany in 2002, changing its name to Commissioner for Matters Related to Ethnic German Resettlers and National Minorities (Beauftragter für Aussiedlerfragen und nationale Minderheiten). With this change, once again domestic and international minority issues became linked. This commissioner serves as an access point to the federal government for such minorities and as the government's representative to various related international institutions.

Germany's policy towards traditional national minorities is characterized by the "principle of self-recognition" (*Bekennnisprinzip*), which was also applied to national minorities during the Weimar Republic (for a list of related rules and regulations, see Zygojannis and Stricker 2015, 178). Although, as described above, Germany specifies the national minorities designated for protection, individuals decide whether they wish to be associated with a minority group. The country cannot register people as minorities, investigate whether a person is of minority background, or reject an individual's self-perception. Therefore, there are no official statistics regarding the number of minorities in the country. The government states that this approach conforms to the third article of the FCNM, which calls for self-determination regarding the treatment of minorities. This German policy has also arisen from reflection on the Nazi practices of identifying individuals as Jews regardless of their self-perception and

certifying people's degree of "German-ness."

Following are the legal and institutional frameworks for each national minority group. As Germany is a federal republic, its states retain considerable jurisdiction and thus national minority protection structures vary greatly by state. Population figures are estimated.

Danes (50,000). The German and Danish governments released the Bonn-Copenhagen Declaration in 1955, calling for mutual protection of minorities. Current protection policies remain in accord with this framework. States and municipalities as well as the Danish and German governments provide assistance for Danish education and cultural activities. The 1990 constitution of the state of Schleswig-Holstein contains a provision for national minority rights (Article 5). Like federal law, the state's election law exempts minority political parties, including those of Danes, from the five percent rule. This law has enabled candidates of the Danish party to be elected as state parliament members. In 2013, the state's constitutional court ruled that such preferential treatment for specific political parties does not violate the state constitution.

Sorbs (less than 60,000). Following the wording of the Weimar Constitution, the 1949 constitution of the former GDR—which at that time saw itself as the lawful government for all of Germany—included a provision (Article 11) calling for the protection and promotion of "residents speaking a foreign language" (*fremdsprachigen Volksteile*). The 1968 revised constitution recognized Sorbs as the country's only national minority while using the term "sorbische Nationalität". Furthermore, under the name of Marxist-Leninist nationality policy (*Nationalitätenpolitik*), the GDR carried out policies promoting Sorbian language and culture, emphasizing how their treatment differed from the oppression of minorities in capitalist countries. When Germany became reunified in 1990, the protection of Sorbs was recognized in an additional protocol of the unification treaty. Furthermore, the constitutions (1992) of the states of Saxony and Brandenburg (where

Sorbs primarily live) and their Sorbian-related laws (Brandenburg 1994, revised in 2014; Saxony 1999) prescribe the protection and promotion of the Sorbian language, culture, and identity. A Foundation for the Sorbian People was established in 1991, and the federal government and both states contribute to it. Sorbs are exempted from the five percent election provision in Brandenburg but not in Saxony; in any case, there exists no Sorbian political party that could acquire parliamentary seats. The post-reunification judicial code inherited GDR law that ensured the Sorbs' right to speak their language in courts located in the areas that they live. Whereas Danish-speaking schools are private, there are public Sorbian schools that deliver instruction in the Sorbian language, also a GDR legacy.

In addition to these two groups who clearly view themselves as having their own ethnicity, the German government recognizes the approximately 10,000 to 15,000 **Frisians** and 70,000 **Sinti and Roma** as objects of protection and support. In 2004, the Schleswig-Holstein state parliament passed a Frisian language act that authorized the use of Frisian language in public signs and of the Frisian language in government offices. Frisian is offered as an elective in schools, and the state and municipalities provide assistance for Frisian cultural activities. Politically, some Frisians are involved in the aforementioned Danish political party. Sinti and Roma, who do not have a traditional settlement area, were listed as a minority in Article 5 of the Schleswig-Holstein state constitution in 2012. This was their first mention in a state constitution. There are no other special laws and regulations regarding Sinti and Roma, but beginning with their agreement with the state of Rheinland-Pfalz in 2005, their organization has negotiated agreements with several states that include provisions for assistance (Pirker 2015, 225). Federal assistance is provided for the Documentation and Culture Center in Heidelberg, which displays their culture and history, including persecution and massacre by the Nazis.

Although implementation of these policies is relatively easy because

the four recognized minorities are small in number and generally well integrated into society (Murswiek 1995, 673), Germany's current national minority protection regime is viewed as exemplary (Murswiek 1995, 664; Hilpold 2009, 52). Hofmann (2015, 101) examined Germany's efforts relating to the FCNM and concluded that Germany has generally met its requirements.

The international situation surrounding the end of the Cold War and the dissolution of the Soviet Union in the early 1990s contributed to heightened concern for *German minorities outside Germany*. National minority issues received considerable attention at that time because of Germany's proximity to Eastern Europe and the many people of German descent living in those countries. The German government provides aid to German minorities in Eastern Europe and various former Soviet countries (Wolff 2013). Furthermore, it has entered into treaties and agreements that include minority protection with seventeen countries (Fontaine and Rein 2015, 494).

3. Are Immigrants “New Minorities”?

3.1 Critical Opinions on an Extended Minority Concept Including Immigrants

Immigrants entering Germany now represent a much higher percentage of the population than the four traditional national minorities. Could they be recognized as “new minorities”?

Regarding the above-described government definition of “national minority,” ever since its First Opinion on Germany (2002) the FCNM's Advisory Committee has suggested that immigrants should be recognized — even if only partially — as new minorities. It also holds that citizenship should no longer be a criterion for national minority recognition. In response, the government has argued that this criterion is in accordance with international law (Angst 2015, 170; Zygojannis and Stricker 2015, 177). Similarly, with regard to the framework

convention's sixth article, which calls for tolerance and mutual respect, the committee contends that it should have the right to monitor groups besides those recognized by the German government as national minorities, but the government has argued that since the convention is not a general human rights treaty but one relating to national minorities, the committee's monitoring should be limited to national minorities (Hofmann 2015, 98; Angst 2015, 240; Rein 2015, 249). In taking this position, the German government is not rejecting tolerance and mutual respect toward immigrants, but stating that the FCNM's scope should be limited to traditional national minorities.

The Polish are a borderline case in that they exhibit both traditional and new minority characteristics. Until 1945, Poles were the largest national minority in German territory and the primary object of Germany's minority policy. In 1945, the eastern part of Germany in which many Poles lived ceased to be German territory. However, since the latter half of the nineteenth century, hundreds of thousands of Poles (primarily coal miners) and their families had moved to the Ruhr region of West Germany. The German government does not recognize such Poles as a minority group because they are not living in their traditional settlement area (*Woche im Bundestag* 1995). Another reason for this non-recognition is that the Polish descendants in the Ruhr region have become assimilated and do not necessarily see themselves as an ethnic minority.

However, in its Third Opinion on Germany (2010), the FCNM Advisory Committee, noting requests submitted by people of Polish descent, stated that the government should consider whether to cover under the convention framework Poles who had lived in Germany since the nineteenth century and had previously been considered a national minority. In response, in its Fourth State Report (2014), the government stated that there are no national minorities of Polish descent in German territory, pointing to the 1991 Polish-German Treaty of Good Neighborship and Friendly Cooperation. This treaty

covers German minorities living in Poland (*Angehörigen der deutschen Minderheit*) but then, when discussing Poles living in Germany, makes a terminological distinction, describing them as “people with German citizenship of Polish origin” (*Personen deutscher Staatsangehörigkeit ... polnischer Abstammung*) (Hofmann 2015, 97-98; Zygojannis and Stricker 2015, 177, Fontaine and Rein 2015, 495).

In this way, although the reunification of Germany led to the recognition of four national minority groups in the federal republic, the German government clearly rejects further expanding such recognition. German jurisprudence, meanwhile, when referring to specific groups as minorities, usually has national, ethnic, linguistic, and religious minorities in mind. As for the treatment of immigrants, whereas an older dictionary treats German citizenship as a premise of minority recognition (Arnold 1987, 1159), a newer legal dictionary (Weber (ed.) 2011, 812) holds that the scope of the concept is determined by the state. This change may have been affected by international developments such as the UN Human Rights Committee’s 1994 General Comment, which held that people without citizenship in their country of residence are covered by the minority rights clause (Article 27) of the International Covenant on Civil and Political Rights (ICCPR).

However, doubts have been raised about this international tendency to expand the concept of minority. One major legal dictionary holds that it is rational to make German citizenship a precondition for minority recognition (Murswiek 1995, 685-86) on the grounds that it is inappropriate to seek the same rights previously enjoyed in one’s home country when living in another country, regardless of whether one moved there freely or was forced to do so. However, it also states that those who end up living in a different country from their citizenship due to changes in national borders should be protected as minorities. Furthermore, it says that although immigrants who acquire citizenship in a new country could be considered a “new minority,” this recognition falls within the scope of the state’s discretion, and that the duty to

protect them as minorities — which would go beyond protecting their general human rights — does not inevitably follow.

Whereas Murswiek’s dictionary at least recognizes the possibility of “new minorities” existing, Pallek (2001) holds that the expression “new minority” is problematic; asserting that expanding the concept of minority to cover immigrants would result in treating different groups with different issues based on the same criteria. He argues that this would not be useful for any group and would do more harm than good. Pallek holds that whereas preventing assimilation is the issue for a classical minority (*klassische Minderheit*), the major problems facing immigrants are social integration and the elimination of discrimination, and thus different frameworks are necessary for each type (Pallek 2001, 663). On the other hand, contrary to the government’s understanding, Pallek argues that the criterion of traditional settlement area is unsuitable for contemporary times and that therefore the Poles, who have already been settled for generations in Germany and are socially integrated, could be recognized as minorities (67).

Hilpold (2009) also addresses this issue, stating that if minority rights are individual rights, the distinction between new and old minorities is no longer relevant. This explains why the concept is expanding at both the UN and European levels. Yet he states that although ICCPR Article 27 and the FCNM could be interpreted as applying to new minorities as well, “there is probably no one who wishes to immediately eliminate the distinction between these categories” (Hilpold 2009, 54). Although Hilpold favors protecting the rights of new minorities, he warns that we should be cautious with regard to placing them within existing minority protection frameworks, because doing so would cause the meaning of minority protection to “take on a completely different connotation” (p. 62). Therefore, Hilpold proposes a differentiation in protection based on time of settlement, degree of integration, historical circumstances, and other

factors. He argues that the country can carry out its international duty to substantively guarantee immigrants' rights without officially recognizing them as new minorities.

More radically, Thürer (2015) questions the framework of minority protection and how it regards people as objects of policy. He proposes doing away with the concept and instead adopting a diversity management approach that views people as agents. This understanding would mean a fundamental change in German policy, which has established the protection of national minorities as a special pillar, but it is similar to the previous views in its criticism of expanding the concept of minority.

In sum, both the German government and scholars on law have taken critical stances toward encompassing immigrants as new minorities under traditional minority law. Representatives of the four recognized national minorities echo this position, arguing that the rights of new minorities involve different issues from those covered by the existing minority protection regime and that the two categories should not be mixed (Elle 2003, 142).

3.2 Social Integration as a Main Issue for Immigrants

What has been the government's approach to immigrants and the recently hot issue of refugees? Below, I will consider major related policies and problems to highlight the differences from traditional national minority policy.

Immigrants of German Descent. Immigrants of German descent occupy a special legal position in Germany. In addition to individuals with German citizenship, Article 116 of Germany's Basic Law also defines a German (*Deutscher*) as "a refugee (*Flüchtling*) or expellee (*Vertriebener*) of German ethnic origin" or "the spouse or descendant of such person." When such people relocate to Germany, they enter as Germans and are thus not considered a minority.

"Refugee or expellee" refers to a resident of German descent who

came to Germany as a refugee or was expelled from Central and Eastern Europe toward or after the end of World War II. The provisions of the Basic Law were created to bestow German citizenship on such individuals. Subsequently, as people of German descent continued to come to Germany, they were also accepted as Germans (Displaced Persons Act 1953), based on their self-perception and such evidence as their historical origins, language, and culture. Even in the 1950s and beyond, after the massive movement of postwar refugees subsided, each year tens of thousands of people moved to Germany. This number rapidly increased during the Eastern European revolutionary period that began in the late 1980s; there were 78,000 such immigrants in 1987 but nearly 400,000 in 1990 (Bundesverwaltungsamt 2006).

In response, from 1990 onwards the federal government changed its position, seeking to limit the influx of resettlers. Those who wished to be accepted as resettlers were required to apply in their country of residence, and the screening criteria for acceptance became stricter under the Law Regulating the Reception of Resettlers, which took effect in 1990. The War Consequences Conciliation Act, enacted in 1993, stated that people born after January 1, 1993 no longer had the right to apply as resettlers. Those who wished to be accepted now had to prove not only their affinity with German culture, language, and traditions, but also that they had been oppressed since World War II because they were German. This change made it clear that the basis for their acceptance was Germany's historical responsibility for Germans who were oppressed in Eastern Europe, rather than the principle of *jus sanguinis*. Subsequently, the financial support provided after acceptance was cut off, and from 1996 onwards a German-language test was introduced. As a result of these measures, in the year 2000 the number of resettlers dropped below 100,000 for the first time in thirteen years, and it has continued to decrease since then.

The 4.5 million resettlers of German descent who entered Germany between 1950 and 2013 (Meier-Braun 2015, 73) are not officially

minorities. Nevertheless, some contend that many of these people struggle to adjust to German society due to issues of language competence, culture, and lifestyle, and that they in effect represent “Germany’s biggest minority,” numerically exceeding Turks and others (Lachauer, 2004).

Foreign Workers. In contrast to ethnic German immigrants, who are not visible as minorities, the most notable immigrants in post-World War II Germany have been foreign workers and their families. Since the mid-1950s (during the country’s high economic growth period), Germany has accepted foreign laborers based on agreements with Turkey and various countries in Southern Europe, among others. These agreements envisioned a rotation system in which people would return to their home countries after working for a set number of years; they did not offer permanent residency, as clearly indicated by their reference to “guest workers” (*Gastarbeiter*). The incoming laborers did not intend to settle in Germany either. However, after the acceptance of new workers ended in 1973, people continued to have their families join them in Germany, and more and more of them became settled. In 1983, when the government enacted a law that encouraged foreign workers to return home, many foreign residents chose to remain in Germany.

Since Germany’s 1913 citizenship law emphasized the principle of *jus sanguinis*, until recently it was common for guest workers and their families — including children born in Germany — not to have German citizenship. As a result, unlike traditional national minorities for whom statistics do not exist, there are data on the countries of citizenship of these new minorities. In 2018, foreigners represented more than 12% of the overall German population, the greatest percentage since the reunification of Germany in 1991.⁶ Turks with around 1,48 million still

6 <https://de.statista.com/statistik/daten/studie/5062/umfrage/entwicklung-der-auslaendischen-bevoelkerung-in-deutschland/> (29.11.2019). In the 2000s the percentage of foreigners in Germany basically stayed just under 9% of the overall population but rapidly increased since 2011.

greatly surpass Poles (approximately 860,000), the second largest group that has considerably increased in the recent years.

Since the 1990 revision of the Foreigners Act that made it easier for settled foreign individuals to acquire German citizenship, the number of those doing so has increased. Nevertheless, by the end of the twentieth century, the number of people born and residing in Germany with foreign citizenship had exceeded 1.5 million (Bade and Oltmer 2004, 97). As the government viewed the increasing number of people being born in Germany without citizenship rights as problematic, momentum toward a more fundamental change grew, and in 2000 the Nationality Law was enacted. Under this law, individuals born in Germany from January 2000 onwards with at least one parent of foreign citizenship who had resided in Germany for eight years or longer would be granted German citizenship, thereby partially introducing the principle of *jus soli* alongside *jus sanguinis*. The option of recognizing permanent dual citizenship was discussed but rejected; instead, children who have acquired citizenship from both their mother country and Germany must choose one or the other between age 18 and 23.

In 2005, the Immigration Act was passed after intense debate, reversing the government's previous position that Germany was not a country to immigrate. It established both policies aimed at selective acceptance of immigrants based on labor market demand and policies for integrating immigrants into German society.

Thus, recent immigrant policy, in comparison with traditional national minority policy, has been characterized by a focus on integration into German society (such as through German-language education) rather than on the protection or maintenance of immigrants' own cultures or identities. Underlying this emphasis was an awareness that inadequate attention to the integration of immigrants after their acceptance had led to their alienation from and at times their rejection by German society (Bade and Oltmer 2004). The Federal

Government Commissioner for Migrants, Refugees and Integration (*Integrationsbeauftragte*; Meier-Braun 2015, 48-49), which had been established in 1978 under a slightly different name, formulated in 2007 a “National Integration Plan,” with four hundred goals in ten spheres (e.g., education, culture, media) to be carried out on various levels from federal to local, embodying a conviction that the integration of immigrants should be addressed nationwide.

The term “ethnic minorities” has been used by the Federal Government Commissioner mentioned in the above paragraph in order to pay attention to the multicultural inhabitants of Germany including immigrants (Schmalz-Jacobsen and Hansen 1995, 1997). On a regional level, one can find some provisions that refer to foreigners as minorities, such as the Saxony state constitution’s acknowledgment of “the interests of foreign minorities, whose members reside lawfully in the state” (Article 5). However, the inclusion of immigrants as minorities to be specially protected is not a federal-level policy.

Refugees. The 1949 German Basic Law states, “Persons persecuted on political grounds shall have the right of asylum” (Article 16). Offering each individual immigrant the right of asylum is historically a response to the Nazi era, during which various countries accepted many refugees from Germany. From the end of the 1980s onwards, however, refugee applications increased due to the political changes in Eastern Europe. Public opinion came to hold that this number should be limited, and in 1993 the government revised the Basic Law to add new restrictions, including one denying asylum to persons who entered Germany through a “safe third state.” The number of refugee applications, which peaked at 438,191 in 1992, fell under 30,000 in 2008. However, in the following year this number began to rise again, reaching a new record of 745,545 in 2016, with the number of immigrants from the Middle East — particularly Syria — rapidly increasing.⁷ The German

7 <https://de.statista.com/statistik/daten/studie/76095/umfrage/asylantraege-ingesamt-in-deutschland-seit-1995/> (29.11.2019)

government has actively welcomed these refugees, but the German society has also expressed resistance and concerns over whether these people will settle in Germany permanently and how they can be integrated. In 2016, Germany passed the Integration Act with the aim of better incorporating refugees into society. Language issues remain a prominent concern, now joined by questions of religion, since many of the recent refugees are Muslims. In the future, immigrants and refugees may receive greater attention as religious minorities.

4 Diffusion of the Minority Concept?

4.1 Changing Descriptions of Minorities in Encyclopedias

Sometimes, the term “minority” is applied to so-called social minorities such as disabled and gays. To examine this expansion of the term, I will first trace the development of its definition through each edition of Germany’s major encyclopedia, Brockhaus, from its first edition at the end of the nineteenth century through its twenty-first edition (its last printed edition) in 2006.

Originally, “minority” was paired with “majority” (*Mehrheit, Majorität*). In fact, in Brockhaus’s 1885 and 1898 editions, the two terms appeared together as a single heading, “Majority and Minority.” Therein, one finds explanations of the principle of majority decisions in resolutions and votes. However, after the end of World War I, the discussion also began to cover “minority” as a concept referring to a specific group, and considerable space was devoted to national minorities.

In editions following World War II, discussions of the protection of minorities listed five categories of such groups: national, religious, linguistic, racial, and cultural. In the 1971 edition, the term ethnic was added, presumably in response to the inclusion of the phrase “ethnic, religious or linguistic minorities” in Article 27 of the ICCPR.

The 1971 edition also contained the phrase “social minority” for

the first time, citing age-group and sexual minorities as examples and referring to scholarship from the United States. From then on, Brockhaus consistently listed social minorities as the final minority category. Editions from 1991 onwards clearly demonstrate a polysemic understanding of minorities, now divided into four different types: religious, national or ethnic/cultural, political, and social.

However, these editions also criticize the idea of treating all marginal groups as “minorities.” For example, the 2006 edition, immediately after presenting the above-listed four categories of minorities, states that there is no consensus as to whether all these should be included within the concept of minority. It questions whether lumping numerically small groups, large but disadvantaged groups (such as South African blacks under apartheid), prostitutes, homeless people, migrant workers, and national minorities all under the same concept is appropriate; they have no commonalities except for being different from the majority. In the main section of this text, the only minority category emphasized in boldface is “national minority.” All cases discussed in the Brockhaus article refer to old and new ethnic groups (including immigrants, who could become lasting minorities) and religious minorities.

A similar tendency is apparent in Wikipedia, the most frequently referenced popular-level encyclopedia today. The German-language entry for “minority” (*Minderheit*) covers minority groups, whereas “democratic minority” (*demokratische Minderheit*), which refers to the minority vis-à-vis the majority in voting decisions, appears as a separate entry. This distinction, not found in the English-language version, reflects the development of the concept of minority in German as referring to a specific group, not just a relative minority in number.

The German Wikipedia entry on “minority,” after stating that the term traditionally refers to ethnic, religious, or national minorities, notes that under the influence of U.S. sociology, its meaning has expanded in the past fifty years to encompass “groups whose members

deviate from dominant customs and behavior patterns, are less than half of a given population, and have less influence than the rest of the population” (Wikipedia-Deutsch, November 29, 2019).

4.2 Critique of the Notion of “Social Minorities” in Sociology

The prior analysis suggests that U.S. sociology has played a role in the expansion of the concept of minority to encompass social minorities. What about the concept in German sociology? First, whereas at least as far back as the 1960s, sociology dictionaries and encyclopedias have an entry for “minority,” many books explaining basic terms in sociology or introductory works on the field had no section or index entry on the topic (for example, Bellebaum 1991; Korte and Schäfers 2002; Vester 2009; Jäckel 2010), reflecting the fact that this is not necessarily a basic concept in contemporary German sociology.

Relevant passages in sociology encyclopedias and dictionaries usually focus on national and/or ethnic minorities, overlapping the indicators of minority status found in international human rights law. However, sociological understandings of minorities do not conform precisely to jurisprudential ones. Sociology is characterized by an attention to discrimination and prejudice in relation to minorities. One dictionary of sociology states that “in modern society the ‘nation’ as (fictional) bearer of all-encompassing social as well as political authority is the favorite choice as the group with which to identify” (Klima 1994, 441), and that therefore national, ethnic, and racial minorities often face discrimination. It adds that for this reason, sociology focuses intensely on such minorities. Another sociology encyclopedia concisely explains the difference in emphasis between German and U.S. minority research: “While in Germany *ethnic identity* and its fate are interrogated, in the United States it is *civil universalism* and its potential” (Lenhardt 1997, 440, emphasis in

original).⁸

This distinction appears to originate in the difference between the national principles of Germany — as a nation-state originally intended for Germans — and the United States, which is composed of different ethnic groups. In German sociology, the concept of minority has primarily been used in discussions of the integration of foreign workers and their families into German society since the late 1950s, along with their maintenance of identity (Peukert and Scherr 2003, 238-39). In such discussions, it is often held that one of the elements constituting “minority-ness” is the lack of rights such as citizenship (Han 2005, 111, 349). The emphasis in sociological research on immigrants, rather than on traditional minorities who do not have many social integration issues, is thus understandable.

On the other hand, another sociology reference states that one can find a usage of “minority” in German like that of “minority groups” in the United States, which widely refers to ethnic groups facing discrimination, societal deviants such as prostitutes, gays, and homeless people, and the disabled (Vascovics 1989, 444-45). This kind of expansion of meaning was already embodied by Doerdelmann (1969), who wrote amidst the social and political upheavals of the late 1960s. Doerdelmann described a wide variety of people as minorities within Germany: gypsies, Jews, homeless people, prisoners, foreign workers, gays, religious sects, anti-establishment groups within churches, political opposition groups, critics of consumer society, exiled Croatsians, sages, and even individuals.

This conceptual expansion is interesting in its relation to the scope of the term “marginal group” (*Randgruppen*), which appears in sociology encyclopedias as a concept related to “minority.” The concept covers foreign workers and Sinti and Roma (gypsies), as well as the mentally ill, physically disabled, prostitutes, drug addicts, members

8 It appears that the author has in mind the efforts aimed at the systemic equality of minorities in the US, such as the Civil Rights Movement.

of unorthodox religious sects, resident students, ex-convicts, homeless people, drifters, the elderly, single mothers, and others (Peukert and Scherr 2003, 239). In dictionaries, we find suspicion about treating such people as minorities. According to Vascovics (1989, 445), “it has also been proposed that in accordance with its original meaning the concept of minority should be limited to peoples (*Volksgruppen*) who are homogeneous in their national origins, language, and customs and live amidst a set of residents with a different composition.” A more recent encyclopedia distinguishes similarly between marginal groups and the concept of minority (Nauck 2002, 367).

In sum, German sociology tends to focus not on traditional minorities but on immigrants as ethnic minorities, and it sometimes but not always includes social minorities not granted minority status under international law. The U.S. understanding of the concept of minority has not yet been widely accepted in German sociology.

5 Outlook: The Minority Concept and Policy between Expansion and Restriction

Returning to the three questions raised at the beginning of this paper, after briefly summarizing the major characteristics of the concept and related policies in Germany on national minorities, immigrants, and social minorities in turn, I will close this paper by pointing out some general tendencies across different fields.

As Germany was formed with language as a major indicator of German-ness, ever since the country’s unification in 1871 the treatment of groups within the country that speak a different language has been a major political issue. After World War I, ethnic Germans living outside Germany became the primary minority of concern in German thinking and diplomacy. Accordingly, when using the term *Minderheit* to denote a specific group, Germans almost always had national minorities in mind. After World War II, the numbers of non-German ethnic groups in German territory and of ethnic

Germans outside Germany decreased due to territorial shrinking and migration. In sharp contrast to the Nazi era, the governments in East and West officially recognized national minorities and regimes for their protection and promotion were actively developed. Within the government and jurisprudence, concern for minorities has grown beyond national minorities in a narrow sense as people who are a part of another nation (state) but traditionally living in Germany. Now, the recognized national minorities include small ethnic groups as well who have traditionally lived in Germany and whose members have German citizenship. Germany's clear delineation of who qualifies as a national minority has made it possible to conduct focused and high-quality minority promotion policies for these recognized minorities.

After World War II, immigrants or "new minorities" gradually become a major social and political issue. German sociology began to recognize these groups as minorities, but the German government and law scholars took a critical attitude toward including immigrants in minority policy, because of the difficulties involved in treating groups with different issues within the same category. In recent years, the government has advanced policies to accept immigrants within society, such as by relaxing conditions for the acquisition of German citizenship. The sharp distinction between old and new minorities, which has been fundamentally based on citizenship, will likely gradually become vague due to the increase in the number of people of immigrant background attaining German citizenship. Yet, there are no indications so far of the large Turkish population in Germany becoming officially recognized in the near future as a minority group to be specially protected. Currently, the increase in refugees is presenting new challenges in the social integration of groups with different ethnic and religious backgrounds. To what extent these refugees will become part of the German society and eventually being discussed as minority groups will be evident in the following years.

We can also observe a sociological trend from the 1960s onwards,

probably under the influence of U.S. academic circles, toward treating a wide variety of people who experience discrimination and prejudice as social minorities. At the same time, however, we find reservations about including “social minorities” within the category of minorities in encyclopedias. German sociology has also often been critical of expanding the meaning of “minority” in this way and has sometimes limited the concept’s scope by distinguishing between minorities and “marginal groups.”

Amidst the struggles over expanding or restricting the concept of minority, we can thus find clear efforts to consciously limit its scope in the German government, jurisprudence, reference works, and sociology. In the background of these discussions lie concerns about lumping together so-called minority groups who actually require different approaches: Different undertakings and approaches are needed for national minorities, immigrants, and marginal groups. For both traditional minorities and immigrants, social integration and identity maintenance may be relevant concerns, but the balance of emphasis differs greatly. For national minorities, the maintenance and passing down of their identity across generations is at the forefront; for immigrants, smooth integration into society is a more pressing need, whereas the maintenance and transmission of cultural characteristics and identity is often assumed. For marginal groups, the major issue is to improve the undesirable aspects of their situation within society. Doubts about the wisdom of grouping together these different goals and major issues undergird the tendency in Germany to be critical of expanding the concept of minority.

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