

**Political Incorporation and Historical Institutionalism:
A Comparison of the Netherlands, Germany and Belgium**

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Abstract: The practice of enfranchising resident aliens lies at the heart of a theoretical debate among political scientists who study the institutions of sovereignty and citizenship. A number of such scholars cite this practice as evidence of the erosion both of the historical link between the nation and the state, and of the state's sovereign authority to define its political community. By contrast, other scholars argue that because these voting rights often are limited and discriminatory, they only reinforce the link between nation and state. Despite the centrality of this broad and ongoing debate to our understanding of sovereignty, citizenship and democracy, however, little is known about the conditions under which this democratic practice will emerge. This paper examines the political incorporation of aliens in three European democracies with widely varying experiences: Germany, Belgium and the Netherlands. Using these three cases, the paper finds considerable support for the nationalist thesis's emphasis on historical institutional factors.

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Up until now the extension of voting rights has always been a positive thing in Dutch history. There have always been positions stating why such an extension should perhaps not put into effect, but after a few years one could not imagine it being otherwise anymore. (Dutch Member of Parliament Peter Lankhorst of the Politieke Partij Radikalen (PPR), as quoted in Jacobs 1998, p. 360)

Elections in which foreigners can vote cannot convey democratic legitimacy. (The German Federal Constitutional Court, as quoted in Tomforde 1990)

"In the big cities, the immigrants run the city councils . . . Now that they are going to give them all the right to vote, they will take over the smaller towns too. Pretty soon, we won't be the boss in our own country anymore." (A Belgian truck driver, as quoted in Vandyck 2004)

The right to cast a ballot speaks to the meaning of membership in the polity in a way that other rights--such as the right to work, own property, or receive social welfare benefits--do not. Perhaps for this reason, proposals to enfranchise noncitizens provoke powerful and sometimes puzzling reactions. A recent initiative to enfranchise New York City's population of resident aliens, for example, met with this opinion from *The New York Times*:

. . . it is in the nation's best interest to encourage people who live here permanently to become citizens and throw in their lot with the interests of the United States. Extending the most important benefits of citizenship to those who still hold their first allegiance to another country seems counterproductive. ("A Citizen's Right" 2004)

As the position of the Times' editorial board and the above epigraphs indicate, the alien franchise speaks to the very meaning of citizenship

and nationhood.¹ As more governments have considered proposals to enfranchise their resident aliens, publics have revisited debates about their shared understandings of "citizenship." In many states these debates reflect centuries of shared experiences. Ironically, then, the debate about the political rights of noncitizens may provide important insights into the institution of citizenship and its changing nature.

In this paper, I explore the debate in three states over the alien franchise. Why would the Netherlands enfranchise resident aliens with little difficulty in the 1980s, while Belgium experienced three decades of debate and abortive legislation before enacting local voting rights for resident aliens in 2004? Why did Hamburg and Schleswig-Holstein's experiment with local voting rights in 1989 fail to survive the constitutional scrutiny of the German federal constitution court? The variation in outcomes in these three states poses a challenge to a number of competing explanations for why states incorporate resident aliens. I argue that the institution of noncitizen voting is an important test of two competing bodies of research on citizenship politics--what one may call the "nationalist" and "transnationalist" theses. The two theses emphasize a variety of cultural, institutional, partisan, international and transnational factors to explain variations in the pattern of immigrant incorporation among democratic states. Broadly speaking, nationalist scholars argue that domestic factors such as institutions, the welfare state or partisan competition reinforce the historical linkage between the "nation" as a sociological construct

¹ This argument seems to arise regularly in other states as well. Philip Dewinter, the leader of the Vlaams Blok party in Belgium, stated in 2004 that Belgium's proposal to enfranchise aliens sent "a permanent message to foreigners that Belgium is a land of milk and honey, where they have rights but no duties." See Vandyck 2004.

and the "state" as a political construct. By contrast, transnationalist scholars argue that international institutions and emerging norms of human rights constitute and demarcate the rights states offer their noncitizens, and consequently weaken the ties between nation and state. Tellingly, several transnationalist scholars cite the practice of enfranchising aliens as evidence of this weakened bond (e.g. Soysal 1994).

Nationalist and transnationalist scholars share a theoretical commitment to problematizing the nature of citizenship. Both bodies of scholarship acknowledge that the culture, laws and institutions of democratic states constitute the institution of citizenship in differing ways. This variation in citizenship practices speaks not only to the incorporation of immigrants in these societies—itsself an important question—but also to the nature of state sovereignty itself. Do states retain a de facto sovereign right to regulate membership in their polity? Nationalist and transnationalist scholars come to different conclusions. I seek to intermeditate the debate between nationalist and transnationalist scholars with three case studies. Using a controlled comparison design, I argue that one can best explain the differences in voting rights in Germany, the Netherlands and Belgium as the result of shared, historical understandings of the meaning of "citizenship." That is, citizenship in Belgium, the Netherlands, and Germany is an institution embedded in the unique historical experiences and societal conflicts of each state. To understand the different patterns of political incorporation of resident aliens, then, one must first understand how these conflicts have molded the institution of citizenship.

Nationalism and Transnationalism: An Overview

Why would democratic states enfranchise resident aliens? Although many democratic states offer extensive social and economic rights to immigrants, historically they have offered far fewer political rights. The incorporation of migrants has followed, furthermore, a process that reverses how citizens historically have acquired social, economic and political rights. Marshall's seminal work (1964) argued that citizens historically acquired civil and legal rights first, then political rights, and finally social and economic rights. Klausen (1995) and Joppke (1999) among others have noted that the incorporation of migrants has reversed this evolutionary process: noncitizens have acquired economic and social rights first, then civil and legal rights. Only recently have states extended political rights to resident aliens, and these often come with restrictions. Yet the rights of resident aliens today are broad enough in many democracies that some scholars argue there are few substantive differences between the body of rights citizens and aliens have (Hammar 1990). Indeed, democratic states emphasize symbolic and totemic distinctions between citizens and noncitizens despite (or perhaps because of) the differences in the rights each group enjoys. The political rights of noncitizens therefore may reflect important changes in the nature of citizenship and the relationship between the state and the polity.

There is a rich and diverse body of scholarship that examines how and why democratic states incorporate noncitizens. There are two broad points of disagreement, however, among the scholars who study citizenship politics. The first is the level of analysis that best

explains the state's policies for the incorporation of noncitizens. Do states offer political rights to migrants due to domestic factors, or are these policies a response to international and transnational pressures? Though a number of scholars creatively integrate domestic-level and systemic factors in their analyses (see inter alia Laitin 1998, Barrington 2000, Kashiwazaki 2000, and Aleinikoff and Klusmeyer 2002), it is nevertheless useful to categorize existing hypotheses according to their level of analysis. The second point of disagreement is the implication of these practices for our understanding of important concepts—the state, sovereignty, and the polity. Does the enfranchisement of noncitizens reflect (or portend) a weakening of the historical bonds of the nation to the state? Do states retain the sovereign capacity to regulate membership in the polity? Many scholars provide different answers to these questions. Using these two points of divergence, one can categorize the citizenship politics literature into two broad theses I call the nationalist and the transnationalist theses.

Nationalist scholars explain differences in how democracies incorporate non-citizens as a product of cultural, institutional and partisan factors. These scholars generally assert that shared historical conceptions of the "nation" motivate the state's incorporation of noncitizens and its ongoing constitution and regulation of the political community. This body of scholarship includes the institutional arguments of scholars like Klausen (1995) and Joppke (1999 and 2001), political development arguments like those of Marshall (1964), Rokkan ([1970] 1999) and Rokkan and Lipset (1967), and cultural arguments such as Brubaker (1992). These arguments

emphasize the importance of judicial systems (Joppke 1999, Aleinikoff 2001), the political economy of social welfare (Klausen 1995), collective action dynamics (Freeman 1995, Money 1999) and partisan competition (Hammar 1990). Together, these arguments suggest the state's incorporation of resident aliens reflects the claims-making of immigrant groups through the political institutions that bind the nation to the state.

One important nationalist hypothesis deserves emphasis. Brubaker's important comparison of immigration policies in France and Germany called attention to important cultural differences in how societies and states conceive of the "nation": as an ethno-linguistic community as typified by Germany, or as a multinational political construct as typified by republican France. Brubaker argued these differing conceptions of the nation are embedded in the legal doctrines of *jus sanguinis* (literally, citizenship by blood) and *jus soli* (citizenship from the soil). In *jus sanguinis* states an individual derives his or her citizenship from his or her parents, while in *jus soli* states the individual derives citizenship from his or her place of birth. States with *jus sanguinis* laws tend to view citizenship as membership in the nation (a cultural community), while *jus soli* states tend to understand citizenship as membership in the state (a political community). Hammar (1990), Brubaker (1992) and Barrington (2000) all find that these competing cultural conceptions affect how states incorporate immigrants. *Jus soli* states tend to provide a broader range of social and economic rights than *jus sanguinis* states do.

Although they do not necessarily dismiss nationalist arguments, transnationalist scholars assert that systemic and transnational

factors today have circumscribed the state's capacity and authority to constitute the political community. That is to say, transnational and international pressures today have overturned the traditional modes of incorporation that nationalist scholars emphasize. As Castles and Davidson (2000) note:

Globalization erodes the autonomy of the nation-state, undermines the ideology of distinct and relatively autonomous cultures, and causes the increasing mobility of people across borders. . . . These new factors destabilize traditional ways of balancing the contradictions that have always beset the nation-state model: the contradiction between the inclusion and exclusion of various groups, between the rights and obligations of citizenship, and--most important--between political belonging as a citizen and political belonging as a national. (p. ix)

Systemic and transnational factors have changed citizenship politics in three ways, according to these scholars. First, the large influx of immigrants during the latter half of the 20th century has caused states to develop institutional alternatives to citizenship—variously called “denizen rights” (Hammar 1990) or “quasi-citizenship” (Castles and Davidson 2000)—in order to incorporate these residents. Second, rather than making claims for social, economic and political rights through the institutions of the state in which they reside, resident aliens increasingly appeal both to their states of origin and to international laws and norms (Soysal 1994, Sassen 1996). Third, because of this transnational claims-making by migrants, states face multiple levels of governance and influence on their citizenship policies and practices that they did not face half a century ago. For all three reasons, transnational scholars tend to emphasize the importance of systemic and cross-border processes in the constitution of political communities. These researchers variously emphasize the importance of international norms (Soysal 1994, Sassen 1996),

international and nongovernmental organizations (Barrington 2000, Martiniello 2000, Kashiwazaki 2000), and transnational activist networks (DeSipio 2001, Guarnizo 2001, Kashiwazaki 2000, Soysal 1997).

For these reasons, transnationalist scholars argue that international and cross-border processes are eroding the capacity of the nation-state to regulate membership in its political community. They consequently view institutional innovations like the alien franchise as evidence of the transformation of the institutions of citizenship and sovereignty. Due to their emphasis on domestic factors, by contrast, nationalist scholars generally are skeptical of arguments that assert the transformative impact of international and transnational factors. They argue that the variation in incorporation regimes among democratic states reflects not "postnational" norms of "personhood" as Soysal (1994) memorably argued, but instead they reflect a shared national history of inclusiveness.

The practice of enfranchising resident aliens stands at the intersection of the debate between nationalist and transnational scholars. As I have argued elsewhere (Earnest 2004), the institution of the alien franchise challenges both theses. Nationalists have a hard time explaining the apparent decoupling of citizenship and political rights, while transnationalists cannot readily explain why some states have adopted non-citizen voting rights, others continue to deliberate them, and still other states have rejected such rights on constitutional grounds. The debate has suffered, furthermore, from research agendas that have emphasized case research and have yet to test competing nationalist and postnationalist hypotheses in a large-*n* study. My previous study sought to redress this deficiency, and

studied the voting rights practices in 25 democracies from 1960 to 2000. I tested four nationalist and three postnationalist hypotheses against an ordered dependent variable that measured the voting rights for resident aliens in each of the 25 democracies.² The study found strong support for nationalist arguments (though some findings were significant and contrary to nationalist expectations) but only weak support for transnational arguments. One nationalist argument in particular explained much of the variation in political incorporation for the 25 democracies in the study: jus soli states were significantly more likely to enfranchise non-citizens than jus sanguinis states. (Earnest 2004, pp. 143-164). Since the study used the jus sanguinis/jus soli distinction as a proxy for competing cultural and legal conceptions of nationhood (as Brubaker 1992 suggested), the study found strong support for nationalist cultural explanations. Indeed, when controlling for other hypothesized factors, jus soli states are four to six times more likely to have some form of noncitizen voting than are jus sanguinis states. (Earnest 2004, pp. 146-165) This paper provides a qualitative complement to these findings of statistical significance.

Method of Inquiry

The following analysis uses a controlled comparison of three states to explore the impact of cultural conceptions of citizenship on

² The dependent variable in the study was ordered on the basis of the "scale" of the voting rights (whether resident aliens could vote in national parliamentary elections, or only in local elections) and the "scope" of the rights (whether or not the state discriminated in the allocation of the franchise: do all resident aliens receive the right to vote, or are only aliens of a specific nationality allowed to vote?). See Earnest 2004, pp. 98-103.

the political incorporation of noncitizens. I choose to look at Germany, Belgium and the Netherlands for three reasons. First, all three states are long-time members of the European Union. Martiniello (2000) for one has argued that EU institutions impose citizenship rules "from above" and constrain the citizenship policies of member states. Indeed, the Treaties of Maastricht (Article 8B, 1992) and Amsterdam (Article 19(1), European Union 1997) stipulate that member states must establish voting rights in local elections for aliens from other EU member states who reside in their countries. Because the three cases are all EU member states, I can assess the importance of the historical deep structure of citizenship while controlling for international institutional factors. Second, Belgium, Germany and the Netherlands each have proportional representation (PR) electoral systems. Because PR systems arguably emphasize the representation of minority groups, one might expect that states with PR systems would be more likely to enfranchise resident aliens than majoritarian states. Not only do PR systems embody civic norms of accommodation of minority groups, but they also may create electoral incentives for parties to enfranchise societal groups who may favor one party or another. Hammar (1990) for one argues that left-leaning parties may be more likely to enfranchise aliens, a finding that my own study contradicts (Earnest 2004, pp. 168-174). Because all three subject states are PR systems, however, the research design controls for this rival hypothesis.

The third reason to examine the experiences of Belgium, the Netherlands and Germany is that the three states vary considerably in the voting rights they provide to resident aliens. In brief, in the 1980s the Netherlands first adopted voting rights for aliens of any

nationality who satisfied a residency requirement. Though there was some controversy, the Dutch parliament pursued this initiative with relatively little public opposition; and the practice has enjoyed broad popular support in the Netherlands. In Belgium, by contrast, opponents have repeatedly blocked initiatives to enfranchise noncitizens, a debate which has recurred in Belgium regularly since the 1970s. Only in the last year has the government finally succeeded in extending the vote to resident aliens. Finally, Germany neither succeeded in adopting voting rights for aliens as did the Netherlands nor suffered from the protracted debate that Belgium endured. Rather, the German federal constitutional court struck down in 1990 the laws enacted by three länder governments to enfranchise aliens in local elections.

To understand the divergent experiences of these three neighboring states, one must first explore how each society understands the meaning of "citizenship." These understandings in turn reflect the unique historical paths of political developments of each state and society. The historical nature of these institutions is significant in two respects. First, historically conditioned understandings of citizenship explain why the Netherlands has pursued a relatively assimilationist policy on voting rights while Germany and, until recently, Belgium have excluded aliens from the franchise. Second, one can understand the recent change in Belgium—as well as Germany's decision in 2000 to enact jus soli provisions in its citizenship laws—as the product of changing historical circumstances at the turn of the millennium. The paper discusses the Netherlands first, followed by the Federal Republic of Germany and then Belgium.

The objective of this paper is not to test nationalist and transnationalist hypotheses per se. A number of qualitative studies already have explored the impact of shared understandings of citizenship on the state's practices for the incorporation of noncitizens (see inter alia Brubaker 1992 and Laitin 1998). Some scholars have questioned, furthermore, the use of controlled comparisons as a design for testing hypotheses (King, Keohane and Verba 1996). Rather than debating the use of qualitative methods or providing yet another detailed historiography of citizenship policies, this paper provides a brief look at the impact of cultural understandings of nationhood on a specific policy question: whether or not the state should allow noncitizens to vote. In this respect, the paper's dependent variable is more focused than a broad discussion of citizenship practices and policies, and is explanatory rather than predictive. I view this paper as a complement to a larger, quantitative study (see Earnest 2004) rather than a substitute for large-n methods.

The Netherlands

Citizenship in the Netherlands reflects what Stuurman (2004) has called the "communitarian-liberal" model of citizenship (p. 183). Although the Netherlands shares many of the jus soli and republican principles of the French conception of citizenship, the two models differ considerably on their conception of the nature of the rights of individuals. As Stuurman argues, the liberal-republican model of citizenship that typifies French policy conceives of rights as naturally adhering to individuals. This emphasis on individual rights

rejects the idea that communities—whether religious, ethnic or linguistic—should enjoy “quasi-rights” on the basis of group identity. In the republican-liberal model, the only group identity that legitimates political rights is the Republic itself. Inherent in the French model is an illustrative paradox. Because it rejects discrimination on the basis of group attributes, French policy not only allows for the possibility of immigrant assimilation to French society irrespective of ethnic or linguistic origins, but it also expects such assimilation. This paradox of republican tolerance was evident recently, for example, in the Muslim *foulard* or headscarf controversy in France.

Though the Netherlands shares a similar liberal and *jus soli* heritage with France, the Dutch conception of citizenship attributes greater importance to community rights (Stuurman 2004). The Netherlands’ history includes a strong tradition of representative government at the local and provincial level, and of progressive and stable enfranchisement (Rokkan [1970] 1999). Dutch citizenship policy reflects three important historical legacies: religious tolerance of the Reformation and the 17th century, the Batavian Revolution of 1795, and the cosmopolitanism of the Netherlands’ colonial heritage. Together these experiences explain the broad Dutch policy of multiculturalism and tolerance toward noncitizens.

Prak (1999) provides a definitive account of how the Batavian Revolution of 1795 took the traditions and rules of local representation and institutionalized them at the state level. Prior to 1795, each of the United Provinces maintained its own laws and practices for membership in the political community. A citizen of

Gelderland may not have any rights, for example, if he or she moved to Utrecht. Because of the commercial nature of the some of the provinces, furthermore, many (particularly Holland) had a considerable number of residents who were born in other nations. Several provinces allowed non-natives to purchase citizenship with its attendant rights, including the right to vote. Although this practice was undeniably discriminatory on the basis of individual wealth, it nevertheless reflects the provinces' conception of the political community as a multiethnic, communal construct rather than a linguistic or ethnic one. When Napoleon's armies invaded the provinces in 1795, they brought with them a republican-liberal template for citizenship. This model reflected the *citoyen* conception of membership in the political community that found powerful expression in Jacobite France. To establish a "Dutch" citizenry from the disparate provinces, France instrumentally defined a "Dutch" citizen as any citizen in one of the seven provinces. Given the heterogeneous and multiethnic quality of provincial citizenship, then, the Batavian Revolution *sui generis* created a polyglot Dutch citizenship that paradoxically emancipated individual rights from ethnicity and religion as had occurred in France, yet tied them to communal identities.

Dutch citizenship is unique, then, in its combination of French republican liberalism, Protestant religious toleration, and colonial multiculturalism. The historic emphasis in Dutch liberalism on community rights finds expression in the state's policies for the incorporation of noncitizens even to this day. The Netherlands' decision to enfranchise resident aliens is particularly illustrative of this shared conception of Dutch citizenship. The cities of Rotterdam

(in 1979) and Amsterdam (in 1981) first introduced noncitizen voting in local elections. As two large commercial ports in Holland and historic centers of trade for the Netherlands, both cities had large populations of foreign citizens in the late 1970s.³ Like many other municipalities throughout Europe, furthermore, Rotterdam and Amsterdam experienced a period of voluminous immigration during the 1960s and 1970s. Combined with Surinamese and other immigrants from former Dutch colonies, the two cities faced a yawning inequality between its citizenry and its growing population of noncitizens. Rotterdam and Amsterdam chose enfranchisement as a means to broaden the integration of aliens into civic life. Three years later, the Dutch Parliament extended the right to vote in local elections to any alien who had resided in the Netherlands for five or more years (though necessary constitutional reforms meant aliens did not vote in local elections until 1986).

Two aspects of the Netherlands' enfranchisement of noncitizens deserve emphasis. First, voting rights for the Netherlands' resident aliens reflected a broader Dutch integration policy that emphasized community rights rather than individual rights. This policy "was set up aimed at emancipation of the official categories of ethnic minorities, with the objective of elevating the ethnicized groups to equal social status with the indigenous groups in Dutch society" (Jacobs 1998, p. 351). The policy sought not only to broaden political rights through the franchise, but also to reform naturalization laws. Here then is evidence of Stuurman's communitarian-liberal model of citizenship rights. Second, as Jacobs (1998) notes, the Netherlands'

³ North Holland had about 19 percent foreign citizens, while South Holland had about 14 percent. For the country as a whole, about 3 percent of the population were foreigners. (Netherlands 1980)

example is marked by two surprising factors: an absence of agitation for rights among immigrant groups themselves, and a degree of consensus on enfranchisement across the spectrum of Dutch political parties and their leaders. The left-leaning Social Democrats (PvdA), the Christian Democrats (CDA) and the right-wing VVD all supported the 1985 bill to enfranchise noncitizens at the local level. Rath (1990) finds that this broad partisan coalition reflected a broad elite consensus favoring enfranchisement.

The enfranchisement of resident aliens in the Netherlands, then, was an elite-led process characterized by broad societal and partisan support. The absence of political controversy reflects broader Dutch norms of political consensus and the communitarian-liberal model of citizenship. Both the decision to enfranchise aliens and the politics surrounding the legislation reflect, then, the Netherlands' unique historical experiences as a multiethnic, pluralist society of diverse communities. The absence of controversy in the Netherlands is all the more striking when juxtaposed with the experiences of Germany and Belgium.

The Federal Republic of Germany

Germany's policies for the incorporation of noncitizens reflect the ethno-linguistic conception of nationhood that Brubaker (1992) illustrated so persuasively. In contrast to the French republican-liberal model of citizenship, German law and policy reflects a conception of the polity as an ethnic and linguistic community rather than a construct of the state itself. In practice, German law attributes rights to the German nation as a social collectivity rather

than to individuals as political beings (see Neuman 1992). This conception is institutionalized in German citizenship law through its emphasis on the doctrine of *jus sanguinis*: an individual joins the political community through descent, rather than by his or her place of birth. An important consequence of this emphasis is Germany's incorporation policies: though the state provides extensive social and economic rights for resident immigrants, these policies typically reinforce the distinction between citizens and noncitizens rather than to erase them. This is true in German law as well as in popular political discourse. The myth of the "guest worker" (*gastarbeiter*)--of "temporary" immigrant laborers who, despite decades of residence in Germany, will return some day to their countries of origin--is a telling example of how powerfully the distinction between citizens and aliens shapes popular dialogue on issues of immigrant incorporation. As I illustrate in a moment, these shared understandings of German citizenship help explain why the German experiment with the alien franchise was so short-lived.

Why does Germany's citizenship law emphasize ethnic and linguistic criteria, whereas other states in the *jus soli* tradition emphasize residential criteria? Brubaker (1992) asserted that it reflects Germany's history of political development. For centuries, Germans were a linguistic and (to a lesser extent) religious community without a state. Upon unification in 1870, federal law reinforced the notion of a "German" as one who spoke the language and descended from another German. The process of German unification may explain, furthermore, the "ethnicization" of German citizenship policies. Although there is no necessary reason why the historical discontinuity

between nation and state should require an ethnic definition of belonging, Preuss (2004) argues that the ethno-linguistic conception of citizenship enabled elites to control the process of political unification, without mass participation. In this sense, unification and ethnicization of citizenship are inextricably related, with consequences for contemporary citizenship politics in Germany.

Other scholars have explored the implications of this cultural conception of nationhood for German political development and citizenship policies (see Rittstiegl 1994 for one), so I opt not to belabor the point. It is interesting to consider, however, Joppke's argument (1999) that postwar German history ironically reinforced the notion of the German nation as an ethnic community rather than a political construct:

While in principle delegitimized by its racist aberrations under the Nazi regime, ethno-cultural nationhood was indirectly reinforced and prolonged by the outcome of World War II, with the division of Germany and the scattering of the huge German diasporas in communist Eastern Europe and the Soviet Union. Against this backdrop, the Federal Republic defined itself as a vicarious, incomplete nation-state, home for all Germans in the communist diaspora. (Joppke 1999, p. 63)

Not only did the postwar division of Germany give renewed emphasis to an ethno-cultural conception of nationhood, but it also shaped incorporation policies through the Federal republic's institutions. The Basic Law paradoxically empowered noncitizens through equal protections, yet the federal structure of Germany created disparities in each *länder's* enactment of social and economic programs for Germany's growing population of guest workers. Legislative passivity in the Bundestag only reinforced these disparities (Joppke 1999, pp. 65-69). As a consequence, Germany's citizenship politics are

characterized by an absence of policy centralization, administrative decree rather than legislation, and policy innovation in the judiciary rather than the executive (see Joppke 1999, chapter 3).

Against this institutional backdrop, politicians in the Federal Republic considered the issue of enfranchising non-citizens. Although the federal commissioner on immigration issues raised the possibility of the franchise for aliens as early as 1979, the executive branch remained passive on the issue, while "activist courts have expansively interpreted and defended the rights of foreigners" (Joppke 1999, p. 69). In 1989, the disparities in local practices clashed with judicial activism over the issue of voting rights for resident aliens. For nearly a decade, various *länder* in the Republic considered enfranchising at least some of their resident aliens. Influenced by the Netherlands' and Sweden's experiences with noncitizen voting rights (Joppke 1999, p. 194), the state of Hamburg took the first preliminary steps in 1989, deciding to allow non-German EC citizens who had resided in the state for eight years to vote in "relatively unimportant" neighborhood council elections (Rath 1990, p. 132). That same year Schleswig-Holstein enacted provisions for noncitizens to vote in local elections, though as in Hamburg the franchise extended only to citizens of specific nationalities.⁴ Neuman (1992) and Soysal (1994, p. 128) report that the government of West Berlin also adopted voting rights for resident aliens in 1990. These modest innovations are noteworthy in two respects: first, like the Dutch initiatives in Rotterdam and Amsterdam, sub-national governments propagated these voting rights

⁴ According to Rath, the rights extended only to resident aliens from Denmark, Norway, Sweden, the Netherlands, Switzerland, and Ireland. See Rath 1990, p. 132.

rather than the national executive. Second, the initiatives in Schleswig-Holstein and Hamburg were considerably more restrictive than the Dutch parliament's initiative to allow noncitizens to vote in local elections. The two German länder not only limited voting to local elections (the only elections over which the states arguably had legal domain), but they also coupled this geographic restriction with the requirement that the resident alien satisfy a nationality criterion. Turkish or Polish resident aliens therefore had no prospects for voting in these länder. In this sense even these limited voting rights reflected a logic that the political community is constituted along ethnic, linguistic or national lines rather than on criteria of locality, residency, or economic status.

Even these relative modest voting rights initiatives met, however, with controversy and political resistance in the Federal Republic. Rath (1990) reports that, in contrast to the Netherlands' experience, political parties in the Federal Republic divided on the initiatives in Schleswig-Holstein and Hamburg: Social Democrats and Greens supported the enfranchisement of resident aliens, while the Kohl Government and the CDU/CSU "denounce[d] the immigrant franchise passionately" (Rath 1990, p. 133). These divides perhaps reflected public opinion in the Federal Republic: Rath found that only a third of Germans favored the enfranchisement of noncitizens. Another difference from the Dutch experience (but similar to Belgium's experience) is that immigrants' groups in Germany actively campaigned for the franchise. The issue of noncitizen voting rights in the Federal Republic consequently was more politically contentious than in the Netherlands, and it lacked the elite consensus and initiative at the national level

that characterized the Dutch case. Rather, as the discriminatory nature of the rights in Schleswig-Holstein and Hamburg illustrate, Germany's experiment reflected both persistent ethno-cultural conceptions of the political community and the variation incubated by a federal system with weak or perhaps disinterested executive leadership at the national level. One can attribute both the emphasis on nationality and the weak federal structure as a consequence of Germany's historical experiences before and after World War II.

The enfranchisement of resident aliens in Schleswig-Holstein and Hamburg never led to a non-German casting a ballot. Soon after the states adopted these measures, opponents filed court challenges that quickly found their way to the Federal Constitutional Court. Joppke (1999, p. 195) notes that "The German debate over alien suffrage was a foundational debate over the meaning of membership and citizenship in the nation-state." In October 1990, the Court took up this debate. It ruled that the enfranchisement of resident aliens violated the Basic Law and threw out the *länders'* laws. Neuman (1992) describes the Court's rationale as grounded in an understanding of citizenship as an ethnic and social construct rather than as a political community. The Court ruled that voting rights for resident aliens violated the Basic Law because the Law grants the franchise to the *German* nation as a *collective* right, rather than as an individual right (Neuman 1992, pp. 283-287). The emphasis on both adjectives is important: the opinion implies that the right to vote adheres to a pre-political community, rather than to individuals as citizens and political subjects of the state's sovereign authority.

The Federal Constitutional Court's decision is ironic in a couple of respects. First, as Joppke (1999, pp. 69-75) notes, the judiciary had served as the leading institutional advocate for the social and economic rights of aliens in Germany, and had progressively extended rights to these groups in a manner that the Federal Republic's elected officials did not. Yet judicial activism cuts both ways: while the courts willingly found social and economic protections for resident aliens in their reading of German law, the courts constructed political rights in a different way. Judicial activism need not be a progressive or liberalizing force, and may vary among issue areas. Because the vote speaks to membership in the polity in a way that economic and social rights do not,⁵ it is no surprise that the constitutional court found the alien franchise to violate a widely held conception of the German nation as ethno-linguistic community that itself antedates the German state. The second irony is that the Court's decision in 1989 to hear arguments over the alien franchise occurred on the eve of the Berlin Wall's fall; it delivered its verdict a week before the Federal Republic consolidated with East Germany. The postwar division of Germany that perpetuated the notion of a German diaspora thus ended even as the Court reaffirmed the German nation as an ethnic construct. Hence historical differentialist conceptions of the nation collided with the inclusive issue of noncitizen voting rights in surprising ways:

⁵ "In short, alien suffrage would take away the last major privilege of citizenship: the right to vote, and devalue the latter by leaving only duties, not rights as its distinguishing mark." (Joppke 1999, p. 198). Note the similarity of Joppke's summary of the Federal Constitutional Court's decision and the position the editorial board of *The New York Times* takes in the first paragraph on p. 1.

In major intersections around [recently reunified] Berlin the dominant conservative CDU has put up large placards with two dialogue-balloons: "I'm against voting rights for foreigners." "So am I. Only a CDU majority will put a stop to it." Winning issue or not, it seems an odd source of imagery to appeal to people who recently won back their own voting rights under such duress. (Schwartz 1990)

Belgium

Unlike Germany's abortive consideration of noncitizen voting rights, Belgians have engaged in a debate over the enfranchisement of aliens for three decades now. Rath (1990, pp. 128-131) notes that the earliest attempts to enfranchise resident aliens date to around 1970, with nearly a dozen bills introduced in Parliament in the 1970s and 1980s. Unlike the Dutch experience, furthermore, immigrants' associations themselves, rather than political elites, have been the main proponents of voting rights for noncitizens. Political parties in Belgium have divided, furthermore, along both ideological and linguistic lines. So the patterns of contestation as well as the recurrent debate distinguish Belgium's experiment with noncitizen voting rights. Only recently have Belgians agreed finally to grant aliens with five years' residency the right to vote in local elections (Vandyck 2004, "Belgium to allow non-Europeans to vote in local polls" 2004).

The Belgian experience unsurprisingly reflects the politics of consociational democracy and linguistic communities. The division of Belgium in French-speaking Walloons and Dutch-speaking Flemings (plus a substantial German-speaking population) reflects both the relative brevity of Belgium's statehood and its longer cultural associations with France and the Netherlands. Though this history did not necessarily imply linguistic and cultural segmentation (see Zolberg 1974), the

linguistic divisions coincided with social and economic divisions, with French-speaking Walloons enjoying both greater wealth and greater political power in Belgium than Flemings. Belgium's early political history therefore is one of socio-economic and political divisions as well as linguistic ones. These fault lines run deep in nearly all contemporary politics in Belgium: not only does the state's consociational structure represent the tension between group identities and statehood, but public discourse in Belgium over many policy issues often focuses on the implications of policy for the delicate balance between Belgium's linguistic communities. Belgium's political evolution has recurrently codified, furthermore, the identities of distinctive linguistic communities. The constitutional reform of 1993 identified, for example, French-speaking, German-speaking, and Dutch-speaking communities as fundamental cultural groups within the nation.

Belgium citizenship policy thus embodies a conception of nationality that differs from both the ethno-linguistic conception of Germany and the communal-liberal model of the Netherlands. It is a curious hybrid, rather, of the French republican liberal ideal and the Dutch emphasis on community rights (see Jacobs 2001). Because integration policy is a local and regional prerogative in Belgium, furthermore, these competing ideas create important differences in incorporation policies within Belgium at the local level. Flemish political parties and policies support migrants' organizations as the means for incorporation, while Francophone parties generally propose problem-oriented policies rather than group-specific initiatives. The rights and benefits that immigrants receive therefore depend upon regional and partisan differences, factors that the consociational

institutions and norms of political life reinforce. In this sense the state's institutions structure and organize these contrasting conceptions of individual rights and membership into discrete parts of the political community. One might even argue there are two distinct models for immigrant incorporation.

The role of the state in ordering multiculturalism in Belgium means that questions about the rights of immigrants invariably become intertwined with broader public debate over the rights of linguistic communities. The multicultural conception of rights ironically serves to delimit the economic, social and particularly political opportunities for immigrants. Dutch-speaking Belgians not only emphasize the community-rights model typical of the Netherlands, but also view such community rights as a necessary protection of their own political prerogatives in light of the historical dominance of Walloons in political and economic life. Flemish parties strongly oppose initiatives that explicitly or implicitly challenge this community-rights model. In this sense, the recurrent debate and political conflict over voting rights for resident aliens illustrates how profoundly the issue touches upon the broader balance of political power in Belgium.

The Dutch-speaking community has resisted enfranchisement on the grounds that it will strengthen Francophone parties at the polls, an intuition which the Francophone parties supporting legislation apparently also shared (Jacobs 2001, p. 117). Rath (1990, p. 129) asserts that attempts to enfranchise resident aliens in Belgium have failed due to "the fear that the ethnic vote might disturb the equilibrium between the Flemish- and French-speaking communities."

Jacobs (2001) argues the implications of the alien franchise are profound for Belgian politics:

Flemish resistance to the enfranchisement of foreigners boils down to defending the power and positions of the Dutch-speaking. Enfranchisement is said to disrupt the existing system of checks and balances between Flemish and Francophones, which ultimately is the basis for the federal structure of the country. (p. 118)

In this respect, the franchise for noncitizens broaches upon both constitutional issues and norms of consociational democracy. If individuals may join the political community irrespective of their community identity, then one must question whether or not the constitutional construction of Belgium as three distinctive cultural communities would survive. This was the crux of the issue. Belgium's decades-long debate over whether or not to enfranchise resident aliens thus reflects both this constitutional debate and the differences between Flemish and Francophone conceptions of individual rights.

So why did Belgium finally enfranchise resident aliens in February 2004? One reason may be the role of the European Union: EU states agree under the Treaty of Amsterdam (1997) to enfranchise EU nationals who reside within the Union but outside their country of citizenship. Because it had already enabled EU nationals to vote in local elections, the enfranchisement of non-EU resident aliens was a relatively modest extension of the franchise. Another reason may be the examples set by other nearby states that had enfranchised non-citizens. Proponents of enfranchisement in Belgium cited the success of similar measures in the Netherlands, Ireland, Sweden and Finland (Vandyck 2004). In these respects, Belgium's enfranchisement of resident aliens may reflect some of the international factors that transnationalist scholars emphasize rather than domestic ones. It

remains to be seen, however, whether or not Belgium's enfranchisement will undermine Fleming rights and upset the delicate consociational balance.

Conclusions

One irony of Belgium's experience is immediately apparent. Whereas the liberal-communitarian model in the Netherlands encouraged elites to enfranchise noncitizens, in Belgium the importance of community rights stalled enfranchisement for decades. This fact illustrates that one cannot separate conceptions of nationality or citizenship from their historical and contemporary context: in Belgium and the Netherlands similar conceptions of rights produced widely different outcomes. To explain such variation, one must understand the unique configurations of both historical and contemporary social and political features in each state. While each state's history of political development has produced unique Dutch, German and Belgian (or perhaps Fleming and Walloon) conceptions of membership in the polity, it is political parties, immigrant groups, citizens and elites who contest these conceptions within the confines of contemporary institutions. In this respect, historically conditioned definitions of citizenship are an important feature of modern citizenship politics, but they are not determinative.

One important difference between Belgium, the Netherlands, and Germany is the role played by political elites. In the Netherlands elites led the push to enfranchise resident aliens, and crafted a careful consensus based on the compromise that resident aliens would vote only in local elections. In Germany and Belgium, by contrast,

elites played less of a role. Proposals in both Germany and Belgium reflected the initiatives of immigrants' groups themselves and left-leaning political parties. In Germany, local governments enfranchised aliens before elites at the national had constructed a consensus (or perhaps because they had failed to do so). The role of the German *länder* illustrates a second important difference between the three cases: the issue of enfranchisement often arises at the level of local politics before it becomes a salient issue for national debate.⁶ In the Netherlands as in Germany, localities enfranchised resident aliens before the national government did. In Belgium, the national initiative to enfranchise floundered for years because linguistic communities viewed it as an infringement on their local rights of self-governance.

The important difference between the three cases appears to be, however, distinctive and historically conditioned conceptions of the political community. In Germany, the polity is an ethno-linguistic and pre-political community, a reflection not only of Germany's late unification as a nation-state but also its postwar division. In the Netherlands, the polity reflects protestant norms of pluralism and tolerance and the state's colonial heritage. Belgium's political community reflects its consociational lineage: it is not one but several linguistic polities, each of which enjoys constitutional status as a fundament of the state. In Germany and Belgium, furthermore, debate over voting rights for noncitizens were debates about foundational and constitutional conceptions of the political community,

⁶ Other examples include the communities of Takoma Park, Chevy Chase, Martin's Additions, Somerset and Barnesville in Maryland, United States; the cantons of Jura and Neuchâtel in Switzerland; and most recently Vienna, Austria. See Earnest 2004, ch. 2.

in a way they never were in the Dutch debate. In each of the three cases, citizens and political elites debated voting rights for noncitizens through the prism of these understandings. Germany's abortive experiment with non-citizen voting rights failed because the Federal Constitutional Court interpreted the franchise as a collective rather than an individual right. Belgium's initiatives foundered because they directly challenged the constitutional definition of Belgium as a community of distinctive cultural and linguistic groups. The Netherlands enacted voting rights with little conflict, by contrast, because its communitarian conception of the polity flexibly allowed for pluralism. In each case, then, the terms of debate reflected histories of unique political and social development. These histories continue to condition the experiences and rights of immigrants in Belgium, the Netherlands and Germany today.

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