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A Comparative Analysis of Rules of Transition

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Abstract

Recently, the link between immigration, citizenship and national identity has emerged as a major political issue in Western Europe. During the last decade important changes have been implemented in the legislation concerning the attribution and acquisition of citizenship in several Western European countries. A trend of convergence, observable since the mid-1970s, was accelerated after 1990. Previously liberal regulations tended to become more restrictive, whereas traditionally restrictive regulations became more liberal. This article deals with the question whether these developments are due to the harmonization of widely diverging national approaches in the field of immigration and citizenship policies in Western Europe.

The first part of the paper is concerned with the legal rules which regulate the naturalisation of immigrants and the intergenerational transmission of citizenship in Austria, Belgium, France, Germany, Italy, the Netherlands, Sweden, Switzerland and in Australia, Canada, the United States of America. The second part delivers an overview of the long-term effects of different patterns of citizenship policies on the inclusion of immigrant populations as citizens. It will be argued that since the beginning of the 1990s one can observe a certain convergence of legal rules which regulate the transition from aliens to citizens. However, major differences in national approaches to immigrants' inclusion as citizens are likely to remain across Western Europe as well as between European and non-European countries immigration.

This article is a revised and expanded version of a paper presented at the conference From Aliens to Citizens held in Vienna in November 1993 and jointly organized by the Institute for Advanced Studie, the Wiener Integrationsfonds and the European Centre for Social Welfare Policy and Research. It is also published in Rainer Bauböck (ed.) (1994), From Aliens to Citizens - Redefining the Status of Immigrants in Europe, Aldershot:Avebury.

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1. Introduction

Legal rules of attribution and/or acquisition of citizenship have been modified in several Western European countries since the beginning of the 1990s. Changes were characterised by the introduction of entitlement to citizenship for children of immigrant origin (Germany, Belgium) and increasing tolerance towards dual citizenship (Italy, the Netherlands, Switzerland) in discretionary naturalisations. In Germany, further modifications are under discussion in favour of dual citizenship and special provisions for children born in the country. At the same time, the automatic attribution of citizenship on reaching majority to children born and living in France was abandoned; the required period of residence before application can be made was raised for non-EU citizens (Italy) and for foreigners married to a national (Belgium, France).

Taking as a starting point prior research on the issue of immigration and citizenship policies, this article aims to analyse the legal rules which regulate access to citizenship and to present related data.¹ The first part is concerned with the general conditions of citizenship acquisition and the intergenerational transmission of citizenship in nine European and three non-European countries of immigration. These are: Austria, Belgium, France, Germany, Italy, the Netherlands, Sweden, Switzerland, the United Kingdom and Australia, Canada, the United States of America. The second part delivers an overview of the long-term effects of different patterns of citizenship policies on the inclusion of immigrant populations as citizens. I will argue that despite modifications of legal rules regulating the transition from aliens to citizens since the beginning of the 1990s, diverging definitions of citizenship and nationhood as well as diverse national approaches to immigrants' inclusion as citizens are likely to remain across Western Europe.

2. General Conditions of Citizenship Acquisition

In all of the countries surveyed here a certain *period of legal residence* is crucial for the acquisition of citizenship by discretionary naturalisation. Being lawfully admitted for *permanent residence* may be a precondition, too. This is the case in the three overseas immigration countries of Australia, Canada and the United States. Similarly, a person willing to take up British citizenship must have had indefinite leave to remain in the country at the time of application. In eight out of the twelve countries surveyed, regular residence of up to 5 years is sufficient to apply for naturalisation. The shortest waiting period before an application can be made exists in Australia (2 years). A long waiting period of 12 years can be found in Switzerland and one of 10 years in Austria, Germany, and, since 1992, Italy.

Until 1992, Belgium had a rather unique policy of granting full citizenship rights after a total of 10 years of residence by a two-stage naturalisation process. The distinction between *naturalisation ordinaire* and *grande naturalisation* was cancelled in 1992 and the required period of residence was reduced from 10 to 5 years. For the time being, a reduction of the required period of residence is under discussion in Germany. Italy,

¹ The analysis of legal rules and naturalisation data is based on a study carried out at the Department of Political Science of the Institute for Advanced Studies (Vienna). The study was supported by the Fonds zur Förderung Wissenschaftlicher Forschung and coordinated by Rainer Bauböck. Kurt Pratscher was responsible for the processing of the data. The project countries were Austria, Belgium, Germany, Italy, France, the Netherlands, Switzerland, Sweden, the United Kingdom as well as Australia, Canada and the United States of America.

where in 1992 the residence requirement was raised from 5 to 10 years, is an exception to this trend.

Language proficiency and *being of good character* are common requirements to be met in addition to legal residence in the country. If the meaning of good character is not specified at all (United Kingdom), authorities are left with a wide margin of interpretation (de Groot 1989:109). Provided that the requirement of a 'good character' means that an applicant should not have been convicted of an offence², this condition is applied in all of the project countries. Being of good character may furthermore imply not being a threat to public order and security, not being under a deportation order or not having been expelled from the territory. A long list of persons who cannot be considered as being of good moral character exists in the United States: a) habitual drunkards; b) polygamists, persons connected with prostitution or narcotics, criminals; c) convicted gamblers, persons getting their principal income from gambling; d) persons who lie under oath to gain a benefit under the immigration or naturalisation laws, and, e) persons convicted and jailed for as much as 180 days. The list also includes persons who have been members of or have been connected with the Communist Party or a similar party within or outside the United States.³

In the majority of the countries surveyed here, foreigners willing to take up citizenship are required to have some *knowledge of the language* or one of the national languages of the naturalising country. According to the Austrian, Italian and Swedish law, language proficiency is not a condition of naturalisation. In Sweden, this practice seems now to be contested by the Immigration Board which requires an investigation into the issue of language proficiency.⁴ Knowledge of the national language may in individual cases be an important condition for acquiring Austrian citizenship. Moreover, in one Austrian province, applicants are required to write an essay in German and to read a text and repeat it (Gächter 1994:176).

The criterion of language proficiency is neither explicitly mentioned by the Swiss law. Since Swiss cantons may specify conditions of eligibility for naturalisation other than those laid down by the *Schweizer Bürgerrecht*, the criterion of language proficiency is invoked by many Swiss cantons in practice (de Groot 1989: 170). Besides an applicant's knowledge of the national language, his/her knowledge of the rights and privileges of citizens (Australia) or of the political order and history of the country (Canada, USA) may also be tested.

Naturalisation procedures expressly based on a double requirement of language proficiency and *integration or assimilation* exist in Belgium, Germany, Switzerland and France. In contrast with these countries, the requirement that an applicant should be integrated into society is clearly defined in the Netherlands as the ability to communicate in simple Dutch (de Rham 1990:167). In Belgium, Germany and Switzerland language proficiency is one of the conditions of integration/assimilation. In Belgium authorities have to assess whether an applicant's will to integrate is sufficient. In addition to knowledge of one of the national languages an applicant should have social ties with Belgium (de Groot 1989:51).

2 In Sweden, only serious offences are taken into account. According to a recent proposal by a government commission, applicants should be obliged to commit themselves to good behaviour today and in the future. Additionally, applicants with a criminal record shall be required to live longer in Sweden before naturalisation can occur (MNS133/94-04:8).

3 See *Naturalisation Requirements and General Information issued by the U.S. Department of Justice, Immigration and Naturalisation Service* (1989).

4 See Sweden - SOPEMI Report 1993.

Knowledge of French is the most important criterion of assimilation into French society (de Groot 1989:91).

More strict criteria of integration or assimilation are applied in Switzerland and Germany. An applicant's 'suitability' for naturalisation has to be investigated by the Swiss authorities. The notion of 'suitability' was partly specified along with the amendment of the Schweizer Bürgerrecht in 1991. Accordingly, integration (*Eingliederung*) in Swiss society and familiarity with the Swiss way of life, customs and habits are important preconditions of the suitability for Swiss citizenship. Similarly, integration (*Einordnung*) in the German way of life, a voluntary and lasting affiliation (*Hinwendung*) to Germany, knowledge of the political order and loyalty to the constitutional order of Germany are conditions to be met by applicants who are admitted to citizenship by discretionary naturalisation.

In addition to this, and in contrast to all other countries, discretionary naturalisation is seen as an exceptional event in Germany, i.e. fulfilling general naturalisation requirements is necessary but not sufficient since discretionary naturalisation depends on a public interest (de Groot 1989:64). Such an interest is taken for granted in the case of foreigners married to German citizens. Since 1991, it has been assumed that in the case of long-term residents and young foreigners living in Germany there is also a public interest in the naturalisation of such persons.⁵

Until recently, in many European countries admission to citizenship by discretionary naturalisation was conditioned upon renunciation of the previous citizenship. In 1992, Italy, the Netherlands and Switzerland moved away from the principle of avoiding dual citizenship, thus the group of countries where naturalising persons may retain their previous citizenship has now become larger. Out of the member states of the 1963 Strasbourg Convention on the Reduction of Cases of Multiple Nationality, the formal requirement of renunciation still exists in Austria, Germany, Sweden and Luxembourg (Hailbronner 1992:62). However, a great number of exemptions are made in the administrative practice in Sweden - about half the annually naturalised persons are allowed to retain their previous citizenship (Hammar 1990:123). When Swedish citizenship is granted by option, the renunciation requirement is not invoked at all (Hailbronner 1992:50).

In Germany, the toleration of dual citizenship has been debated several times throughout the last decade. The significance of the principle of avoiding dual citizenship has been gradually diminishing since the mid-1980s. This development is due, first, to the increasing number of children born from mixed marriages – many of whom acquire the citizenship of both parents. Second, *Aussiedler* (ethnic Germans) acquiring German citizenship as a right are not obliged to give up their previous citizenship. Third, there are several provisions in the administrative guidelines of 1977 which define exceptions to the renunciation requirement, also with regard to discretionary naturalisation. The emergence of dual citizenship may be tolerated if, as in the case of immigrants from Greece, the country of origin generally refuses to release its citizens from their original citizenship. Finally, several Länder, but principally Berlin, made, in recent years, greater use of the exceptions concerning the retention of one's previous citizenship when naturalising in Germany. In 1991, 10 out of 192 citizens from Greece renounced their previous citizenship; the remaining 95% were allowed to retain it. In the same year, 3,502 Turkish citizens were

⁵ See *Das neue Ausländerrecht der Bundesrepublik Deutschland*, issued by the Ministry of Interior, p. 29.

naturalised, of whom two thirds (2,366) could keep their Turkish citizenship.⁶

There are roughly 1,2 million persons who hold both a German citizenship as well as that of another country. However, when the new Aliens Act was passed in 1990, the German Government argued that the requirement regarding the renunciation of one's previous citizenship still remained indispensable. According to official reasoning, laid down in the explanatory comments on the Aliens Act of 1990, serious and persistent efforts to renounce a previous citizenship are a decisive sign of loyalty towards Germany.⁷

The number of dual citizens might, nevertheless, continue to increase since, according to § 87 of the Aliens Act of 1990 which regulates the facilitated naturalisation of long-term immigrants and of young foreigners, dual citizenship may be tolerated in several cases. Thus, to maintain the principle of avoiding dual citizenship by the German Government seems to be a public affirmation of the exclusiveness of membership in the German nation-state rather than an attempt to avoid serious problems caused by dual citizens.

Usually, the majority of applicants who fulfill the general naturalisation requirements sketched out above are admitted to citizenship through a discretionary naturalisation procedure. Again, Germany provides an exceptional case. In 1991, roughly 80% of all naturalised persons acquired German citizenship as a right. In the same year, out of 141,630 people who were granted German citizenship only 27,295 were discretionary naturalisations. Compared to 1981 the annual rate of citizenship acquisition rose from 0.8% to 2.4% in 1991. However, this rise is due to the naturalisation of German Aussiedler (ethnic Germans from Central and Eastern European states) who enjoy an unconditional right to German citizenship if they can prove their ethnic German origins.

Since 1991, there have been two other major groups which enjoy the right to acquire German citizenship. According to the Aliens Act of 1990, long-term residents⁸ are 'in general' entitled to acquire German citizenship if certain conditions are met. In July 1993, this general entitlement (*Regelanspruch*) has been strengthened. Since then, immigrants who have been residing in Germany for at least 15 years enjoy a legal claim to acquire German citizenship (*Rechtsanspruch*) if they have sufficient private income, give up their previous citizenship and are not convicted of a crime. The second group which enjoys a legal claim to German citizenship are young foreigners living in Germany. After 8 years of residence and 6 years of attending school in the country, they are entitled to acquire German citizenship if they apply between the ages of 16 and 23. Additional conditions to be met are not to be convicted of a crime and the renunciation of one's previous citizenship.

Although an explicit right to citizenship of all eligible applicants exists nowhere, the administrative practice in the non-European immigration countries and in Sweden comes close to the principle of entitlement (Brubaker 1989:109). Yet the most unfavourable combination of criteria is in procedures that could be called dual discretionary. If conditions such as

6 See *Mitteilungen der Beauftragten der Bundesregierung für die Belange der Ausländer*, p. 14.

7 See *Das neue Ausländerrecht der Bundesrepublik Deutschland*, p. 31.

8 Long-term residents are entitled to citizenship in Austria, too. After at least 30 years of residence, and if general naturalisation requirements are fulfilled, Austrian citizenship is acquired as a right upon application. In 1991, 91 persons were granted Austrian citizenship as a right after at least 30 years of residence (Findl, 1992:765).

integration, assimilation, proof of loyalty, etc. are added to the requirement of a certain time of residence, authorities can use their discretion in two ways. First, even when the applicant meets all criteria, there is no obligation to grant citizenship. Secondly, in assessing whether the applicant meets, for instance, the criterion of a sufficient will to integrate, authorities have a wide margin of interpretation. The second aspect shows that a legal claim to acquire citizenship may not necessarily be a guarantee for easy access to naturalisation if conditions to be met are unspecified or unduly demanding.

2.1. Facilitated Naturalisation

There are certain categories of persons exempted from general naturalisation requirements in all countries. The first group includes cases in which all conditions of naturalisation may be dispensed with. Special services to the state or nation is the most common criterion leading to an unconditional admission to citizenship. In Austria, there is a rather unique provision that foreign university professors are naturalised upon accepting a chair and entering the broadly defined Austrian civil service for which Austrian citizenship is generally required. The second group includes certain categories of foreigners *partly* exempted from general naturalisation requirements, such as refugees granted asylum, former citizens and their descendents, citizens of former colonies, and Nordic citizens in Scandinavia. In the case of foreigners belonging to one of these categories, usually, the time of residence required is reduced. Citizens of the European Union living in Italy may acquire citizenship after 4 years of residence. Nordic citizens living in Sweden may naturalise after 2 years of residence and after 5 years of residence they are entitled to acquire Swedish citizenship by simple declaration (de Rham 1990:161). In the Netherlands, the requirement of 5 years residence before application is reduced to 2 years if a foreigner has lived in the country for a total of 10 years. In Austria, a foreigner may be naturalised after 4 years of residence, if there are conditions deserving special consideration.⁹ In certain cases, residence requirements may be waived altogether. The latter is the case in France for parents of three or more children under the age of majority (de Groot 1989: 90). In Austria, minors are exempted from the general residence requirement.

In countries where renunciation of one's previous citizenship is a precondition of naturalisation, political refugees (Austria, Germany, Sweden) and persons acquiring citizenship by option or declaration (Sweden) may retain their previous citizenship. Certain categories of persons may be exempted from the need to have an adequate knowledge of the language. A person over 50 years of age may become a citizen in Australia and the United States even though she does not have a sufficient knowledge of English. Spouses of citizens are exempted from the condition of language proficiency in the United Kingdom and Australia.

With the exception of Canada and Australia, access to citizenship is explicitly made easier by special legal provisions for persons married to a citizen. In some countries, persons married to a citizen have an optional entitlement to citizenship (Austria, Germany, Belgium, France, Italy). In other countries, they may acquire citizenship through facilitated but still discretionary naturalisation (Sweden, Switzerland, the Netherlands). In Italy

⁹ What counts as a condition deserving special consideration is not specified by the law; in the case of minors it is unclear whether minority itself is a condition deserving special consideration or not (Thienel 1990: 206ff).

and Germany, persons married to a citizen and entitled to citizenship have to meet even stricter conditions. Italian law mentions two reasons for denial of naturalisation: being a threat to national security and being convicted of certain crimes. However, this rule is specified only with respect to applicants married to an Italian citizen, although a person seen as a threat to national security is unlikely to be granted citizenship at all. In Germany, the condition of renouncing one's previous citizenship is explicitly mentioned by the law only with respect to foreigners married to German citizens and has to be applied more strictly in this case (Hailbronner 1992:12).

The general residence requirement for foreigners married to a citizen is reduced to 3 years in Belgium, the Netherlands, Sweden, and the United States. In Canada and Australia, in some cases, foreign spouses of citizens may be exempted from the general residence requirement of 3 and respectively 2 years. In Austria, there are different residence conditions depending on the duration of the marriage or residence. A person married to an Austrian citizen for at least 1 year may apply for citizenship after 4 years of residence or 2 and 3 years respectively. After 5 years of marriage, naturalisation is independent of the period of residence in Austria if the spouse has been holding Austrian citizenship for at least 10 years. The shortest period for which the foreign spouse of a citizen must have been resident is 6 months (Italy), the longest one is 5 years (Germany and Switzerland). Recently, the period the foreign spouse of a citizen must wait before application has been extended to 2 years in France and 3 years in Belgium (MNS 127/93:11). The 2 year period is waived if a child is born to the couple in France either before or after the marriage (Simmons 1994:15). Apart from family members of citizens by descent, the spouse and children under the age of majority of a foreigner may partly be exempted from the general requirements of naturalisation when application for naturalisation is made simultaneously. In Austria, family members of a foreigner admitted to citizenship enjoy a legal claim to acquire Austrian citizenship upon meeting the general conditions of naturalisation. In Belgium, France, the Netherlands and Italy children under the age of majority follow the naturalisation of their parent(s) automatically.¹⁰ The Swiss law states that in general children under the age of majority should be included in the naturalisation of the parent(s). In Sweden, the Central Office for Foreigners decides whether minors shall be granted citizenship along with their parent(s).

The rules regulating the transition from the status of alien to citizen which have been reported so far are concerned with the naturalisation of the first generation of immigrants and their family members. Conditions of access to citizenship for the first generation are similar in Australia, Canada and the United States. They differ much more across Western European countries. In the following chapter, I will give a brief overview of the provisions of the admission to citizenship with respect to subsequent generations.

2.2. Intergenerational Transmission of Citizenship

Although the prevalence of the *ius sanguinis* tradition in continental Europe still makes for a strong contrast with North America and Australia where *ius soli* is the basic rule of transmission, a number of European countries have modified *ius sanguinis* to some extent by introducing the criterion of birth

¹⁰ This is the case in Italy if the child is living together with the naturalising parent. In the Netherlands, the parent(s) and children above 12 years of age are asked for their opinion on this matter.

and/or prolonged residence in the territory in order to facilitate access to citizenship for children of immigrant origin. According to the principle of *ius soli*, citizenship is automatically attributed to the first generation born to non-citizen parents in Australia, Canada, the United States and the United Kingdom by virtue of birth in the territory. This rule is applied unconditionally in the United States, whereas in Australia, Canada and the United Kingdom one of the parents must be 'settled' at the time of the birth of the child.

If a child born in Australia or the United Kingdom cannot acquire citizenship at birth because neither of the parents is a permanent resident, there are additional provisions assuring a subsequent acquisition of citizenship prior to the age of majority. If one of the parents becomes 'settled' after the birth of the child in the United Kingdom, the child may be registered as a British citizen. Otherwise, the child who has been continuously residing in the country since birth may acquire British citizenship by registration after reaching the age of 10 even if neither parent is 'settled'. Similarly, a child born in Australia acquires Australian citizenship *automatically* on reaching the age of 10 - independent of the residential status and citizenship of the parent(s).

Combining *ius soli* and *ius domicili*, the French law entitles the first generation born in its territory to the acquisition of citizenship on reaching majority. This rule was one of automatic ascription before the change of the law in 1993, i.e. French citizenship was automatically attributed to children born in France provided that they had lived there during the 5 years prior to their eighteenth birthday and had not explicitly rejected acquisition of French citizenship before reaching majority. Along with the modification of Article 44 of the French law in 1993, children born in France¹¹ to non-citizen parents and fulfilling the condition of 5 years residence have to make a declaration of intent in order to acquire French citizenship between the ages of 16 and 23. The French Government may challenge the acquisition of French citizenship by young foreigners who satisfy the above requirements if they have been convicted of certain offences or are subject to a deportation order (Simmons 1994:14).

The new French legislation introduced another change that might have more important effects on the naturalisation of children under the age of majority. The hitherto existing right of foreign parents to demand naturalisation for their children born in France - even when they themselves do not naturalise - was abandoned in 1993. According to this rule, the number of children acquiring French citizenship prior to the age of majority was 14,383 in 1992 (see Appendix table 3). Annually, more than 50,000 children born in the territory have so far become French citizens at birth or on reaching majority (Bernard 1993:798). Notwithstanding the modification of the French legislation in 1993, entitlement to citizenship by virtue of birth and residence is still typical for the inclusionary approach of France.

A similar option to acquire citizenship by declaration upon reaching majority exists in Italy and the Netherlands. Children born in the country and who have been residing there since birth acquire Italian or Dutch citizenship by declaration within one year after reaching majority (Italy) or between the ages of 18 and 25 (the Netherlands). In Belgium, there are several provisions which are also based on a combination of *ius soli* and *ius domicili* for the first generation born in the territory. The birth of a child to

¹¹ According to the new legislation children born in France after 31 December 1993 to a parent born in Algeria before the date of independence will acquire French citizenship at birth only if the Algerian parent has been living in France for 5 years. For an overview of the new provisions concerning the attribution of French citizenship to children of citizens of former colonies or overseas territories see Simmons (1994).

non-citizen parents and its continuous residence both lead to acquisition of citizenship, if the parent(s) fulfill certain residence conditions and make a declaration¹² before the child is 12 years old. A child born in Belgium who cannot acquire citizenship according to this rule is entitled to take up Belgian citizenship later on. The condition to be met is continuous residence in Belgium since birth. A declaration to be made between the age of 18 and before reaching the age of 30 is sufficient to test the will to integrate (CIFE 1993:14). A person born in Belgium, however, not fulfilling the condition of continuous residence since birth may acquire Belgian citizenship by option¹³ between the ages of 18 and 21.

According to the principle of *double ius soli*, the second generation born in the territory to non-citizen parents acquires citizenship at birth in France, the Netherlands, and since 1992, in Belgium if one of the parents was born in one of these countries. In the Netherlands, this rule is applied only if one of the parents of the child has been born to a mother living in the Netherlands at the time of birth (de Groot 1989:131). A child born a French national according to double *ius soli* may renounce French citizenship six months before reaching majority provided that only one of the parents is born in France. If both of the parents were born in France, the right to renounce French citizenship is lost. Since 1992, Belgian citizenship has been automatically attributed to the second generation born in the territory. Before the recent change in the law, children acquired citizenship according to double *ius soli* only by declaration made by the parent(s) on behalf of the child before the age of 12.

In countries where the principle of *ius sanguinis* still prevails, children of immigrant origin are born as 'citizens' on the condition that one of their parents holds the citizenship of the country of immigration. This is the case in Austria, Germany, Sweden and Switzerland. However, in Sweden and in Germany since 1991 the criterion of regular residence (*ius domicilii*) replaces the criterion of birth in the territory (*ius soli*). Children raised in Sweden acquire citizenship by simple declaration between the ages of 21 and 23 if they have been continuously residing in Sweden since their sixteenth birthday and have been living there for five years before that date. The requirement of renunciation of one's previous citizenship is not invoked in these cases (Hailbronner 1992: 50). As mentioned above, in Germany young foreigners are entitled to acquire citizenship by virtue of residence and education in the country if they apply between the ages of 16 and 23. Finally, foreign children who have lived in Belgium for at least 1 year together with their parent(s) before reaching the age of 6 have an optional entitlement to citizenship between the ages of 18 and 22 and meet further conditions of residence for citizenship acquisition by option.

Austria and Switzerland are the remaining examples of countries where children born and/or raised in the country have no entitlement to citizenship if not at least one of the parents is a citizen by descent or naturalisation. In Austria, minority is listed as a reason for facilitated (discretionary) naturalisation of foreign children without reference to either birth or previous residence in the territory. Unlike in Switzerland, children under the age of majority still have to give up their previous citizenship in order to be granted citizenship in Austria or Germany. In Switzerland, the years a person has lived in the country between the ages of 10 and 20 are

12 The non-citizen parents must have been resident in Belgium for at least ten years before the date of declaration.

13 Conditions to be met in order to acquire Belgian citizenship by option are: (1) application between the ages of 18 and 22; (2) residence in Belgium for at least 12 months prior to the application; (3) residence in Belgium between the ages of 14 and 18 or for a total of 9 years.

counted twice in calculating the total of 12 years residence. In both countries, children born and/or raised in the country have to apply for admission to citizenship at the discretion of the authorities.

3. The Inclusion of Immigrant Populations as Citizens

During the last decade important changes have been implemented in the legislation concerning the attribution and acquisition of citizenship in several Western European countries. Legal amendments have been related to the general conditions of naturalisation and modes of citizenship attribution. The naturalisation of first-generation immigrants and their family members has been made easier by reducing the required period of residence (Belgium), by allowing the retainment of one's previous citizenship (Netherlands, Italy, Switzerland) or by introducing a right to citizenship for long-term immigrants and their descendents (Germany). The most important step towards the facilitation of the inclusion of immigrant populations as citizens was taken by gradually abandoning the requirement of renouncing one's previous citizenship. The availability of dual citizenship has now become a matter of course in Western Europe.¹⁴

Attempts to modify the prevailing rules of admission in order to facilitate the inclusion of immigrants as citizens have not been successful everywhere. Although several surveys carried out during the 1980s revealed that more immigrants would be interested in German citizenship if dual citizenship were available (Hammar 1990:96; de Rham 1990:170), the ban on dual citizenship was not removed by the Aliens Act of 1990. In Switzerland, the facilitation of the naturalisation of children of immigrant origin was rejected in two referenda in 1983 and once again in 1994. Developments of the last decade have also entailed restrictions in the field of citizenship policies. In the United Kingdom, the British Nationality Act of 1981 defined British citizenship for the first time and restricted the unconditional application of the principle of *ius soli* in the territory of the United Kingdom and its Colonies. Acquisition of British citizenship as a right by foreigners married to a citizen was replaced by a discretionary procedure. Several classes of British citizens with different rights were created which led to considerable and lasting confusion on the effects of the new legislation (Layton-Henry 1993:13f).¹⁵ With respect to foreigners married to French citizens and to subsequent generations born in the country, legal reform has been on the French political agenda during the last decade, too. The automatic attribution of French citizenship at majority was said to be undermining the basic concept of citizenship by consent and voluntary membership in the French nation-state. The automatic attribution of citizenship was questioned because children of immigrant origin, especially North Africans, were suspected of lacking the will to assimilate and identify with France (Brubaker 1992:148ff). Finally, in 1993 the French practice of turning children born in France automatically into citizens was modified by requiring a declaration in order to be granted citizenship at majority.¹⁶

It is tempting to see these modifications in citizenship policies as part of a process of harmonising widely diverging rules in an area that has always been regarded as entirely within the scope of national sovereignty

¹⁴ Austria, Germany and Luxembourg are exceptions in this regard.

¹⁵ For a detailed discussion on the historical evolution of British legislation on citizenship see Dummet/Nichol (1990).

¹⁶ For an analysis of the success and failures of the opposition regarding restrictions of access to citizenship for children born in the territory see Wayland (1993).

and determined by divergent national traditions. There is in fact a certain convergence of citizenship policies among Western European immigration countries. Formerly expansive citizenship policies were strengthened in some countries whereas restrictive rules of transition were liberalised in others.

It seems that Western European immigration countries have come closer to each other now. Yet this process is, first, somewhat ad hoc and there is no evidence of purposeful harmonisation (Butt Philip 1994:187). Second, considerable differences with respect to the long-term inclusion of immigrant populations as citizens are likely to remain. Thus, the cautious German reforms so far are unlikely to change much about the transmission of alien status from one generation to the next. This seems to be true in the case of France, too, where in spite of a tightening of rules, most children of immigrants and their grandchildren are still admitted to French citizenship by virtue of being born in the country. In other words, the likelihood that even a third or fourth generation born in the country is of foreign citizenship is much higher under German as well as Austrian and Swiss regulations.

Although there are problems of comparability in the figures, a look at the data is useful to get an idea of the effects of different citizenship policies on the inclusion of immigrants as citizens. As indicated in table 5 and 6, (see Appendix) generally, the percentage of naturalised immigrants is the highest in countries where access to citizenship is easy in terms of (1) a short waiting period, (2) the certainty of being granted citizenship, (3) objectivity and appropriateness of requirements with respect to different groups of immigrants and (4) the availability of dual citizenship. Accordingly, the highest naturalisation rates are recorded in Australia, Canada, Sweden and the Netherlands. In these countries, early availability of citizenship is seen as a measure to facilitate the integration of immigrants (at least formally) as equal members of the state. Thus, conditions to be met by applicants are more precisely defined, legal residence being the most important criterion. However, the link between integration and citizenship acquisition is still constructed in the opposite way in Austria, Germany and Switzerland.

Similarities and differences in national approaches become manifest when the rate of citizenship acquisition is related to immigrants' duration of stay in the country. The percentage of all overseas-born persons who have been living in the country for more than 2 years and who have been holding Australian citizenship was 64.7% in 1986 (see Appendix table 6). More than 50% of foreigners born outside Sweden had already been naturalised by the end of 1992. Roughly half of the foreign born population were French citizens in 1990 (de Wenden 1994:94). The analysis of the naturalisation records of the immigration cohort of 1977 by the U.S. Immigration and Naturalisation Service revealed that 'only' 37% of all immigrants admitted in 1977 for permanent residence had been naturalised by 1991. Annual rates of citizenship acquisition for the first-generation of immigrants are, however, much lower in some Western European countries even if many immigrants fulfill the general residence requirement. The rate of naturalisation among immigrants with at least 10 years of residence in Germany was, for instance, only 0.4% in 1985 (Fleischer 1987:51).

Extremely diverging naturalisation records of immigrants living in different immigration countries support the idea that citizenship policy still is "a more important factor in determining citizenship acquisition than the propensity to naturalise of particular national groups" (de Rham 1990:183). In 1991, the rate of non-citizens taking up Swedish citizenship was two times higher than in Austria and France and 10 times higher than in Germany. Since the mid-1980s differences between Western European

countries have become even larger especially when checking for selected nationalities. In 1991, immigrants from former Yugoslavia had naturalisation rates of about 7% (1992:10%) in Sweden and 0.4% in Germany; for Turks the corresponding figures were 5.1.% (1992:5.9%) and 0.2%. In the Netherlands, the rate for Turks increased between 1986 and 1992 from 0.9% to 5.4% and for ex-Yugoslavs from 2.5% to 5.7%. In Germany the rates for Turks rose from 0.1% in 1986 to 0.2% in 1991 and those for immigrants from former Yugoslavia dropped from 0.4% to 0.3% during the same period.

Apart from the impact of more or less abundant sets of pre-conditions for naturalisation on the propensity of immigrants to apply for citizenship¹⁷, the public promotion, and encouragement, of naturalisation is also decisive: 1989 was designated the Year of Citizenship in Australia which involved a publicity campaign and measures to facilitate naturalisations by encouraging qualified immigrants to apply for Australian citizenship. The Year of Citizenship led to an increase in naturalisations “indicated by the 119,140 persons granted Australian citizenship in calendar year 1989, up 47 per cent on the previous year” (BIR 1990:3). Similarly, the highest proportion of immigrants which take up citizenship is found in Canada where the Government actively promotes naturalisation (Brubaker 1989:110). There is further evidence which supports the notion that public promotion of citizenship acquisition can be conducive to higher rates of naturalisation.

In Austria, where the administration of applications for naturalisation is in the hands of the provinces, Vienna broadened access to citizenship in 1989. The list of requirements for facilitated naturalisation was enlarged in August 1989. Since then, naturalisation after at least 4 years of residence is possible upon meeting one of the following conditions deserving special consideration:

- 1) uninterrupted and satisfactory employment or self-employment for at least 4 years
- 2) a close family member holding Austrian citizenship
- 3) the applicant lives together with her/his family in Vienna and her/his children attend school there

In 1991, 38% of all foreign citizens lived in Vienna where the naturalisation rate was 4.1% in that year. In the rest of Austria the corresponding rate for the remaining 62% of all non-citizen residents was only 1% (Findl 1992:769). The number of persons granted Austrian citizenship significantly increased between 1981 and 1991, whereas in seven out of nine Austrian provinces the number of persons granted citizenship declined in the same period. In Vienna, the annual number of naturalised persons has doubled since 1989, and, notwithstanding increasing numbers of foreign residents, naturalisations continue to increase in Vienna in both absolute and relative terms. The case of Austria also reveals the importance of the area of residence and the related administrative practice with respect to immigrants' naturalisation records.

The most important discrepancy among national regulations, however, lies in the basic rules regulating access to citizenship for children of immigrant origin independent of their parents' citizenship. Thus, there is a major difference between countries with similar low naturalisation rates for the first generation of immigrants. In contrast to countries with special provisions related to subsequent generations' access to citizenship (see Appendix table 4), the great majority of the children born and/or raised in

¹⁷ For a detailed discussion on immigrants' propensity to naturalise see chapter 4 in Bauböck (1994).

the country remain aliens if legal rules regulating the transition from aliens to citizens are solely based on *ius sanguinis*.

As Rogers Brubaker's broad comparative analysis of the French and German citizenship policies revealed, "ascription constitutes and perpetually reconstitutes the citizenry; naturalisation reshapes it at the margins. The striking difference in the civic incorporation of immigrants in France and Germany is chiefly a consequence of the diverging rules of ascription. Differing naturalisation rules and rates reinforce this difference but are not its fundamental source' (Brubaker 1992:80f). The long-term exclusion of immigrant populations from citizenship rights is, thus, only partly due to restrictive rules and/or the low propensity of immigrants to apply for citizenship. Even if the proportion of naturalising first-generation immigrants remains relatively low, a persistent incongruency between (social) membership and citizenship may be avoided by hindering the transmission of the status of aliens to descendants of immigrants. Although naturalisation rates for the first-generation are comparatively low in the United States, the United Kingdom and France, the exclusion of the immigrant population from citizenship is not indefinite because of the attribution of citizenship to children born and/or raised in the country. Low naturalisation rates within the first generation of immigrants may be compensated for by the application of additional rules based on the principle of *ius soli* and/or *ius domicili* which regulate access to citizenship for children of immigrant origin (Brubaker 1992:77ff). Accordingly, one of the major changes in citizenship policies during the last decade was the modification of the prevalence of *ius sanguinis* by several Western European countries faced with large-scale immigration in the postwar period.

However, the idea that successful integration is the basic precondition of admission to citizenship, irrespective of one's country of birth and residence, is still typical of some Western European countries. As long as citizenship is attributed according to the principle of *ius sanguinis* the great majority of subsequent generations born as non-citizens in Austria and Switzerland are likely to remain placed "outside the structure of state membership" (Collins 1993:106). Moreover, under such conditions, changes in immigration rules may entail dramatic consequences for children of immigrant origin. This was the case in Austria in 1993: The legal framework regulating the entry and residential status of so-called 'guestworkers' was profoundly modified by the Austrian Government in 1991 and 1992. Apart from the revision of existing legislation, a new Residence Law (*Aufenthaltsgesetz*) came into force in July 1993. The new legislation caused several difficulties for local authorities and immigrants living in Austria. One of the problems to be tackled was the residential status of children born in Austria to non-citizen parents.

Due to the provisions of the Residence Law it was not clear whether *birth in Austria* should be classified as *family reunification*, which is subject to the quota and requires an application from abroad. In this case, children born in Austria would have to return to the 'home country' and make an application for admission in order to re-enter their country of birth. Secondly, approximately 10,000 children are born in Austria to non-citizen parents per year¹⁸, but the maximum number of family members to be admitted within the first 12 months following the enactment of the Residence Law was limited to 5,000. Thus, the new quota system gave rise to considerable administrative confusion, and, during the summer of 1993, authorities were urged from many sides to abandon the numerical limitation of initial

18 In 1992, 11,583 foreign children were born to non-citizen parents in Austria (ÖSTAT, 1993).

residence permits to be issued for newly entering family members and for children born in the country to non-citizen parents. However, the Ministry of Interior reacted by introducing a separate quota for 'newcomers', i.e. children born in Austria to non-citizen parents. After this change, the public attention the residential status of these 'newcomers' had attracted came to an end. Remarkably, the Austrian Citizenship Law, based exclusively on the principle of *ius sanguinis*, was not a topic of the discussions about the legal status of immigrants' children born in the country. In contrast to Austria, a proposal aimed at facilitating the naturalisation of children of immigrant origin was put to the vote in a Swiss referendum in June 1994. According to the proposed regulation, young foreigners would be entitled to acquire Swiss citizenship between the ages of 15 and 24 on condition that they have attended a Swiss school for at least 5 years. An estimated number of 140,000 young foreigners would profit from this regulation. However, the proposal was rejected in the referendum (MNS 128/93:9; MNS136/94:8).

Although analysis of legal rules and naturalisation rates may yield strong arguments for policy adaptations in Austria, Germany and Switzerland, in evaluating citizenship policies, new patterns of mobility and membership also have to be taken into account. Thus, a more global perspective would make evident that under conditions of rapid globalisation, traditional approaches concerning national affiliations and cultural identities become inadequate. When spatial distances can be overcome at a marginal cost regarding time and money, migration is no longer a one-way street which inevitably entails cultural assimilation and naturalisation but allows for a persistent maintenance of bonds and commitments. One can therefore conclude that the general necessity of abolishing assimilation and integration requirements still prevails in several Western European countries. In the course of European integration, the requirement of the exclusiveness of membership in, and of loyalty towards, one, and only one, nation-state is also increasingly becoming obsolete. This applies to immigrants as well as to citizens by descent and it is this development which raises questions that reach far beyond naturalisation.

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Appendix

Table 1:
General conditions of discretionary naturalisation by virtue of residence
in selected Western European countries

Table 1 (continued) :
Discretionary naturalisation by virtue of residence

Table 2:
Grants of German Citizenship by Country of Origin, 1991

Country of Origin	Foreign Population	Grants of German Citizenship by discretion	as a right
Greece	336,893	192	2
Italy	560,090	634	45
Portugal	92,991	69	13
Spain	135,234	97	10
Former Yugoslavia	775,082	2,164	668
Turkey	1,779,568	3,502	27
Poland	271,198	2,328	25,318
Romania	92,135	239	28,772
Former CSFR	46,702	1,746	557
UdSSR	52,833	724	54,896
Hungary	56,401	410	768
All Countries	5,882,267	27,295	141,630

Source: Statistisches Bundesamt

Table 3:
Grants of French citizenship, 1988-1992

<i>By kind of regulation</i>	<i>1988</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>
<i>Discretion</i>					
1. Naturalisation	16,762	19,901	20,827	23,177	22,792
2. Readmission	2,251	2,961	3,462	3,710	4,205
3. Minors ¹	7,948	10,178	10,610	12,558	12,349
<i>Declaration</i>					
1. After marriage	16,592	15,489	15,627	16,333	15,601
2. During minority ²	9,937	9,711	12,041	13,551	14,383
3. Other reasons	809	1,268	2,409	2,884	2,265
<i>Automatic attribution³</i>					
1. At majority	19,700	22,500	23,500	23,500	23,700
<i>Total⁴</i>	<i>73,999</i>	<i>82,008</i>	<i>88,476</i>	<i>95,713</i>	<i>95,295</i>

Source: Direction de la population et des migrations, Ministère des affaires sociales (1992, 1993).

1 Children under the age of majority following both the naturalisation or the readmission of their parents to French citizenship.

2 By Declaration made by non-citizen parents on behalf of their children born in France. In 1993, this regulation was abandoned.

3 Estimated numbers. Since 1993, a declaration has had to be made.

4 Children born in France with at least one parent born on French territory are excluded. Approximately 20,000 children acquire French citizenship at birth according to double ius soli per year (information by Gérard Moreau, Direction de la population et des migrations).

Table 4:
Citizenship by option or as a right for children of immigrant origin (by virtue of birth and/or residence)

Table 5:
Grants of citizenship and rates of citizenship acquisition in selected
European countries, 1988-1992*

Table 6:
Grants of citizenship and rates* of citizenship acquisition in Australia,
Canada and USA, 1988-1991

Country	1988	1989	1990	1991	%
Australia	81,218	119,140	127,857	118,510	12.0 ¹
Canada	58,810	87,478	104,267	118,630	9.1 ²
USA	242,063	233,777	270,101	308,058	2.3 ³

Source: *INS; BIR; Canadian Citizenship Statistics; own calculations.*

* In non-European immigration countries, available data on immigrants usually refer to the foreign-born population including those who are already citizens of the immigration country. In order to make the rates comparable to the rates calculated for European countries based on non-citizen residents, census data and estimates based on the census were used for Australia, Canada and the USA.

1 The rate of citizenship acquisition is for 1989. The number of non-citizen residents refer to those who appeared to be eligible for citizenship in 1989. The corresponding figure (992,215) is based on the extrapolation of the 1986 Census estimate of eligible *and* non-citizen residents by the Bureau of Immigration Research.

2 The rate of citizenship acquisition is, for 1991, calculated as acquisitions per 100 permanent non-citizen residents.

3 The rate is for 1990 calculated as acquisitions per 100 non-citizen residents.

Table 7:
Immigrants holding Australian citizenship by period of residence, 1986

Period of residence	Overseas born non-citizen residents	Australian citizens by naturalisation	%
3 – 4 years	173.394	67.742	39.1
5 – 9 years	386.927	209.859	54.2
10 – 19 years	858.500	523.294	61.0
20 plus	1.426.083	1.040.506	73.0
Total	2.844.904	1.841.401	64.7

Source: *Bureau of Immigration Research, own calculations.*

Table 8:
Naturalisations of Immigrants Admitted in 1977 (USA)

Country of birth	Immigrants admitted in 1977	Naturalisations through 1990	%
Philippines	31,686	18,849	59.5
China, Mainland	14,421	8,252	57.2
Korea	19,824	10,548	53.2
India	15,033	7,213	48.0
Cuba	57,023	19,246	33.8
United Kingdom	8,982	1,417	15.8
Mexico	30,967	4,679	15.1
Canada	9,000	1,000	11.1
<i>All Countries</i>	392,071	131,705	37.4

Source: *U.S. Department of Justice, INS (1992).*

