Immigration, the State and the Decline of the Ethnocultural Paradigm of Germany’s Citizenship Policy

This dissertation explains why Germany’s notoriously restrictive citizenship policy for foreigners was becoming inclusive as the result of a spate of changes in the 1990s. Despite having one of the largest populations of long-term resident foreigners, i.e. non-citizens, Germany’s citizenship policy has until recently been based on the principle of ethnic descent of Germany’s citizenship law of 1913, jus sanguinis, granting only individuals of German descent a right to German citizenship. Others could become German citizens only on an exceptional basis, after discretionary investigation of their suitability. Since the early 1990s, however, the German government abandoned the general principle that naturalisation of foreigners was the exception rather than the rule, granted long-term resident foreigners a right to naturalise, and eventually broke with the principle of ethnic descent by granting automatically German citizenship to foreign children born on German territory (jus soli).

These developments are puzzling first because they are inconsistent with approaches that explain the restrictive citizenship policy in terms of Germany’s ethnocultural tradition of nationhood crystallising in the late 19th century and perpetuated ever since by Germany’s citizenship law of 1913. If citizenship policy was constrained by this traditional conception of membership, why did developments of citizenship policy in the 1990s break with this tradition? A second puzzling feature is that the spate of changes occurred without any major upheaval in the sphere of legal integration of resident foreigners or disruptions that could explain a more inclusive shift in the policy. If so, why was there an acceleration of legal change in Germany’s citizenship policy in the 1990s?

In line with state-centric theories of public policy change I argue that policy changes originated partly from within the public policy-making process driven by ideational developments in this policy area. The thesis analyses the redefinition of the basic organisational principles of German citizenship policy as actors in key arenas of public policy struggled to adjust the prevailing mode of policy-making to the unintended consequence of past policies— the permanent settlement of foreigners originally recruited as temporary “guestworkers”. It highlights how the gradual extension of a constitutionally protected status of long-term resident foreigners based on values of equal treatment created a tension within the legal ideology of citizenship policy with its particularistic conception of national community and its emphasis on unfettered sovereignty. The thesis analyses how actors grappled to resolve this tension and why they in the end failed to do so, focusing on changing structure of argumentation justifying or opposing citizenship arrangements in interaction with broader domestic and international institutional developments in the sphere of migration. Attention is particularly paid to how certain structural features of the German State, and changes within them, (e.g. co-operative federalist structure, legislative-executive relations, the pronounced role of judicial review, role of the state in international regime of migration) regulate access and flow of ideas within public policy-making process. This longitudinal study of the redefinition of legal ideology of Germany’s citizenship policy draws on written sources from institutional settings conducive to a more systematic public deliberation about the basic principles of the state. These include judicial decision, parliamentary debates, legislative proposals, legal scholarship, the protocols of domestic committees of Bundestag and Bundesrat and parliamentary hearings, national newspapers and interviews with key decision-makers in the policy-making process.