



EU citizens: Challenging the notion of German National Political Community, 1990–2005

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Abstract

This article assesses the extent to which Germany's adaptation of European Union legal norms through altering the criteria for access to territory and rights has challenged the judicial and conceptual boundaries of its notion of national political community. It compares the policies that directly affected EU citizens' and other immigrant groups' access to German territory, citizenship and social integration programs. It may be seen that, in enjoying a unique and privileged position between Germans and the other foreigners, this group not only challenges and undermines the justification for this very distinction, but also transforms the concept of 'otherness'.

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1. Introduction

This article traces the profound shift in the German immigration policy from the early 1990s to 2005 during which time EU citizens were granted certain rights and freedoms that traditionally had only been reserved for German citizens or those of proven German descent. It is possible to interpret this more 'inclusive' German policy as an example of a process where national law became subordinated to EU legal norms (Hailbronner and Renner, 2001). It is the intention of this article to question whether, in adapting to European legal norms, German politicians progressively altered the criteria for access to

Abbreviations: SPD (Die Sozialdemokratische Partei Deutschlands); B90/ Greens (Bündnis 90/ Die Grünen); PDS (Partei des Demokratischen Sozialismus); CDU (Die Christlich-Demokratische Union Deutschlands); CSU (Die Christlich-Soziale Union in Bayern); FDP (Die Freie Demokratische Partei)

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German territory and rights, and thereby challenged the very boundaries of the national political community. I propose that valuable insights can be gleaned through the comparison of policies that directly affected EU citizens and other immigrant groups' access to German territory and rights.

An immigration policy defines the laws governing immigrants' access to territory and to citizenship as well as to measures provided by the state for their social integration. The criteria for entry, naturalisation and social integration measures refer to three core elements underpinning the nation state: the sovereign control over external borders, the regulation of access to political rights and a nation's cultural self-understanding (Koopmans et al., 2005). Together, these are questions of inclusion within, or exclusion from, the national political community.

The very process of redefining inclusion/exclusion criteria necessarily requires that the boundaries of the national political community be reformulated. Examined here is the extent to which the privileged inclusion of EU citizens in German society challenged the notional distinction between 'German' and 'foreigner', 'us' and 'them'; thereby altering the boundaries defining the German national political community. Changes in EU legal norms did not only have judicial and conceptual consequences, but also undermined how the concept of 'otherness' could be understood.

The situation in Germany presents an ideal case study on which to base an analysis of the relationship between definitions of privileged inclusion and of the judicial/conceptual boundaries of a nation state's political community. Unlike other immigrant groups, EU citizens' access to German territory and rights depends on reciprocal agreements. Indeed, Germans themselves—as EU citizens—have similar access to territory and rights among the other member states. And yet, Germany is unique for two reasons. First, EU citizens' access to German territory is inseparable from—and inexorably linked to—German politicians' support for the further transfer of sovereignty rights to common European institutions. It is generally observed that Germans have a great vision for a federal Europe, which underlies their support for integration within the EU (Joerges et al., 2000). Second, Germany is the only large western European country that has met the problems of immigration using national laws historically reliant on aspects of its ethno-cultural national tradition (Brubaker, 1992; Habermas, 1994; Koopmans, 1999; Koopmans and Statham, 1999). As such, a study of changes in judicial and conceptual categories measured against the way in which notions of 'German' and 'foreigner' are used can offer important insights into the transformation of national political community in the German context.

The article approaches the subject in two ways: first by discussing nationalism as a classification system and by defining the concept of national political community; and second by identifying and analysing the process by which changes to laws governing EU citizens' and other immigrants' access to territory, to citizenship and to measures provided for social integration were legitimised.

2. Nationalism as a classification system

Although countries all address the challenges of immigration differently, there are several characteristic similarities, which arise from considerations including the recipient country's territorial borders and its political culture and institutions. Ultimately, immigrants inspire questions about the unifying values and cohesiveness of nation states and, in the West, challenge liberal, democratic ideals and standards (Favell, 1998). Issues,

for countries like Germany, include the process by which political decisions are democratically legitimised and the country's understandings of a political community. Usually seen as 'other', immigrants often necessitate a redefinition of the conception of national political community by the host society; specifically, one that is compatible with the needs of pluralistic societies. As such, the recipient society must be willing and be able to expand the boundaries of its national political community.

This study can be seen in the context of what Brubaker et al. (2004; p. 1) describe as the 'cognitive turn', which transformed diverse areas of social scientific research during the last third of the 20th century. For the study of ethnicity, race and nationalism, it implied a shift in focus from an examination of how these concepts were defined in terms of objective commonplaces like shared language, culture, territory, history, economic life, political affiliations, etc. towards a subjective study of the participants' own perceptions and identifications. Consequently, recent scholarship on the question of national political community has become a study of the process defining not only boundaries but, more importantly, a group's understandings of itself in relation to other groups. The national political community, therefore, is defined in relation to the actors' perceptions of themselves. Not to be taken for granted, these categories are analysed with reference to subjective considerations. One important consequence of this shift has been the increasing attention paid to categorisation and classification. Ethnicity and nation are not seen as a matter of shared traits or cultural commonalities, but rather of the practice of classification and categorisation, including both self-classification and the classification of others (Brubaker et al., 2004).

The classification system does not only define certain groups and determine whether an immigrant does or does not have access to German territory and rights, but it can also justify how the state controls migration flows across national borders. The state's system of categories is important because it validates the uneven treatment immigrants receive. In Germany, the immigration policy responds differently to four broad categories of immigrant: (1) those seeking political asylum; (2) those coming as labour immigrants; (3) those able to prove their belonging to the German people, the (*Spät*)*Aussiedler*; and (4) those moving within the EU as Union citizens. A detailed examination of the process by which the state determines who belongs in which one of the four groups reveals not only the attitudes of the general public to the policy—vis-à-vis inclusive/exclusion—but also those of German politicians and, by extension, their understanding of national political community.

As with the question of legitimate conditions for *entry*, so too is *citizenship* commonly interpreted in the scholarly literature as a question of inclusion in or exclusion from a political community (i.e., belonging) (Habermas, 1994; Preuss, 1995; Shafir, 1998; Eder and Giesen, 2001). Citizenship also means membership in a particular community, which is determined in relation to other communities (Preuss, 1995, p. 269). With every act of naturalisation, not only is a state able to control the expansion of the political community (Habermas, 1994, p. 138), but it confers access to formal nationality (i.e., legal status). By examining how legal categories are implemented by the administration and how politicians have justified changes to them, both aspects of citizenship have been referenced in this study: belonging and legal status (Soysal, 1994). The process of *social integration* often relates to the question of adaptation to the host society's mainstream culture and the extent to which cultural differences are accepted (Han, 2000). Inevitably, it is a question of whether the minority group must adapt to the mainstream community or *vice versa*.

Within this context, the recipient nation's cultural self-understanding is paramount as is its ability to provide programmes promoting social integration.

3. The parliamentary process

From the perspective of the German legislative process, an examination of the decision-making process affecting the laws on immigration reveals how both national political community itself has been defined (in context) and the manner in which various immigrant groups have been assigned to different communities. As such, an attempt has been made to examine how—and if so, how much—the politicians themselves have adjusted, and then have justified, any changes or amendments in their reasoning. When politicians provide reasons for their standpoints, they simultaneously also reveal their fundamental attitudes; as, indeed, in the case of the inclusion of EU citizens within the German national political community. Therefore, in studying both the changes to German immigration law and the changes in the legislators' arguments, categories and concepts the extent to which the politicians' understanding of the subject can be shown.

This is a study of an elite group. That German politicians experienced an attitudinal shift does not necessarily imply a corresponding shift for the German public. However, as their elected representatives, legislators are expected to prove to the electorate (the citizens, the people) that the laws they have made represent popular interests. Indeed, modern law is based on the principle that, since laws are made by the people, they can be changed by the people. Moreover, any adjustments to the laws must be justified in relation to both existing laws and the Constitution (Eriksen and Weigård, 2003). In this study, the legislative process has been examined in relation to changes both within a near-context (Parliament) and within the wider context (Germany and the EU).

A study of the changes to the German immigration policy allows us to interpret conceptual changes, as reflected in the introduction of different themes, over the past 16 years. Moreover, several important structural factors have influenced the German immigration situation since the end of the Cold War and Reunification in 1990. The principal themes that emerge sequentially are related to the three core elements underpinning the notion of nation state: first, the changes in the sovereign control of external borders (i.e., how EU citizens were no longer classified according to the Foreigners Act of 1990); second, the regulation of access to political rights (i.e., Germany's ratification of the Maastrich Treaty in 1993 and, again, in the Citizenship Law of 1999); and finally, the nation's cultural self-understanding (i.e., the Immigration Law of 2004). These laws and legislation processes have been selected as examples of the changes to the state's categorisation process since Reunification. It is important to note that, with an exception of the German ratification of the Maastricht Treaty, these laws were not related to the European integration process *per se*, but rather to the German regulation of immigrants' access to territory and rights. They, therefore, represent an excellent intake for an evaluation of the justification for the changes in the privileged treatment of EU citizens compared to that of other immigrant groups.

4. Access to territory: EU citizen as a legal category

In its introduction, the Foreigners Act (1990) legally defined a foreigner as a person who is neither a citizen nor a member of the German people according to Article 116, Sentence

1 of the Basic Law. As this also referred to those living on German territory without formal citizenship rights, the legal definition included people who had lived in the country for several years (first-generation immigrants), their children who were born and had grown up in Germany (second-generation immigrants) and even their grandchildren (third-generation immigrants).

Related to Marshall's (1998 (1963)) well-known distinction between three categories of rights—civil—legal, political and social—most western European countries have extended many civil and social rights to permanent residents, while generally withholding electoral rights from non-nationals. In most cases, fundamental rights are constitutionally guaranteed and do not differ significantly in the question of national belonging. Therefore, welfare rights appear virtually identical for both permanent residents and citizens; although reality dictates that this actually depends on the type of residence permit held by the immigrant (Koopmans et al., 2005). Consequently, the concept of 'post-national citizenship' has been introduced as an analytical tool to describe the kind of situation where, while an immigrant has gained access to territory and to welfare rights, he or she is not eligible for citizenship. Moreover, it describes a situation where, in addition to the dissociation of nationality from the state and of identity from rights, there are multiple levels of participation in a polity (Soysal, 1994).

Although the understanding of the concept of foreigner does not always correspond to the legal category and most foreigners have access to a wide spectrum of political rights (Bade, 1994; p. 10), the term *Ausländer* as 'foreigner' has been used to describe people living in Germany without citizenship rights. Most EU citizens are foreigners, but they elude this classification as their access to territory is regulated by European law and Germany's subsequent adaptation to it. As such, their access is neither categorised within the Foreigners Act (as for asylum-seeker and labour migrants) nor codified in the Constitution (as for (*Spät*)*Aussiedler* who are considered to be German). Indeed, EU citizens are neither citizens (*Staatsangehörige*) nor do they belong to the German people (*Volkszugehörige*). The (*Spät*)*Aussiedler* designation belongs to another privileged group, whose access depends on their being able to prove belonging to the German people. Being understood as German, they are distinguished from other immigrant groups (principally asylum-seekers and labour migrants), who are perceived as foreigners. By contrast, EU citizens are included as members of a geographically defined European political community, in which Germany is one member state, while (*Spät*)*Aussiedler* are included as members of a non-territorial German national community. Their privileges are justified with reference to different understandings of political community: while EU citizens' access derives from rights-based criteria and reference to the European integration process, (*Spät*)*Aussiedler*'s access depends on their ability to prove ethno-cultural belonging to the German people. These two types of political community have successfully defined 'us' in contrast to those 'others', who exist outside these communities.

In terms of actual numbers, the position of EU citizens in German society is not insignificant. Indeed, by the end of 2002, around 1.8 million of the total 7.3-million foreigners living in Germany came from other EU countries. Furthermore, approximately the same number of EU citizens came to and left Germany during the 1990s.

German legislators are bound to Union legal norms with regard to its citizens' freedom to immigrate to and emigrate from the country. As a member of the European Union, Germany must abide by political processes ratified at the European level. According to the EU Treaty, every citizen has the right to move freely and reside anywhere within the

Union. Changes to these legal norms in the 1990s were particularly apparent in a terminological shift from the use of the term ‘EU worker’ to ‘EU citizen’. The concept of treating all members as citizens equally in terms of employment, remuneration and other conditions of work and employment has obviously extended the Treaty’s scope. It suggests that every citizen, who can pay for his or her living expenses and health insurance, has permission to reside anywhere on Union territory and participate in local community elections. These legal norms were transported into German regulations in the *Freizugigkeitsverordnung/EG*. Notably, the German Foreigners Act supplemented the EU Treaty only insofar as it regulated other foreigners’ residency access to territory; that is, when it was incompatible with EU law and its transformation into German law.

Changes to EU legal norms shifted the criteria for its citizens’ access to German territory. Significantly, their privileges required the creation of a new judicial category within the German political system as the EU citizen could be classed as neither a foreigner nor as a German. As a direct result of the European integration process, the emergence of this category of foreigner perforated the judicial boundaries of the nation state.

5. Access to political rights: The Maastricht Treaty (1993)

Central to the process of classifying foreigners, EU citizens and Germans in the Maastricht Treaty (1993) was the institutionalisation of Union citizenship, which required that each individual be a citizen of a member state. Union citizenship brought with it certain rights, inherent to the EU framework and exercised specifically within community borders. In addition to guaranteeing the right of every citizen to move about and to reside freely within EU territory, it conferred the right to participate in local elections wherever the citizen resided. Since 1990, local electoral participation in Germany provided this right to EU citizens while denying it to other resident foreigners, the so-called ‘third-country nationals’. Some national and federal politicians attempted to reform this situation and to grant all foreigners the right to participate in local elections. For example, this was stated as a goal in the red/green coalition agreement on 20 October 1998. It was also suggested by the federal states Hessen and Rheinland-Pfalz in the Federal Council on 26 January 1999. However, the Constitutional Court ruled against this in 1990, declaring that it would be constitutionally unacceptable for non-Germans to elect Germany’s government. As background for the Constitutional Court’s decision was the federal state Schleswig-Holstein’s introduction of a law in 1989 that gave foreigners the right to participate in local elections. A complaint was sent to the Court and it responded by referring to Article 28, Part 1, Sentence 1 in the Basic Law (Bundesverfassungsgericht Urteil vom 31. Oktober 1990, BVerfGE 83, 37, 51).

The Court justified this decision by referring to the constitutional definition of the concept of people (*Volk*). Article 116, Part 1 of the Basic Law divided the German population into two groups: the *Staatsangehörige* and the *Volkzugehörige*. Following this definition, the Court argued that the German people represent the *Staatsvolk* and provide the foundation for the government. It also referred to the principle of popular sovereignty, *alle Staatsgewalt geht vom Volke aus*, according to Article 20, part 2, sentence 1 in Basic Law. The Court emphasised that, in a democracy, it is important to identify the people who form the basis of state power. Accordingly, these people could only come from the German *Staatsvolk*. The Court emphasised that the same definition of *Volk* should be used equally at the national, federal and local levels so as to ensure a degree of uniformity in all

democratic decisions. Since there was a division of labour among the various administrative levels, it concluded that this approach was optimal. Integral to its decision, the Court only alluded to a discussion at the EU level about granting the right of local electoral participation to foreigners (Urteil vom 31. Oktober 1990. BVerfGE 83, 37, 51).

With reference to this allusion, in 1992, both Parliament and the Federal Council decided nearly unanimously to give Union citizens the right to participate in local elections. Their decision relied on constitutional changes proposed by the Conservative/Liberal government, which included a statement guaranteeing that citizens of other EU member states could vote—and be elected—in the local elections of their place of residency in Germany. Referring to the Maastricht Treaty, the government noted that Union citizenship could neither replace nor supersede German citizenship as the Union was not a state. It cited the Constitutional Court's ruling of 31 October 1990 and argued that local electoral participation was restricted to individuals defined by the Constitution as 'German citizens'. Acknowledging the legality of pursuing further constitutional amendments, it noted that any electoral changes would only be permitted at the communal level. The government argued that the changes were consistent with Article 79, Part 3 in the Basic Law (Deutscher Bundestag, 02.10.1992, Drucksache 12/3338).

Since it only represented a minor change in the broader German adaptation to the Maastricht Treaty, the subject of local electoral participation gained scant attention in parliamentary debates up to and including the day on which voting occurred 2 December 1992 (Drucksache 12/3338, Plenarprotokoll 12/126). The issue was addressed only once by the Social Democrats (SPD) when they emphasised the symbolic value of giving local electoral rights to EU citizens. Seen as something positive, they argued that this right should be granted to all foreigners, regardless of their nationality, who had lived in Germany for a certain length of time. Reiterating a statement from the American independence movement of the 18th century, they claimed: 'No taxation without representation'. As such, it was unacceptable that long-term—but non-EU—residents who participated in society by, among other things, paying taxes should be excluded from the political community, even at the communal level. These individuals must, according to the SPD, be integrated into German society by gaining the opportunity to participate in politics (Deutscher Bundestag, 02.12.1992, Plenarprotokoll 12/126). According to this argument, the party did not see membership in the European political community as sufficient—or necessary—reason to give EU citizens access to privileged rights. Using a territorial understanding of political community, they argued that all people living within the borders of the polity should be entitled to political participation.

As the only party to present an alternative law proposal, the PDS argued that all immigrants, after five years' residency, should be given the right to participate in elections not only at the local, but also at the federal and national, levels. Explicitly citing the republican model, they maintained that, regardless of nationality, one should have access to political rights in his or her place of residence and work. The PDS also voted against further German integration within the EU, noting that the nation state should be the central political entity even if all rights should be universally guaranteed (Bundestag, 02.07.1993, Plenarprotokoll 12/169).

While the SPD, B90/Greens and PDS all argued that the right to participate in local elections should be extended to all foreigners living in Germany, the CDU/CSU and FDP emphasised that this right should be limited to Union citizenship. Here, for them, belonging to the European political community was the deciding factor for defining access

criteria to the German political community (Deutscher Bundestag, 02.12.1992, Plenarprotokoll 12/126). When the CDU/CSU and FDP justified this access to political rights, they did not refer to the specifically national German, but rather general European, political community. The manner in which they referred to a European political community suggested a shift in the redefinition of the German national political community's boundaries.

As long as third-country nationals continued to be excluded from it, access to the political community remained a form of privileged inclusion. The privileged access of Union citizens—and not of third-countries nationals—to political rights was based both on their membership within the European political community and, by extension, upon a concept of a larger European political community. In extending its boundaries to include the European political entity, one can perceive a change not only in the judicial but more persuasively the conceptual borders of the German national political community.

On 2 December 1992, support to adapt the Constitution to the Treaty came from all parties except the PDS and half the members of the B90/Green party. These opponents all used similar arguments to justify further integration by suggesting that German reunification and the unification of Europe represented two sides of the same coin. On the one side, they maintained that reunification would not have been possible without German integration in Europe; and on the other, that reunification necessitated further German integration within Europe. European integration had special symbolic importance to Germany because of the country's history and geo-political position (*Mittellage*): indeed, it was argued that a unified and powerful Germany in the middle of the European subcontinent could be a danger to itself and to other European countries. Accordingly, several parties referred to European integration as a question of destiny (*Schicksal*) for Germans. The only possible answer for Germany was, therefore, to 'bind itself into' (*Einbindung*) European political structures. The main point on which they all agreed was that, given Germany's unique historical and geographical position in Europe, there were no realistic options to further integration in the EU (Schwarz, 1994). As such, politicians suggested that any alternatives were unthinkable and pernicious (Deutscher Bundestag, 02.12.1992, Plenarprotokoll 12/126).

Changes to Union citizens' right to participate in local elections were integrated into a broader discussion about the further transfer of sovereignty rights to European institutions, focusing on the question of the democratic legitimacy of such an action. More for this reason than for the expansion of the local electoral rights, complaints sent to the Constitutional Court were based on two laws related to the Maastricht Treaty.

On 12 October 1993, the Court ruled against the complaints and, shortly thereafter, the President signed the Maastricht Treaty. However, the Court's ruling revealed a decidedly national rather than supranational concept of democracy (BvR 2134/92 und BvR 21159/92). For instance, it was criticised for using a problematic analogy both when referring to 'a relatively homogenous people' (Habermas, 1996) and when using an absolute principle of democracy, which appeared to be based on an ethnic understanding of nation (Weiler, 1997). Moreover, when it ratified the Treaty, the Court also presented restrictive conditions for further German integration, which were based on the antiquated notions of nation state democracy. While it tended to adopt an approach oriented to the concept of nation state, many politicians' support for the further transferral of sovereignty to European institutions seemed to be based on post-national democratic ideals. Thus, when

they justified the local electoral participation of Union citizens, they did so while offering a general support for further integration within the Union.

It appears as though the manner in which German politicians understood the parameters of the European political community came to influence their establishment of the criteria for access to the German national political community. The result of this reinterpretation was to challenge the sharp distinction between the notions of ‘German’ and ‘foreigner’. Moreover, in justifying the inclusion of EU citizens in the political community, arguments supporting the exclusion of foreigners from this political process were undermined since access to local elections was no longer seen to be the privileged domain of the German citizen. A direct result of this change in the political understanding of inclusion/exclusion *vis-à-vis* the political community could be seen in the Citizenship Law of 1999.

5.1. Access to political rights: The Citizenship Law (1999)

A common proposal from the SPD, B90/Greens and FDP provided the basis for the new Citizenship Law of 1999 (Deutscher Bundestag, 16.03.1999, Drucksache 14/533). Not only did it replace the 1913 Law, but it amended the Foreigners Act of 1990. Gaining the requisite majority in Parliament on 7 May 1999, the proposal was approved in the Federal Council two weeks later. Although agreed, the proposal ultimately relied on a compromise between the Red/Green Government and the FDP. It was not supported by some members of the PDS and by the CDU/CSU. One of the most contentious issues was the problem of dual citizenship. The Conservative party (the CDU/CSU) along with members of the supporting FDP found dual citizenship untenable. By contrast, the Social Democrats and B90/Greens would have preferred to accept dual citizenship. The new law, in fact, introduced more restrictions on dual citizenship with the abolition of the so-called *Inlandsklausel*. This clause, codified in the 1913 Law, stipulated that no permanent residents in Germany could lose their original citizenship, even if they gained a new one. Previously, an immigrant could temporarily abandon his or her original citizenship in order to become a citizen; but when successful, he or she could then regain the former citizenship. Gaining dual citizenship in this manner was strictly prohibited in the 1999 Law. The revised law did, however, include several exemptions (Deutscher Bundestag, 16.03.1999, Drucksache 14/533). Especially, the acceptance of dual citizenship for children and the introduction of new exemptions for adults demonstrated a generally more liberal attitude about the issue (Hagedorn, 2001, p. 70).

As a renunciation of dual citizenship was a central principle of the naturalisation process, identifying exemptions from the rules can offer significant insights into the various understandings of political community. For instance, dual citizenship was accepted for both (*Spät*)*Aussiedler* and EU citizens. However, while the (*Spät*)*Aussiedler* were seen as Germans, the latter could only be distinguished from other foreigners and identified as a privileged group as a consequence of their Union citizenship. Identifying these different criteria, and how they were applied to different groups, is crucial in understanding German citizenship rights, in general, as well as the way in which German politicians understood the notion of national political community.

Although the policy of integration was decisive in justifying the political privileges Germany gave to EU citizens, it was not identified as a priority in the justification of

amendments to the Citizenship Law. One might expect politicians to have referred to the European integration process when amending the immigration policy as part of a process of norm diffusion from the European to the nation state level and within the context of Europeanisation (Olsen, 2002, p. 924). However, none of the German political parties identified the European integration process as being an important factor in influencing changes to the Citizenship Law. Notwithstanding, one can observe references made about Europe on the day Parliament voted on the Citizenship Law. In these, it was clear that only the B90/Greens used the European argument to justify changes to the law, while the Conservatives and Social Democrats used it to indicate how much the German attitude toward immigration required future change (Deutscher Bundestag, 07.05.1999, Plenarprotokoll 14/40).

Since the reform of the Citizenship Law (and by extension the Foreigners Act), Germany has accepted dual citizenship for EU citizens when a bilateral agreement exists between and the status is reciprocated with the other member state. In their proposals, the SPD, B90/Greens and FDP argued that granting dual citizenship to all Union citizens would be in the public interest. In so doing, they suggested that, since EU citizens were to be treated equally with German citizens, it would not be necessary to have them renounce their former citizenship in order to gain access to citizenship rights. Therefore, they feared that, without dual citizenship, naturalisation rates would not increase. The parties articulated their goal that European integration should encourage EU citizens to apply for German citizenship (Deutscher Bundestag, 16.03.1999, Drucksache 14/533). Again, it was justified that membership in the European political community was a legitimate way to gain access to the German political community.

In this case, a coalition of SPD, B90/Greens and FDP championed the special treatment of EU citizens. Notably, the SPD and B90/Greens wanted to extend this right to all foreigners, and in principle to accept dual citizenship, but they could not achieve an electoral majority in Parliament. By contrast, the FDP would not accept universal dual citizenship, but could justify the extension of these privileges to Union citizens. The compromise, therefore, was that only this group of foreigners received privileged status.

In the other political quarter, while the Conservatives defended the integration process as an argument to justify EU citizens' participation in local elections, they did not perceive it sufficiently valid to permit dual citizenship. The PDS's position was that if EU citizens gained access to dual citizenship, it would lead to a differentiated treatment of foreigners living in Germany that would most negatively impact the Turkish community. Although it did not appear in their proposal, the CDU/CSU voiced similar concerns in the plenary debate in Parliament and urged that it not be accepted at all (Deutscher Bundestag, 07.05.1999, Plenarprotokoll 14/40). Neither of these two parties identified the importance of the European integration process as a legitimate reason to justify EU citizens' access to dual citizenship. Quite clearly there was little accord—and a complicated range of opinion—among the legislators about exactly how to define the new access criteria.

Although the inclusion of EU citizens within the German political community depended on the tacit consent about European integration, there was no agreement about the degree to which the European integration process should privilege EU citizens. What it does prove is that the position of EU citizens in relation to the conceptual distinction between German and foreigner, 'us' and 'them', had far-reaching implications for the national classification system.

6. Access to measures for social integration: The Immigration Law of 2004

As has been shown, EU citizens' acquisition of rights normally reserved only for German citizens required adaptation of the way immigrants were categorised. However, not only did this privileged inclusion challenge and undermine the justification for distinguishing between the various immigrant groups, but it also transformed the concept of 'otherness' in the German context. Thus, while it was the Italian and Greek migrant workers who were categorised as 'other' in the 1950s and 1960s, their designation changed in the 1990s when they gained access to Union rights and privileges (Tränhardt, 1998). By the turn of the new millennium, the focus had shifted: now it was those immigrants from outside the EU who were classed 'other'. This transferral of 'otherness' was reflected in the Immigration Law of 2004. The process that culminated in the law was complicated and lengthy. Beginning in 2000 until 2002, each of the political parties initiated discussion of this issue through the presentation of policy papers. But it was not until 1 January 2005 that the law was implemented, having passed both in Parliament six months earlier (1 July 2004) and in the Federal Council (9 July 2004).

With reference to the implementation of the freedom of movement within the European Union, the new German Immigration Law obviated the need for residence permits for EU citizens. Thereafter, EU citizens merely needed to register with local authorities, as do Germans, thus receiving certification confirming their right of residence. This amendment was included in the Red/Green Government's proposal for the new law in 2002, following an agreement made by Germany, France, Italy and Spain in July 2000 (Deutscher Bundestag, 14.01.2002 Drucksache 14/7987). The government urged that the aim was to ease the process of residence for EU citizens in Germany. Acknowledging that this change received unanimous political support, the Government's Commissioner on Foreigner Questions suggested that this reflected a general, public-wide consensus for the European integration process (Bericht, August 2002, p. 125). As such, not only did EU citizens increase their privileges in Germany, they also gained access to rights, which previously had only been granted to German citizens.

Significantly, the Immigration Law defined the social integration of foreigners as a responsibility of the state. If integration is seen as a special responsibility of the state, the state explicitly recognises that immigrants are not transient, but potentially permanent, members of society. As such, the state has a civic duty to take appropriate steps to ensure their successful integration. That this responsibility was to be addressed at the national level in the new law, implied that previous regional solutions were inadequate and that social integration had been defined as more than just social problem. When the legislators approached the subject of social integration in this way, their conceptual understanding of nation was paramount.

The law stipulated that new immigrants establishing permanent residency in Germany were legally obliged to attend integration courses just as (*Spät*)*Aussiedler*, asylum-seekers and contingent refugees already did. These included language courses and those addressing themes like German legal order, culture and history. Attendance was mandatory; failure to do so could affect the immigrants' residence status. Those foreigners who were already resident were also obliged to attend the courses, if places were available. However, neither the obligation to attend courses nor the enforced equal treatment of foreigners and (*Spät*)*Aussiedler* extended to include EU citizens. According to the law, this group had the

possibility to attend integration courses if places were available. German politicians saw no need to justify this, and there was no debate in Parliament.

It is apparent that there were different opinions on the theme, if anything, as part of a compromise between the Red/Green Government and the Conservatives. Here, the government first proposed that the right to attend integration courses should only be given to newcomers; they explicitly did not extend this right to resident foreigners and no mention was made of EU citizens at all. In the final version of the law, the right was extended to include resident foreigners and EU citizens depending on availability. Part of the reason for this decision was the realisation that in, obliging them to participate in integration courses, Germany would be hindering the right of EU citizens to move freely within the Union.

Within the German mindset, it is clear that differences in the treatment of EU citizens and non-EU foreigners meant that the notion of ‘other’ no longer applied to the former category of immigrant. When the Red/Green Government justified the introduction of the integration courses, it emphasised the importance of foreigners learning about their rights and duties, their relationship to the German administration and their ability to become fully oriented within society (Deutscher Bundestag, 14.01.2002, Drucksache 14/7987). Since they neither were obliged nor had the right to attend integration courses, EU citizens were seen—in judicial and conceptual terms—to be more equal to German citizens than were other foreigners.

7. Conclusion

This article has demonstrated that an adaptation to the European legal norms both led to judicial and conceptual changes and transformed the national classification system in Germany. Inspired by the European integration process, the German state’s criteria for access to territory, citizenship rights and measures provided for social integration were altered. In context, these changes refer to questions of inclusion within, or exclusion from, the national political community. In fact, the state’s privileged inclusion of EU citizens must be seen as challenging to the judicial and conceptual boundaries of the German national political community in three ways.

First, the manner in which EU citizens were granted access to territory undermined the traditional distinction between conceptions ‘German’ and ‘foreigner’, or ‘us’ and ‘them’. Indeed, their access neither was outlined in the Foreigners Act—as for other immigrants—nor was codified in the Constitution—as for Germans. EU citizens fell out of this classification since their access was regulated by European law and its transformation into German law. Changes to EU legal norms during the 1990s and until 2005 led to a perforation of the judicial boundaries of the territorial nation state. As such, Union citizens gained access to German territory only through their membership within the European political community.

Second, EU citizens’ access to special political rights has, in some cases, undermined the justification for the use of the distinction between ‘German’ and ‘foreigner’. With their institutionalisation in the Maastricht Treaty, EU citizens were granted the right to participate in local elections wherever they lived in the Union. In the German case, Union citizens were granted a right available to no other foreigner living in the country. The German policy responded to a ruling made by the Constitutional Court in 1990, which declared it constitutionally unacceptable for non-Germans to elect Germany’s

government. Thus, justification for including EU citizens in the German political community by giving them the exclusive right to local electoral participation undermined the arguments used to exclude all foreigners from this political process. Although EU citizens' access to the German political community depended on the tacit consent about European integration, there was not always agreement among the parties about the degree to which this process should privilege EU citizens. Especially in the changes to the Citizenship Law of 1999, in which the EU citizens gained a privileged right to dual citizenship, the parties presented diverging views.

Third, the status EU citizens came to gain throughout the 1990s up to 2005 can be seen both to undermine the justification for the traditional distinction between Germans and the other foreigners and to transform the concept of 'otherness' in German political consciousness. EU citizens were excluded from the obligation as well as the right to participate in the state's integration programs; as such, they were seen to be more equal to German citizens by comparison to other foreigners. These complications arose out of the state's legislative process *vis-à-vis* the political justifications for amendments to the law. As perhaps an indication of consensus, all the political parties maintained the conceptual distinction between 'us' and 'them' as is evident in their simultaneous redefinition of those who were to be included and those excluded. Indeed, EU citizens' access to privileged rights, as a part of membership within the European political community, has led to changes in many of the judicial and perceptual boundaries surrounding the notion of German national political community.

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