

Citizenship in Germany: Europeanization or Domestic Process?

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This article investigates the influence of the European Union in liberalizing Germany's citizenship laws. It does so by tracing the legalities of German citizenship and domestic social concepts of it since the early 20th century. In particular, it investigates the contrast between the basis of Germany's citizenship laws as a 'community of descent' and the growing number of those born in Germany still considered 'foreigners' via this concept of citizenship. This article considers the conversations within Germany in light of this contrast and the growing liberalization of similar policies within other member states to conclude that national identity is the dominant influence in regard to Germany's citizenship laws.

For much of the twentieth century, Germany's laws regarding citizenship have been based primarily upon descent. In light of the growth in numbers of foreigners residing within German borders, coupled with the increasing social policies created by the European Union, German citizenship has faced increasing pressure for reform. While citizenship laws have been liberalized, they still remain moderately restrictive, particularly in the area of dual citizenship. This paper will examine the domestic and international factors that have contributed to the changes to German citizenship policy. It will then analyze the influence of Europeanization on Germany's citizenship policy to determine the extent to which they have changed as a result.

To begin, it is necessary to discuss citizenship in the context of the nation state as well as in the context of the European Union (EU). Since the inception of the sovereign nation-state in the seventeenth century, citizenship has been associated with the territorial authority of the state. EU citizenship is a unique concept in that the EU is not a unified

territory, it does not possess a body of citizens loyal to its institutions alone, nor is its authority absolute over member-states.¹ The EU functions under a system through which member-states have pooled sovereignty in specific areas and have delegated it to EU institutions. By contrast, Germany is a sovereign state and retains control over citizenship within its borders. This control directly relates to the EU level in that only citizens of member-states and recognized refugees are granted EU citizenship. The concept of citizenship remains closely related to that of nationality and it remains a rarity to have one without the other, as in the case of the EU. Further, it is possible that concepts of citizenship vary in each nation, which poses a further challenge to coordination of policies at the EU level. This contributes to the persisting importance of national identity, as will be discussed below.

Until reforms in the late 1990s, Germany's citizenship laws remained intact, for the most part, from the Nationality Law of 1913. The principle of this law was that to be German was to belong to a 'community of descent,' embracing the principle of *jus sanguinis*, based upon lineage rather than birthplace.² Following the First World War and the Paris Peace Conference, this law was enshrined in Germany's constitution. Between this period and 1933, naturalization was a process that crossed regional and federal levels of bureaucracy and, as a result, was largely a discretionary decision on the part of the authorities. But

¹ Ulrich K. Preuss et al., "Traditions of Citizenship in the European Union," *Citizenship Studies* 7, no. 1 (July 2010): 4, <http://www.tandfonline.com.ezproxy.library.uvic.ca/doi/abs/10.1080/1362102032000048675#.UbgXeEBO9U>. Accessed 1 June 2013.

² Marc Morjé Howard, "The Causes and Consequences of Germany's New Citizenship Law," *German Politics* 17, no. 1 (March 2008): 42, <http://www.tandfonline.com.ezproxy.library.uvic.ca/doi/abs/10.1080/09644000701855127#.UbgXrEBO9U>. Accessed 1 June 2013.

upon the Nazi ascension to power, citizenship was determined explicitly along racial lines. Using the same principle of *jus sanguinis*, the Nazis revoked the citizenship or naturalized status of those who they deemed undesirable and those who did not fit in with the Nazi ideal of what it meant to be ‘German’ with the introduction of the racist Nuremberg Laws.³ Despite the mass murder committed with the manipulation of these citizenship laws, they remained the laws governing citizenship in democratic West Germany, with the exception of the Nuremberg Laws. This included the reinstatement of the bureaucratic process for naturalization.

The redrawing of European borders during and after the war led to the displacement of enclaves of those who identified as ethnically German beyond the post-war boundaries of Germany. West Germany maintained the principle of descent as a basis for citizenship in an effort to aid those ethnic Germans left outside its borders, primarily to the East, who were facing persecution as a result of their ethnicity. The ethnic basis for citizenship allowed those Germans to be ‘repatriated’ if they could prove their German heritage, despite the fact that many had never lived in Germany.⁴ Although other immigrants to Germany did not receive the full rights permitted with citizenship, they were not without protection. The constitution of West Germany, the Basic Law of 1949, guaranteed human rights protection to non-citizens within Germany as well as generous asylum provisions.⁵ In contrast, East Germany had no formal citizenship structure prior

³ Jan Palmowski, “In search of the German nation: citizenship and the challenge of integration,” *Citizenship Studies* 12, no.6 (November 27, 2008): 547-563, <http://www.tandfonline.com.ezproxy.library.uvic.ca/doi/pdf/10.1080/13621020802450635>. Accessed 16 May 2013.

⁴ Howard, “Causes and Consequences,” 42.

⁵ Palmowski, “In search of the German nation,” 553.

to 1967. In the period between the end of the war and 1967, citizenship in East Germany was based upon a post-capitalism socialist ideal whereby basic rights existed without a legal guarantee.⁶ Yet, despite the lack of official distinction based upon ethnic lines, East Germany did reflect the ethnic ideal of pre-1945 laws in that foreigners were often segregated from the German population socially and physically. The formalization of a citizenship law in 1967 legalized the socialist ideal of citizenship in community participation, but discrimination prevented the full participation of foreigners.⁷ In 1990, the Basic Law was adopted as the constitution for the reunified Germany.

Conversations regarding the liberalisation of German citizenship policy became more pressing as the number of foreigners within Germany increased during the 1990s. The ‘guest worker’ program had brought hundreds of thousands of workers to West Germany from several Southern European countries as well as Turkey between the 1950s and early 1970s.⁸ In East Germany, guest workers came from other communist countries, such as Vietnam. The intention of these programs was for the workers to remain in the country temporarily, as the name suggests, to assist with the booming post-war economy. These workers were often housed separately from the rest of the German population. However, following the end of the program, approximately 3 million of these workers, primarily from Turkey, remained in Germany and with the assistance of German federal court rulings, were able to bring their families to live in Germany as well.⁹ In addition, German laws regarding asylum had granted admittance to a large number of those fleeing the Balkans during

⁶ Ibid., 551-552.

⁷ Palmowski, “In search of the German nation,” 552.

⁸ Ibid., 553.

⁹ Howard, “Causes and Consequences,” 44.

the wars of the 1990s. This group contributed to the relatively large portion of the population in Germany that remained ‘foreign.’¹⁰ While naturalization was possible, the process was considered to be a means of assimilation into German culture. Contingent to the process was the usefulness of the applicant to German society, as was the guarantee that loyalty would be singularly with Germany.¹¹ This perspective substantiated the absence of the possibility for dual citizenship. The resulting situation was a paradox in that approximately nine per cent of the population were permanently residing within Germany without legal citizenship rights despite some having been born there, while at the same time ethnic Germans from the East, who in some cases did not even speak the language, were granted citizenship.¹²¹³

The percentage of foreigners that made up Germany’s population in the 1980s and 1990s, combined with the increasing integration of the EU, led to discussions within Germany as to the liberalisation of citizenship policy. With the establishment of the European Union and integration beyond simply economic factors between member-states came EU citizenship. EU citizenship was established with the Maastricht Treaty of 1992, which was extended to those individuals with citizenship in EU member-states, including recognized refugees. As EU citizenship evolved through the Amsterdam Treaty of 1997, it included the right to

¹⁰ Ibid., 45.

¹¹ Holger Hoffman, "The Reform of the Law on Citizenship in Germany: Political Aims, Legal Concepts and Provisional Results," *European Journal of Migration & Law* 6, no. 3 (July 2004): 196, <http://heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/ejml6&collection=journals&page=195>. Accessed 1 June 2013.

¹² Howard, "Causes and Consequences," 44.

¹³ Marc Morjé Howard, "Germany’s Citizenship Policy in Comparative Perspective," *German Politics and Society* 30, no. 1 (Spring 2012): 43, doi:10.3167/gps.2012.300103. Accessed 2 June 2013.

free movement within the EU, to stand in elections in the European Parliament and at the local level, to receive diplomatic and consular services in third countries, the right to petition European Parliament and other EU institutions in one's own language, and a principle of non-discrimination based on nationality.¹⁴ EU citizenship was not intended to replace national citizenship, but meant to add another layer to existing citizenship. The Maastricht Treaty also illustrated the growing role of the EU and its various institutions in member-states to include social policy. Arguably, the granting of EU citizenship was meant to contribute to a shared identity among member-states. However, the member-states still retain the right to determine who is permitted national citizenship, meaning that EU citizenship is also determined in this manner, illustrating the limits of Europeanization.¹⁵

Germany was not the only country to face pressure to liberalise its policies regarding citizenship as the EU began to attempt to coordinate social policies. However, it faced particular scrutiny in the context of the Nazi past and of the reforms that had taken place in other member-states, such as the Netherlands and Portugal. Yet, despite this awareness of past transgressions as well as the liberalised persuasion of EU citizenship and changes occurring elsewhere, Germany maintained much of its original 1913 citizenship regulations until 2000. This is largely due to the domestic situation within Germany, both socially and politically. Following the Third Reich, Germany was left to question its identity in a cultural context. According to Palmowski:

¹⁴ "EU Citizenship," European Commission, http://ec.europa.eu/justice/citizen/index_en.htm. Accessed 16 May 2013.

¹⁵ Preuss et al., "Traditions of Citizenship," 5.

In each of the German political systems of the twentieth century, the legal definition of citizenship reflected an uneasy compromise between political and ideological preferences of a governing elite, administrative and bureaucratic exigencies, and, to a lesser extent, popular demands.¹⁶

This meant that attempts to make any changes to citizenship policy within Germany were heavily debated and difficult to achieve. As a further challenge to the situation, it was also widely accepted that Germany was not a country of immigration.¹⁷ While the EU began to play more of a role in social policy-making and creating its own citizenship, at the national level Germany was unable to come to an agreement regarding citizenship reform in a liberal direction as a result of complex politics and post-war German identity.

Domestically, Germany was divided politically in regards to citizenship and how reform should take place, if at all. A Federal Constitutional Court ruling in 1989 regarding voting rights of foreigners added legitimacy to arguments for the liberalisation of citizenship policy. It did so by stating that voting in local elections by foreigners was unconstitutional, but that the nationality law governing citizenship should be changed to allow permanent residents of Germany to obtain citizenship.¹⁸ Moderate reforms to the Aliens Act were introduced in 1990 to make citizenship easier to obtain for those migrant workers who had been in Germany for more than 15 years. This was done with the easing of language requirements and the ability of families to naturalize with the worker. Additionally, those children and grandchildren of migrant workers between the ages of 16 and 23

¹⁶ Palmowski, "In search of the German nation," 554.

¹⁷ Hoffman, "The Reform of the Law on Citizenship," 196.

¹⁸ Howard, "Causes and Consequences," 45-46.

were able to obtain naturalized status as well, providing the first instance of *jus soli*, the territorial right to citizenship, in Germany. However, even with these changes, dual citizenship was still not permitted.¹⁹ These political debates surrounding citizenship reform had been kept at an elite level until the late 1990s.

The turning point in the political debate regarding citizenship in Germany came in 1998. As in most European countries, parties on the Left had been responsible for pursuing the liberalisation of citizenship. The 1998 German federal election brought to power the coalition of the Social Democratic Party (SPD) and the Greens. With this came the promise of citizenship reform by the new Chancellor, Gerhard Schröder. The proposed changes would grant *jus soli* citizenship to those born on German soil to foreign parents, the easing of the naturalization process and the granting of dual citizenship by allowing foreigners to obtain German citizenship without giving up their current status.²⁰ Upon this announcement, the debate regarding citizenship reforms was no longer limited to political elites and quickly spread to the public domain. The opposition Christian Democratic Party (CDU) and Christian Democrats (CSU) publicly condemned the proposed legislation with claims that dual citizenship would lead to citizens whose loyalty would be divided, stoking the popularly held anti-immigration sentiments of a large portion of the population.²¹ These sentiments had conveniently remained private while the citizenship debates had been kept at the elite level. During the regional elections in Hessen, the CDU spearheaded a petition campaign against dual citizenship, thus directly involving the electorate in the discussion of citizenship reform. This tactic contributed to the success of the

¹⁹ Hoffman, "Reform of the Law of Citizenship," 197.

²⁰ Howard, "Germany's Citizenship Policy," 44.

²¹ *Ibid.*, 46.

CDU in the election, with the petition gaining over five million signatures and the SPD losing its majority in the upper house of parliament and thus, losing the ability to pass the legislation.²² The result was a compromise of the original reforms set out by the SPD-Green coalition. The Nationality Act of 2000 provided German citizenship provisions for those born in Germany to foreign parents, in addition to the citizenship of the parents, as long as one parent has been living in Germany for a period of eight years or longer, with the stipulation that between the ages of 18 and 23 they will choose between the two. For those not born in Germany and wishing to obtain citizenship through naturalization, they must have lived within Germany legally for at least eight years and must meet the qualifications outlined in both the Aliens Act as well as the Nationality Act, which include gainful employment, working knowledge of the German language, a clear criminal record, relinquishment of other citizenship, in most cases, and an adherence to the Basic Law. In certain cases, such as those residing in Germany under the provisions of asylum, the length of residence may be shortened to six years.²³ But perhaps more importantly, it had been demonstrated that the German public would mobilise to defend its national identity, which was still viewed as a ‘community of descent’ and thus, largely anti-immigrant.

Despite the liberalisation of citizenship policies within Germany, they are still viewed as restrictive. A particular point of contention, especially among Germany’s Turkish population, is that children born to foreigners within Germany must choose one citizenship. In contrast, those born to citizens of other EU member-states or Switzerland are permitted to retain dual

²² Howard, “Causes and Consequences,” 51-52.

²³ Hoffman, “Reform of the Law of Citizenship,” 199-201.

citizenship their entire lives. This has led to the accusation that the law creates two classes of citizens within Germany.²⁴ Further, the bureaucratic process and various exceptions are blamed for making it difficult to administer the policy. Reliance upon the other country of citizenship to release these would-be Germans from their citizenship can be restrictive as well, depending on the length of time it takes to process the request, as some have missed the deadline of the 23rd birthday, resulting in the involuntary loss of German citizenship.²⁵ For these residents of Germany, Europeanization has had very little positive impact.

The ongoing debate in Germany regarding citizenship policy has remained closely tied to national identity, leaving little room for the influence of the EU. Germany has faced pressure to liberalise citizenship policy, not strictly from the EU, but rather from the international community at large. Germany's unique history has put it in a precarious situation in regard to its own identity, whereby the tradition of a 'community of descent' was taken to a murderous extreme during the Third Reich, thus challenging the legitimacy of this concept. In light of this tradition, the growing number of foreigners without citizenship throughout the post-war era in Germany led to recognition at the national level that liberalisation must take place. However, this was divisive amongst the population and political elites, as there remained an anti-immigration sentiment despite the large number of foreigners already residing within Germany. Top-down Europeanization thus helped to initiate the conversation, but it was unable to provide further influence.

²⁴ "Jus sanguinis revisited; Dual citizenship in Germany," *The Economist* 406 no. 8825 (March 2, 2013), 52, <http://www.economist.com/news/europe/21572822-how-not-treat-people-more-one-passport-jus-sanguinis-revisited>. Accessed 31 May 2013.

²⁵ Nils Naumann, "Germany and dual citizenship," *Deutsche Welle*, March 25, 2013. <http://dw.de/p/183X0>. Accessed 16 May 2013.

While citizenship reform within Germany was partially the result of external pressures of the development of EU citizenship, it was limited by domestic factors. EU citizenship and the rights it has bestowed upon citizens of other member-states led Germany to the realization that its citizenship policies were out of sync, particularly in light of the large population of foreigners residing within the country. Though German national citizenship has adopted measures to become more inclusive, these measures are still somewhat restrictive as a direct result of national identity in the post-war era. Europeanization has had a moderate effect on citizenship policy in Germany; however, the domestic political and social landscape has proven the limits to the extent of this process.

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