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## Foreword

This book is a revised and updated version of my doctoral thesis. When I started working on the thesis, I wanted to examine Germany as an example of post-nationalist thought. This idea was based on the assumption that because of its history, Germany is more European in outlook – and less nationalistically oriented – than many of its neighbours. However, the book became an investigation of the changes in Germany's immigration policy after the Cold War and Reunification in 1990 until 2005 for three reasons. First, I found it paradoxical, from a historical perspective, that the Germans who, while being extremely proud of their modern liberal '*Demokratische Rechtsstaat*', maintained an ethnically based immigration policy until the 1990s. I was therefore interested in exploring the general shift towards a more inclusive and rights-based policy. Second, the process of political change gave me an exceptional opportunity to investigate how German politicians redefined the national political community's boundaries, in response to the immigration of ethnically, culturally and religiously different people. Finally, the conflict inside German society about the extent to which these material challenges (in number and in terms of the ethnic, religious and cultural composition of the population) led to a normative challenge in which an examination of the political parties' different understandings of national political community has been interesting. On the surface, these differences are most apparent in the character of parliamentary conflict; but this work has shown the importance of the argumentative process for political change, changes in consensus and why some arguments are considered more appropriate than others.

As a Norwegian, I have studied this process of political change as an outsider. I have emphasised my usefulness as being a 'person from the outside going into Germany' to investigate the arguments and concepts, while simultaneously attempting to reconstruct the social interactions and context within which they have emerged. I have benefited substantially from the stimulating research environment at ARENA (Advanced Research on the Europeanisation of the Nation State), University of Oslo. They have given me excellent working conditions for these four years, and the 'ARENA-seminars' have set a high standard. Special thanks go to Johan P. Olsen, whose wide insight and encouragement was very important for me at a point in time when I struggled with the direction of the work. I am most greatly indebted to my supervisor Erik

Oddvar Eriksen for guiding this work from loose thoughts to a final result. He has provided qualified guidance, and his ideas have inspired me throughout this study. I am also very grateful to Yasemin Soysal, who stepped in as a second supervisor in the middle of the project: she inspired me to increase my focus on the theme of immigration. A number of people have read various parts, and versions, of this dissertation and have provided me with valuable suggestions. In particular I would like to thank the ARENA researchers Svein S. Andersen, Jonathan Aus, Jeffrey T. Checkel, Morten Egeberg, John Erik Fossum, Andreas Føllesdal, Kåre Hagen, Agustín José Menéndez, Lars Mjøset, Helene Sjursen, Anne Elizabeth Stie and Ulf Sverdrup. I also want to thank the Norwegian Research Council for the financial support to this project, which also made it possible for me to stay in Berlin for a period of time. In Berlin, the several researchers and bureaucrats who willingly gave interviews made this process easier and my stay in Berlin more enjoyable.

I am grateful to Sarah King Head, who has done a great job by editing the language. I have learned a lot from her, yet she bears no responsibility for the last minute changes I have made. I alone am responsible for any misinterpretations or mistakes that remain in the text. My two sons Håvard and Øystein deserve special thanks. How many times during these past four years have I wished that I could have followed their advice: ‘to finish the work in one year and to spend the rest of the time together with them’. My final thanks are reserved for my husband Magne Lindholm, who has been my most important source of inspiration. Our long and interesting discussions have been and remain of great importance to me in life and for this book.

Marianne Takle  
Oslo, September 2006



## Introduction

The theme of this book is the changes witnessed in German policy on immigration from Reunification in 1990 until 2005. These changes show two tendencies. One is that the state has introduced more restrictions on immigrants' access to German territory. The other represents a more inclusive policy for immigrants with permanent residence permission. They have gained access to more legal rights, and the state has decided to implement gradually a policy treating all groups equally, including ethnic Germans. The main pattern of these changes represents a departure from the historic immigration policy, in which access to political rights was virtually closed to non-German immigrants while being open to those of proven German ancestry.

Several previous studies explain the restrictive citizenship policy according to a historic ethno-cultural understanding of nationhood. These studies present a dichotomy between Germany's ethno-cultural and France's civic rights-based understanding of nation. By contrast to these studies, this book will emphasise that although the principle of ethnic descent has historically been crucial in defining the German legal tradition on immigration, it is not the only one. Over the course of latter part of twentieth-century history, an important civic-political expression of national identity evolved in West Germany along with, and in latent opposition to, the ethno-cultural tradition. This civic component refers to historic liberal universalism that, although crucial in the establishment of the national tradition in the 19th century, was later marginalised in the political process. After the Second World War, the civic understanding of political community underpinned the institutions of the liberal democratic West German state. From a historical perspective, it seems paradoxical that Germans who, while being extremely proud of their modern liberal '*Demokratische Rechtsstaat*', kept an ethnic-based immigration policy until the 1990s. The contrast between the civic understanding of political community in the political institutions after the Second World War and the ethnic based immigration policy, raises two questions. How could the immigration policy retain such a strong ethnic component? Why did it change so rapidly after the Cold War and Reunification?

My aim is to examine these changes in German policy from 1990 to 2005 and to explore reasons for its general shift towards a more inclusive and rights-based

policy. Several structural factors have influenced the immigration situation in this period, and I intend to explore how these, as background factors, have been interpreted by politicians and have thus influenced policy outcome. The immigration policy is defined as the laws governing immigrants' access to territory (entry) as well as political rights (citizenship) and measures provided by the state for the integration (social integration) of immigrants. The criteria for entrance, naturalisation and social integration 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. Together, these are questions of inclusion within, or exclusion from, the national political community.

As part of an apparent dualistic tendency in the development of the German national tradition (*ethnos/demos*), the political processes from 1990 to 2005 show a complicated combination of forces. Due to various diverging understandings, there exist different definitions of the community. This study focuses on the political parties as the core analytical unit because, in one way or another, they have formulated all the main, observable arguments about the German debate on immigration. Changes to the immigration policy might be seen as the outcome of changes in the power constellation in Parliament (and the Federal Council), in which those parties defending the ethno-cultural national tradition have lost their political influence. Those politicians who defended liberalism and civic-based notions not only have gained political influence in the 1990s, but might also be responsible for the changes to the immigration policy since Reunification. This observation implies that the decisive mechanism for change belongs to the parties holding power in the political institutions. The bargaining process and parliamentary voting is seen as the important parts of the democratic process.

Although changes in power relationships can explain several aspects of changes to the immigration laws, it is not entirely sufficient. In particular, it cannot explain whether there are changes in opinion over time. In order to analyse questions related to values and identities, like the norms for inclusion/exclusion from national political community, one needs an approach that goes beyond these contested interests and analyses how the parties engage in a process of deliberation that fosters new understandings of national political community. Furthermore, to evaluate the degree of reformulation over time, one can use a theoretical approach, which emphasises how preferences and identities are shaped through a social process of interaction that involves argumentation and justification. This is a mechanism through which changes in standpoints might occur. The actors are seen to change their understanding of national political community based on notions of appropriateness and justice.

I question whether the changes in the German immigration policy after Reunification can be understood as the outcome of a weakening of those parties defending the ethnos position and/or as the outcome of a reinterpretation of the German politicians' understanding of criteria for membership in the national political community from one traditionally based on ethnic and cultural criteria towards a more rights-based and civic understanding. I concentrate on the legislative process in Parliament. Since proposals are related to each other as a text corpus (to former arguments, existing laws and the Constitution) we are able to analyse the arguments systematically. Emphasis on systematic analysis of specific arguments means that this book has neither included the more informal arguments of the public sphere nor popular opinion. This is an argument analysis, and an elite study.

In examining how the parties' justifications of changes to the laws on immigration refer to combinations of elements of the ideal-typical notions of political community and in comparing them with the results of voting on amendments, I attempt to discern whether the changes can be interpreted as a reformulation of the national political community. If the changes in the laws on immigration are the outcome of such a reformulation, we must expect to find changes in the way these questions are discussed. This would reflect changes in at least some of the parties' understanding of what appropriate and just arguments can be used in a liberal democracy like Germany. By contrast, if there is no evidence for changes in argument, then any legislative changes could be interpreted as evidence of the existence of tension between parties with diverging understandings of national political community. My main assumption is, however, that the changes cannot merely be explained as a weakening of the ethnos position, but also as a reformulation of the German politicians' understanding of national political community, 'from ethnos to demos'. In this respect, temporal considerations are important.

The book is divided into three parts. The first three chapters consist of an introduction to the theme (Chapter One), the theoretical framework and methodology (Chapter Two) and analyses of German historical national tradition and the structural and conceptual changes that occurred following the end of the Cold War and Reunification in 1990 (Chapter Three). In the second part (Chapters Four to Six), I examine changes in the German immigration policy and its understandings of political community. In Chapter Four, I investigate immigrants' access to territory; in Chapter Five, their access to citizenship rights; and in Chapter Six, policies taken by the state to provide social integration. In the final part of the book (Chapter Seven), I will draw conclusions.



# Chapter 1. German Policy on Immigration 1990-2005

## *1.1 Departure from the Historic Immigration Policy*

### **Access to Territory, Citizenship and Social Integration**

After the Second World War, the Federal Republic of Germany recruited foreign workers to assist in its expanding economy. In the 1950s and 60s, the recruitment of labour was not meant to increase immigration to Germany, but rather to provide sufficient temporary labour for the burgeoning economy (Münz & Ulrich, 1997). Although most of the immigrants were repatriated according to the terms of their temporary recruitment, the number of foreigners in Germany had increased to about four-million people in 1973, compared to half-a-million in 1960.<sup>1</sup> While the government restricted recruitment from non-EC states in an attempt to reduce immigration since 1973, numbers of immigrants actually rose. In 2004, there were 6.7-million foreigners living in the country, or 8.1-percent of the entire population.<sup>2</sup>

In the second half of the twentieth-century, no other region in Europe had more immigrants than the German Federal Republic. Indeed, from 1954 to 2000, about 31-million Germans and foreigners immigrated, while about 22-million people left, resulting in a net gain of about nine-million people.<sup>3</sup> In this period, the immigration policy relied on a repeatedly reaffirmed premise that ‘Germany is not a country of immigration’. This notion has been a guiding political principle and standard for many decades; and even as late as in 1998, it was the government’s official position. Germany’s counter-factual position of not being a country of immigration reveals a conceptual problem. Indeed, it represents an

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1 Statistisches Bundesamt. Ausländer im Bundesgebiet seit 1960.

2 Bundesamt für Migration und Flüchtlinge. Ausländer und Flüchtlingszahlen <http://www.bamf.de> Accession date 11.08.06.

3 Bericht der Unabhängigen Kommission ‘Zuwanderung’ Zuwanderung gestalten Integration fördern. 4. Juli 2001.

example of how one country's policies have reacted to difficulties common to all western European countries; namely, the challenges associated with the immigration of millions of culturally and religiously different individuals. Several nations in western Europe have become immigration countries often against the will of the political elite and of the population, especially as the temporary labour migrants' activities, needs, demands and social input have extended far beyond the economic sphere (Koopmans et al., 2005).

Immigration raises important questions not only of access to territory, but also of immigrants' integration into the political culture and society of the recipient country. The process of immigration leads inexorably to questions of rights and identity: who has the right to entry; what kinds of political rights does the host society give immigrants; and what level of social integration into the cultural community does the host society expect?

The immigration policy can be defined as the laws governing immigrants' access to territory (entry) as well as political rights (citizenship) and measures provided by the state for the integration (social integration) of immigrants. 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 question of legitimate conditions for *entry* addresses the state's approach to decisions about inclusion in and exclusion from the national territory. In this respect, the state classification system is important. By defining certain groups (in Germany these are asylum-seekers, labour migrants, (*Spät*)*Aussiedler* and EU citizens) and determining the group to which each immigrant belongs, the recipient society can justify its methods of controlling the flow of migration. The categories do not simply reflect the fact that immigration takes on different forms. Moreover, the perceptions about and attitudes to the immigration policy can be understood through a detailed examination of how the state determines who belongs in which one of the pre-defined groups. Changes in the German criteria defining the groups might indicate a change in the understanding of national political community.

In academic literature, *citizenship* is commonly considered a question of inclusion in or exclusion from a political community (Habermas, 1994; Preuss, 1995; Shafir, 1998; Eder & Giesen, 2001). Citizenship also means membership in a particular community, which is determined in relation to other communities. The concept circumscribes a status not just of physical – but also of political –

belonging. It is an exclusive status, which implies a setting of boundaries between ins and outs (Preuss, 1995: 269). From the perspective of a territorial nation-state, citizenship is a concept based on the relationship between rights and membership. The right to citizenship implies the right to vote and thus formal membership within the political community (Soysal, 1994). With the act of naturalisation, every state controls the expansion of the political community, defined by citizenship rights (Habermas, 1994:138). Accordingly, changes in German citizenship requirements affect who will be included in the national political community.

The process of *social integration* is a continual process, which requires effort over time, both by the host society and the immigrants. Long-term residential immigrants must demonstrate a minimum amount of social integration and, like any other citizen, must respect and abide by the law. Social integration might be examined in relation to the question of adaptation to the host society's mainstream culture and the extent to which cultural differences are accepted (Han, 2000). It is a question of whether the minority group must adapt to the mainstream community or of whether the majority society must change. This might be reflected in how the recipient society provides programmes to promote social integration. Changes in Germany's attitude to these problems might indicate a shift in its self-understanding.

### **German Policy on Immigration before Reunification**

According to Habermas (1994), the idea that Germany is not a country of immigration must be seen as part of a traditional perception that it is a nation of '*Volksgenossen*', or ethnic comrades, united by language and culture. Many authors have explained the ethnic aspects of the citizenship law within the historical context of the ethno-cultural national tradition (Brubaker, 1992, 1998; Schoch, 2000; Koopmans, 1999). These studies tend to contrast Germany's ethno-cultural with France's civic rights-based understanding of nation. Academic literature on nation and nationalism has seen this dichotomy as being representative of models of nation and national self-perception and has characterised the two national traditions as conceptual pairs, like universalism and particularism or cosmopolitanism and ethnocentrism (Brubaker, 1992).

The dichotomy is based on the distinction made by German historian, Friedrich Meinecke (1962), in 1907 between '*Staatnation*' (state-nation or political nation) and '*Kulturnation*' (cultural nation). By 'political nation', Meinecke understood 'nation' as centring on the idea of individual and collective self-determination and relying on concepts of individual free will and subjective commitment to nation. The population of a given, historically-evolved territory perceives itself to be a nation and, thus, citizenship is equated with nationality.

By contrast, the idea of ‘cultural nation’ is founded on criteria such as common heritage and language, a distinct area of settlement, religion, customs and history. It does not need a state to mediate a consciousness of unity, since the sense of belonging and togetherness can develop independently of the state (Meinecke, 1962 (1907)).

Several pairs of concepts have been closely related to this dichotomy. As I will return to this in greater detail in Chapter Two, there exist several theoretical approaches: while Greenfeld (1992) distinguished between the civic and the ethnic concept of nation, Gellner (1983) contrasted ‘voluntaristic’ and ‘cultural’ notions of nation. Smith (1991) also relied on a dualistic understanding of nation: the first he called a ‘territorial type’ of political nation and the second an ‘ethnic type’. He emphasised that in each case a rather different notion of political identity and community is envisaged, emerging from different ‘neo-classical/rational’ and ‘indigenous/romantic’ cultural sources. Smith applied the Western paradigm to the civic notion of nation and the non-Western to the ethnic notion (Smith, 1991).

The German ethno-cultural national tradition has been reflected in the privileged access to territory for people who can prove their ‘belonging to the German people’ (*Volkszugehörige*) according to the Constitution. This is specified in the Federal Refugee Act which suggests that an individual ‘belongs to the German people’ if he or she professes to German *Volkstum* in his or her place of residence. This subjective support can be confirmed by certain objective characteristics, like the expression of ethnic descent, language, upbringing or culture.<sup>4</sup> Under specified conditions – as I will examine in Chapter Four – such a person is considered to be a (*Spät*)*Aussiedler* and can gain access to German territory along with his or her spouse and children. On arrival, they are all categorised as *Volksdeutsche* and have the legal right to citizenship. Several naturalisation requirements reserved for other immigrants are unnecessary for them.

Requirements that other immigrants must fulfil were formulated in the Citizenship Law of 1913. Except during the Third Reich, this Law governed the western part of Germany until its replacement in 2000.<sup>5</sup> It was based solely on

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4 Federal Refugee Act. Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge Bundesvertriebenengesetz vom 19.5 1953. Changed in 1993 and in 1999. (See Hailbronner & Renner, 2001).

5 Reichs- und Staatsangehörigkeitsgesetz von 1913 (RuStAG). *Deutsches Ausländerrecht*. Textausgabe, 15 Auflage, 2001. München: Deutscher Taschenbuch Verlag. Staatsangehörigkeitsrecht von 1999 (StAG). Gesetz zur Reform des Staatsangehörigkeitsrechts



the principle of birth (*jus sanguinis*). As such, only children who were born to German parents could be considered German; and the status of foreigner was something that could be inherited across generations. According to the Law, the government evaluated and determined foreigners' requests to become citizens, but its decisions neither needed to be justified nor could be legally challenged. Germany insisted on the fulfilment of certain ethno-cultural criteria in the citizenship process by introducing guidelines on naturalisation at the end of the 1970s. These stated that, in considering each case, the applicant's voluntary and permanent commitment to the country would be judged according to his or her general conduct and attitude to German culture (Hailbronner & Renner, 1998). The combination of the 1913 Citizenship Law and the naturalisation guidelines of 1977 meant that naturalisation was viewed as an exception – and not the normal – practice (Hagedorn, 2001). Furthermore, there was a contrast in the German policy which has often been cited in the literature on the immigration policy: while citizenship has been nearly closed to non-German third-generation immigrants, it has been open to Poles and Russians with proven German ancestry as '*Volksdeutsche*' (Brubaker, 1992; Habermas, 1994).

Furthermore, the historical policy on social integration has revealed how indebted it had become to the labour policy (Meier-Braun, 2002). Since immigrants were largely viewed as economic resources, it was not deemed necessary that they adopt the host society's value system (Han, 2000). While the social integration of foreigners had been well managed with various welfare programmes (employment and social schemes) (Soysal, 1994), the question of cultural integration was not seen as an issue for the national political institutions (Leggewie, 2000). These social integration programs were left to the discretion of local authorities, because cultural integration was not considered worthy of discussion by the German political or public (unlike in France or Britain). By contrast, residential (*Spät*)*Aussiedler* enjoyed the legal right to attend language and integration courses with the goal of improving their assimilation within German society. Their integration/assimilation was seen as a common national responsibility.

### **Changes in the German Immigration Policy after Reunification**

Changes in the German policy on immigration since Reunification in 1990 and to 2005 appear to reflect two tendencies. One is that the state has introduced more restrictions on immigrants' access to German territory. This can be especially observed by the restrictions on the asylum policy since 1993. The other tendency represents a more inclusive policy for immigrants with per-

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Deutscher Bundestag, 16.03.1999, Drucksache 14/533. The law came into force 01.01.2000.

manent residence permission. They have gained access to more legal rights, and the state has decided to implement gradually a policy in which all groups (including ethnic Germans) are to be treated equally. Although there are some contradictory tendencies, the *main pattern* in the changes reflects a more inclusive policy and a departure from the historical German immigration policy. It shows that the immigrants have gained access to more legal rights and that the state has abolished many of the former ethnic privileges.

Indeed, one significant adjustment was the introduction of naturalisation regulations in the Foreigners' Act of 1991 (with revisions in 1993). This gave foreigners the legal right to citizenship upon the fulfilment of certain, basic criteria. The procedure was simple and applicants could appeal against a negative decision. This implied a move from decisions informed by German self-interest toward those based on the applicant's individual right to gain access to the political community. Decisions were no longer made with reference to the discretion of the political system but with regard to the immigrant's rights.

Another decisive change came with the restriction of privileges granted to ethnic Germans from Eastern Europe and the former Soviet Union throughout the 1990s. The implementation of the so-called *Auslaufmodell* (expiration model) adjusted the policy of granting privileged access to territory and rights only to those ethnic Germans who were born before 1993.<sup>6</sup> The introduction of this law marked the abandonment of the ethnic notion of political community and the gradual implementation of a policy treating all groups, including ethnic Germans, equally.

A third change came with the new Citizenship Law of 2000, which gave second and third-generation immigrants access to citizenship.<sup>7</sup> Here, the principle of ethnic descent (*jus sanguinis*) was combined with the territorial principle (*jus soli*), so that all children born on German territory could become citizens. One stipulation was that, between the ages of eighteen and twenty-three, they had to decide formally to become German citizens in order to comply with the state's refusal to accept dual citizenship for adults. It can thus be seen that more rights-oriented considerations have influenced policy change.

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6 This is ruled in the new Kriegsfolgenbereinigungsgesetz from 1993 and incorporated as § 4 in Bundesvertriebenengesetz. *Op. Cit.*

7 Staatsangehörigkeitsrecht von 1999. *Op. Cit.* Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht in der Fassung vom 15. Dezember 1999.

A fourth change came with the Immigration Law of 2004.<sup>8</sup> Central aspects of this Law indicate a shift towards a more inclusive and rights-based understanding of the immigration policy. For instance, it made social integration of immigrants the responsibility of the state and introduced the first comprehensive integration programme for those intending to stay for the long term. This included an equal treatment of foreigners and ethnic Germans. However, the fact that this Law also referred to domestic security, the cognitive distinction between ‘us’ and ‘them’ was emphasised. Moreover, the political process underlying the Law shows that there were contradictory tendencies in German policy.<sup>9</sup>

In spite of the contradictory tendencies, several fundamental policy changes during the 1990s implied a shift from the ethno-cultural tradition towards a more rights-based policy (Santel & Weber, 2000: 128, 134). German academics (Angenendt, 2002a; Han, 2000) and documents on immigration published by state institutions have described a general change in the public debate about immigration in 2000.<sup>10</sup> Indeed, the oft-repeated statement ‘Germany is not a country of immigration’ has been abandoned in favour of one affirming that it is now a country of immigration.<sup>11</sup>

The aim of this book is to examine the changes in the German policy on immigration after the Cold War and Reunification and to explore reasons for its general shift towards a more inclusive and rights-based policy. I principally seek to investigate the most observable changes in the German immigration policy in the period from 1990 to 2005. The fact that this process shows that the development towards a more inclusive policy is not a strictly linear, uni-directional process demands a sufficient examination of the countervailing forces.

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8 Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz) vom 30. Juli 2004. Bundesgesetzblatt Jahrgang 2004 Teil 1, No. 41, ausgegeben zu Bonn am 5 August 2004. The law came into force 01.01.2005.

9 The complicated process, where also several parties were excluded from the final negotiations, shows that there were huge disagreements among the political parties. This I will return to in Chapter Four.

10 Bericht der Beauftragten der Bundesregierung für Ausländerfragen über die Lage der Ausländer in der Bundesrepublik Deutschland. Bonn und Berlin, August 2002.

11 Bericht der Beauftragten der Bundesregierung für Ausländerfragen, 2002, *Op. Cit.* Bericht der Unabhängigen Kommission 2001, *Op. Cit.*

## 1.2 From Ethnos to Demos?

### National Tradition as a Multi-Dimensional Concept

Brubaker (1992, 1998) is one of the authors who explain the restrictive citizenship policy within the context of a historic ethno-cultural understanding of nationhood (Habermas, 1994; Schoch, 2000; Koopmans 1999). Brubaker (1992) makes an extensive study of the development of the nationalisation of citizenship in Wilhelmine, Germany. In agreement with many other scholars, he argues that the nation was founded within an ethno-cultural tradition (Brubaker 1992; Meinecke, 1967 (1907); Greenfield, 1992; Habermas, 1994; Alter, 1985; Preuss, 1995).

Brubaker's (1992) goal is to explain the differences in citizenship between France and Germany in the late 1980s. He describes how the French citizenry, at that time, was defined expansively as a territorial community, while the German was a community of descent. While birth and residence in France automatically transformed second-generation immigrants into citizens, birth in the Federal Republic of Germany had no bearing on citizenship. Moreover, the naturalisation policies in France were more liberal than in Germany, making rates much higher. Brubaker uses an historical approach to explain these differences. He traces the genesis and development of the institution of citizenship in France and Germany and shows how differing definitions have been shaped and sustained by distinctive and deeply rooted understandings of nationhood. Moreover, he emphasises their crystallisation in the late nineteenth and early twentieth-century. Embodying and expressing sharply opposed definitions of citizenship, these attitudes could also be found in the two countries' policies on citizenship in the late 1980s. Brubaker notes that historically the French understanding of nationhood had been state-centred and 'assimilationist', while for Germans it had been ethno-cultural and 'differentialist'. He further argues that a progression could be shown to exist between this development and that of the ethno-cultural citizenship laws of the late 1980s.

Brubaker does not present his explanation of the immigration policy as a general theory. As such, it could be seen to explain adequately the German ethno-cultural citizenship policy only in a specific historical situation. He does not, however, anticipate that there would be a change in the citizenship practice: 'There is no chance that the French system of the territorial principle (*jus soli*) will be adopted; the automatic transformation of immigrants into citizens remains unthinkable in Germany' (Brubaker, 1992: 185). In the early 1990s, Brubaker (1992: 3) supports the claim of a deeply rooted German understanding of nationhood, which had remained surprisingly robust and nowhere more

strikingly found than in citizenship policies *vis-à-vis* immigration. As such, it would be unlikely that the citizenship process could have changed as quickly as it did after Reunification. If the restrictive German naturalisation practices in the 1980s reflected a broad consensus based on an ethno-cultural understanding of nationhood, we must also assume that changes to the citizenship laws in the 1990s reflected changes in the country's national self-understanding. According to Brubaker's approach, there must have been a shift in the consensus about national political community.

Identities change slowly. This is the main argument of the German scholar, Hagedorn (2001), when she explains changes in the German and French citizenship practices in the 1990s based on Brubaker's historical analysis. Indeed, she argues that citizenship practices had never been entirely ethnic because if ethnic descent was the only way to become German, then citizenship laws would have reflected the 'blood right'. She argues that Brubaker exaggerated the importance of national tradition and contends that the German policy could not have changed so rapidly in the 1990s if it had been based on an ethno-cultural national tradition.

However, as mentioned in the introduction, it is important to emphasise that although the principle of ethnic descent has historically been crucial in defining the German legal tradition on immigration, it is not the only one. The catastrophe of the Third Reich challenged the core of this ethno-cultural tradition; thereafter, the new German Federal Republic (1949) came to describe and understand 1945 as '*die Stunde Null*' and rejected a German '*Sonderweg*', '*Sonderbewusstsein*' or a 'sense of being special' (Habermas, 1995a). In the post-War period, the three Western occupational states forcibly imposed the civic and liberal understanding of political community on the country. This civic component referred to historic liberal universalism that, although crucial in the establishment of the national tradition, was marginalised in the political process for several years (Giesen, 2001). Over the course of latter twentieth-century history, an important civic-political expression of national identity evolved in West Germany along with, and in latent opposition to, the ethno-cultural tradition (Koopmans & Statham, 1999). After the War, the civic understanding of political community legitimised the institutions of the liberal democratic West German state (Greiffenhagen, 1997). The combination of ethnic and civic elements has varied over the course of history, and there might also be differences between state/formal and popular/informal understandings. The dominance of the civic understanding of political community in the political institutions after the Second World War, and the fact that the immigration policy retained such a strong ethnic component, can be seen in light of a multi-

dimensional concept of national tradition, or national identity. This concept is composed of several elements.

One cannot merely characterise the German national identity as being ethnic and the French as being civic. Indeed, the two countries' cultural repertoires overlap. However, although contemporary German and French discourses on national identity contain both ethnic and civic elements, the German citizenship law does rely on more ethnic considerations than does the French (Giesen, 2001). This multidimensional approach is pivotal to this book. Using the dualism of *ethnos/demos* to explain how the German criteria for access to territory have changed demonstrates that the political process between 1990 and 2005 were beset by a complicated combination of forces.

### **Waning of Parties Defending Ethnos**

According to an explanation that sees policy changes as the outcome of shifts in power relations in political institutions, one can assume that political parties would uphold their different understanding of political community regardless of the challenges posed by immigration. Thus, while one position would uphold the former immigration policy by referring to common cultural values within the German community, the other position would integrate those changes that have occurred into their more inclusive and rights-based immigration policies. As such, the parties would rely on fundamentally different arguments when supporting changes to the immigration policy, and the outcome would either be a compromise or reflect the view of a winning coalition. Since Reunification in the 1990s, it can be seen that those politicians who defended liberalism and civic-based notions not only gained political influence, but were also responsible for the changes to the immigration policy.

Such an explanation does not require that the interactive context through which decisions for legal changes emerge be analysed. Arguments are understood in purely strategic/informational terms; thus, the bargaining process and parliamentary voting patterns would be identified as the most important aspects of the democratic process (Elster, 1992). Since the central mechanisms for change are strategic behaviour, the parties in power determine the outcome of the legislation process. Although they do not change their fundamental values, the parties might change their standpoints for tactical reasons in order to achieve a better outcome. In parliament, the justification can be understood in terms of bargaining, which according to Elster, 'concerns the division of the benefits from cooperation, compared to a state-of-nature alternative' (1992:39). Regardless of the challenges immigration poses on the nation state and its congruence between cultural and political entity, it may be assumed that the parties uphold their understanding of political community. However, in

questions related to values and identity, like the question of inclusion/exclusion from national political community, communication is required to determine a common definition of what is really at stake. According to Habermas, ‘Such questions call for discourses that push beyond contested interests and values and engage the participants in a process of self-understanding by which they become reflexive aware of the deeper consonances (*Übereinstimmungen*) in a common form of life’(1996:165). In order to reach stable decisions on problems that involve more than pragmatic concerns or measurable material interests, an inclusive and participatory process is required. When parties bargain about values, then the alternatives must be delineated in such a way as to make concessions without violating the parties’ basic values (Eriksen, 2003:198). The problem can then be assessed as purely technical questions (e.g., certain paragraphs or sentences in the immigration laws); however, as this analysis will show, the solutions to these technical questions might impact long-term attitudes about values.

### **From Ethnos to Demos?**

Changes in the power constellation in political institutions, and the waning in influence of those political parties defending the ethno-cultural national tradition, can explain some – but not all – of the changes in the immigration laws. This approach can explain changes in terms of power relations, but cannot explain fundamental changes in opinion over time. By investigating the process over time, I expect to find that the changes in German policy cannot merely be understood as a weakening of those parties defending the ethnos position, but also as part of a reinterpretation of the German politicians’ understanding of criteria for membership in the national political community from one traditionally based on ethnic and cultural criteria towards a more rights-based and civic understanding.

If changes in the laws on immigration are the outcome of a reinterpretation of the national political community, we can expect to find changes in the way the issues are discussed. During the political process, at least some of the political parties must have changed their opinions and preferences about the state’s criteria for access to territory and rights. Two kinds of changes are especially interesting: first, if new arguments are included in the debate or if they were considered important at one time but later excluded from the debate; and second, if new arguments lead to agreements about law amendments. Both these kinds of changes would reflect a shift, at least, in some of the parties’ understanding of what arguments are considered appropriate and just for use in a liberal democracy like Germany. Furthermore, by examining the reasons given by politicians justifying the need to change the laws, I will be able to elaborate on why they perceived one form of justification more appropriate than another. To

determine the extent to which these changes could be interpreted as the outcome of a reformulation of the understanding of political community, we need a theoretical framework that emphasises mechanisms like social interaction, learning and argumentation. Accordingly, the political process is understood as a process of communication where German politicians repeatedly reinterpret their understanding of political community.

However, the analysis is based on the assumption that the concept of national political community is both disputed and continually reinterpreted by German politicians in the political process. The various legislation processes might show different combinations. As such, the political phenomenon might be so complex that a single theoretical approach would be unsatisfactory (Olsen, 2001). If this is the case, then the policy outcome will be interpreted as a combination of a reformulation and shift in power relations. A combination of the two approaches necessitates increased attention on the circumstances, or under what scope conditions, one can find various combinations (Checkel, 2001a).

### ***1.3 Justification and Legitimacy***

#### **Arguments in Parliament**

I concentrate on the legislative process in Parliament and examine how the political parties justified their proposals to change laws related to immigrants' access to territory, citizenship and measures provided for social integration. The argument analysis is based on a theoretical approach, which emphasises that the actors are rational not only when they seek to maximise their given preferences, but also when they are able to justify their actions and defend them against criticism. Accordingly, actors must not only be able to justify their standpoints; but in order to gain support, they must also be able to appeal to a common standard or a statement that has a certain general quality in a political context (Habermas, 1997 (1992)). The social process of interaction involves argumentation and justification, a mechanism through which changes in standpoints might occur.

When this theoretical concept is applied to the question of political legitimacy, it highlights a particular mode of justification based on the public employment of reason (Eriksen & Fossum, 2000). Although ideal conditions of deliberation and justification are frequently violated in practice, it might be important that the rules of parliamentary procedure have evolved in the spirit of impersonal justification. Indeed, parliamentary debates require that new arguments not only must be related to former arguments, but also must be made with the aim to



qualify the laws in relation to existing laws and the Constitution (Eriksen & Weigård, 2003). In this respect, it is crucial that the arguments found in the legal proposals are related to each other as a text corpus. Furthermore, when politicians give reasons for their standpoints, they simultaneously express their attitudes towards the theme discussed; as in this case, towards the question of inclusion in/exclusion from the national political community. The investigation of these changes in arguments makes possible a systematic analysis of the extent to which there exists a political culture that determines the appropriateness and legitimacy of particular arguments in Parliament during the 1990s and until 2005. Changes in the understanding of national political community depend then on new notions of appropriateness and legitimacy (March & Olsen, 1995).

### **Two Types of Norm-Guided Justification**

According to Habermas' (1995 (1991)) a distinction can be made between three different types of arguments to justify policy: pragmatic arguments, ethical-political arguments and moral arguments. Pragmatic arguments refer to the outcome that the policy changes are expected to produce. Ethical-political arguments refer to a particular idea of what it means to belong to the community, to be Germans. Moral arguments rely on universal standards of justice that are independent of the actors' preferences or special form of life. Pragmatic arguments have much in common with the concept of the logic of consequences, while both the ethical-political and moral arguments can be seen as related to the concept of the logic of appropriateness (March & Olsen, 1989, 1998). According to the latter, actions are expressions of what is appropriate or acceptable behaviour according to the structure of rules and conceptions of identity. Politicians act from conceptions of self and of society and from notions of correct behaviour. Such an institutional perspective contends that institutions influence the construction of the reality within which individual action takes place. The process through which politicians translate the rules into actual behaviour is a constructive interpretation of the situation and justification of standpoints and actions (March & Olsen, 1995). The logic of appropriateness could imply a rule-following argumentation both referring to a special value community and based on a rational assessment of arguments based on universal standards (Eriksen, 1999). Two different kinds of norm-guided justifications, value-based and rights-based, can be applied when analysing the kind of normative arguments and reasons that have influenced policy changes (Sjursen, 2002).

The main distinction in this book' examination of the parties' justification is related to two types of norm-guided justifications: cultural values and moral rights, or justice. Moreover, I have further specified this distinction by connecting the type of arguments to the two ideal-typical notions of political

community, ethnos and demos. While the ideal-typical ethnos notion emphasises a pre-modern community based on blood, descent and fate emerging from particularistic notions of solidarity and commonality, the civic notion accepts abstract patterns of solidarity based on modern law, the idea of rights and universalistic principles of social justice (Preuss, 1995: 275). I seek to connect this examination of changes in arguments and concepts with the former investigations of German historical immigration policy, which we have seen mainly described the policy as based on an ethnic notion of political community. I will, however, analyse the extent to which I find new combinations of elements of the two ideal-types and examine the extent to which these show new tendencies.

It is important to note that the aim of this book is not to evaluate explicitly the normative validity of these arguments by universal standards, but rather examine them in relation to the ethnos–demos distinction. Furthermore, the aim is not to evaluate the extent to which these arguments are used strategically. One reason is that the bargaining processes in parliamentary committees are closed to the public. Another reason is that it is possible that political actors do not say what they mean. I will, however, not search for ‘hidden agendas’ or ‘true motives’, but rather identify what kinds of arguments were used by actors justifying changes in laws on immigration in Parliament. I intend to evaluate to what extent the arguments were able to mobilise support in Parliament. I will examine the extent to which the parties have consistently presented arguments for changes to the laws in the plenary debates in Parliament, and in the voting results in each legislation process.

## ***1.4 Challenges and Interpretations***

### **Immigration and the Nation State**

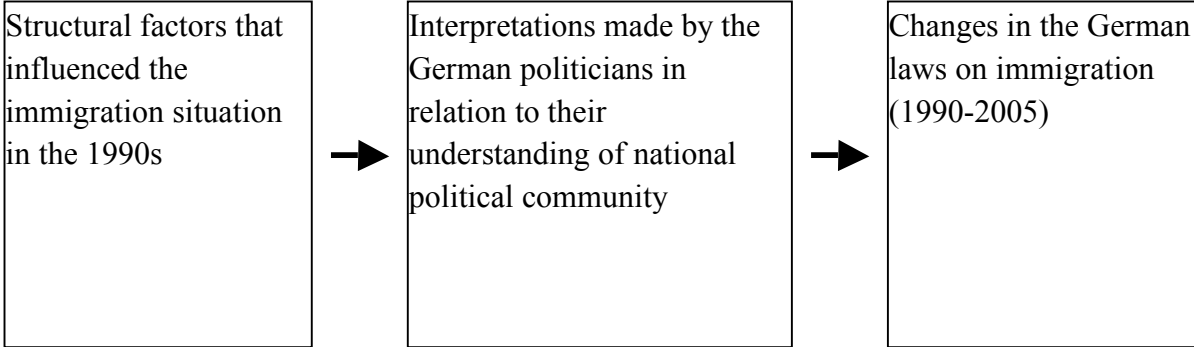
The challenges immigration poses on the nation-state are fundamentally related to the recipient country’s territorial borders and its political culture and institutions. Immigrants inspire questions about the unifying values and the cohesion of nation-states and challenge the liberal standards of western democracies (Favell, 1998). At issue is the legitimisation of political decisions in modern democratic societies, and how a political community is understood. Since immigrants are often understood as ‘the other’, they put pressure on the host society to redefine its conception of national political community. One central concern is the ability of the majority to create a community that is compatible with the needs of pluralistic societies. This refers to the willingness

of the recipient society to expand the boundaries of the national political community.

Most of the literature on nationalism emphasises that it is precisely the common values in the community that legitimise political decisions in a nation-state. As such, political legitimacy is based on the popular perception that the state recognises the community as a cultural unit (Smith, 1991). As I will show in Chapter Two, both Gellner (1983) and Anderson (1991) similarly emphasised the importance of common values in the nation-state's way of legitimising policies. The main problem with the immigration of culturally different people, and that which might raises normative concerns, relates to culture: that is, to what extent must immigrants adjust themselves to the values of the recipient society as a precondition to gaining access to the political community?

This analysis will not include all factors that might have influenced the process of change in the German immigration policy. Any changes in the environment are factored into the investigation of the actors' justification for the need to change the laws. The challenges to the nation state play an important role, but only insofar as they are interpreted by the political elite in Parliament when amending the laws on immigration.

I intend to examine the problems experienced by the German politicians associated with the demarcation of the political community's parameters. The immigration policy is analysed within the specific political context of Reunification and developments in the 1990s. These changes are interpreted in terms of the politicians' understanding of how immigration challenges the political community. The main focus of this analysis is on the interpretations made by the German politicians, in relation to their understanding of national political community, see Figure 1.1.1. This is not a structural causal analysis.



*Figure 1.1.1 Structural factors, interpretations, and changes in laws.*

This methodological choice is based on the view that political institutions and identities change in relation to internal dynamics, not only in relation to changes in the environment. This implies that the match between environmental and political institutional changes is not automatic (March & Olsen, 1995). Politicians' interpretations of environmental changes are often contested; especially when they led to debates over the determination of valid criteria for inclusion in the political community and, indeed, what that community is or should be. Judgements about the understanding of environmental changes are mediated by attitudes about the political community. I attempt to discern if the changes can be interpreted as a reformulation of the national political community when examining how party justifications for legislative changes refer to combinations of elements of the ideal-typical notions of political community and when comparing them with the voting results of amendments.

### **Comparison of the Immigrant Groups**

The analysis is structured around comparisons of changes in Germany's treatment of different immigrant groups: asylum seekers, labour migrants, (*Spät*)*Aussiedler* and EU citizens. As such, I analyse the categories by elaborating on how various criteria for access to territory, citizenship and the measures provided for social integration were established, in relation to key tenets of the ideal-typical notions of political community. Indeed, (*Spät*)*Aussiedler* were defined as Germans in ethno-cultural terms and gained access to territory and rights as members of the national political community. By contrast, asylum seekers and labour migrants were treated as foreigners – before gaining citizenship rights – also when they had lived in the country for a period of time. I will discuss whether (*Spät*)*Aussiedler* were defined as 'one of us' and foreigners as 'the other' and evaluate the extent to which this distinction has lost importance over time. Moreover, I will discuss how EU citizens, in being defined neither as 'self' nor as 'other', might have undermined the very justification for the distinction.

I intend to analyse how Germany defined the criteria for these immigrant groups' access to territory and rights and to examine how they have changed over time. I will then examine how politicians have justified these changes both in terms of their definitions of the national political community and their alignment of various immigrant groups within that community. The use of such categorisations has fundamentally conditioned the way these groups have been treated; indeed, their inclusion criteria are shaped by – and in turn shape – public understanding and societal mores.