

Immigration into a Non-immigration Country: The German Experience

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Summary:

Although empirically being a country of immigration right from the beginning, Germany for a long time had difficulties to accept immigration and integration as vital features of its history. This contribution aims at uncovering and explaining the complex divergence between empirical reality and self-description and argues that the roots of this gap are to be found in the German history of being an incomplete nation-state for a long time. As a consequence of the German partition and the emergence of large Diasporas in the East of Europe, Germany for a long time could not finally finish its nation-building project and thus was obliged to renounce the immigration and integration reality. The German reunification in 1990 and as a corollary the finalisation of the German nation-building project ended this period of self-renunciation. Consequently, normalisation processes started right after the finalisation of the nation-building process in the various realms of society. Two of these normalisation processes, politics and law, are explained in more detail.

If somebody would be asked to summarise the relationship between Germany and immigration with one word, he/she probably best would use one word: “ambivalent”. The ambivalent relationship between Germany and its immigration experience can be best summarised with the sentence: “Germany is not a country of immigration.” This formula is the centre point of the stubborn self-denial of Germany, a country which Dietrich Thränhardt

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(1995) characterised as an “undeclared” country of immigration and which in fact is one of the most important immigration countries of the world. It is not even difficult to supply empirical evidence for this argument: The net migration balance between 1950 and 1993 comes up to 12,6 Million which amounts to 80% of the population growth. The new microcensus of 2005 indicated that 15 million out of 82 million inhabitants have a migratory background, that means are either born abroad or are descendants of parents of whom at least one is not born in Germany. In Germany more fifteen year old youngsters come from families with a migratory background than in the USA. In the group of the kids under six every third has a migratory background. The percentage of foreigners grew from 1.2 per cent in 1961 to 8.9 per cent in 1996 and has since then has remained stable. This empirical snapshot indicates that the self-description of being a non-country of immigration largely conflicts with the empirical reality and thus needs to be further explained. Before going into detail and discovering the foundations of Germany’s self-description of being a non-country of immigration it is necessary to give an overview of the different relevant immigration strands in Germany after the Second World War.

The first group that needs to be mentioned is the group of expellees, refugees and ethnic Germans after 1945. This group nowadays is mainly forgotten, but nevertheless appeared to be very relevant. Between 1945 and 1961 (the year of the construction of the Berlin Wall) more than 12 million Germans entered the territory of what became in 1949 the Federal Republic of (West) Germany. In 1950 one-fifth of the population in West Germany were refugees and expellees. So the federal republic of Germany actually was right from the beginning a country of immigration. Two major effects of this immigration strand on the social structures in Germany are worth to be mentioned here.

(1) First of all, the political system of Germany, as it stands today, was a highly influenced by this immigrant group. The emergence of a modern mass party system consisting of two main parties (the middle-right Christian-Democratic Union and the middle-left Social Democratic Party), which were based less on the division of ideologies or world-views but were able to articulate the interests of different strata, worldviews and ideologies, was a result of the immigration-induced mixing of the German population. As a consequence this type of political mass party succeeded in addressing socially heterogeneous groups, to articulate their interests, motives and values and “to bind them to the newly institutionalised structures of the German democracy” (Bommes 2006: 147).

(2) Next to the political also the religious sphere was highly influenced by the immigration of expellees and refugees. As a consequence of the partition of Germany into the Federal Republic of Germany and the German Democratic Republic Catholics outnumbered Protestants as quantitatively most important religion. The immigration of this group additionally lead to a formerly unknown “mixture of Catholics and Protestants in the main urban areas linked with cultural and religious processes of pluralisation” (Bommes 2006: 147).

The second group that played a major role in the German immigration experience is the group of the guest workers from Italy, Spain, Portugal, Yugoslavia and Turkey that was recruited mainly for low and unqualified jobs in the time of 1955-1973. One of the main mistakes of the German governments as well as of the migrants themselves was that both acted on the assumption that the stay in Germany would be of temporary nature (Bade 2007). This proved to be wrong and must be seen as the roots for many integration problems Germany faces today. In the year of the recruitment ban 1973 about 2.6 million foreigners were employed liable to social security legislation. They were included into the German social security system right from the beginning. Although foreigners are more vulnerable to unemployment than natives the economic integration of the guest workers must be assessed as a big success. Labour migrants and consequentially a large part of their children became a stable element of the German economy and with a share of roughly 10 per cent they constitute an integral part of the domestic labour force. This success even becomes clearer when looking to Germany’s neighbours such as France and the Netherlands where the overrepresentation of migrants in the group of the unemployment is much higher than in Germany (Werner 1994; Böcker/Thränhardt 2003, Koopmans 2005). This migrant group had and still has a lot of implications. Next to the economic dimension that was already mentioned, it is also necessary to refer to the implication of this group on religious life in Germany. The consequence of the migration of guest workers from Turkey was the establishment of Islam “as the third largest mass religion in Germany (3.2 million Muslims) linked with multiple forms of self-organisation and strong efforts to get access to the same rights as other religions, especially as the dominating Christian churches” (Bommes 2006: 150).

The third group I want to introduce is the group of the ethnic Germans that mainly came between 1950 and 1990 from Poland, Romania and the USSR. In this period of time almost 2 million ethnic Germans, who were legally privileged and received German citizenship immediately after coming to Germany, immigrated to West Germany. In most of the years the

numbers were rather low because of the denial of exit in the socialist countries. The political and social integration of this group was rather successful not the least because large parts of this group of immigrants lost its visibility as a migrant group. After the collapse of socialism in Eastern Europe the formerly quite effective restrictions of movement were suspended and consequently the formerly low numbers of ethnic German immigrants rocketed upwards. Between 1988 and 1993 about 1.6 million ethnic Germans immigrated to Germany. This caused reaction by the German state which will be drawn on in more detail later.

The fourth group constitute asylum seekers and refugees since the 1970s. It is a widespread perception that this migration is part of the global movement of the poor and desperate from Africa. But this is not true for Germany because only a quarter of the asylum seekers in Germany came from Third world countries. The main sources of this migratory flow were political, social and militant turbulences following the collapse of the socialist countries in Eastern and South-eastern Europe (Bommes 2006: 155). In 1992 the number of asylum seekers peaked and reached over 430.000. In this year more people asked for asylum in Germany than in the whole rest of Europe. This has caused political turmoil and conflict and resulted in the amendment of the asylum paragraph of the German constitution which will be explained in more detail later.

The last group of migrants that is presented here actually is not a group per se, but a collective term for all kind of different migrants. The group that nowadays constitutes the most important source of migration in Germany are family migrants (mainly from Turkey). The size of this group is difficult to estimate, but the number of visa applications which amount to 70.000 – 80.000 for the purpose of family reunification might serve as a good indicator. In addition to the family migrants Germany started to open itself for highly skilled migrants and set up a permanent residence permit for high earners with a minimum gross salary of about 84.000 € This, however, proved to be rather unsuccessful, because in the last year less than 2.000 of the desired highly skilled accepted the offer to come to Germany. But also low skilled workers are still needed. On a temporary basis Germany about 250.000 workers per year are recruited in order to fill vacancies in the hotel and catering business as well as in agriculture.

What is important to bear in mind apart from interesting details, is the long history and the impressive quantity of immigration in Germany. Given these numbers the political self-denial

of being not a country of immigration does not seem to be easy to understand. Consequently it has been criticised a lot by politicians and by migration researchers for quite a while. This critique largely can be justified as right. However, many critics fail in going more into detail in order to explain this dichotomy between empirical reality and self-declaration. Joppke (1999: 62), who probably wrote the most informative book on this issue, pointed to the fact that the critics overlooked the normative dimension of this denial and its grounding in national self-definition of Germany. From this point of view the “no-immigration formula is overdetermined by history and culture” (Joppke 1999: 62). The roots of this at a first glance odd self-definition of a no-immigration country can thus be found in the former ethno-cultural mode of German nationhood, which itself was a consequence of the Second World War. One of the side effects of the liberation of Germany from the Nazi regime was the division of Germany and thus the emergence and existence of huge German Diasporas. The corollary of this development was the perception of the federal republic of Germany as an incomplete nation-state. This incompleteness was reflected in various institutional realms. For example Germany does not have a constitution, but a basic law which underlines that it is only supposed to be in force until Germany is united and thus becomes complete.¹ A second example is the former German capital, which was Bonn, a tiny and provincial city located at the river Rhine which – next to various other reasons – could be understood as another signal to indicate the provisional character of the Federal Republic. The former preamble of the basic law gets to the point and underlines the provisional self-understanding of Germany by stating: “The entire German people remains asked to complete the unity and freedom of Germany in free self-determination”.

It is one of the bizarre outcomes of history that Germany in this respect resembled Israel – a country that only existed because of the genocide committed by the National Socialist Regime against the Jews. In a similar way as Israel understood and still understands itself as the homeland of all Jews, Germany perceived itself as homeland of all Germans including those living in the German Diasporas (Joppke 1999: 63). As a consequence of this self-definition, Germany prioritised the immigration of co-ethnics which was semantically disguised as return. The legal background can be found in article 116 of the Basic law which grants automatic citizenship to ethnic Germans fleeing from communism.

The main reason for the problems Germany had with accepting itself as a country of immigration is now obvious: This would have lead to the risk of being obliged to redefine the national identity of Germany and to weaken the historical obligation to its dispersed co-

¹ After reunification, the Basic Law, however, remained in force, having proved itself as a stable foundation for the thriving democracy in West Germany.

ethnics in the East (Joppke 1999: 65). We also see this in the political semantics: As you know the immigrants that were recruited between 1955 and 1972 were called guest workers. This actually was the only status Germany could accept immigrants, because - as Christian Joppke phrased it - there was some “unfinished business” of nation-building to be done.

But as we know *tempora mutantur* or in Bob Dylan’s words: The Times They are a Changing: Germany now is united, the nation-building issue is done and thus it is not a surprise that Germany has been starting to ease its attitude towards the no-immigration formula. The main reason for the tendencies of relaxation took place was that the two-side approach to a) try to exclude guest workers and b) include ethnic Germans lost its rationale (Joppke 1999: 261) because of the completeness of Germany as a nation-state. We see this in the many political and legal developments in the last decade.

- Ethnic priority immigration was discontinued. In 1993 the Consequences of War Regulations Act (Kriegsfolgenbereinigungsgesetz) denied the status of resettler to all persons born after 1 January 1993. This means that ethnic German immigration has in principle come to an end. For those still eligible to apply, the procedure has been fundamentally tightened and in addition a formal quota restriction of 200.000 admissions per year (reduced to 120.000 in the late 1990s) was introduced.
- Guest workers and their offspring are encouraged to apply for citizenship. In the aliens act of 1991 which was the precursor of the immigration act of 2005 the former discretionary naturalization procedure was replaced in the case of aliens fulfilling certain residence (and other) requirements by the ‘as of right’ access to citizenship.
- Last but not least the former dominant and visible no-immigration discourse disappeared from the political sphere. The federal state of North Rhine-Westphalia, which is the most populous state in Germany, in 2005 established a ministry for integration. The chancellor started a dialogue with migrant organisations in order to build a national integration plan etc. Undoubtedly, a lot of these developments belong to the sphere of symbolic politics, but nevertheless they are not meaningless.

It is easy to see that Germany converged to other nations that had done their nation-building project much earlier. In this respect Germany started a much delayed process of normalisation. Before different spheres of this process will be uncovered it is worth to point to one further German particularity that is important to understand the German immigration experience.

In general we must act on the assumption that in fact the no-immigration semantics in material terms was much weaker than expected (see for a more detailed explanation Joppke 1999: 69). One main reason for this was that the political intention of being a non-immigration country was counteracted by strong rights and protections granted by the legal system. It is thus necessary to introduce the actors and institutions of the legal system as influential players. These are activist courts that expansively interpreted the rights of foreigners and a strong and explicit constitution that drew 2 lessons from the Nazi time:

- a) the subordination of state power to individual rights and
- b) the irrelevance of nationality as far as the granting of these rights is concerned

This strong role of the legal system has major implications for immigration policy, because the basic principle “individual first, state second” (Joppke 1999: 69) limits the scope for state action and leads to the described discrepancy of political intentions and political outcomes. The German constitution has gone further than any other constitution to implement universal human rights into domestic law. Although the different German foreigner laws often tried to stipulate a strong supremacy of state interest, actors of the legal system compensated and overruled these attempts by referring to the supremacy of individual rights in the Basic law. There are plenty of court rules which corrected or revoked political initiatives of tightening immigration and integration policy. Despite these initiatives, which followed more or less the rather restrictive preferences of the electorate, the political outcomes - as far as the rights of legally residing foreigners are concerned – were comparatively liberal. In migration research this has triggered an interesting debate about the so-called gap-hypotheses, which enters into the question of how liberal outcomes in immigration policy can be explained given rather restrictive preferences of the electorate and the policy-makers. When discussing the German immigration experience one must be aware of the ambivalence of on the one hand a political self-denial which was a consequence of the unfinished business of nation-building and the rather liberal and expansive mode of policy making and influencing by courts.

As already indicated reunification and the completion of the German nation-building project started a process of normalisation of the relationship of Germany and the immigration issue. These tendencies of normalisation took place in the various realms of society (see for a more detailed explication of various normalisation processes Bommes 2006). Particularly the political and the realm of law deserve attention.

With regards to the realm of politics it is necessary to mention again that the famous German mantra of being a non-immigration country became less and less convincing for two reasons.

First of all, the existence of a huge immigrant population made the claim of not being a country of immigration less and less convincing and secondly, the rationale of the denial, the maintenance of the German nation-building project, disappeared. Nowadays all relevant political parties accept the status of Germany of a country of immigration. For some parties it is still not easy, but even the German conservative party now accepts that Germany indeed is a country of immigration. In the realm of politics there are various developments that deserve attention in this respect. The national integration plan which was started by the chancellor was already referred to. In addition to that, the conservative minister of interior started the German Islam conference in order to set up a platform of dialogue with the German Muslim associations. The commissioner for migrants which formerly was based as secretary of state at the ministry for family was upgraded as a minister of state and is now institutionally based in the chancellery. And last but not least the regional government of North Rhine-Westphalia founded a new ministry on integration in order to underline the importance of the political task to support immigrants in their efforts to integrate. Critics of this interpretation might ask whether these developments really do matter, but this is not the actual question. What is interesting in this respect is the emergence of a relaxed and – compared to European neighbours – normal treatment of the political issue migration.

An even more impressive development can be assessed in the realm of law. The normalisation process in this area started in 1991 – that means shortly after the reunification - when the new foreigner law was passed in the parliament. One of the big and often underestimated achievements of this law was the termination of the discretionary process of naturalisation and the introduction of a legal entitlement for naturalisation under certain circumstances. The changes in the asylum law in 1992, which transformed an asylum law that directly was a consequence of the experience of many founding fathers of the Basic law during the Nazi regime into an asylum system that was comparable to other European systems, was a second step in the process of normalisation. It becomes apparent at this point, that normalisation is not necessarily something everybody appreciates very much. Particularly the change of the asylum system which cut the formerly rather generous German asylum law back to EU standards was hotly debated. But nevertheless this change can be interpreted as normalisation in the sense that a unique and singular asylum law provision was substituted by legal standards that can be found in many other EU states as well. The third example in the realm of law was the so called *Kriegsfolgenbereinigungsgesetz* (Law on Resolving Long-term Effects of World War II) in 1993 which started to close the formerly privileged channel of ethnic based immigration to Germany. As a consequence of this law and subsequent amendments the

number of ethnic Germans that fulfilled the criteria to come to Germany dramatically decreased. And finally the new citizenship law in 2000 and the new immigration law of 2005 can be understood as legal adaptations in that way that a former incomplete nation state reconfigured its legal rules after being completed. One of main achievements of the new immigration act was the introduction of the *ius soli*-element into the naturalisation system which now rules that children of foreign parents who are born in Germany automatically receive the German citizenship. However, in the age of 18 they must decide whether to take the German or the citizenship of their parents. These are the realms where the German normalisation process is most obvious. But also in various other fields such as education, science and sports Germany underwent these processes (see Bommers 2006 for more details on these realms).

Concluding, it can be argued that Germany is a latecomer in many respects. This has implications on migration and migration policy. But nevertheless Germany arrived (although being quite late) as a complete nation state and now undergoes a fundamental process of catching up. This process will go on for quite a while, but as far as the basic institutional settings are concerned Germany generally seems to be on the right way, but needs to go on this way for quite a while. Within the political area of migration policy it can be speculated that particularly two immigrant groups will deserve special attention in the near future. First, the group of the illegal migrants which not only is still under-researched but will also pose a challenge to the German governance to find pragmatic solutions handling this group. And secondly, Germany will increasingly draw its attention to the group of the highly skilled migrants, a highly-demanded group that in the worldwide “war for talents”. The current legal framework of Germany does not seem to be appropriate to be competitive in attracting “the best and the brightest”. But since the German history of immigration policy always has been a history of catching-up, it may be hoped that also for the coming challenges Germany will find institutional answers in time.

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