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Dealing with Alien Suffrage: Examples from the EU and Germany

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Rarely in the course of history does an opportunity like this present itself...For the first time since the fall of the Roman Empire we have the opportunity to unite Europe - this time it will not be by force of arms but on the basis of shared ideals and agreed common rules. Romano Prodi (President of the EU Commission)¹

Introduction

The idea of good governance is becoming the latest buzz-word to cast its shadow over the operational nature of domestic and international politics. Within that shadow is the need to ensure the opportunity to participate.² The fact that the 5.5 million EU citizens living in other EU Member States have been granted limited political rights is obviously a step forward but the fact that resident aliens and third-country nationals lack equivalent rights and, hence, remain excluded from both the national, local and supranational arena, represents a major challenge to the normative-based idea of good governance.

The paper will address two distinct though, perhaps, interconnected issues? [this is a question that will hopefully be answered during the course of field-work immediately prior to the conference]: the issue of EU citizens and alien suffrage and the case of non-citizens and to alien suffrage. While the former looks at developments within the EU, the latter will concern itself with the case of the Turkish minority in Germany. We need to

* The author is presently working with Professor Jo Shaw, on 'The Boundaries of Suffrage' project which examines the concept and practices of 'alien suffrage'. This is part of the 'Strategies of Civic Inclusion in Pan-European Civil Society' which comes under the ESRC 'One Europe or Several Programme.' An outline working paper can be found at <http://www.leeds.ac.uk/law/csle/wp1-00.htm>

¹ Quoted in *European Forum for Solidarity and Democracy Newsletter*, November 1999, p.2.

² This includes not only the right to vote but also the right to stand, thereby enabling the opportunity to participate at the level of policy-making as well as being able to react to policy-outcomes.

ascertain what is the factor(s) that initiates/ and or drives change?' It is the contention of this paper that one possible driving force, because of the difficulties of addressing such issues at the national political level, could be the European Union. That is not to say that reform at the European level in terms of EU Citizens voting rights, will lead to the vote being given to Third Country Nationals (at the local and European level) or indeed any non-nationals being given the right to vote at the national level, it is rather an assertion that change at the European level begins to change the nature of the political climate within which issues have to be dealt with at the national level. Of course establishing a new norm is going to generate both support and opposition.

Supporters of this process view such developments not only as a moral imperative in relation to the normative ideals that the member states of the EU claim to represent, in terms of good governance, but also as something that would enhance social cohesion by providing a sense of belonging (integration, with the opportunity for dual citizenship, not assimilation). Opponents though claim that such developments represent another example of the undermining of the nation-state, which requires a defensive closing of ranks mentality to protect the nation, its history and culture from foreign influences.

The resulting cleavage is subsequently being played out within the electoral arena where the issue of citizenship, the method of acquisition for minorities i.e. naturalization, and political rights are buffeted between a *Scylla* and *Charybdis*. The increasing propensity by which opponents have increasingly used the issue in the form of a *kulturkampf* and the response of potential/supposed supporters to downplay developments or put them on hold because they lack political capital (such as votes) in comparison with the perceived costs (i.e. loss of votes) means that the notion of alien

suffrage is unlikely to be addressed at the national level in anything other than banal rhetoric. That's not to say that the European level represents a prescriptive panacea either. The, presently, seemingly only clear outcome is that the battle lines that are being drawn-up between the forces of what Márkus has termed 'social-nationalism',³ and those opposed – the ground over which they are fighting is the European project of which alien suffrage is deemed to be a part. Advocates of social-nationalism shun external influence, use a traditional social democratic language in relation to the materialist sphere (full employment, welfare state etc.) and an extremist language vis-à-vis the cultural/social sphere which is dominated by a collectivism based on exclusion, intolerance and emotion. For them Europe represents a monolith that is determined to “subsume national identity and a country's history”, and hence has to be resisted at all costs.⁴ In addressing these issues this paper will focus upon the machinations associated with the contemporary political environment.

Citizenship and Europeanization

The concept of the European Citizen was established in the *Maastricht Treaty*, which set out four specific rights:

³ György Márkus, 'Social Democracy - the alternative to Social Nationalism', *European Forum for Democracy and Solidarity Newsletter*, June 1997.

⁴ Forces of social-nationalism can be seen right across Europe. The success of elements within Fidesz-MPP (Alliance of Young Democrats-Hungarian Civic Party; István Csurka's MIÉP (Party of Hungarian Truth and Life) in Hungary in 1998; and elements of the AWS (Solidarity Electoral Action) in Poland 1997 comes on top of the already well established forces in certain existing EU member states such as France and Austria where the National Front and the Freedom Party are ideology anti-EU.

- The right to move and reside freely within the territory of the member states (ex Article 8a presently article 18 of the TEU)
- The right to vote and stand for election in municipal and European elections in the member states in which you live – ex article 8b now Article 19 of the TEU
- The right to be protected by the embassy of any member states in a country where your own member state does not have an embassy – ex Article 8c now Article 20 TEU
- The right to petition the European Parliament and apply to the Ombudsman – ex 8d now Article 21 of the TEU

Article 17 heralded that, ‘Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.’ It went on however, ‘Citizenship of the Union shall complement *and not replace* national citizenship.’ (italics added)

Regardless of the nature of the qualification there is no escaping from the fact that Article 19 in expanding the franchise on the basis of residency, rather than citizenship or nationality criteria was a significant shift. It is important, as an aside, to remember that this isn’t a new or unique experiment. Layton-Henry, for example, highlights a number of earlier attempts to establish the principle of alien suffrage.⁵ However, broadening the scope of this principle beyond local/municipal elections (which had been in the case of countries such as Holland, the UK and Denmark) continued to be shied away from. Fear of the outcome of a referendum concerning the endowment of national voting rights to non-citizens ultimately resulted in the proposal being dropped. A similar fear of the political fall-out saw the French Socialists drop any such pledge.⁶

⁵ According to Layton-Henry ‘Sweden’s Social Democratic leaders felt that to exclude long-term residents from voting not only violated principles of representative democracy, but would foster divisions between natives and immigrants and would encourage the neglect of immigrants’ grievances, thus fostering alienation and bitterness.’ Zig Layton-Henry, ‘Citizenship and Migrant Workers in Western Europe’, in pp.107-124. 120.

⁶ Ibid., p.122.

The promulgation of the European (Directive 93/109/EC; OJ 1993 L329/34) and local/municipal elections directive in 1994 (Directive 94/80/EC; OJ 1994 L368/38), created the legal basis for ex article 8b. The result to date, rather unsurprisingly has been less than uniform. The fact that for some Member States to comply has necessitated constitutional change has made the issue very much a hot political potato. The Commission for example referred Belgium to the Court of Justice(Case C-323/97 *Commission v. Belgium*, judgment of July 9 1998). Mario Monti (then Single Market Commissioner) stated that:

we cannot expect people to take seriously efforts made by the Union to make citizens' concerns a priority if Member States fail to implement their rights in practice...In the case of Belgium the Directive incorporates special rules to take account of the large number of people from other Member States. In particular, there is a specific derogation allowing the Belgian authorities to request a minimum residence period before granting the right to vote in a limited number of municipalities where people from other Member States exceed twenty per cent of eligible voters. Despite this, Belgium has failed to fulfil its obligations to implement this Directive on time.⁷

In terms of the European elections the evidence that exists to date indicates a very low rate of participation by EU citizens resident in other Member States and considerable obstacles to effective participation (see table 1 below). An example of this, which Article 12 of Directive 93/109/EC was meant to address, was the fact that in Greece, France and Luxembourg registering as an alien voter for the European elections required submitting an application between 6 and 15 months in advance. Germany has also been criticised for the lack of information about voting. Indeed many of those who came to vote in the 1999 European elections were prevented from doing so because they had no idea that they had

⁷ See 'Municipal voting: European Commission decides to refer Belgium to Court of Justice', http://europa.eu.int/comm/internal_market/en/people/voting/573.htm

had to re-register (see the dramatic decline in the number of registered voters in table one below).

Table One: Selected figures from the 1994 and 1999 European Parliamentary Elections

Member State	Total Percentage Turnout (%)		Number of eligible electors		Number of registered electors		Percentage of electors who voted (%)	
	1994	1999	1994	1999	1994	1999	1994	1999
Austria	67.73	49.4	91,385	97,359	7,261	14,659	7.94	15.06
Belgium*	90.7	90.8	471,277	496,056	24,000	38,236	5.1	7.71
Germany	60	45.19	1,200,00	1,573,316	80,000	33,643	6.6	2.14
Denmark	52.9	50.5	27,042	46,400	6,719	12,356	24.85	26.6
Spain	59.1	64.38	192,074	290,085	24,227	64,904	12.61	22.37
Finland	60.3	30.14	11,296	13,898	2,515	3,911	22	28.14
France*	52.7	46.76	1,427,315	1,427,315	47,508	70,056	3.38	4.91
Great Britain	36.4		400,00		7,845		1.96	
Greece*	71.2	75.30	40,000	40,000	622	736	1.55	1.84
Eire*	44	50.21	13,600	67,900	6,000	29,804	44.11	43.89
Italy	73.7	70.81	152,139	109,8000	2,809	10,136	1.8	9.23
Luxembourg*	88.5		105,000		6,907		6.58	
Holland	36	29.89	160,000	167,332		28,284		16.90
Portugal*	35.5	40.03	30,519	30,519	715	4,149	2.34	13.59
Sweden	41.64		150,000		36,191		24	

Source: European Commission 10 November, 1999.

*Belgium, Greece and Luxembourg have compulsory voting; in France and Portugal, no new information for the number of potential voters in 1999; the figures for Eire do not include British citizens

Within and beyond the European dimension a reading of various declarations and international agreements might lead one to think that the issue of alien suffrage has already been resolved (see table two)

Table Two: Examples of Declaratory rhetoric?

<p>The Lund Recommendations⁸ on the 'Effective Participation of National Minorities in Public Life': Effective participation of national minorities in public life is an essential component of a peaceful and democratic society...These Recommendations aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State. (2) These Recommendations build upon fundamental principles and rules of international law, such as respect for human dignity, equal rights, and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights. (3) States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.⁹</p>	<p>According to 1989 programme of the SPD (Basic Policy Programme December 1989) Only where civil rights and liberties have been guaranteed and where they are applied can people live as free and equal citizens and practice democracy. Only where basic social rights have been fully implemented can everyone fully enjoy the civil rights and liberties and political rights of participation. Only where civil rights and liberties and the political rights of participation are respected and free controversy and political commitment permitted can people assert their right to sufficient food, housing, work and education. Only in their entirety can these human rights facilitate a decent life.</p>
<p>Article 21(1) of the UNDHR, for example, states that: 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Article 22 states that 'Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality</p>	<p>From a pan-European level the OSCE European Security Charter (Istanbul, November 1999) stated that: 'Peace and security in our region is best guaranteed by the willingness and ability of each participating state to uphold democracy, the rule of law and respect for human rights. We individually confirm our willingness to comply with our commitments and we also have a joint responsibility to uphold OSCE principles.'¹⁰</p>
<p>The Paris Declaration of the Socialist International stated that: What is essential are the values that bring us together: solidarity in the improvement of human living conditions to attain more social justice, based on the universal respect of human rights, the equality of the sexes and individual and collective freedoms which is the essence of democracy...It is our intention to foster and improve the role of representative democracy and civic participation.¹¹</p>	<p>18. The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia. 21. The legal status of third country nationals should be approximated to that of Member States' nationals.¹²</p>

⁸ This arose from Max van der Stoep, who as the first OSCE High Commissioner on National Minorities asked the Foundation on Inter-Ethnic Relations, in co-operation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, to bring together a group of internationally recognized independent experts to elaborate recommendations and outline alternatives, in line with the relevant international standards.

⁹ The Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Note (Foundation on Inter-Ethnic Relations, September 1999)

<<http://www.osce.org/henn/docs/lundrecs.htm>>

¹⁰ Point 14 of the Charter for European Security see <<http://www.osce/indexe-n.htm>>

¹¹ 'Declaration of Paris: The Challenges of Globalisation', XXI Congress of the SI, 1999.

¹² 'Towards a Union of Freedom, Security and Justice: The Tampere Milestones', Presidency Conclusions, Tampere European Council 15-16 October 1999.

Similarly, the fact that nature of the Copenhagen criteria, which laid down stipulations (that are to be examined and which have to be fulfilled) that each candidate country is expected to pass, might have led one to believe that the applicant countries were about to join a club where the issue of good governance (and as part of that alien suffrage) had been resolved.¹³

The reality though is somewhat different as the national dimension and the ramifications of domestic politics has to be taken into account, in terms of the running of the supranational EU. The fact that many of the EU member states (including Germany) have yet to implement effectively legislation (or to follow correctly the spirit of that EU legislation) relating to the electoral rights of EU citizens and are seemingly disinterested in dealing with the issue of the exclusion of third country nationals, not least because of the potentially destabilising effects it could have on the domestic political scene needs to be assessed. The Commission report on EU citizenship, for example, emphasized the need to develop an interactive bonding with EU citizens ‘otherwise citizens will regard EU citizenship as a vague, intangible concept which means very little in reality.’

¹³ The Copenhagen Criteria called for: the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the ability to take on obligations of membership, including adherence to the aims of political, economic and monetary union; the operation of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the union.

Dealing with non-citizens (the Turkish Minority) in Germany

The identity of the German nation is built upon a mono-ethnic foundation (i.e. the idea of an organic community that includes a common heritage and language), stemming from the principle of *jus sanguinis* (nationality stemming from blood ties/ethnic origin) driving the conventional acquisition of citizenship. The principle of *jus solis* (nationality stemming from the right of having been born in a country), as a method of attaining citizenship, was rejected. With such an historical inheritance, the process of naturalization has been very restrictive and, correspondingly, very low particularly amongst the 2,110,000 Turkish people.¹⁴ The fact that the collapse of the Soviet Union meant that those of German descent (*Aussiedler*) were given a right to automatic citizenship was a particularly bitter pill for many within the Turkish community.

Despite the fact that many immigrants have permanent resident status (and hence the rights and obligations associated with that status), citizenship rights that include a full package of political rights (i.e. the right to vote, stand and participate in the decision making-process) continue to remain some way off. Of course, overcoming such a restrictive policy was never in itself a panacea for overcoming the sorts of problems that minorities continue to face, indeed it may well open another Pandora's Box if they have to relinquish their existing nationality, but it can at least, provide a certain amount of protection. As Gerald Neuman puts it '...citizenship carries the potential for

¹⁴ These data come from the ***Facts and Figures on the Situation of Foreigners in the Federal Republic of Germany***, June 1999 (The Federal Government's Commissioner for Foreigners' Issues).

empowerment, through voting, through government service, through military service and the accompanying social respect.¹⁵

In terms of the *jus sanguinis/jus solis* dichotomy the extensive continuity of the *jus sanguinis* principle contained within the Citizenship Law of 1913 (*Reichs und Staatsangehörigkeitsgesetz*) had much to do with a purely political goal: that the pursuit of German unity would come via the Federal Republic rather than the GDR. It also led to a situation whereby the Basic Law made certain distinctions between universal human rights and rights only imbued to Germans. Sandra Schmidt, who remains highly critical of such developments, explained the situation in the following terms:

Article 1 lays down the inviolability and protection of dignity of man as the norm. From this follows the entitlement of all people to the basic rights of liberty, equality, and religious freedom. Article 3 of the Basic Law provides furthermore that 'nobody shall be discriminated or favoured because of gender, descent, race, language, homeland and origin, creed, religious or political beliefs'. However, subsequent articles on freedom of assembly, association and profession as well as on freedom of movement and prohibition of extradition are reserved exclusively for German citizens. This restriction of fundamental rights for German citizens only is incompatible with Articles 2 and 3 of the Basic Law. In this respect, Germany continues to define itself as an ethnic as opposed to civic nation.¹⁶

The deeprootedness of the mono-ethnic state became only too apparent as the 'economic miracle' and the corresponding labour shortage resulted in significant levels of a migrant workforce (Guest Workers - *Gastarbeiter*).¹⁷ The largest numbers came from Turkey under negotiated recruitment agreements that took place with the EC in 1963. Their exclusion at the national/political level (Alien Law 1965) would result in the

¹⁵ Gerald L. Neuman, 'National Law as a Method of Integration - A Comparison Between the USA and Germany', draft chapter, 1996, p.4.

¹⁶ Sandra Schmidt, 'Immigration policy and new ethnic minorities in contemporary Germany', in Thomas Banchoff and Mitchell P. Smith (eds.) *Legitimacy and the European Union: The contested polity*, (London and New York: Routledge, 1999), pp. 91-105. 95-96

emergence of numerous initiatives from below. Initially, a number of student organisations across the country began to draw Turks into their networks. During the 1960s the German Labour Unions became instrumental in integrating guest workers, and unlike their Austrian counterparts, for example, who preferred to maintain strict demarcation lines, sought to provide them with the same 'union' rights as German members. A proliferation of network organisations took place in the 1970s following the establishment of family reunification groups, which became the basis for setting up other groups and organizations.

Unlike their European counterparts who received the protection which stemmed from the freedom of movement legislation, and despite the fact that they paid their taxes and lived according to the laws of the land, the right to vote remained firmly tied to the notion of German nationality (Article 38 of the Basic Law) and Section 12 of the Federal Elections Act. Thus, as Madel puts it, 'the confluence of German laws of citizenship and ideologies of ethnicity, nation and state, have effectively prevented this population from achieving legal and social equality, and civil rights, by denying them crucial access to full citizenship.'¹⁸ Over time, though, the Turkish minority have been granted a package of civil and social rights. This did not, however, emerge from the foresight of politicians. In the words of Christian Joppke '...the Constitutional Court has established in its case law that, over time, aliens are due even the *Deutschenrechte* [rights reserved for Germans]. The key to this is Article 2 (1) of the Basic Law, which guarantees the 'free development of personality...This incrementalism is conditional upon a lack of resolve on the part of

¹⁷ At its peak there were some 3 million foreign workers.

the state.¹⁹ Of course, the addition of political rights is not necessarily going to have much impact, particularly at the national level, but it at least provides a voice at the local level. As Layton-Henry puts it:

Once family reunification takes place and migrant communities become established, then access to social and political rights becomes much more important. The presence of wives and children makes access to decent accommodation and housing a high priority. Also health care, social security and other welfare benefits are more important. The community may desire more permanent and substantial places of worship and access to educational institutions to ensure that their children can be taught the customs and traditions of their home society. In order to achieve these goals, political influence may be necessary.²⁰

At the local level though although Article 28 is meant to enable the Land to stipulate their own particular qualifications *Schleswig-Holstein* was deemed to have acted unconstitutionally in 1990 by allowing foreigners to vote. For Neuman this highlighted 'a restrictive interpretation of the popular sovereignty provisions of the Grundgesetz, and afterward the Grundgesetz was amended only to the minimum extent necessary to comply with the Maastricht treaty.'²¹

Agents of change: implementing reform at the domestic level

With the effort and aid associated with the immigration of the *Aussiedler*, the Turkish minority, which according to official data stood at 2,110,000 at the end of 1998 (765,000 had limited residence status, 610,000 an unlimited residence, 500,000 a right of unlimited

¹⁸ Ruth Mandel, "'Fortress Europe' and the Foreigners Within: Germany's Turks', in Victoria A. Goddard, Josep R. Llobera and Cris Shore (eds.), *The Anthropology of Europe*, (Oxford: Berg, 1994), pp.113-125. 117.

¹⁹ Christian Joppke, 'The Domestic Legal Sources of Immigrant Rights: The United States, Germany, and the European Union', *EUI Working Paper SPS No. 99/3*, pp.20-21 & 22.

²⁰ Zig Layton-Henry, 'Citizenship and Migrant Workers in Western Europe', in Ursula Vogel and Michael Moran (eds.) *The Frontiers of Citizenship*, (Houndmills: Macmillan, 1991), pp.107-125. 114.

residence the most secure residence status²²), has found itself surpassed by a group of people whose contemporary connection with Germany is far less tenable than theirs. Under these conditions, the need to address such a differentiation has finally made it to the mainstream political agenda. On January 1, 2000, the new citizenship law came into force and is, according to the government, meant to 'halt the growing gap between that group of persons who are entitled to vote in Germany and the group of persons who actually live in Germany.' It didn't though empower the Turkish community as resident aliens, but rather said 'once you have become naturalized then you will be able to participate in the political process.'

The starting point for changing the citizenship law was contained within the coalition agreement, signed between the SPD and the Greens, which contained a statement of intent concerning the importance of integration:

We recognise that an irreversible process of immigration has taken place in the past and set our hopes on the integration of those immigrants who live here on a permanent basis and who accept our constitutional values. The focal point of our integration policy will be the creation of a modern nationality law...acquisition of *German citizenship is not dependent on renunciation of the previous citizenship...*To promote integration, those foreigners living here who do not possess the citizenship of an EU Member State *shall also receive the right to vote in district and local elections.*²³

²¹ Neuman, op.cit., p.15.

²² See *Facts and Figures on the Situation of Foreigners in the Federal Republic of Germany*, op.cit. p.11. The Alien Act provides for various types of residence status, including: a limited residence permit which establishes a basis for permanent residence. The holder's residence status becomes more secure the longer he or she stays; an unlimited residence permit is the first step towards secure residence status. Holders of a limited residence permit can apply for an unlimited one after five years provided that they satisfy certain other criteria; a right of unlimited residence is the best and most secure residence status under the Aliens Act. Holders of a residence permit can apply for a right of unlimited residence after eight years provided that they satisfy certain other criteria.' Ibid., p.18.

²³ See Coalition Agreement Chapter IX (7) <<http://www.spd.de/english/politics/coalition/nine.html>> *Italics added*. Chancellor Schröder (during the policy making process in November 1998) claimed that 'For far too long those who have come to work here, who pay their taxes and abide by our laws have been told that they are just 'guests'. But in truth they have for years been part of German society. For this reason the government will modernize the law on nationality.' Citizenship Reform and Germany's Foreign Residents', <http://www.germany-info.org/newcontext/np/np_3c_1.html>

However, the praxis of politics stemming from the uncertainties of securing the passage of the legislation, which in fact would have essentially re-written the mono-ethnic-cultural foundation of the German state, meant that the Green initiative of unrestricted dual nationality had to be watered down so that a choice would have to be made at the age of 23. This followed the success of the CDU (which has had a long opposition to dual citizenship and in fact was able to mobilise some 5 million supporters for its petition campaign against dual citizenship) in local elections in *Hesse* (February 7, 1999) which saw its support increase on the back of the slogan “Yes to integration. No to dual nationality”, a platform which was against the introduction of a new citizenship law which would have introduced the principle of *jus soli*.²⁴ The victory for the CDU also meant that the governing coalition lost its majority in the Upperhouse. Today (April 2000) the on-going CDU campaign in North Rhine-Westphalia, for example, of '*Kinder statt Inder*' (children instead of Indians) is contributing to an attitude of anti-foreigner.²⁵

The new law, by introducing the principle of *jus soli* (thereby allowing children born to legal foreign residents [i.e. that one of their parents has lived in Germany for at least 8 years] to become citizens if they so choose at the age of 23 and hence the chance to grow up as Germans) and lowering the period of time for naturalization from 15 to 8 years), is meant to ‘halt the growing gap between that group of persons who are entitled

²⁴ There are, however, already provisions for dual nationality in cases where it is practically impossible to rescind their previous nationality.

²⁵ This stems from the idea of the Chancellor to introduce work-permits to Indian computer experts to develop this sector due to labour-shortage. Some 20,000 permits are to be provided. Although the story has become known as the ‘Green Card’ issue the work permits are in fact only going to be temporary (for five years) and hence not the same basis as the Green card in the American sense.

to vote in Germany and the group of persons who actually live in Germany.'²⁶ In addition the process of naturalization still requires: possession of a residence permit or entitlement to residence; as a rule, ability to support oneself and one's family without social security or unemployment benefit; no criminal convictions, minor offences excepted; express commitment to the Basic Law; no activities hostile to the Constitution; adequate command of the German language.²⁷ Otto Schily (Federal Minister of the Interior) was quoted as saying 'since integration is not a one-way street, this opportunity entails certain minimum requirements. Anyone wishing to live permanently in Germany must respect our constitution and our legal system. It goes without saying that he or she will have to learn German. Integration can only succeed where there is a will on both sides - among Germans and among the foreigners living in Germany.'²⁸ This type of discourse and the latter three factors were needed to satisfy the demands of the conservatives and ensure promulgation of the law.

Drawing the battle lines at the European level

The fact that the EU is presently dominated by social-democrats might, one may have thought, have increased the speed by which declatory rhetoric was turned into a concrete

²⁶ This information is taken from the web-site of the German Embassy in Ottawa. See 'Germany's new citizenship law' <<http://www.germanembassyottawa.org/cala/citizen.html>>. The initial intention of the governing German Social Democrats (SPD) was to have been a law that also enabled dual nationality which would have been of major significance for the Turkish minority. It should be noted that to renounce Turkish citizenship one has to undertake military service or pay a certain sum. At present only about 2.8 per cent of the 2.2. million Turkish community are citizens. See 'The German Elections, Turkish Germans and Turkey', *Transnational Communities - An ESRC Research Programme*, <www.transcomm.ox.ac.uk/wwwroot/traces/iss3pg2.htm>

²⁷ See *The new Nationality Law 09-11-1999*, <<http://www.bundesregierung.de/english/01/0103/05957/index.html>>

reality. However, confronted with social-nationalists and their ideology of *Kulturkampf* social-democrats have seemingly begun to accommodate certain elements of their erstwhile opponents. In the case of Britain for example, the respected *Financial Times* columnist, Philip Stephens wrote:

With the introduction of new rules for the treatment of asylum seekers. From this week those hapless creatures seeking refuge from war, oppression and poverty in their homelands would be wise not to wash up on the shores of Mr Blair's brave new Britain. A system that was always harsh has now become pernicious. Jack Straw, the home secretary, has described this new regime as "tough but fair". The facts are otherwise. It is calculated – and calculated is the rights word – first to stigmatise and then to criminalise those foolish enough to take Mr Blair at his word when he trumpets the cause of tolerance.²⁹

It remains to be seen if the so-called 'progressive forces' (domestic and transnational) will address issues, such as a drive to extend participatory rights to third-country nationals (local and European elections) thereby bringing them up to the same status as EU nationals. Unfortunately, where immigration is concerned one can already see the issue being driven by fears of illegal immigration; the pursuit of tighter border controls; the mind-set of a Fortress Europe' etc.

It seems to me that at the core of the strategy, of right-wing and nationalist-oriented forces, is the idea of a *Kulturkampf* where identity-based politics seek a retreat into the 'familiar and the secure', not least national identity. Jean-Marie Le Pen summed it up in a line 'Globalization and its Trojan horse, a federal Europe, are leading France to its death.'³⁰ Hence their immediate goal *is to change the political climate* so that certain issues become 'untouchable'. This leads to a situation where progressive forces, afraid of

²⁸ This is found in the foreword to the booklet "Staatsangehörigkeitsrecht" published by the Official Federal Government Representative for Matters relating to Foreigners, Federal Ministry of the Interior, Press and Information Office of the federal Government, August 1999. Ibid.

²⁹ See Philip Stephens, 'Tony Blair's intolerant island', *The Financial Times*, 7 April, 2000, p.21.

losing votes, dare not address the issue of minority rights. This all leads to a situation whereby part of the extreme-right agenda is being carried out by those who are meant to oppose it so virulently. The extreme right is also adopting a new genesis that has brought it success in Austria, Italy and Switzerland in recent months. The campaign of Jürgen Rüttgers (regional CDU Chief in Northrhine-Westphalia) against the introduction of the 'Green Card' (as already mentioned above) is another example of the move to the right.

In Lieu of a conclusion – the need for good governance

The process of Europeanization though has to be more than an elite led drive to attain certain standards, it also needs to capture the imagination and ultimate support of the populace. The problem for advocates of increasing integration, it seems, is two-fold. First the fact that integration necessitates a 'pooling of national sovereignty' enables opponents to make political capital advocating a defence against such a loss. Second, their approach to date has tended to focus primarily on the economic and technical level leaving Europe as a distant and unspecified entity that lacks a sense of identity. The proposed EU Charter of Fundamental Rights, the draft of which is scheduled for the end of 2000, is undoubtedly an attempt to begin to rectify this deficit, but as Gareth Harding highlights, 'EU governments and MEPs look set to start talks on a charter of fundamental rights with widely-differing views on what status it should have.'³¹

The failure to convince the populace of the merits of such developments carries with it the dangers of increasing 'social-nationalism'. The battle-lines therefore are

³⁰ Quoted in 'Europe's far right loses its way', *The Guardian*, 2 May, 2000, p.10.

³¹ Gareth Harding, 'Row looms over status of Union's "bill of rights"', *European Voice*, December 9, 1999, p.6.

apparent. Opponents of change, not least social-nationalists, can simply cast it in terms of a monolithic block that is seeking to destroy national identity (in much the same way as the Soviet Union had been perceived to have done). Supporters therefore have a much harder task in talking about future-oriented goods and in setting about winning the hearts and minds of a sceptical or uninterested public. One fact though seems clear, such a process though can no longer rely upon political parties simply disseminating information in a top-down manner and, hence, has to provide the opportunities for an increasing role for forces within civil society.

To what extent the implementation of procedures such as subsidiarity (which is seen as a way of taking decisions as closely as possible to the citizens), or the development of trans-national political movements and NGOs can begin to provide a vision for the future remains to be seen.³² However according to the 'Second report of the European Commission on Citizenship of the Union, 'the introduction of citizenship of the Union has raised citizens expectations as to the rights they expect to see conferred and enforced. Citizens are entitled to be aware of these rights and to have them honoured in practice by the Member States. Otherwise citizens will regard EU citizenship as a vague and distant concept.'³³

³² One might expect a formation such as the trans-national Party of European Socialists (PES) - with members dominating 13 of the 15 EU member states; an internationalist spirit and a common election manifesto to provide such an entity. The June 1999 European Manifesto laid forth 21 commitments and stressed the need for the to 'belong to the people and must be driven by their priorities'. It called for a more transparent decision-making process and an EU 'that both respects the identity of each of our countries and promotes a closer union between our peoples.' The PES though remains embroiled within a framework whereby a logic of solidarity and a logic of competition (stemming from domestic considerations) pulls it in two opposite directions See ***PES: Manifesto for the 1999 European Elections***, (http://www.eurosocialists.org/election/en/1a_content.htm)

³³ See 'Second Report of the European Commission on Citizenship of the Union', op.cit., p.3.