EMPLOYER SANCTIONS IN WESTERN EUROPE

By
Mark J. Miller
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the German Marshall Fund of the United States

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Center for Migration Studies of New York, In
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ABSTRACT

The May 30, 1985 Wall Street Journal reported that "Employer sanctions have proven to be ineffective deterrents to illegal immigration in at least 20 nations, according to the U.S. General Accounting Office." Reports such as this have fueled opposition to adoption of employer sanctions in the United States.

The following study reviews the development of illegal immigration to Western Europe. Varieties of illegal alien employment and patterns of illegal residency are examined. The evolution of Western European employer sanctions is then traced.

Enforcement of employer sanctions has evolved appreciably since the writing of the GAO report. Most continental European democracies have adopted employer sanctions and have strengthened and refined enforcement of them over the past decade. Employer sanctions generally are viewed as a useful component of broader public policies aimed at curbing illegal immigration and employment. Levels of illegal residency and employment probably would be higher in their absence. Employer sanctions do not appear to have resulted in additional employment discrimination against minorities in France.

Western European experiences with employer sanctions reveal numerous problems and issues associated with implementation and enforcement. Employer sanctions can provide a partial solution to the problem of illegal immigration over the medium term. But the efficacy of employer sanctions is inextricably linked to the formulation of a comprehensive strategy to reduce illegal immigration through attenuation of its structural causes.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgments</td>
<td>iv</td>
</tr>
<tr>
<td>Abstract</td>
<td>v</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>vi</td>
</tr>
<tr>
<td>List of Tables</td>
<td>vii</td>
</tr>
<tr>
<td>I. A Transatlantic Overview</td>
<td>1</td>
</tr>
<tr>
<td>II. Western European Immigration Policies</td>
<td>5</td>
</tr>
<tr>
<td>III. The Complexity of Illegal Immigration to Western Europe</td>
<td>13</td>
</tr>
<tr>
<td>IV. Characteristics of Illegal Alien Employment</td>
<td>19</td>
</tr>
<tr>
<td>V. Residency Patterns</td>
<td>24</td>
</tr>
<tr>
<td>VI. The Evolution of Employer Sanctions</td>
<td>26</td>
</tr>
<tr>
<td>VII. The Marcellin-Fontanet-Gorse Decrees</td>
<td>33</td>
</tr>
<tr>
<td>VIII. Problems and Issues Concerning Employer Sanctions in Western Europe</td>
<td>48</td>
</tr>
<tr>
<td>IX. Implications for the United States</td>
<td>52</td>
</tr>
<tr>
<td>Footnotes</td>
<td>54</td>
</tr>
<tr>
<td>Select Bibliography</td>
<td>62</td>
</tr>
</tbody>
</table>
# LIST OF TABLES

| I. | Stocks of Foreign Population in Selected OECD Countries, 1974-83 | 6 |
| II. | Naturalizations in France, the Federal Republic of Germany and Switzerland, Selected Years, 1969-83 | 8 |
| III. | Seasonal Worker Employment in France and Switzerland, 1960-79 | 16 |
| IV. | Breakdown of Illegal Status Wage-Earning Applicants for French Legalization Program Accepted, by Economic Sector (%) | 22 |
| V. | Officially Reported Departures and Actual Arrivals from Turkey by Host Country, 1961-71 (1000s) | 30 |
| VI. | Foreigners Expelled from France 1974-81 | 37 |
| VII. | Disposition of Cases of Illicit Employment in the Federal Republic of Germany 1973-75 | 39 |
| VIII. | Offences Committed By Employers in the Federal Republic of Germany Against Regulations Governing the Employment of Foreigners, 1980-84 | 40 |
| IX. | Amount of Administrative Fines Imposed, 1980-84 | 41 |
| X. | Types of Employer Sanctions in Western Europe | 46 |
Unlike the United States, most continental Western European states have imposed penalties against employers who hire aliens without legal entitlement to employment. Some European states had employer sanctions as early as the interwar period. The French legislature passed a law with an employer sanction provision in 1926. However, most European states adopted employer sanctions in the 1970s when control of illegal migration first became a significant European issue. The adoption of convention 143 by the International Labor Organization in 1975, which specifically calls for the imposition of employer sanctions, and a 1976 draft directive issued to the European Community, which also specifically calls upon member states to adopt employer sanctions, encouraged European decisions to penalize employers of irregular-status aliens. Great Britain represents a significant exception to the Western European pattern as the British government has rejected the notion.

European experiences with employer sanctions have varied. The Federal Republic of Germany had adopted employer sanctions by 1972 and has since refined and reinforced them in law and in terms of enforcement. The French cabinet adopted a four point plan aimed at curbing illegal entry and employment primarily by Italians in 1946 which specifically called for the imposition of legal penalties upon employers who hired aliens outside of official procedures. Employer sanctions again were decreed in 1976 as part of a broader effort by the French government to establish control over immigration. The French have since strengthened the criminal and administrative penalties against employment of irregular-status aliens and have striven to improve the coordination between various agencies involved with enforcement of employer sanctions. In Switzerland, a major migrant receiving country despite its small size, legal penalties aimed specifically at employers of irregular status aliens were not adopted until 1984. However, employers could be punished under the provisions of a 1931 law making it unlawful for anyone to help unauthorized aliens enter and stay in Switzerland. In 1971, Great Britain adopted a provision similar to the 1931 Swiss law against harboring illegal immigrants. The French and Germans have similar statutes. The 1971 British law against harboring illegal aliens or assisting illegal entry theoretically
could apply to employers, but in practice has been directed against traffickers of illegal aliens. 8

Western European countries have not unanimously opted for employer sanctions. Among those that have, there are significant differences arising from varying national situations which limit generalizations about employer sanctions in Western Europe. However, Western European experiences with employer sanctions are of broad comparative significance to all industrial democracies and in particular to the United States.

The concept of employer sanctions is a key element in proposed United States immigration legislation. A 1981 United States Accounting Office report on the enforcement of laws regarding employment of aliens in selected countries concluded that employer sanctions were not "an effective deterrent" to illegal employment. 9 This finding has since been cited as an argument against the wisdom of adopting employer sanctions in the United States.

The so-called Texas Proviso to the 1952 Immigration and Nationality Act as amended has been interpreted in such fashion that United States employers have not been subject to legal penalties for hiring irregular-status migrants. 10 The notion of employer sanctions appears to have been first advocated for the United States by the government of Mexico during the bracero program period. 11 The Mexican government was distressed by American employers flouting procedures established by the United States and Mexico to regulate temporary employment of Mexican nationals in the United States. 12 Despite the possibility of legally recruiting temporary Mexican workers, many employers apparently preferred recourse to irregular-status Mexican workers. The government of Mexico's advocacy of employer sanctions would appear to have been intended to ensure better protection of Mexican nationals working in the United States.

In the 1970s, a widely shared perception that the irregular status alien population in the United States was large and growing led to the creation of series of Federal task forces and commissions which recommended changes in United States immigration law and policy. The most important of these was the Select Commission on Immigration and Refugee Policy which reported to President Reagan in March of 1981. The Select Commission recommended "...that legislation be passed making it illegal for employers to hire undocumented workers." 13 The recommendation was subsequently embodied in the so-called Simpson-Mazolli
legislation. While the House and Senate bills differed in detail, they both would penalize employers who knowingly hire irregular-status migrants.

The wisdom of imposing employer sanctions has been hotly debated in the United States. This situation contrasts sharply with continental Europe where employer sanctions were adopted with little or no public debate and where a broad consensus in favor of the concept exists. In the United States, critics have feared that employer sanctions would lead to additional employment discrimination against Hispanics. Fear of employer sanctions possibly leading to additional discrimination against immigrants and minorities was a factor in the British decision not to adopt employer sanctions. And there have been concerns expressed in other European countries with significant minority populations comparable to Hispanics in the United States. However, in the single most illuminating comparative case, employer sanctions in France do not appear to have resulted in additional discrimination against the French citizenry and legally-resident alien population of North African background.

In marked contrast to the American and, to a much lesser extent, the British situation, employer sanctions are widely understood in continental Europe to be a means of preventing the discrimination inherent in the exploitation of illegal immigrants by wayward employers. The possible discrimination-engendering effects of employer sanctions simply have not been an issue in France and other continental European countries with which the author is familiar. The transatlantic contrast in perceptions seemed sharpest when all major Democratic candidates for the United States Presidency in 1984 declared their opposition to the Simpson-Mazzoli legislation on the grounds that the legislation, and in particular employer sanctions, would lead to additional discrimination against Hispanics. At roughly the same time in France, the Socialist government was announcing steps to enhance enforcement of various laws intended to curb illegal immigration.14

Despite important dissimilarities between the various major migrant-receiving countries of Western Europe and the United States, Western European experiences with employer sanctions would appear to have important implications for the United States debate over the advisability of enacting employer sanctions. Several continental European states have had employer sanctions for a decade now, most notably France and the Federal Republic of Germany. This time span permits tentative analysis of possible repercussions of enacting employer sanctions and of
the effectiveness of employer sanctions in curbing illegal immigration. Employer sanctions in continental Europe have not stopped illegal immigration. If anything, illegal immigrant populations probably are larger today than they were a decade ago with a number of important exceptions. Of course, as in the United States, there can only be informed guesses about numbers of irregular-status migrants.

No single immigration control measure can eradicate such a complex phenomenon as illegal migration. There is a broad consensus in continental Europe that employer sanctions are a useful component of broader policies designed to deter illegal immigration. It seems likely that there would be significantly larger irregular-status migrant populations in continental Europe without employer sanctions.

Continental European governments have encountered numerous obstacles to implementation or enforcement of their laws prohibiting employment of irregular-status migrants. But enforcement of employer sanctions has increased in recent years, particularly in the Federal Republic of Germany since December of 1981 and in France since the end of the legalization program in 1982. The most recent French governmental report on policy against illegal immigration, which reports on the 1983 to mid-1984 period, suggests a French appreciation of employer sanctions that has evolved considerably since the time of the writing of the GAO report.
II.
WESTERN EUROPEAN IMMIGRATION POLICIES

A number of major studies provide a wealth of information concerning similarities and differences in immigration matters among industrial democracies. (Boehning 1985, Castles and Kosack, 1985, and Miller and Martin, 1982.) The immigration policies of most diverge sharply from the United States immigration tradition, although one should be careful not to overstate the differences as is commonly done. The United States traditionally has welcomed permanent immigration or settlement. With the important exception of Mexican temporary labor programs and the small-scale H-2 program admitting nonimmigrants to perform temporary services of labor, the United States avoided the temporary foreign worker or so-called guestworker policies characteristic of immigration policies in continental Europe. The British immigration tradition also was seen as diverging from the immigration policies of continental Europe in that most post-World War II immigrants arrived with Commonwealth status and therefore enjoyed citizenship rights. However, the bulk of British immigrants came for employment purposes like the guestworkers on the continent.17

Among the major migrant-receiving Western European states, the Federal Republic of Germany and Switzerland did not foresee or necessarily welcome temporary foreign worker recruitment eventuating in permanent settlement. The Federal Republic of Germany still pointedly declares that it is not a country of immigration. Nonetheless, it and Switzerland have become de facto immigration countries as suggested by Table I which traces the evolution of foreign populations in key European countries from 1974 to 1983. Virtually everyone agrees that the Federal Republic of Germany and Switzerland will retain large legally resident alien populations, despite a steady homeward flow of migrants. Departures are offset by new arrivals including family members of legally resident aliens, new-borns, asylees and a restricted number of aliens legally admitted for employment.

The Federal Republic of Germany stopped guestworker recruitment in 1973. It does permit family reunification, but generally tightly regulates and restricts legal immigration opportunities for non-Germans except for European Community citizens and a number of minor exceptions to the rule. The Federal Republic of Germany was a founding member of the Common Market or (EEC) which has now
<table>
<thead>
<tr>
<th>Year</th>
<th>Belgium</th>
<th>France</th>
<th>Germany</th>
<th>Netherlands</th>
<th>Sweden</th>
<th>Switzerland</th>
</tr>
</thead>
<tbody>
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<td>1974</td>
<td>805.4</td>
<td>4,053.3</td>
<td>4,127.4</td>
<td>344.9</td>
<td>401.2</td>
<td>1,064.5</td>
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<tr>
<td>1975</td>
<td>835.6</td>
<td>4,196.1</td>
<td>4,089.6</td>
<td>350.5</td>
<td>409.9</td>
<td>1,012.7</td>
</tr>
<tr>
<td>1976</td>
<td>851.6</td>
<td>4,205.3</td>
<td>3,948.3</td>
<td>376.3</td>
<td>418.0</td>
<td>958.6</td>
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<td>1977</td>
<td>869.7</td>
<td>4,237.0</td>
<td>3,948.3</td>
<td>399.8</td>
<td>424.0</td>
<td>932.7</td>
</tr>
<tr>
<td>1978</td>
<td>876.6</td>
<td>4,170.4</td>
<td>3,981.1</td>
<td>431.8</td>
<td>424.2</td>
<td>898.1</td>
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<tr>
<td>1979</td>
<td>890.0</td>
<td>4,124.3</td>
<td>4,143.8</td>
<td>473.4</td>
<td>424.1</td>
<td>883.8</td>
</tr>
<tr>
<td>1980</td>
<td>903.7</td>
<td>4,168.0</td>
<td>4,153.3</td>
<td>520.9</td>
<td>421.7</td>
<td>892.8</td>
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<tr>
<td>1981</td>
<td>878.6</td>
<td>4,223.9</td>
<td>4,629.8</td>
<td>537.6</td>
<td>414.0</td>
<td>909.9</td>
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<tr>
<td>1982</td>
<td>885.7</td>
<td>4,459.1</td>
<td>4,666.9</td>
<td>546.5</td>
<td>405.5</td>
<td>925.8</td>
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<tr>
<td>1983</td>
<td>891.2</td>
<td>--</td>
<td>4,534.9</td>
<td>555.4</td>
<td>397.1</td>
<td>925.6</td>
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</table>

evolved into the European Community (EC). Citizens of the recently expanded twelve nation EC can, within certain restrictions, freely seek and take employment anywhere within the EC.\textsuperscript{18} France and Great Britain also belong to the EC.

Switzerland is not a member of the EC. But like France, Great Britain and the Federal Republic of Germany is a member of the Organization for Economic Cooperation and Development, (OECD). Membership is one or both of these international organizations has implications for immigration policy.\textsuperscript{19} Switzerland tightly regulates immigration through a complex quota system. Unlike the Federal Republic of Germany, Switzerland continues to recruit temporary foreign workers, primarily seasonal and annual workers, although in significantly smaller numbers than in the past. As in the Federal Republic of Germany, Switzerland has stringent naturalization requirements, although they have been liberalized in recent years, and relatively few aliens are granted Swiss citizenship.

Unlike the Federal Republic of Germany and Switzerland, France has a long tradition of welcoming permanent immigration for demographic purposes. The French immigration tradition makes it the most interesting case to compare to the United States in Western Europe. Sweden also now sees itself as an immigration country, but further immigration is not encouraged except for family reunification and refugees. About one out of every four French citizens has a grandparent who was non-French.\textsuperscript{20} There are about 1.5 million naturalized French citizens out of a total population of 54 million.\textsuperscript{21} French naturalization procedures are much less stringent than in Switzerland and the Federal Republic of Germany. Very few applications for French citizenship are denied. Consequently, a significantly higher number of aliens naturalize in France each year than in Switzerland and the Federal Republic of Germany as indicated in Table II. The French naturalization figures do not include individuals born in France of alien parents who receive French nationality through "automatic acquisition." Approximately 25,000 persons annually receive French citizenship through automatic acquisition.\textsuperscript{22} Most German naturalizations actually involve ethnic Germans from Eastern Europe. Out of the 39,280 persons naturalized in 1982, 26,014 were naturalized on the basis of a naturalization claim. Of the 13,266 persons naturalized by discretionary decision only 4,826 came from former recruitment countries.\textsuperscript{23}

The French immigration tradition is distinctive and approaches the
### TABLE II

**NATURALIZATIONS IN FRANCE, THE FEDERAL REPUBLIC OF GERMANY AND SWITZERLAND**

Selected Years 1969-1983

<table>
<thead>
<tr>
<th>Year</th>
<th>France</th>
<th>Germany</th>
<th>Switzerland</th>
</tr>
</thead>
<tbody>
<tr>
<td>1969</td>
<td>37,425</td>
<td>17,818</td>
<td>5,420</td>
</tr>
<tr>
<td>1970</td>
<td>34,112</td>
<td>18,585</td>
<td>6,939</td>
</tr>
<tr>
<td>1971</td>
<td>33,385</td>
<td>18,914</td>
<td>7,405</td>
</tr>
<tr>
<td>1972</td>
<td>35,254</td>
<td>18,645</td>
<td>7,640</td>
</tr>
<tr>
<td>1973</td>
<td>33,616</td>
<td>18,858</td>
<td>7,843</td>
</tr>
<tr>
<td>1974</td>
<td>36,086</td>
<td>25,744</td>
<td>8,739</td>
</tr>
<tr>
<td>1977</td>
<td>--</td>
<td>--</td>
<td>14,354</td>
</tr>
<tr>
<td>1979</td>
<td>46,790</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1980</td>
<td>52,103</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1981</td>
<td>54,011</td>
<td>--</td>
<td>8,574 a</td>
</tr>
<tr>
<td>1982</td>
<td>48,827</td>
<td>39,280</td>
<td>9,352 a</td>
</tr>
<tr>
<td>1983</td>
<td>39,695 b</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

a - Does not include children of Swiss mothers and alien fathers.

b - French figures do not include grant of French nationality through "automatic acquisition."

French situation to that of the United States. But France also has had a long history of foreign labor recruitment in a fashion very similar to the Federal Republic of Germany and Switzerland. In the post-World War II period, French immigration policy operated at two levels. Permanent immigration from Italy and the Iberian Peninsula was welcomed. Foreign workers from North Africa and Turkey, among other more spatially and culturally distant migrant-sending areas, were valued for their economic contributions, but their settlement, while permitted, was not encouraged.

As in the Federal Republic of Germany and Switzerland, there are a welter of foreign worker legal statuses in France, primarily established by bilateral labor agreements and treaties. Like Switzerland, but unlike the Federal Republic of Germany, France has a seasonal worker program, primarily for agriculture in the Midi or South. Seasonal workers in France and Switzerland, have the most restricted statuses among legally resident foreign workers. They are obligated to repatriate after their term of employment of less than one year. In Switzerland, seasonal workers may qualify for less restrictive annual permits. The French have no established de jure procedure permitting seasonal workers to qualify for renewable annual residency and employment permits, but have a long tradition of allowing seasonal workers to adjust their status. Most recently, a number of seasonal workers were granted more secure legal status during the French legalization program of 1981-1982.

In EC countries, the status of foreign workers from within the community generally is the least restricted. Aside from employment restrictions in the public sector, the status of community workers is generally similar to that of citizens save for political rights. The status of non-seasonal, legally resident aliens from countries outside the EC has been liberalized, but is generally inferior to that of so-called community workers and their dependents. Relatively few requests for issue of a new or renewal of employment permits for non-EC aliens are refused. As reported by Roger Boehning of the International Labor Organization (ILO), during the high unemployment years of 1974 to 1978 in the Federal Republic of Germany, out of a total of 6,370,000 requests for work permits by foreign workers, excluding EC citizens, only 152,000 or 2.4 per cent were refused.

The legal status of non-EC workers and their dependents is determined by bilateral agreements and treaties, immigration regulations and, in some instances,
by the provisions of instruments issued by international organizations, specifically
the EC, the OECD, and the ILO. In France, the special circumstances of the
France-Algerian relationship have meant that Algerians in France have had a special
status.

Algeria was legally an integral, organic part of France from the nineteenth
century to 1962. The Evian Accords, under which Algeria voted through referendum
to become independent of France, included provisions to regulate population
movements between France and post-independence Algeria.28 The large number of
Algerians of Islamic background living in metropolitan France, perhaps 400,000,
could choose between French and Algerian nationality. Most opted for Algerian
nationality. A large number of Algerians of Islamic background, perhaps several
hundred thousand, opted to retain French citizenship. This was the case in
particular of the so-called Harkis who had served France during the period of the
Algerian War of national liberation and who faced reprisals at the hands of the
victorious Algerian rebels.29 Perhaps one million Algerians of European extraction
chose to repatriate to metropolitan France in the waning months of Algérie
française.30

The massive exodus of the so-called Pieds Noirs rendered almost meaningless in
the eyes of French officials the provisions of the Evian Accords concerning the
rights of entry and residency of French nationals in Algeria and the reciprocal rights
of entry and residency of Algerian nationals in France. The Algerian government,
however, has steadfastly maintained that the status of Algerian nationals in France
is regulated by the principles of the Evian Accords and subsequent Franco-Algerian
accords pertaining to immigration. Algerians in France have had a unique and, in
many respects, privileged legal status in France since 1962, although several French
governments have sought to erode the privileged status of Algerian nationals. Issues
pertaining to immigration have often strained the Franco-Algerian special
relationship since 1962. The Algerian government stopped regulated Algerian labor
emigration to France in 1973 in the wake of widespread attacks on and murders of
North Africans in France.31 Family reunification, however, has continued.

Today, some 850,000 Algerian nationals legally reside in France. There also are
430,000 and 200,000 legally-resident Moroccans and Tunisians respectively.
Together, then, France's North African community represents about 2.6 per cent of
the total population. However, there also is a large but indeterminate population of
French citizens of North African descent (excluding the Pied Noirs and their descendants and similar groups of European extraction from Morocco and Tunisia.) This population group is composed of the Harkis and other individuals of North African Arab background who retained French citizenship in the aftermath of decolonization, their descendants who are French by birthright, and the important number of North African Arabs who have naturalized or received French nationality through "automatic acquisition" since the decolonization period along with their offspring. Together, the French citizenry of North African Arab background and the legally resident North African Arab community represent a minority group comparable in many respects to the United States citizenry and legally resident alien population of Hispanic background.

Metropolitan France, although less so than in the United States, also has a large black minority comprised of citizens, primarily immigrants from overseas French departments in the Caribbean, but also of legally resident aliens, primarily from former French colonies in sub-Saharan Africa. As many illegal immigrants to France come from Africa and, to a much lesser extent, from the Caribbean, it would be those minority communities which might be most adversely affected by potential employment discrimination arising from the imposition of employer sanctions. Black and North African Arab minorities in France are distressingly frequent victims of racism and discrimination despite a 1972 French law prohibiting racial and other forms of discrimination.

In the Federal Republic of Germany and Switzerland, the legal principle of jus sanguinis prevails. The children of Turkish guestworkers do not become German citizens by virtue of their birth on German soil. Both Switzerland and the Federal Republic of Germany have moved to facilitate the naturalization of second generation migrants, many of whom were born in the Federal Republic of Germany and Switzerland or have lived there much of their lives.32 In France, a modified principle of jus soli prevails. The children of aliens born on French soil may opt for French nationality upon reaching their majority. Many, if not most, children of foreign workers, born on French soil, who grow up in France and who continuously reside there, opt for French citizenship. There is considerable confusion surrounding the citizenship status of many Algerian children in France and their status has been the subject of on-going negotiations between the French and Algerian governments.33
Other Western European countries with important citizen minorities which might be adversely affected by discrimination arising from employer sanctions include Great Britain and the Netherlands. However, massive post-war labor migrations have altered the socio-economic and political landscape of Western Europe, generally rendering Western Europe societies less homogeneous than frequently assumed in the United States. The one and a half million-strong Turkish minority in the Federal Republic of Germany and the 610,000 member Yugoslav community also hypothetically could experience employment discrimination as the result of employer sanctions even if they are not German citizens. Irregular-status Turks and Yugoslavs are thought to comprise important segments of the Federal Republic of Germany clandestine population.

A German employer is legally required to hire a German or an alien worker whose socio-economic status is assimilated to that of a citizen, say community workers, but an employer cannot legally discriminate against legally resident aliens entitled to employment. In other words, the so-called priority to indigenous labor principle in employment which prevails in major continental European migrant-receiving countries cannot be used to dismiss or "bump" alien workers from their employment in favor of natives.34 Legally resident alien workers theoretically enjoy considerable legal protections against employer discrimination. Hence, the possible discriminatory effects of employer sanctions could be a potential concern in countries without significant citizen minorities like the Federal Republic of Germany. The concerns raised in the United States over the potentially discriminatory effects of employer sanctions are broadly relevant to Western Europe and the Western European experience with employer sanctions in this respect would appear to have significant implications for the United States policy debate.
III.

THE COMPLEXITY OF ILLEGAL IMMIGRATION TO WESTERN EUROPE

There is a striking pattern of socio-economic and political characteristics surrounding immigration to Western Europe. The predominance of labor migration in postwar immigration prior to 1973 is characteristic of seemingly all Western European countries. Family reunification, dependents joining legally resident foreign workers, has dominated immigration since 1973. But there was substantial family migration in the 1950s and 1960s, particularly in the French case, and family reunification has had significant consequences upon labor markets since the 1973 to 1975 period when virtually all European countries stopped labor recruitment or significantly reduced it.

A number of major migrant-receiving states had received large inflows of immigrants and foreign workers prior to World War II and their postwar migration policies were shaped by the legacy of the interwar period and before. France sought permanent immigrants to restore its demographic equilibrium and to provide the manpower necessary for reconstruction. It signed a bilateral labor accord with Italy in 1947 to regulate immigration. The National Immigration Office (ONI) received a legal monopoly over the introduction of aliens and has since administered immigration policy in historically highly centralized France in conjunction with the Ministry of Labor and other ministries.

Switzerland also recruited its early postwar migrant workers in Italy. The Swiss signed a 1948 treaty with Italy to regulate foreign worker employment and residency. Unlike the French and German cases, Swiss employers are responsible for foreign worker recruitment although Swiss authorities must approve the hiring and monitor the entry of foreign workers. Prior to 1960, Swiss employers could hire foreign workers virtually at will. Since then, a quota system has been created placing annual numerical restrictions on the number of permits that can be issued to various categories of foreign workers by canton and for the federal OFIAMT (The Federal Office of Industry and Labor).

Swiss immigration policy is administered on the federal level by the Federal Aliens Police, an agency of the Department of Justice, in conjunction with OFIAMT which certifies employer need for alien labor and regulates other employment aspects of immigration. As in the Federal Republic of Germany, local authorities
play an important role in Swiss immigration policy. Significant differences pertaining to alien employment and residency can arise from canton to canton and even from commune to commune. Communes set their citizenship requirements, for example, so it is more difficult for an alien to become a citizen in some communes than in others. Overall, local authorities seem to play a more important role in immigration policy matters in the Federal Republic of Germany and Switzerland than in France, but the difference should not be exaggerated.

In recent years, significant movement toward decentralization of government has occurred in France. In the Miterrand Presidency, French mayors received important powers affecting immigration policy. Most notably, mayors were empowered to attest that a foreign worker had found adequate housing for family members before being authorized to bring family members to France. A good number of mayors appear to have systematically refused to attest that foreigners had secured adequate housing.

It seems likely that a large proportion of irregular-status alien employment in Western Europe involves the families of legally resident aliens. The efforts by some French mayors to block family reunification may have led instead to unauthorized family reunification. France has had a long-term housing shortage problem which affects aliens in particular. There often is not adequate housing to be found for the families of foreign workers. But many families come anyway without authorization.

In France and the Federal Republic of Germany, foreign workers are permitted to bring their immediate families after one year. The waiting period is somewhat longer in Switzerland. Seasonal workers in Switzerland and non-Spanish seasonal workers in France are not authorized to bring their families with them, although family members can visit during the seasonal worker contract period.

Employment of irregular-status aliens in Western Europe may include the hiring of legally resident aliens not entitled to employment. For example, to limit the consequences of family reunification upon the German labor market in recent years, the spouses of non-EC alien workers generally are prohibited from receiving employment authorization for a period of several years. Nonetheless, it seems that many spouses do work without legal authorization. In other cases, visitors, who also are not entitled to employment, take jobs. Overstaying of visitors visas and
subsequent illegal employment comprises another important category within the rubric of illegal alien employment. In Switzerland, the much criticized Swiss refusal to grant residency rights to the families of seasonal workers has played an important role in the development of a significant illegal alien population. The spouses and children of seasonal workers frequently enter clandestinely or overstay their visitor permits. The lack of schooling of illegal resident children of seasonal workers is a particularly significant problem.

In France, the families of Spanish grape pickers are permitted to accompany a worker. Although spouses and children of Spanish grape pickers are not authorized to work, they frequently do. Illegal employment by the dependents of Spanish grape pickers is difficult to stop and is often tacitly tolerated by French officials. Occasional tragedies involving unauthorized work by family members have exposed a widespread pattern of illegal alien employment. The so-called faux saisonnier or false seasonal worker also represents an important dimension of illegal alien employment. Many seasonal workers overstay their permits and effectively work most of the year despite being authorized for "seasonal" work.

French and Swiss seasonal workers are required to repatriate. In the case of Moroccan seasonal workers in France, for example, the worker must report to the ONI office in Morocco within a specified time period after the expiration of the seasonal permit in order to qualify for seasonal labor authorization in the future. It is not difficult, however, for seasonal workers to comply with the repatriation check and then return to France. The recent French legalization program revealed a large problem of illegal alien employment in agricultural areas employing important numbers of seasonal workers. French farmers frequently complain that not enough seasonal worker employment is authorized. In recent years, the French government has taken steps to reduce seasonal worker employment as part of its broader effort to curb illegal immigration.

As indicated in Table III, levels of seasonal worker employment in Switzerland plummeted from the high point of 206,000 workers in 1964. The seasonal worker program can be credited with helping keep unemployment within Switzerland extremely low during the economics recession of the 1970s. The Swiss were effectively able to "export" unemployment through the non-renewal of seasonal worker permits in particular. Seasonal worker programs provide considerable
TABLE III
SEASONAL WORKER EMPLOYMENT IN FRANCE
AND SWITZERLAND, 1960-79

<table>
<thead>
<tr>
<th>Year</th>
<th>France</th>
<th></th>
<th>Switzerland</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>109,798</td>
<td></td>
<td>139,538</td>
</tr>
<tr>
<td>1961</td>
<td>96,956</td>
<td></td>
<td>173,459</td>
</tr>
<tr>
<td>1962</td>
<td>95,093</td>
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<td>194,110</td>
</tr>
<tr>
<td>1963</td>
<td>101,274</td>
<td></td>
<td>201,348</td>
</tr>
<tr>
<td>1964</td>
<td>120,950</td>
<td></td>
<td>206,305</td>
</tr>
<tr>
<td>1965</td>
<td>131,571</td>
<td></td>
<td>184,235</td>
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<tr>
<td>1966</td>
<td>124,270</td>
<td></td>
<td>164,569</td>
</tr>
<tr>
<td>1967</td>
<td>113,971</td>
<td></td>
<td>153,514</td>
</tr>
<tr>
<td>1968</td>
<td>129,858</td>
<td></td>
<td>144,081</td>
</tr>
<tr>
<td>1969</td>
<td>132,871</td>
<td></td>
<td>149,201</td>
</tr>
<tr>
<td>1970</td>
<td>135,058</td>
<td></td>
<td>154,732</td>
</tr>
<tr>
<td>1971</td>
<td>137,197</td>
<td></td>
<td>180,828</td>
</tr>
<tr>
<td>1972</td>
<td>144,492</td>
<td></td>
<td>196,632</td>
</tr>
<tr>
<td>1973</td>
<td>142,458</td>
<td></td>
<td>193,766</td>
</tr>
<tr>
<td>1974</td>
<td>131,783</td>
<td></td>
<td>151,962</td>
</tr>
<tr>
<td>1975</td>
<td>124,126</td>
<td></td>
<td>86,008</td>
</tr>
<tr>
<td>1976</td>
<td>121,474</td>
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<tr>
<td>1977</td>
<td>112,116</td>
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<tr>
<td>1978</td>
<td>122,658</td>
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</tr>
<tr>
<td>1979</td>
<td>124,715</td>
<td></td>
<td>96,000</td>
</tr>
</tbody>
</table>

flexibility to seasonal worker-receiving countries at a considerable cost in social
democratic norms. A recent referendum to abolish the seasonal workers status in
Switzerland was resoundingly defeated. Seasonal worker employment has increased
recently despite persistent criticism of the Swiss seasonal worker policy in
international forums.

Another important category of irregular-status alien employment stems from
totally illegal entry followed by employment. Alien workers in this category often
number among the most exploited by employers, who not infrequently are
themselves legally resident aliens or naturalized citizens of the same background as
the illegal aliens they employ. Despite considerable efforts to regulate entry at
borders and airports, continental Western European states are quite permeable. The
vulnerability of certain European states to illegal entry is increased by difficult to
monitor frontiers and by the enormous volume of alien transit by air, sea and land
transportation. The situation created by the United States' 2,000 mile long border
with Mexico is not as unique among industrial democracies as commonly thought.

France's long borders with Spain and Italy are important illegal entry points for
aliens from Africa and the Middle East. Senegalese and Malien illegal immigrants
are smuggled in by Basque and other Spanish "coyotes" in much the same fashion as
alien smuggling occurs on the United States - Mexico border. The volume of illegal
entry from Spain into France, however, is proportionally much less than along the
United States - Mexico border. The perilous land route taken by many illegal
immigrants across the Pyrenees exacts a toll in lives lost and serious injuries that
jars the conscience in much the same way as the tragic deaths of Salvadoran or
Mexican illegal entrants in the United States - Mexico border area. Illegal alien
smuggling or trafficking has been the target of severe fines and possible
imprisonment in all Western European countries.\textsuperscript{47} The French in particular have
stressed the importance of improved international cooperation to suppress illegal
immigration from Italy and Spain. Thus far, French efforts to secure more effective
international cooperation have borne little fruit.

The vulnerability of continental European states to illegal entry and residency
played an important role in decisions to adopt employer sanctions. In the absence of
effective border and port of entry controls in "open" industrial democracies,
so-called interior control focusing on the employment of irregular-status migrants in
particular appears to represent the only credible alternative control strategy. The
British decision not to adopt employer sanctions stemmed in large part from the belief that British port of entry controls are an effective deterrent to illegal entry. British authorities do not perceive their illegal entry and overstay problems as sufficiently serious to warrant an interior control strategy. The British decision not to impose employer sanctions also was influenced by concerns over the feasibility of implementation in a society, like the United States, without a national identity card and a fear of possibly exacerbating employer discrimination against immigrant minorities. The British also objected to inclusion of criminal penalties in the EC directive of 1976, particularly imprisonment, which was viewed as overstepping the acceptable limits of EC prerogatives. There is significant opposition to British membership in the EC, particularly in the ranks of the Labour party which was in power at the time of the British decision not to adopt the EC draft decision. British confidence in the effectiveness of their port of entry controls apparently was the decisive factor in the decision. The notion of employer sanctions is not viewed as inherently discriminatory against minorities as suggested by some authors.

The notion of irregular-status alien employment, then, subsumes a multiplicity of situations ranging from legally resident foreign students taking summer jobs illegally to alien workers being smuggled in by boat in life-threatening conditions to labor in underground "sweatshops." Obviously, certain types of illegal alien employment are regarded as much more detrimental than others. Irregular-status alien employment in certain regions and industries is viewed as benign and is generally tolerated. Indeed, an important barrier to enforcement of employer sanctions in many areas has been a prevailing attitude that illegal alien employment is not harmful to public interests and perhaps necessary to the survival of certain industries or to certain types of employment. To grasp what might be termed the sociology of illegal immigration in Western Europe, one must further elucidate the characteristics of immigrant employment and residency in general as illegal immigration to Western Europe cannot be understood outside of the larger legal immigration context.
IV.
CHARACTERISTICS OF ILLEGAL ALIEN EMPLOYMENT

A senior official of the ONI once remarked that all postwar French immigration policy stemmed from an effort to regulate "spontaneous" inflows of foreign workers.49 Be that as it may, there has always existed a relationship between legal alien entry and employment and illegal alien entry and employment in France. Traditions of irregular-status alien employment had developed in certain French industries prior to World War II despite (or perhaps because of) the massive legal immigration and authorized foreign worker recruitment of the interwar period.50 Certain industries, like agriculture and construction, in certain regions, particularly the Southeast region nearest to Italy, were particularly dependent upon foreign manpower. Wages and working conditions in these dependent industries were often less than attractive to indigenous workers precisely because of a tradition of employer reliance upon alien labor.

In the early postwar period, an immigration policy was planned and agreed upon by key political and social actors in France which would have regulated immigration with substantial protections both for indigenous and foreign labor. The planned immigration system, however, only partially materialized. It broke down in the face of employer dissatisfaction with the legal recruitment procedures and was undercut by the legalization policy.51 The result was a veritable laissez-faire immigration policy. Until the 1970s, French employers had virtually unhindered access to foreign labor. However, as in the situations in the Federal Republic of Germany and Switzerland, there was little competition between French and foreign workers in the period of spectacular economic growth in the 1950s and 1960s. Foreign workers took the best jobs they could find, but they were usually less attractive in terms of wages and working conditions than those occupied by native workers.

The restrictions placed upon foreign worker mobility by employment and residency permits (these were combined in the Swiss case) influenced the structure of alien employment. In the Federal Republic of Germany and Switzerland, where established recruitment procedures were followed more vigorously than in the French case, foreign worker recruitment was closely tied to the manpower needs of employers. Employers had to have a certified need for foreign workers but such
certification became routine as economies surged. Foreign worker employment levels closely followed upswings and downswings in the economy.

The employment and residency restrictions placed on non-EC foreign workers were gradually reduced the longer the period of continuous foreign worker employment and residency. And, by the 1970s, continental European states came under pressure to liberalize their permit systems thereby granting significantly greater employment and residency mobility to long-term foreign workers.\textsuperscript{52} One important, long-term legacy of the restricted status of foreign workers and the other circumstances surrounding their entry into the economies of industrial democracies has been their characteristic employment concentration in certain jobs and in certain industries.

In France, circa 1970, for example, one out of every four auto workers and one out of every three construction workers was an alien.\textsuperscript{53} Most foreign autoworkers were employed in assembly-line work, particularly in the Paris region. Very few alien autoworkers appear to have been in an irregular employment status. In the construction industry, on the other hand, irregular-status alien employment almost seems to have been the norm in certain areas. The construction industry, like Midi agriculture, has employed significant numbers of irregular-status aliens in addition to large numbers of legal status alien workers throughout the postwar period. Midi agriculture and the construction industry traditionally have served as entry (or transition) industries for illegal migrants and short-term legal migrants who then seek better paying jobs with better working conditions in other industries.

Employment and residency restrictions helped retain foreign manpower in agriculture and construction. Since the recruitment halt of 1974, fewer and fewer foreign workers with restricted status have been available to industries that had grown dependent on such labor over the years. It seems likely that the persistence of illegal immigration in the 1980s despite governmental efforts to curb, indeed eradicate, the phenomenon is closely linked to employer demand for workers on terms unlikely to attract French or long-term legally resident alien workers. A similar situation obtains in the Federal Republic of Germany where seasonal worker policy was ruled out in the post-recruitment stop period primarily on the grounds that it was administratively infeasible and would exacerbate irregular-status alien employment.\textsuperscript{54} Hence, German employers probably have proportionally less
foreign labor with stringent employment and residency restrictions available to them than in France where agricultural employers in particular can still count on seasonal workers.  

Generally speaking, the characteristics of irregular-status alien employment seem to follow the pattern of legally resident alien employment. During the 1981-82 French legalization program, a sampling of aliens who were legalized (hence a sub-set of all those who applied for legalization excluding Algerians) were interviewed. Although the study had certain methodological limitations, it produced a profile of the employment and residency characteristics of irregular-status aliens of extreme interest. As indicated by Table IV, significant proportions of the sample interviewed worked in industries with long traditions of heavy reliance upon foreign labor like construction and agriculture. The structure of irregular-status alien employment in the 1980s has a marked resemblance to the structure of foreign worker employment in the 1960s.

Across Western Europe, irregular-status alien employment is clustered in certain jobs, industries and settings. Construction, hotels and restaurants, the garment industry, domestic services, agriculture and cleaning/maintenance services comprise the magnet industries. Irregular-status alien jobs are characteristically poorly paid, involve long or irregular hours, or otherwise unattractive working conditions. Industries with important seasonal variations in labor demand are among the most likely to employ large numbers of irregular-status migrants. Industries like construction and cleaning/maintenance services characterized by a high degree of subcontracting are particularly prone to important levels of irregular-status alien employment. The existence of the EC makes regulation of subcontractors, say from Holland, who employ irregular-status aliens in the Federal Republic of Germany, a particularly difficult phenomenon to control.

Characteristics of irregular-status alien employment in Western Europe currently may reflect characteristics of foreign worker employment in the 1960s. However, the characteristics of legally resident alien employment have evolved since the recruitment stops. Foreign workers used to have markedly lower unemployment rates than citizen workers. They now have significantly higher unemployment rates than citizens. Foreign worker employment has been disproportionately adversely affected by the recession of the 1970s and the reorientations of industrial policies in the 1980s.
### TABLE IV

**BREAKDOWN OF ILLEGAL STATUS WAGE-EARNING APPLICANTS FOR FRENCE LEGALIZATION PROGRAM ACCEPTED, BY ECONOMIC SECTOR (%)**

<table>
<thead>
<tr>
<th>Employment</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, forestry</td>
<td>10.7</td>
</tr>
<tr>
<td>Building and civil engineering</td>
<td>30.0</td>
</tr>
<tr>
<td>Textiles, clothing, leather</td>
<td>7.8</td>
</tr>
<tr>
<td>Other industries (including transport)</td>
<td>7.2</td>
</tr>
<tr>
<td>Retail and wholesale trades</td>
<td>9.5</td>
</tr>
<tr>
<td>Hotels and catering</td>
<td>11.8</td>
</tr>
<tr>
<td>Cleaning firms</td>
<td>4.6</td>
</tr>
<tr>
<td>Domestic service</td>
<td>10.3</td>
</tr>
<tr>
<td>Other activities</td>
<td>8.1</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Number interviewed 8,517

Source: French Ministry of Labor, Studies and Statistical Service
Legally resident foreign workers in Western Europe enjoy quite extensive rights and protections. A majority of them now have an ordinarily non-revocable, if still renewable, legal status with only minor restrictions upon their residency and employment mobility. As guestworkers stay on, more and more of them have qualified for less restrictive residency and employment permits. Despite the liberalized status of long-term migrants, most of them still would not appear to compete with citizens for jobs. This observation may hold less true for the important numbers of second generation migrant youth reaching working age.

Although long term legally resident aliens and citizen workers generally do not appear to compete for jobs due to labor market segmentation, there does appear to be fairly widespread discrimination in employment against legally resident alien populations and citizen minorities like French citizens of North African Arab background. In France, where unemployment among Algerians may be as high as 25 per cent, there can be little or no doubt that employment discrimination against North Africans is a serious problem.
RESIDENCY PATTERNS

The French Ministry of Labor profile of irregular-status alien workers also revealed a correspondence between the residency pattern of legally resident aliens and that of irregular-status aliens. Legally resident alien populations are characterized by a high degree of concentration in heavily industrialized major urban settings. In the mid-1970s in the Federal Republic of Germany, 50 per cent of the legal alien population was concentrated on less than 4 per cent of West German territory.60

In France, also in the mid-1970s, almost 1.5 million aliens or 34 per cent of the total legally resident alien population at that time, lived in the Paris region alone.61 One quarter of the remaining alien population was to be found in the two regions of Rhone-Alpes and Provence-Cote d'Azur.62 In Switzerland, in the mid-1970s, the canton of Zurich alone contained one fifth of the total alien population. Four out of the remaining 24 cantons contained another 39 per cent of the total alien population.63 The characteristic spatial concentration of legal alien residents has probably since become more pronounced despite efforts to limit residential concentration by local authorities.

Most major Western European cities have distinctive neighborhoods inhabited largely by aliens. In some instances, aliens are clustered by nationality groups in much the same fashion as Chicago's ethnic crazyquilt. Aliens disproportionately inhabit substandard housing in Western Europe. In France in the 1970s, aliens represented 80 per cent of those classified as living in unfit housing even though aliens comprised only 7 to 8 per cent of the total population.64 In the 1960s in France, many foreign workers lived in veritable Hoovervilles bidonvilles on the outskirts of cities. Employers theoretically were obligated to secure suitable housing for foreign employees. But this requirement was easily and massively circumvented. Most bidonvilles were razed during the 1970s, and many of their inhabitants relocated in newly built apartment towers in working class suburbs. While the French government has made an effort to improve foreign worker housing conditions, a major social problem concerning the housing of foreign workers and their dependents persists.

The difficulty encountered by many foreign worker families in their
efforts to secure adequate housing, a situation sometimes exacerbated by discrimination, reinforces the pattern of spatial concentration that springs from the very nature of labor migration. As in the United States, labor migration occurs through familial, village and regional networks. Migrants often seek the company of fellow nationals to avoid isolation. They find jobs and lodging through networks linking emigration areas with expatriate communities. The networks that developed in the 1950s and 1960s have continued to function since the 1973-75 period. Irregular-status migrants in Western Europe often have family, village or other contacts which help them find jobs, housing and false documents when they arrive. The spatial concentration of legally resident alien populations helps irregular-status workers "melt in" to the Western European urban landscape. In the French profile, irregular-status workers were concentrated in major urban areas like Paris, Lyons and Marseille. The major exception to the pattern was the correlation between a higher density of irregular-status aliens in rural areas and utilization of seasonal workers in those areas.  

While the housing problems encountered by foreign workers and their dependents in France may be more severe than elsewhere in Western Europe, the residency characteristics of irregular-status migrants discernible in the French case typify Western Europe. Irregular-status alien employment and residency is concentrated in major urban areas. Enforcement of immigration laws is complicated by the frequent spatial and linguistic gulf separating alien communities from their environs. In France, legally resident alien communities have supported protest movements seeking legalization for irregular-status migrants. "Area control" style identify checks by French police frequently provoked violent reactions. The police in Paris had been allowed to conduct random identity checks of "alien looking" individuals in the subway system, but this procedure has since been discontinued. One major legacy of the massive postwar guestworker recruitment has been the creation of minority communities whose rights and liberties could be prejudiced by stepped up efforts by governments to curb illegal migration in the wake of the recruitment halts or reductions.
VI.

THE EVOLUTION OF EMPLOYER SANCTIONS

Irregular-status alien employment is not unique to the post-guestworker-recruitment phase of modern European history. Large-scale labor migration to Western European industrial democracies began in the last quarter of the nineteenth century. Public authorities inevitably felt constrained to regulate these migrations and the roots of contemporary Western European immigration regulation systems can be traced to the nineteenth century.

Under an October, 1888, decree, the French government first imposed the duty of registration with local authorities upon aliens.66 The registration requirement was strengthened in a 1893 law and penalties were provided for in case of breach of contract by alien workers or their employers. During World War I, identity cards for alien workers were required.67 Identity cards for French citizens and aliens were required by the Vichy government.68 Today, in part because of the injustices committed during World War II, identity cards are not mandatory for French citizens. However, out of practical necessity and convenience, the vast majority of French citizens possess identity cards. Most other continental European states, such as the Federal Republic of Germany, have an obligatory national identification document for citizens.

In Imperial Germany, Polish agricultural seasonal workers in East Prussia were required to register at the borders. The agricultural workers had to have contracts with specific employers, but workers frequently broke contracts if they could find work nearby with higher wages or better working conditions. According to Knuth Dohse, irregular-status alien employment in Imperial Germany was punished through expulsion. It was unthinkable to impose penalties on employers who hired Polish workers without proper authorization.69 Expulsion of irregular-status workers without penalization of their employers appears to have been the European norm until the post-World War II period. The 1926 French law penalizing employers does not appear to have been enforced despite concerns raised about "spontaneous" immigration in the interwar period.70

Immigration issues were salient concerns for European employers, nascent trade union movements and political parties by the turn of the century.
Trade unions pressed for governmental regulation to protect jobs, wage levels and working conditions. Employers sought governmental assistance in labor recruitment which already by the 1920s was regulated on the basis of bilateral treaties and accords.\textsuperscript{71} The League of Nations' labor adjunct proposed a convention concerning migrant labor in 1939 and the International Labor Organization adopted Convention 97 and Recommendation 151 pertaining to migrant labor in 1949 which encouraged regulation on the basis of bilateral accords. Many of the key elements of post-World War II European immigration policies were crafted in the interwar period.

World War II diminished the influence of employers upon postwar immigration policies and strengthened the hand of trade unions and religious organizations in several countries. The postwar contrast was particularly marked in France where the ONI and immigration policy in the immediate postwar period reflected the immigration policy proposals of major trade unions and left-wing political parties. It was in this changed immigration policy context that employer sanctions were decreed by the French cabinet in 1946.\textsuperscript{72}

France signed the initial postwar labor agreements with Italy in 1946 and 1947 in the context of fairly extensive illegal immigration and employment of Italians in France. In October and November of 1946, some 10,000 out of 12,000 legally-admitted Italians had their status legalized.\textsuperscript{73} The going price for illegal Italian workers smuggled into an employer was about 30,000 old francs.\textsuperscript{74} Article 24 of the 1947 Franco-Italian accords pledged the two governments to take appropriate measures to prevent illegal or clandestine entry.\textsuperscript{75}

The 1947 accords fully reflected European-wide desires for organized, rationalized international labor migration in the interest of all parties concerned. In many respects, the 1947 accords constituted a model bilateral labor agreement. However, they remained just that, a model, as many of the treaty provisions were not implemented successfully. Only some 47,000 Italian immigrants were officially admitted in 1947, about one quarter of the authorized immigration quota.\textsuperscript{76}

Implementation of the 1947 accords was frustrated by employer resistance to a recruitment system which limited employer hiring flexibility in order to safeguard against exploitation of foreign labor and adverse effects upon French labor. French trade unions would complain of employer "sabotage" of the 1947 accords through hiring of technically illegal status migrants.\textsuperscript{77} The legalization procedure allowed
employers to bypass established recruitment procedures. Employers complained that ONI recruitment procedures were cumbersome and insufficiently responsive to their needs.

Initially, French employers and their agents were not allowed to play an active role in the recruitment process. All recruitment was to be done by so-called anonymous requests which required an employer to pay a fee of 6,000 old francs for a worker of unknown quality and who might break his contract. Apparently quite a number of Italian workers admitted for specific jobs, illegally took other work. Under a 1948 revision of the accords, employers and their agents were granted a right to recruit directly in Italy and to make requests for specific workers. These requests seem to have improved the functioning of the ONI from the employer point of view, but also raised problems from the Italian viewpoint and from the standpoint of regulation, as they enabled French employers to pick and choose workers, whereas Italy had an interest in regulating who left. Like other emigration countries, Italy wanted to facilitate the emigration of the unemployed and underemployed. Requests by name also tended to undermine control and to foster illegal migration as they were, according to Alfred Sauvy "... a half-opened door which can be opened further."

Despite some apparent improvement in the functioning of the ONI from an employer standpoint by 1948, employers increasingly ignored ONI procedures. Many employers apparently preferred irregular-status labor and would retain it in spite of the availability of legal foreign workers and the decreeing of employer sanctions. There appears to have been little effort made to enforce the sanctions decreed in 1946. Illegal entry or overstay and then legalization became a method to cut red tape from an employer point of view. The change in government in 1947 also influenced the situation as the labor minister in charge in 1946 when employer sanctions were decreed had a short term of office. The change of government apparently nullified the sanctions announced in 1946. By 1950, serious consideration would be given to calls to eliminate the ONI.

The inability of the French government to implement the 1946 and 1947 accords meant that many of the legal protections afforded foreign labor in principle were denied them in practice. Beneath the veneer of official policy enunciated in bilateral agreements and law arose an unofficial but tolerated policy of laissez-faire
immigration. The influx of Italian workers would be succeeded by waves of foreign workers from other countries. Between 1948 and 1981, some sixty per cent of them (excluding Algerians and sub-Saharan Africans) would receive their legal status through the legalization procedure. In the 1950s and early 1960s, illegal immigration was viewed as benign and consequently there were no employer sanctions although a provision of the 1945 immigration law theoretically could have applied to employers who hired aliens without proper papers. Employer sanctions would not be contemplated again in government circles until the early 1970s.

Switzerland and the Federal Republic of Germany would never routinely legalize irregular-status aliens nor suffer problems of policy implementation to the degree suffered by the French. But there is considerable evidence that other Western European countries in addition to France also had significant populations of irregular-status migrants prior to the 1973-1975 recruitment halts or reductions. In the Netherlands, Hans Kok estimated that around 2,000 migrants per month arrived "spontaneously" over the 1960 to 1965 period. By 1974, a bill would be introduced into the Dutch legislature which included a provision for penalizing employers of irregular-status aliens. Table V, which compares officially recruited departures and actual arrivals of Turkish workers in four host countries over the 1961 to 1971 period, reveals that Turkish "spontaneous" entry into the Netherlands peaked in 1966. Turks probably comprise the largest single nationality group of illegal aliens in the Netherlands. The Dutch instituted a legalization program in 1975.

To the south, in Belgium, "spontaneous" immigration dominated in the 1960s. Most workers had their status legalized, but about 70,000 out of a total foreign population of 800,000 were thought to be illegal aliens in the mid-1970s.

In the Federal Republic of Germany, there was fairly widespread illegal immigration and employment in the 1960s. Max Diamant estimated in 1970 that the number of illegals could be as high as 15 per cent of the number of legal aliens in the country. Suzanne Paine estimated that nine out of every ten unofficial Turkish departures were individuals going to the Federal Republic of Germany.

The German trade union confederation, the DGB, urged the German government to take steps to curb illegal entry and employment in 1968. The 1972 Germano-Turkish labor agreement, according to Paine, was signed to legalize the
### TABLE V
OFFICIALLY REPORTED DEPARTURES AND ACTUAL ARRIVALS FROM TURKEY BY HOST COUNTRY, 1961-71
(Thousands)

<table>
<thead>
<tr>
<th></th>
<th>W. Germany</th>
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<tr>
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<td>Official</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>1961</td>
<td>1.5</td>
<td>7.1</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>1962</td>
<td>11.0</td>
<td>15.3</td>
<td>–</td>
<td>0.1</td>
<td>–</td>
</tr>
<tr>
<td>1963</td>
<td>23.4</td>
<td>27.9</td>
<td>5.6</td>
<td>5.0</td>
<td>0.1</td>
</tr>
<tr>
<td>1964</td>
<td>54.9</td>
<td>62.9</td>
<td>6.7</td>
<td>7.0</td>
<td>0.2</td>
</tr>
<tr>
<td>1965</td>
<td>45.6</td>
<td>59.8</td>
<td>1.7</td>
<td>4.1</td>
<td>0.5</td>
</tr>
<tr>
<td>1966</td>
<td>32.6</td>
<td>43.5</td>
<td>0.6</td>
<td>1.4</td>
<td>0.5</td>
</tr>
<tr>
<td>1967</td>
<td>7.2</td>
<td>14.8</td>
<td>–</td>
<td>0.1</td>
<td>0.5</td>
</tr>
<tr>
<td>1968</td>
<td>41.4</td>
<td>62.4</td>
<td>–</td>
<td>0.1</td>
<td>0.5</td>
</tr>
<tr>
<td>1969</td>
<td>98.1</td>
<td>121.5</td>
<td>–</td>
<td>0.1</td>
<td>0.5</td>
</tr>
<tr>
<td>1970</td>
<td>97.0</td>
<td>123.4</td>
<td>0.4</td>
<td>n.a.</td>
<td>0.5</td>
</tr>
<tr>
<td>1971</td>
<td>65.7</td>
<td>112.1</td>
<td>n.a.</td>
<td>n.a.</td>
<td>0.5</td>
</tr>
</tbody>
</table>

**Note:** a – Excluding seasonal workers.

**Sources:** Official departures of workers: Table 2. Actual arrivals of workers: Germany – Table A3; France – Office National d’Immigration; Belgium and Netherlands – E.E.C. La libre circulation de la main d’oeuvre et les marchés du travail dans la C.E.E. 1966–70.

status of illegal Turkish workers who were required to return to Turkey for official registration in order to obtain legal status.\textsuperscript{89} Hence, it would appear that the Federal Republic of Germany did allow limited legalization prior to the November 1973 guestworker recruitment ban. Unofficially, there have been small-scale legalizations since in spite of declared German policy that rules out legalization as a policy instrument.\textsuperscript{90}

The notion of imposing legal sanctions upon employers of irregular-status migrants was promoted in particular by the powerful DGB. However, German employers, who are represented by an umbrella association known as the BDA, did not oppose the imposition of sanctions. BDA officials with responsibilities for immigration policy summed up the BDA viewpoint in a 1981 interview as follows:\textsuperscript{91}

Employer sanctions are needed to deter employers from engaging in unfair labor practices which undermine the German concepts of a social state and social partnership. Irregular-status alien employment exploits the workers and is detrimental to society. Hence, when employer sanctions were imposed in the early 1970s, there was a broad consensus in policymaking circles in support of the concept. The German case appears typical. There is no evidence of substantial political opposition to the concept of employer sanctions in continental Western European countries.

In a June, 1973 "action oriented" program issued by the West German government, a provision called for reinforced measures against illegal employment of foreign labor.\textsuperscript{92} In June of 1975, a law was passed which made anyone who recruited aliens for employment purposes, outside of Federal Labor Office procedures, liable for fines up to DM 50,000 and prison terms of up to three years. Employers who negligently or intentionally hired irregular-status aliens could be fined up to DM 50,000. In those instances when an employer would further discriminate against the alien employee by paying less than the minimum wage, the offending employer was subject to imprisonment for no more than five years.\textsuperscript{93}

Switzerland appears to have had a smaller irregular-status alien employment problem than in neighboring states. Swiss authorities, at least, are fond of demarcating the Swiss postwar immigration experience from those of its neighbors. A careful perusal of the Swiss press and interviews with knowledgable observers of Swiss immigration history would reveal, however, a longstanding
problem of illegal alien employment. A recent report to the Intergovernmental Committee on Migration (ICM) and the fact that Swiss authorities imposed employer sanctions in 1984 suggests that the illegal alien employment phenomenon in Switzerland was more significant throughout the postwar period than acknowledged by Swiss authorities. In 1981, Aldo Messina estimated the Swiss illegal alien population between 30,000 to 100,000.94

Illegal immigration and employment, then, was a significant phenomenon prior to the recruitment stops. In 1973, Houdaille and Sauvy estimated the illegal immigrant population at about ten per cent of the total alien population of Western Europe.95 A 1974 EC report estimated that there were 600,000 aliens illegally employed within the Community, about ten per cent of the legally employed alien manpower.96 By 1976, the EC's former Director-General for Social Affairs would estimate the illegal resident alien population at between one and two million.97 Most scholars and officials concur that levels of illegal employment and residency increased markedly after the recruitment era. However, this should not obscure the existence of a significant socio-economic phenomenon prior to 1973. Political pressures for governments to do something about illegal immigration built up steadily over the 1968 to 1973 period in particular. No where was this more evident than in France.
VII.
THE MARCELLIN-FONTANET-GORSE DECREES

In 1968, over 80 per cent of all alien immigrants to France had their status legalized. Immigration policy was widely perceived as nonexistent or out of control. Huge foreign worker bidonvilles had built up outside major cities, such as at Nanterre west of Paris. The Nanterre bidonville became a symbol of injustice for students at the nearby university which was the crucible of the 1968 student revolt. The May-June events of 1968 seemed to spur the government to undertake a number of measures in following years ranging from razing of the bidonvilles and relodging of foreign workers to a sustained effort to enforce existing immigration laws and regulations which for decades had been circumvented with the tacit approval of the government. A passage from an article by Carmel Sammut summarizes the public mood.

"...public opinion was scandalized by the serious accidents which regularly befell immigrant workers - deaths by asphyxiation in unfit housing, deaths during clandestine entry organized by "coyotes", growth of the bidonvilles, development of racism, living and working conditions (for migrants) which were increasingly inhumane. It was the age of the "coyote" and the "slavers" who were systematically denounced by trade unions and political parties in addition to charitable organizations supporting migrants."  

Even the Confédération Nationale du Patronat Français (CNPF), the umbrella association representing French employers, agreed that the laissez-faire reality of French immigration could not continue. Hence, like their German counterpart, they would endorse governmental efforts to control immigration. A turning point in postwar French immigration policy occurred with the promulgation of three decrees in 1972 and 1973 which were directed in particular against illegal immigration.

In July of 1968, employers of aliens were required to write in the name of an alien employee on a special registry within twenty-four hours of hiring. On December 31, 1970, a law was passed concerning employment of irregular-status aliens. The so-called Marcellin-Fontanet-Gorse decrees of 1972-1973 essentially
sought to implement already existing laws. Consequently, legalization was to become "exceptional" rather than routine. Under the decrees, aliens who entered as tourists and then took jobs could no longer be allowed to legalize their status after a cutoff date. Some 40,000 aliens eventually were legalized, but a significant number of aliens were not able to legalize their status prior to the original cutoff date. This situation led to a wave of hunger strikes and demonstrations by irregular-status migrants which were supported by various French organizations.

More often than not, the government gave into pressure and agreed to legalize aliens long after legalization, in theory, became exceptional. During this protracted legalization period, the government did not take specific steps against employers of irregular-status aliens. However, in 1973, separate laws were passed against individuals who lodged aliens collectively without notifying authorities and against individuals who trafficked in manpower. Both of these laws could be applied to employers if they fell within the purview.

Socio-political tensions over immigration increased markedly. Extreme rightist organizations protested uncontrolled immigration (immigration sauvage) and their rallies frequently sparked violent counter-demonstrations. A spontaneous strike by several hundred, primarily North African, workers shut down production at a Renault plant for a period in April of 1973 and revealed the vulnerability of French industry to foreign worker protests. Over the summer of 1973, a series of murders and racially-motivated attacks prompted public outcry. Algeria unilaterally suspended further labor migration after a bomb attack on the Algerian consulate in Marseille in December of 1973.

In July of 1974, the French government suspended further labor recruitment. Seasonal workers were excluded from the French recruitment stop. In the Federal Republic of Germany where guestworker recruitment was stopped in late 1973, some employer representatives pressed for adoption of seasonal worker policy. However, German officials ruled out the idea, primarily on the grounds of administrative infeasibility. From time to time since 1973, employer representatives and office-holders in Baden-Wuertemburg and Bavaria have called for the creation of a Swiss-like seasonal worker policy. The idea has yet to attract much support. The DGB is totally opposed to the notion. And as one Baden-Wuertemburg official
related in an interview, German officials are persuaded that a significant number of seasonal workers would "leak" into the permanent work force.\textsuperscript{108}

Both France and the Federal Republic of Germany continued to permit family reunification in the wake of the recruitment stops. Both governments post-recruitment halt policies were also basically two-pronged: better integrate existing legally resident alien populations while "stabilizing" those populations. A new emphasis was attached to immigration control and consequently to the concept of employer sanctions.

In 1975, the French government set up a "judicial mission" to coordinate the actions of public authorities aimed at suppressing illegal immigration and employment.\textsuperscript{109} The Interministerial Liaison Mission to Combat Manpower Trafficking was officially instituted in 1976, the same year in which employer sanctions became operative. A July, 1976, law reinforced penalties against individuals who aided illegal immigration and created an administrative penalty for employers of irregular-status migrants.\textsuperscript{110} Employers of irregular-status migrants were required to pay a sum equivalent to 500 times the minimum hourly wage for each worker illegally employed to the ONI. In 1980, the fine was 4,275 francs (about U.S. $1,000 at the currency exchange rate of the period).\textsuperscript{111} This administrative fine was automatic in principle, above and beyond any penal sanction that might be imposed on an offending employer, including imprisonment from one to two months and longer in the case of repeat offenders. For many years, actual collection of the administrative fine was haphazard as complaints against employers were not communicated properly to the ONI and many offenders were not located. However, enforcement of the fine has improved in recent years. According to the first annual report of the Interministerial Liaison Mission, the government chose to accent control over the employment of aliens more so than other possible solutions to illegal migration and employment because limiting the entry of aliens into France was impractical.\textsuperscript{112}

One of the major functions of the Interministerial Liaison Mission is to keep track of enforcement of the panoply of laws aimed against illegal immigration and employment. Employer sanctions are only part of an impressive legal arsenal that has built up. An overview of overall legal enforcement since 1976 as measured by communicated legal complaints (proces-verbaux) made by various enforcement
agencies reveals a 1976 upsurge in enforcement followed by a decline, precipitous in 1977, 1978, and 1981, prior to a dramatic resurgence in 1982 and 1983. The upsurge in enforcement since 1982 mainly can be attributed to the police and labor inspectors.

The number of infractions by employers against section L 341-6 of the Work Code which specifically penalizes employers for hiring irregular-status aliens in 1976 and 1977 amounted to 1,624 and 2,208 respectively.113 The level of enforcement of employer sanctions strictly speaking corresponds to up and downs in overall enforcement of laws aimed against illegal immigration and employment and centrally affects those variations.

The annual report on the year 1979 by the Interministerial Liaison Mission summarized the first four years of enforcement of the 1976 law reinforcing employer sanctions as follows:

"After four years of functioning, it is necessary to recognize that the objective was not totally attained and that irregular-status alien employment remains an important problem both with regard to the employment situation and on the social and human level of those workers themselves. On the other hand, it is difficult to evaluate the number of clandestine foreign workers and thus to know whether it is more important in 1980 than it was in 1976."114

Evaluation of the effectiveness of employer sanctions over the period was complicated by a number of factors. Among those was the continuation of legalization despite the intent announced during the Fontanet-Marcellin-Gorse decrees period. A number of "exceptional" collective legalizations occurred during this period particularly in the Spring of 1980 when some 4,000 Parisian garment industry workers, primarily Turks, were granted legal status.115 The legalizations diverted manpower resources, as a good number of labor inspectors, who are always in short supply, were involved with the legalization efforts.116

There also was a notable surge in deportations over this period. A 1975 law made illegal alien employment a deportable offense for aliens. A 1980 law appreciably increased the government's deportation powers. Table VI presents the total number of aliens deported from France yearly from 1974 to 1981. Deportation seems to have become a major method to sanction illegal employment by the end of
<table>
<thead>
<tr>
<th>Year</th>
<th># of Foreigners Expelled</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>2,830</td>
</tr>
<tr>
<td>1975</td>
<td>3,715</td>
</tr>
<tr>
<td>1976</td>
<td>4,450</td>
</tr>
<tr>
<td>1977</td>
<td>5,330</td>
</tr>
<tr>
<td>1978</td>
<td>4,236</td>
</tr>
<tr>
<td>1979</td>
<td>4,324</td>
</tr>
<tr>
<td>1980</td>
<td>13,537</td>
</tr>
<tr>
<td>1981</td>
<td>7,650 (first 5 months)</td>
</tr>
</tbody>
</table>

the period. According to Garson and Moulier-Boutang, "With the law of January 10, 1980, deportation had become simultaneously a priority means of combatting clandestine immigration, but also a means to rendering precarious (the legality) of alien sojourns in France."

Among the barriers to more effective enforcement during this period, certain problems stood out. It was clear that many employers adapted to employer sanctions by masking their activities. Hence, enforcement became an increasingly complicated matter requiring close cooperation between various agencies. Cooperation was not always readily forthcoming. There also was a dearth of specialized agents, particularly labor inspectors, to enforce the laws. Many labor inspectors were uncomfortable with employer sanctions and other laws aimed against illegal migrant residency and employment. In 1978, only a little more than 1 per cent of the total legal complaints filed by labor inspectors concerned infractions pertinent to foreign labor. There appeared to be a large gap between the perceived threat of illegal immigration on the governmental level and perception of the phenomenon by the judiciary and local officials. Employer sanctions simply were not enforced in many areas in the Midi and judges often did not punish offending employers. Still, the concept of employer sanctions was far from discredited. Employer sanctions had only been in existence for a few years and one would normally expect quite a number of initial coordination and implementation problems. The Socialist victories in the 1981 presidential and legislative elections would have important effects upon enforcement of employer sanctions.

Similar barriers to more effective enforcement of employer sanctions were also apparent in the German context by 1981. As in France, there is a panoply of German laws pertinent to illegal immigration and employment. The German employer sanctions strictly speaking are provided for by paragraphs 227 and 229 of the Employment Promotion Act, and include fines, prison terms and a requirement for employers to pay for an alien's trip home. Tables VII and VIII present statistical summaries of legal enforcement of employer sanctions for two periods from 1973 to 1975 and from 1980 to 1984 respectively. A large number of employers of irregular-status aliens receive warnings only. Prosecution is focussed on employers who repeatedly flout the law and who most exploit aliens. Enforcement of employer sanctions is limited to specific individuals as firms cannot be prosecuted.
### TABLE VII

**DISPOSITION OF CASES OF ILLICIT EMPLOYMENT IN THE FEDERAL REPUBLIC OF GERMANY, 1973-75**

<table>
<thead>
<tr>
<th>Category</th>
<th>1973</th>
<th>1974</th>
<th>1975</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases closed</td>
<td>36,200</td>
<td>46,913</td>
<td>69,647</td>
</tr>
<tr>
<td>Notice of fine</td>
<td>3,969</td>
<td>5,933</td>
<td>11,252</td>
</tr>
<tr>
<td>Warnings and fees</td>
<td>307</td>
<td>511</td>
<td>1,919</td>
</tr>
<tr>
<td>Warnings without fees</td>
<td>21,034</td>
<td>26,821</td>
<td>30,605</td>
</tr>
<tr>
<td>Cases Referred to the Public Prosecutor</td>
<td>38</td>
<td>48</td>
<td>67</td>
</tr>
<tr>
<td>No Proceedings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Instituted Resp.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stay of Proceedings</td>
<td>10,852</td>
<td>13,600</td>
<td>25,804</td>
</tr>
</tbody>
</table>

Source: Deutscher Gewerkschaftsbund
### TABLE VIII

**OFFENCES COMMITTED BY EMPLOYERS IN THE FEDERAL REPUBLIC OF GERMANY AGAINST REGULATIONS GOVERNING THE EMPLOYMENT OF FOREIGNERS, 1980-84**

<table>
<thead>
<tr>
<th>Type of Offense</th>
<th>Possible Criminal Penalties/Administrative Fines</th>
<th>Number of Cases Prosecuted (a)</th>
<th>Number of Criminal Penalties/Administrative Fines Imposed (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>a</td>
<td>b</td>
</tr>
<tr>
<td>Illegal Placement of Foreigners</td>
<td>- prison sentence up to 3 years or fine</td>
<td>11</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>- in particularly serious cases: prison sentence up to 5 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- in the case of working conditions significantly below standard: prison sentence up to 3 years or fine in particularly serious cases: prison sentence up to 5 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leasing of Foreign Temporary Workers without Work Permit</td>
<td>- administrative fine up to 100,000 DM</td>
<td>526</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>- prison sentence up to 3 years or fine in particularly serious cases: prison sentence up to 5 years</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Reproduced from Bundesminister fuer Arbeit und Sozialordnung
TABLE IX

AMOUNT OF ADMINISTRATIVE FINES IMPOSED IN THE FEDERAL REPUBLIC OF GERMANY, 1980-84

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ranging from...up to...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>up to 1,000</td>
<td>5,642</td>
<td>4,488</td>
<td>2,912</td>
<td>3,140</td>
<td>3,437</td>
</tr>
<tr>
<td>1,001 - 5,000</td>
<td>419</td>
<td>475</td>
<td>417</td>
<td>697</td>
<td>539</td>
</tr>
<tr>
<td>5,001 - 10,000</td>
<td>20</td>
<td>48</td>
<td>45</td>
<td>33</td>
<td>41</td>
</tr>
<tr>
<td>10,001 - 50,000</td>
<td>12</td>
<td>16</td>
<td>8</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>More than 50,000</td>
<td>--</td>
<td>1</td>
<td>--</td>
<td>--</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Bundesminister fuer Arbeit und Sozialordnung
Table IX reveals the amount of administrative fines paid by offending employers from 1980 to 1984. The vast majority of fines were under DM 1,000 (U.S. $500). It is important to stress that not all enforcement of employer sanctions is reflected in either German or French legal statistics. In France, for instance, some procès verbaux may not have been communicated to the Interministerial Liaison Mission. In the Federal Republic of Germany and France, employers who hire illegal aliens may be penalized for violations of labor and social security laws, but not necessarily for violations of the laws prohibiting employment of irregular-status aliens.

By 1981, the estimated number of irregular-status migrants in the Federal Republic of Germany ranged between 200,000 and 300,000, about the same size as the estimated irregular-alien population in France at the time. The problem of illegal alien employment was particularly severe in the construction industry and in hotels and restaurants. Employers of illegal aliens often realized huge profits, particularly in the construction industry, as much of the work was off the books or Schwarzarbeit, and therefore employers would not pay high German payroll taxes. In some instances, the DM 50,000 penalty foreseen for employment of each irregular-status alien worker did not stop employers. They simply made so much illegality that the employer sanction fine was derisory. Poor coordination and communication between various agencies concerned by illegal alien employment hampered follow up prosecution for violation of social security laws. Prohibitions against the sharing of information between various agencies also hampered enforcement. The official in charge of enforcement of employer sanctions in the Federal Ministry for Work and Social Order requested authorization to hire 300 additional inspectors in 1981. While there certainly were numerous obstacles to enforcement of employer sanctions in the Federal Republic of Germany apparent in 1981, there also seemed to be broad agreement that employer sanctions were a necessary component of any strategy to curb illegal alien residency and employment.

In 1981, both the French and the German governments passed new laws reinforcing employer sanctions. The Germans increased the maximum fine per alien employed to DM 100,000, effective January 1, 1982. To improve coordination between various agencies and levels of government, the Federal Labor Office established a network of 25 priority offices for combatting illegal employment.
An important difference between France and the Federal Republic of Germany arises from the broader, more inclusive, German approach to combating illegal alien employment. In France, illegal alien employment is seen as a specific aspect of the broader problem of black work or underground economy, but the Interministerial Liaison Mission's authority is restricted to coordinating measures against illegal alien residency and employment only. In the Federal Republic of Germany, the specialized liaison or priority offices are authorized to coordinate enforcement of law against underground economy employment in general.

In France, the law of October 17, 1981, made employment of irregular-status aliens a criminal offense subject to fines of 2,000 to 20,000 francs and imprisonment from two months to a year. For repeat offenders, the prison term could reach two years and the fine 40,000 francs. The fine could be imposed as many times as there were individual aliens involved. However, a legalization program was simultaneously announced and employer sanctions were not to be enforced until after the termination of the legalization program. Contrary to expectations, the legalization period was prolonged as additional categories of aliens, such as seasonal workers, were permitted to apply for legalization. Hence, the marked drop in enforcement of employer sanctions in 1981 is directly linked to French legalization policy.

Enforcement of employer sanctions did not begin again until well into 1982. Still later, on August 31, 1983, the French government adopted a series of measures proposed by the Interministerial Liaison Mission which simultaneously aimed at reinforcing the effort to curb illegal alien residency and employment while promoting the "insertion" of legally resident alien communities in France. It is important to stress the linkage made by the French government between curbing illegal alien employment and residency, on one hand, and the insertion or integration of resident alien communities on the other, as it closely resembles the rationale behind the Simpson/Mazzoli legislation in the United States. Illegal alien immigration and employment is perceived as jeopardizing the status of legally resident aliens. This linkage was made explicit in the 1983 annual report of the Interministerial Liaison Mission.

"Stopping clandestine immigration, combatting employers of irregular-status aliens and controlling migratory fluxes effectively constitute a priority objective (for the French
Failure in this case would put in doubt the insertion of legally resident alien communities in France. Failure

The August 31, 1983, measures increased the administrative fine for employers of irregular-status aliens from 500 to 2,000 times the minimum hourly wage for each alien illegally employed. As of January 1, 1985, the administrative fine was 26,340 francs, roughly $3,000. The Interministerial Liaison Mission staff was increased allowing the Mission to open up a regional office in Marseille. The number of specialized labor inspectors was authorized to increase to 55. Police forces were also authorized particularly in Midi areas with large concentrations of illegal immigrants. In September, the Garde des Sceaux (literally the Keeper of the Seals) addressed a memorandum to all public prosecutors which reiterated the government's viewpoint regarding the grave consequences of illegal alien employment and called upon prosecutors to step up enforcement of laws prohibiting illegal alien employment. Prosecutors were also asked to "rigorously apply" the text of the laws concerning penalties.

In June of 1984, the first of twenty-three priority departmental coordinating committees came into being. These coordinating committees were authorized by a governmental memorandum (circulaire) of November 21, 1983. The objective of the coordinating committees was to facilitate the exchange of information so as to more effectively detect and sanction violations stemming from illegal alien employment. The Parisian area coordination committee includes representatives from the police, fiscal authorities, the Department of Labor and Employment, the Department of Sanitary and Social Affairs, the National Employment Agency, the National Immigration Office, the enforcement arm for social security and family allowance taxes (URSSAF) and the departmental authority for state finances and economic affairs. Representatives from other public organizations and the prosecutor's office were also invited. The Paris-area coordinating committee has since served as the model for the coordinating committees established in other priority areas.

The termination of legalization combined with the measures taken in 1983 and 1984 have resulted in a marked increase in enforcement of laws against illegal immigration and employment as measured by legal complaints communicated to the Interministerial Liaison Committee. The total of 2,245 proces verbaux
communicated to the Mission in 1983 was the highest ever. The number of proces verbaux for infraction of article L 341-6, which prohibits employment of irregular-status aliens, rose from 549 in 1982 to 947 in 1983. The record number of 2,266 total proces verbaux had already been surpassed by mid-1984 as some 2,519 legal complaints had been communicated to the Mission by March of 1985.\textsuperscript{131}

The increase in legal complaints was matched by increased court action, enforcement of the administrative fine, and penalties against employers of irregular-status aliens. About 1,300 court decisions ordering employers to pay fines of at least 2,000 francs were made during 1983. In Paris, the first six months of 1984 witnessed a 50 per cent increase in the number of persons found guilty of employing illegal aliens relative to the 1983 period.\textsuperscript{132} The Director of the Interministerial Liaison Mission summed up the judiciary's handling of employer sanctions over the first six months of 1984 as follows:

"The sampling of judgements rendered during the first half of 1984 by various courts appears to us as very indicative of the current tendency toward hardening of legal counteraction vis à vis employers of irregular-status aliens. The great majority of fines are to be found from now on above the minimum provided by the law, which denotes a clearcut understanding by the courts of matters connected to manpower trafficking."\textsuperscript{133}

The tone of recent French governmental reports on and assessments of their policy against illegal immigration and employment has been quite upbeat. There clearly is an official perception that enforcement of employer sanctions is beginning to bear fruit. The 1981-1983 period is seen as a stage where the policy instruments decided upon in 1981 were "broken in" and that the policy outlined in 1981 on paper has since taken concrete form. In March of 1985, Mrs. Georgina Dufoix, the Minister of Social Affairs and National Solidarity and the spokesperson for the French government, declared that the results of enforcement of laws against illegal immigration and employment have a "....very encouraging balance sheet."\textsuperscript{134}

The French government clearly intends to pursue its current strategy against illegal immigration and employment. Employer sanctions play an important role in that strategy. As witnessed by Table X, which summarizes the types of employer
<table>
<thead>
<tr>
<th>Country</th>
<th>Fines</th>
<th>Imprisonment</th>
<th>Requirement to pay back wages, social security and/or the cost of repatriation of illegal aliens</th>
<th>Lose rights to hire after repeated violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Belgium</td>
<td>Yes</td>
<td>--</td>
<td>Yes</td>
<td>--</td>
</tr>
<tr>
<td>France</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes (exc. repatriation)</td>
<td>--</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Yes</td>
<td>--</td>
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<td>Norway</td>
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<td>Switzerland</td>
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<td>United Kingdom</td>
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sanctions adopted, much the same can be said for the rest of continental Europe. The Swiss decision to adopt employer sanctions in 1984 would appear to confirm the trend. The most recent German government report on enforcement of laws against black market or illegal employment in general suggests that the number of illegal aliens in the Federal Republic of Germany may have decreased in recent years, but that it would be difficult to attribute any decrease to enforcement of laws such as employer sanctions.  

In September, 1984, the Parliamentary Assembly of the Council of Europe adopted a recommendation to the Committee of Ministers on Clandestine Migration in Europe which strongly endorsed the concept of employer sanctions. The recommendation called for "...laying down severe administrative and legal sanctions for employers of clandestine workers, intermediaries and traffickers, so as to impose the same charges on all firms and to prevent illicit migration by providing equal treatment and working conditions for migrant workers."  

Employer sanctions are components of broader strategies to curb illegal immigration and employment. Alone, they are not seen by Western European governments as a possible panacea to the profoundly complex phenomenon of illegal alien immigration and employment. They are, however, generally perceived as a valuable, indeed necessary, deterrent to illegal immigration and employment. Illegal immigration and employment is viewed as a long-term and likely increasingly severe problem in Western Europe. Employer sanctions are valued as a medium-term public policy instrument, but there are few illusions that employer sanctions alone could "solve" the problem over the long run.
VIII.
PROBLEMS AND ISSUES CONCERNING
EMPLOYER SANCTIONS IN WESTERN EUROPE

The Western European experience with employer sanctions over the past
decade reveals a number of problems and issues associated with laws penalizing
employers for hiring irregular-status aliens. Perhaps the most important of these
involves a lack of general understanding of the phenomenon of illegal migration.
Employer sanctions would represent only a stopgap measure in the absence of an
intelligent, long-term public policy response to the problem of illegal immigration.
Enforcement of Western European employer sanctions has been hampered by a lack
of understanding of the sociopolitical and labor market mechanisms which, in a
sense, create illegal alien immigration and employment. As suggested by the most
recent annual report of the Interministerial Liaison Mission, however, progress is
being made toward understanding the complex reality of illegal immigration and
employment.

The gap between governmental perceptions of the social disorder created
by illegal immigration and employment and the indifference of some institutions and
elements of the public at large to the problem also have hindered enforcement of
employer sanctions. A key component in the overall strategies of several Western
European governments is publicizing the gravity of the threat posed to society by
illegal immigration and employment. Western European governments have found
that legal systems in particular have been slow to regard illegal alien employment as
a serious matter. Officials in both the Federal Republic of Germany and France
complain that judges have often been too lax with offending employers. However,
the publicity campaigns undertaken to sensitize judges and the public at large to the
perceived prejudicial consequences of illegal alien employment seem to have had an
effect in both countries. Judiciaries now seem to be responding to calls for firmer
enforcement of laws prohibiting illegal alien employment.

Employer sanctions, like other laws, are expected to deter certain kinds
of behavior. Most European employers comply with the laws voluntarily. It takes
considerable manpower and other resources to penalize those employers who do not
comply. In France and the Federal Republic of Germany, enforcement of employer
sanctions has been limited by manpower constraints. Hence, early enforcement
strategies have emphasized exemplary cases in part to publicize employer sanctions so as to obtain voluntary compliance.

A minority of employers have responded to employer sanctions by going underground or dissimulating their activities through dummy or front businesses. The growth of subcontracting in particular often makes it difficult for labor inspectors and other agents to sanction employers of irregular-status aliens. Enforcement is complicated by legal, logistical and physical constraints, but Western European governments have increased the manpower resources available for enforcement of employer sanctions and have taken steps to improve coordination between various agencies and levels of government so as to prosecute employers hiding behind subcontractors, who often are themselves aliens, and other devices to dissimulate their employment of illegal aliens. Recent changes in labor enforcement in the French construction industry in particular now make it possible for labor inspectors to bring charges against employers utilizing subcontractors who hire irregular-status aliens. The complexity of detecting, charging and prosecuting many employers of irregular-status aliens limits enforcement of employer sanctions. This is why specialized agents concentrate their enforcement activities on so-called exemplary cases, which are likely to be publicized and perhaps deter some employers from engaging in similar unlawful employment practices. Enforcement is also targeted against the worst offenders, those employers who most exploit irregular-status aliens. In general, the growth of the underground economy has mitigated the deterrent effects of employer sanctions.

In a number of instances, political considerations have limited or precluded enforcement of employer sanctions. According to W.R. Boehning, Swiss officials frequently "look the other way" if irregular-status aliens perform employment services regarded as necessary or vital. Much the same has been true in agricultural areas of the Midi, although the French government has brought charges against a number of farmers. Some industries with well entrenched traditions of utilizing illegal alien labor and with political clout have been exempted from enforcement of employer sanctions. In cases like these, a long-term approach to eliminating the structural causes of illegal alien employment is needed. In these instances, the foreign and trade policy components of a comprehensive approach to immigration policy matters take on significance as do their linkages to employer
sanctions enforcement. Most Western European employers, it should be recalled, seem to view illegal alien employment as harmful to society and as constituting an unfair labor practice.

Great Britain ruled out imposition of employer sanctions in part because it was feared that they might lead to additional discrimination against minorities. Fears of possible discriminatory effects of employer sanctions have been voiced in France as well. Nonetheless, putative discriminatory effects of employer sanctions have not been an issue in continental Europe. In Great Britain, the Select Committee on Race Relations and Immigration actually recommended that employer sanctions be adopted.

In France there is little or no evidence that employer sanctions have increased employment discrimination against citizens and legally resident aliens of North African Arab background. Under the 1972 anti-discrimination law, a citizen or legally resident alien could seek redress if he or she were discriminated against by employers. Issues of discrimination are usually well publicized and often are quite politicized in France. Unfortunately, discrimination against persons of Arab background is a deadly serious and quite pervasive phenomenon. But employment discrimination against such individuals would appear to arise from factors other than employer sanctions. It cannot be ruled out that employer sanctions have contributed to a certain stigmatizing of North African Arabs which may indirectly affect their employment opportunities. Hence, there might be some unintended linkage between the French government's campaign against illegal immigration and the growing unemployment of Algerians and other North African legally resident in France. But the government views the relationship differently. Control of illegal immigration and employment is seen as a necessary pre-condition to better "insertion" or integration of France's legally resident alien communities.

Racism is a problem all across Western Europe and most observers would agree that racism and racial tensions have been grown in recent years. The French government's viewpoint that continued illegal immigration exacerbates discrimination and resentment against foreigners seems to make sense in this context. A certain delegitimizing of French immigration policy seems to have occurred in recent years. However, employer sanctions would not appear to have triggered this phenomenon. The legalization program of 1981 may have or the
persistent strikes by primarily foreign auto workers. The causes of employment discrimination against persons of North African descent in France would appear to be found elsewhere than in employer sanctions. The reorientation of French industrial policy in recent years, which has fostered mechanization and robot-aided production to the detriment of employment, would appear to be a major factor in rising unemployment of Algerians and other North African workers.  

Many Western Europeans would appear to view the issue of discrimination and employer sanctions in terms other than those most commonly heard in the United States. Illegal alien employment is perceived as inherently discriminatory and abusive of the aliens involved. Consequently, employer sanctions are viewed as a means of combatting discrimination and exploitation. It seems improbable that the International Labor Organization would adopt a concept that was inherently discriminatory against minorities and the resident alien populations which are the ILO's special responsibility to protect.
IX.

IMPLICATIONS FOR THE UNITED STATES

There would appear to be little or no factual basis for an argument to the effect that employer sanctions have not worked in Western Europe, so they would not work here. Such argumentation grossly overstates what can be learned through comparison and conveniently ignores or distorts the actual Western European experience with employer sanctions. Employer sanctions simply have not been a major issue in Western Europe. Many Western European countries have them and they are generally viewed in a positive light. The fact that the ILO recommends adoption of employer sanctions and that most continental European countries have them has had the effect of creating an international norm or expectation of some significance to the United States debate.

The Western European experience with employer sanctions would appear to indicate that employer sanctions are not inherently discriminatory against racial or ethnic minorities. There is some potential for possible employment discrimination associated with employer sanctions in societies like France and the United States, but the possibility of legal remedy and public vigilance should limit this potential problem. This potentiality should be weighted against possible salutary effects that can be expected from penalization of employers who exploit irregular-status aliens.

Employer sanctions and labor law enforcement often appear as elements of a zero-sum game in the United States debate over immigration reform—either you have one or the other. The United States clearly should take heed of the close connection between labor law enforcement and enforcement of employer sanctions that has developed in continental Europe. It seems clear that the two go hand in hand. Employer sanctions can be a valuable component of a broad strategy to combat illegal immigration and employment. However, the effectiveness of employer sanctions is contingent upon a number of factors including, for example, the obvious need to commit sufficient personnel and financial resources.

But the effectiveness of employer sanctions also is linked to a comprehensive approach to the question of illegal immigration and employment. If the wrong decisions are made in a host of related policy areas, employer sanctions may only achieve pyrrhic results.

This analysis of employer sanctions in Western Europe has
attempted to elucidate the strengths and weaknesses and limits of the concept of employer sanctions. Employer sanctions are a possible medium term solution, or more appropriately, partial solution to the illegal immigration problem faced by industrial democracies. The long-term solution is to be found in decisions which restructure labor markets and industries so as to eliminate the root causes of illegal immigration and employment.
FOOTNOTES


7. Immigration into Britain, p. 15.


10. It is illegal in the United States for anyone to harbor aliens, but this provision has been interpreted narrowly so as to exclude employers.


15. Fuenfter Bericht der Bundesregierung ueber Erfahrungen bei der Anwendung der Arbeitnehmerueberlassungsgesetz..., pp. 33-35.


18. See, Commission of the European Communities, Working in the EEC.


20. Catherine Wihtol de Wender - Didier made this estimate in October, 1984.


22. Ibid, p. 25.


25. W.R. Boehning, Studies in International Labour Migration, p. 130.


30. Many of these French citizens settled in the Midi where the anti-immigrant National Front is strongest today.


34. M. Miller and P. Martin, Administering Foreign Worker Programs..., pp. 25-29
36. Clark, pp. 606-608.
44. In the 1970's there were an estimated 10,000 illegal alien school-age children in Switzerland. See Power, p. 34.
45. Libération, October 12, 1977.
47. International Labor Organization, Migrant Worker.
48. Statement made by the British Home Secretary to the author on September 27, 1985.


54. This is based on interviews with various German officials conducted in November, 1981. Also see, Knuth Dohse, Auslaendische Arbeiter und buergerlicher Staat, pp. 310-314.

55. French agricultural employers, however, regularly complain that not enough seasonal labor is authorized to enter. The French government has reduced the maximum length of seasonal contracts to 6 months.


59. This is a major conclusion of Anicet Le Pors, Immigration et developpement economique et social, (Paris: La Documentation Francaise, 1977.)


62. Ibid.


64. Le Dossier de l'Immigration, Fiche 9.


67. Ibid., p. 13.
68. Yann Moulier-Boutang, Migrations Clandestines de Main-d'oeuvre: Les Fils Conducteurs, p. 147.


70. G. Cross, pp. 125, 137, 141, 188-89.


73. Ibid., p. 130.


75. The text of the 1947 treaty is printed in Population.

76. L. Gani, pp. 35-36

77. Ibid., p. 37.

78. L. Chevalier, p. 139.

79. Ibid., p. 136.


81. Ibid., p. 423.


84. Ibid., p. 323.

85. J. Power, Migrant Workers in Western Europe and the United States, p. 27.

86. Ibid., p. 27.


89. Ibid., p. 60.


91. Interviews conducted in Bonn, November, 1981.


93. R. Rist, p. 78.


96. J. Power, p. 27.

97. Ibid., p. 27.

98. This bidonville has since been razed.


100. Ibid., p. 382.


102. C. Sammut, p. 393.


104. Sammut, p. 388.


108. Interview with Oberregierungsrat Reinhard, Innenmini - Sterium Bader - Wuerttemberg, November 6, 1981.

110. Ibid., p. 2.

111. Ibid., p. 17.


114. Mission de liaison ..., Bilan ... pour l'année 1979, p. 2.


118. Mission de liaison ..., Bilan ... pour l'année 1980, p. 5.


122. Interview, November, 1981.

123. Illegale Beschäftigung und Schwarzarbeit duerfen nicht sein.


126. Ibid., p. 19.

127. Ibid., p. 15.


129. Liaisons Sociaux, Number 34/85, (March 25, 1985), p. 3.

130. Mission de liaison ..., Lutte Contre les Trafics de Main d'oeuvre, p. 19.


60
132. Ibid.

133. Ibid.


137. Mission de liaison ..., Bilan ....pour l'annee 1983, pp. 159-161.


139. J.P. Berlan, pp. 61-62.

140. See, for example, Mission de liaison ..., Bilan ....pour l'annee 1980. p. 72.


142. Jacqueline Costa-Lascoux expressed such a worry to the author in a recent letter.
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