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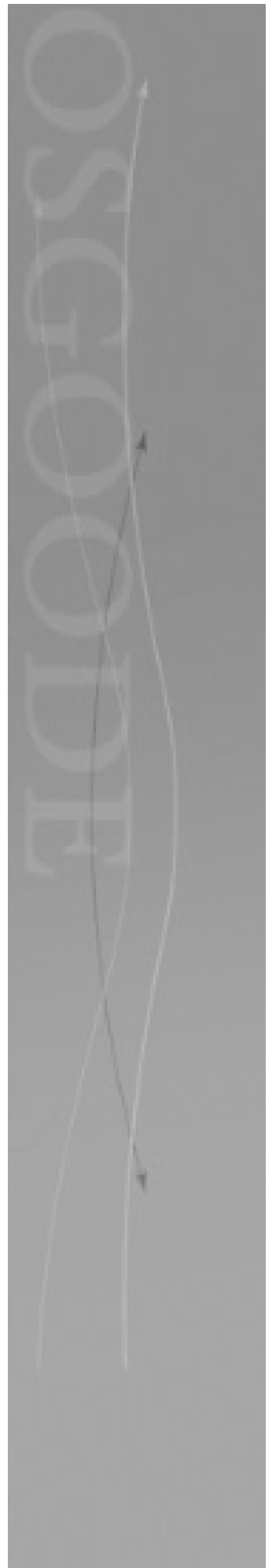
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Abstract: This article looks to contemporary debates about the emergence of post-national forms of membership and analyzes their significance as potential challenges to exclusionary conceptions of citizenship and the state. Taking seriously the claims of cosmopolitan theorists that transnational institutions like the European Union offer the promise of eroding the tension between the rights of citizens and the rights of others, I use the case of contemporary transformations in German citizenship to argue that present dynamics of inclusion are far more ambivalent. While recent shifts in the legal status of EU citizenship do herald the emergence of a robust form of post-national status, these transformations only highlight the growing gap between the rights of Europeans and those of nationals from outside the EU for whom limited access to national citizenship remains a central concern. Recognizing these contradictory dynamics is important for theorists to take note of because of the promissory role the EU so frequently plays in the work of cosmopolitans and post-nationalists; in truth the contemporary politics of inclusion indicates a far less sanguine present.

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Political Community of Fate or Postnational State? Tensions and Transformation in Contemporary German Citizenship

We are in a time of transition, or at least uncertainty, with regard to the status and future of our contemporary conceptions of community, membership, and belonging. The recent explosion of global discussions, both scholarly and political, about immigration, multiculturalism, and the role of universal human rights norms in constraining state action, are a testament to the unsettled and contested nature of our traditional conceptual frameworks in light of the rapid developments of the post-war era.

Very much at the intersection of such concerns has been the long-running debate over postnational citizenship, which has focused on perceived transformations in the meaning and significance of citizenship rights and status in relation to nationality, the state, and emerging transnational forces. Beginning with Yasemin Soysal's influential and provocative *The Limits of Citizenship*, proponents of the postnationalist position have argued that we have witnessed and are continuing to witness a fundamental transformation in the nature of citizenship (Bosniak 2006; Sassen 1996, 2002, 2006; Soysal 1994). Pointing to a diverse set of phenomena such as globalization, the expansion and entrenchment of extensive migrant's rights decoupled from national citizenship, and the growing power of human rights norms to shape state behavior and policy, they have sought to examine shifts in the forms of identity, rights, and status, that have traditionally been associated with national membership, while also problematizing the substance, location, and category of citizenship as traditionally understood (Bosniak 2006, pp. 17-36; Soysal 1994, pp. 137-67). At their most bold, these scholars question "the assumption that national citizenship is central to membership in a polity" and argue that our contemporary world is characterized by the diminished importance—and inevitable irrelevance—of the nation state and national citizenship, alongside the rise of a "broadened, postnational constellation of membership" (Soysal 1994, pp. 3, 164). Moreover, they argue that states are 'loosing control' as globalization erodes the competencies of the nation state, and human rights discourse further inscribes normative bounds on the exercise of sovereignty with regard to immigration and the status of non-citizen residents.

In response a number of trenchant critiques have challenged the postnationalist's claims on both empirical and conceptual grounds. These critics have argued for the persisting centrality of national citizenship to full membership in a state, called into question the significance of international norms by pointing to the role of domestic dynamics, and suggested that postnationalist theorists irresponsibly, if unwittingly, glorify what is at most a derivative legal status, amounting to little more than a tribute to second class citizenship.¹ Simply put, given the continued prominence of the nation state, any 'citizenship' outside of national citizenship is not worthy of the name, and talk of the declining import of national membership is at best unrealistic and, at worst, dangerous.

This long-running debate over the nature of contemporary articulations of citizenship has taken on increasing practical significance, especially in the European

¹ For powerful challenges to postnationalist claims regarding the importance of international human rights norms in transforming non-citizen rights and immigration policies of states, see Joppke (1998, 2001, 2005). For important critiques of the empirical and normative issues entailed by assertions about the devaluation of national citizenship, see Joppke (1997, 2009), Hansen (1998, 2009).

context. There, the unfolding implications of the European Union, growing doubts about the integrationist policies of several member states, and attempts of domestic governments to shore up the meaning of national ‘membership’ all suggest a series of further potential transformations and shifts in state policy. Such phenomena clearly imbricates with the significance of citizenship and point to the need to clarify the relationship of citizenship status, rights, and identity, to both the domestic and international sphere.

Against this backdrop of scholarly discussions and emerging policy responses, this paper seeks to address the salience of the postnationalist position for understanding contemporary practices of membership, using the context of Germany to examine two developing, though seemingly diverging, regimes of non-citizen resident rights. I begin by explaining the importance of the German case for assessing transformations of citizenship and membership beyond the national. From here I move to a conceptual clarification of the postnationalist position in order elucidate the stakes in its emphasis on the “emergence of locations for citizenship outside the confines of the nation state” (Sassen 2006a, p 304). Following recent scholarship, I suggest that the central aspects of the postnational position can be distinguished as two sets of separate claims.² First, postnationalists assert that the modes of identity, bundles of rights, and status traditionally accorded through national membership are becoming decoupled from citizenship, nationhood, and the nation state. Second, postnationalists make important claims about the sources and forces at play in the generation of these new forms of membership—in particular, they suggest that the growing prominence of transnational and international human rights norms are responsible for these transformations.

My goal in this paper is to assess the first of this pair of propositions in light of recent developments in German domestic citizenship law and the continued evolution of European Union citizenship status. I argue that taking these features into account leads to an ambivalent, though provocative, perspective on the emergence of postnationalist trends. It is clear that questions of nationality remain central to the status of Germany’s non-European migrant population. Even in the wake of a substantive liberalization of German citizenship law, the dynamics surrounding Germany’s third-country migrant populations seemingly points toward the continued importance of the national, both in the ways membership is conceived in German political discourse, as exemplified in continued opposition to dual nationality, and in the ambivalent response of migrants themselves to the recent naturalization reforms. Yet alongside this re-inscription of the national, recent transformations in European Union Citizenship, and their concomitant implications within Germany, do point to the belated emergence of an, albeit narrowly accessible, postnational form of membership.³ I conclude by suggesting that even as postnationalist trends are

² I adapt this division from Hansen (2009, p. 3)

³ Here I bracket the latter aspect of the postnationalist position. In other work I explore the impact of transnational and international liberal democratic and human rights norms in driving transformations in membership. There I argue that the postnationalist claim that transnational and international legal norms are increasingly constraining and shaping the behavior of states has been vindicated, at least in a qualified sense. As postnationalists are quick to acknowledge, the effects of such norms “tend to instantiate inside the national” and yet there is an undeniable transnational influence on the contours of citizenship policy and immigration, as exhibited both by German domestic

emerging as a reality, we ought to remain far from optimistic about the normative implications of such developments and recognize that we may be witnessing the contingent coexistence of multiple regimes of membership. The incipient postnational status instantiated in Germany within the context of the EU is highly selective, and while generating a class of rather privileged and protected transnational citizens, exists alongside the continued political exclusion of the majority of Germany's non-European migrants. Thus, lacking the protection of a robust supranational authority, the position of third-country nationals within Germany remains substantively precarious.

German's Membership Regimes: A Crucial Case

Contemporary Germany provides an ideal case for assessing the robustness of arguments regarding the emergence of postnational citizenship, as well as the significance of such potential transformations. As of 2008, Germany possessed the largest population of foreign citizens of the 27 EU member states at 7.25 million persons, comprising 8.8% of its total population (Eurostat 2009). Therefore, in matters of sheer scale and prominence among fellow EU states, Germany is a pivotal test for assessing the relationship of nationality and citizenship rights. Moreover, of its non-nationals, Germany hosts the greatest number of both non-national EU-citizens and third-country nationals of all member states at 2.5 and 4.7 million, respectively (Eurostat 2009). Attending to the features of the still unfolding status of European Union Citizenship is particularly important, given that postnationalists frequently cite EU citizenship as the most elaborate legal enactment of postnational membership (Soysal 1994, pp. 147-48). Moreover, as a result of historically restrictive naturalization policies and relatively high levels of immigration, Germany's population of third-country nationals far exceeds those of other member states, comprising 45% of the EU total (Palmowski 2008, p. 1). Thus the contemporary position of Germany ought to provide a telling rubric for determining the salience of nationality in the provision of membership rights and status *between* EU-citizens and third-country residents.

In addition to current dynamics that highlight its central importance in assessing transformations in citizenship, additional historical reasons suggest Germany as a meaningful context for appraising claims regarding the growing potential and meaning of forms of postnational status, rights, and identity. In particular, Germany's past history of restrictive approaches toward naturalization and nationality, followed by a relatively recent extensive transformation of such policies, point to the significance of Germany as a site for the emergence of postnational trends. Rogers Brubaker's 1992 path-breaking study of immigration and nationalism influentially characterized Germany as exemplifying an ethno-cultural and differentialist conception of nationhood and citizenship, one grounded in "habits of national self-understanding that were deeply rooted in the national past" (Brubaker 1990, pp. 397-8). According to Brubaker, German's restrictive approach to both citizenship and naturalization have been fundamentally related to conceptions of descent and ethno-cultural membership, as embodied most definitively by the central place of *jus*

dynamics and by a general European convergence toward upholding liberal democratic and human rights norms. (Sassen 2006, p305)

sanguinis in German nationality law.⁴ While the continued validity of such an ideal-type characterization of contemporary Germany is upset by the rapid sequences of reforms that German citizenship and nationality law has undergone in the past 20 years, Germany's long prior history of approaching national belonging in narrow terms makes it an important case study for examining the claims of the postnationalist hypothesis. In particular, it is suggestive of a context in which the interaction between a historically restrictive approach toward naturalization and the growing salience of liberal democratic and human rights norms may have paradoxically led to the emergence of robust civil and social membership rights dissociated from national belonging.

Theorizing Postnationalism: Concepts and Claims

Before turning to an assessment of the prospects and possibilities of postnational forms of membership within the German context, it is imperative that we first clarify the conceptual dimensions of the postnationalist position that is to be assessed. This is of central importance, given that the postnational debate hinges on a series of claims regarding the changing status, meaning, and significance of central conceptual categories such as citizenship, membership, and nationality, as well as assertions about the sources of such transformations. Moreover, the contours of the debate between postnationalists and proponents of the nation-centered perspective speak to the need to lay out the specifics of the postnationalist claims to be assessed, if only to avoid the risks of a discussion characterized by potential misconstrual and confusion (Jacobson 2009). The conceptual ambiguities and misunderstandings that have frequently characterized exchanges between postnationalists and their critics have been highlighted by Christian Joppke, leading him to suggest that postnationalists and defenders of citizenship frequently find themselves talking past one another (2007, p. 37). More recently, Randall Hansen has noted that divergences both *between* and *within* the position of those who defend postnationalist claims regarding the status of citizenship have led to a great degree of ambiguity over the implications of the postnationalist thesis. (2009 pp. 4-5). And for their own part, proponents of the postnationalist position have defensively bemoaned being frequently "misinterpreted" and "misread" by critics, as well as having their arguments misrepresented by "strawmen versions of postnationalism" (Jacobson 2009, p. 283; Sassen 2006b p. 59). These considerations all suggest the need for specifying the theoretical commitments of the postnational position under consideration. Accordingly, I offer a brief reconstruction of the crucial elements of the postnationalist position, one accommodating the postnationalist assertion that they do indeed recognize the persisting importance of national institutions alongside emerging transnational and global trends. (Sassen 2006b, p. 59).

A central component of the postnationalist thesis to be assessed is the historical and conceptual claim of a progressive decoupling of components of citizenship from

⁴ For a more extensive discussion of Brubaker's position, see Brubaker (1992). See also Gosewinkel (2002) for an account that complicates Brubaker's depiction of German citizenship as linked to an ethno-cultural conception of the German nation.

nationhood and the nation state. As Saskia Sassen writes, “[w]hether it is the organization of formal status, the protection of rights, citizenship practices, or the experience of collective identities and solidarities, the nation state is not the exclusive site for their enactment” (2002, p. 278). In sketching out the postnationalist position it is helpful to further distinguish between the multiple dimensions of citizenship that are potentially undergoing transformation. Following Joppke, we may analytically differentiate between the elements of citizenship along three levels (2007, p. 38; 2010, pp. 28-33). First, with regard to citizenship as formal membership status in the state, postnationalists argue that contemporary trends indicate the diminishing importance of national membership. Second, with regards to rights traditionally accorded by such status, they stress that a growing set of entitlements have become decoupled from formal citizenship.⁵ Pointing to contemporary examples of the extension of broad social and economic rights to non-citizens, postnationalists emphasize that the status of residency is coming to approximate that of citizenship in important ways. As one commentator has put it, “[r]ights are no longer exclusively enjoyed by national citizens residing in the nation state granting their citizenship, but by permanent residents” (Hansen 2009, p. 2). But of equal importance, in a move that spans both the status and rights dimensions of citizenship in liberal democratic states, postnationalists have advanced the ambitious claim that the nation state is no longer exclusively the most important *generator* of rights. Emphasizing the novel character of EU citizenship as an embodiment of “postnational citizenship in its most elaborate legal form” they thus argue for a partial decoupling of both rights and status from the state itself. (Soyasal 1994, p. 148). Third, with regard to identity, to the extent that rights come to assume “universality, legal uniformity, and abstractness” alongside persisting conceptions of national identity as expressions of bounded particularity, rights and identity can be said to part ways. (Soyasal 1994, p. 159). But concurrent with this is a transformation in the nature of the identity of citizenship itself, which comes to be decoupled from particularistic accounts of nationhood as “national identities that celebrate discriminatory uniqueness and naturalistic canonization become more and more discredited” (Soysal 1994, p. 161). As a former critic of postnationalism has noted, “the increasing universalism, which we could observe in its status and rights dimensions, cannot but affect the identity of citizenship, diluting its national distinctness.” (Joppke 2010, p. 111).

In addition to arguing for shifts in the location, status, and meaning of elements of citizenship, postnationalists make a related claim about the sources of these dynamics. In this vein, they have contended that traditional configurations of membership are being transformed by international and transnational human rights norms that have increasingly come to inform the behavior of states. Thus these authors suggest a postnational source to the historical decoupling of the elements of citizenship—that is, “global factors transform the national order of citizenship” (Soysal 1994, p. 10). The various contemporary shifts in the nature of membership noted above are driven by the emergent influence and power of the post-war international human rights regime, whose stress on the context-transcending rights of universal personhood has come to at least contest and destabilize more

⁵ The distinction between citizenship status and rights is important, because it is frequently only in the context of liberal democratic regimes that the former can be presumed to entail the latter. As the citizens of authoritarian states can well attest, it is quite possible to possess the status of citizenship without enjoying many rights; because of this, we ought not imagine that all states are liberal when theorizing citizenship.

exclusionary forms of membership. This has been framed by Soysal as the redefining of individual rights as “human rights on a universalistic basis and legitimized at the transnational level” and by Sassen as processes of ‘denationalization’ marked by the growing use of transnational and international human rights instruments in national courts (Soysal 1994, p. 164; Sassen 2006a, p. 309). These authors therefore controversially contend that the forces that have driven the decoupling of rights from exclusive conceptions of national citizenship, alongside a concomitant expansion of migrant rights, lie outside the confines of the nation state. This is not to say that postnationalists dismiss the ‘national’ as a frame or imagine that international and transnational norms have fully dissolved the importance of the state. Indeed, they are quick to concede that “the exercise of universalistic rights is tied to specific states and their institutions and “it is through the agency of the state that rights are enacted and implemented” (Soysal 1994, pp. 157, 165). But they do argue that international and transnational human rights norms are increasingly coming to influence the contours of immigration and citizenship policy, as well as the status accorded to non-citizen. In sum, for these scholars, the emergence of postnational forms of membership signifying the decoupling of rights, status, and identity from national citizenship is ultimately driven by sources outside particular states.⁶

The Dis-aggregation of Citizenship? Germany’s Migrant Populations

As discussed above, the two central claims of the postnationalist position concern particular transformations in the nature of membership within a polity and locating the source of these postnational dynamics of inclusion and universalism outside the confines of the nation state. Here I turn to an assessment of the first of these claims within the context of Germany with an eye to identifying and attending to potentially competing trends in the dynamics surrounding membership in the German polity. Tracking the implications of shifts both in the significance of EU citizenship and recent reforms in nationality policy that bear on the status of third-country nationals, I suggest that a close examination of Germany provides ambivalent evidence for the postnationalist thesis. On the one hand, the recent emergence of an increasingly ‘thick’ European Union citizenship increasingly lends credence to the position that it exemplifies a form of postnational membership decoupled from possession of nationality in the state of residence. Thus non-nationals within Germany with privileged access to the exclusive entitlements of Union status enjoy rights and benefits that approach, and indeed potentially exceed, those of nationals. On the other hand, the contemporary situation of Germany’s larger third-country population tells a different story, one in which traces of exclusivist conceptions of national belonging continue to play a prominent role, despite attempts to move to a more inclusive model of membership. The enduring gap between the rights of third-country migrants and formal citizens, as well as the persistence of the national in debates over German naturalization and dual citizenship, thus cut against the grain of the postnationalist trends seemingly exemplified by EU citizenship.

⁶ As noted, discussion of this part of the postnationalist claim will be bracketed for the purposes of this paper; for the most persuasive case see: Ingram and Triadafilopoulos (2010), Triadafilopoulos and Schönwälder (2006).

Privileged Postnationalists: EU citizens in Germany

As a novel form of transnational or supranational legal status, European Union citizenship has long been heralded by postnationalists as an exemplar of the decoupling of membership rights and identity from nationality. Originally formalized by the Maastricht Treaty in 1992 and further elaborated by the Amsterdam Treaty in 1997, citizenship in the Union is conferred on the nationals of all EU member states and has come to be linked to a number of increasingly impressive rights and entitlements. Given that Germany hosts the largest population of resident non-national EU-citizens among member states, the recent developments in the status of EU citizenship have important implications for how we should understand the nature of membership within the German context and more broadly.

The central features of EU citizenship include a number of important rights originally intended to supplement the status of nationals of member states. These include the right to move freely between EU member states, as well as the right to settle and take up employment in their chosen country of residence. These rights of movement are complemented by the right to vote and stand as a candidate in both local and European Parliament elections where they reside, as well as accountability mechanisms in the form of the right to petition the European Parliament and an Ombudsman. Moreover, EU citizens enjoy the right to diplomatic protection of other member states when in third-countries. Arguably the most important of these rights with regard to the expansionist thrust of EU citizenship, the right to free movement for employment and residence purposes, is linked to prohibitions against any discrimination on the basis of nationality. Thus European Union law bans “discrimination based on nationality among workers of the member states with regard to employment, social security, trade union rights, living and working conditions, and education” (Soysal 1994, p. 148). Recent transformations in the significance of EU citizenship, primarily driven by European Court of Justice (ECJ) activism, have played on exactly this obligation of non-discrimination to extend the implications of this status (Wind 2009; Joppke 2010, pp. 162-168). Thus, following postnationalist predictions, European Union law has indeed come to increasingly entitle EU citizens to “equal status and treatment with the nationals of the host country” (Soysal 1994, p. 148). As we shall see, in a certain sense, the seemingly limited right of freedom of movement proved to be the sharp end of a large wedge.

But while the evolution of EU citizenship no doubt represents a novel legal development, the significance of its emergence for the postnationalist thesis has remained rather contested. Thus we must ask: does EU citizenship in the context of Germany constitute a form of postnational membership? Is it emblematic of the dis-aggregation of crucial components of citizenship away from nationality and nationhood, and therefore signify a diminishment in the importance of national citizenship? In order to adequately answer these questions we must account for two challenges raised by scholars skeptical of postnationalist claims regarding the nature of EU citizenship.⁷

First, critics of postnationalists have suggested that EU citizenship, far from exemplifying a superceding of the national, is best understood as a subset of national citizenship, given that it is enjoyed only by the nationals of member states (Hansen 1998, p.

⁷ I take this important set of challenges from Hansen (1998).

2; 2009 p. 6; Joppke 1998b, pp. 29-30). As they have stressed, EU citizenship is a derivative status that “itself independently generates not a single right” and therefore, they suggest, it is a mistake to construe EU citizenship as a challenge to the nation state as it ultimately “reinforces rather than detracts from national citizenship” (Hansen 2009, p. 6). This criticism, attentive to the foundational treaty-language of EU citizenship that did indeed cast the status as supplementary to national citizenship, admittedly provided an important correction to the optimism of early postnationalists. However, contemporary dynamics, most notably the ECJ’s judicial activism noted above, have transformed EU citizenship “into a free standing source of rights” worthy of the name of postnational citizenship (Joppke 2010, p. 164). Former postnationalist critic turned partial convert Joppke has recently offered an illuminating documentation of this dramatic and expansive change in the nature of EU citizenship as a result of recent ECJ case law. In a series of crucial developments, the ECJ has established a right to free movement and residence inherent in Union citizenship independent of a tie to economic activity, and moreover that there are, “next to formal rights of free movement and residence, substantive social rights that accrue to EU citizens *qua* citizens, outside prior economic status categories” (Joppke 2010, p. 164). As one commentator has noted, the ECJ has increasingly granted ‘autonomous content’ to EU citizenship, transforming the “Union’s non-discrimination provisions into a fundamental and personal right for all European citizens.” (Wind 2009, p. 242) Through a series of rulings leading up to its historical decision of *Grzelczyk* in 2001, the ECJ extended the principled prohibition against discrimination on grounds of nationality toward EU citizens exercising their right to free movement to entail extensive access to social benefits, thus lending credence to its claim that “Union citizenship is destined to be the fundamental status of nationals of the Member States.” (ECJ 2001). While this statement may still have more the sound of prophecy than present day reality, it does speak to the remarkable transformations in the nature of EU citizenship that have taken place. Indeed, the more recent ECJ case *Rottmann v. Freistaat Bayern*, involving the relationship of Community law to the loss of nationality, seems to herald the potential for an even greater degree of preeminence of Union citizenship over national citizenship. (ECJ 2010). The court’s decision both highlighted the dependent relationship between national citizenship in a EU member state and EU citizenship, while simultaneously suggesting that judgments concerning the loss of the former should be subject to considerations flowing from the importance of the latter status.⁸ While it remains too early to speculate on the eventual ramifications of these developments, it is hard not to interpret *Rottmann* as signaling only the beginning of a likely encroachment of EU citizenship rights on member states’ control over nationality. In light of this, EU citizenship has become increasingly hard to conceptualize as merely a derivative status.

⁸ Echoing the sentiments of *Grzelczyk*, the ECJ both established that that the potential loss of citizenship fell “within the ambit of European Union law” in the event that it would render an individual capable of losing “the status conferred by Article 17 EC and the rights attaching thereto” (§43) and that states must apply standards of proportionality take into account the consequences of a decision revoke citizenship “with regard to the loss of the rights enjoyed by every citizen of the Union.” (§56) (Ibid.)

This connects up with the second challenge that critics have raised against the postnationalist claim that EU citizenship should be read as a competing status on par with and challenging national membership. Pointing to the limits of EU citizenship—most notably restrictions on political rights and public service—scholars have raised doubts regarding the meaningfulness of EU vis-à-vis nationality and thereby called into question its significance (Hansen 1998, p. 2). However, contemporary trends seem to have vindicated the postnationalist position. With regard to social and economic rights, the dramatic changes above have radically reinvented the entitlements of EU citizens relative to nationals. Indeed, as Joppke has stressed, the increasingly robust nature of the rights and entitlements of EU citizenship has opened up the possibility of reverse discrimination against nationals, “who, for instance, now perversely have lesser family reunification rights under national law than border-hopping EU citizens may enjoy in the same country under European law” (Joppke 2010, p. 165).⁹ This striking outcome emerges from the interaction of EU and national law, where Community law rights attached to the free movement provisions only become salient with transit across an EU internal border, while the absence of such movement leaves the jurisdiction wholly internal, and under domestic law.¹⁰ Thus, the interaction of these two jurisdictions means that “EC law sometimes engenders reverse discrimination internally against nationals of Member States in relation to other EU nationals who have moved there and benefit from EC law” (Tillotson and Foster 2003, p. 342). What is more, it appears that nationals can take advantage of these jurisdictional slippages to upgrade their status in relation to their fellow citizens. Thus border-crossing nationals can in some instances draw on a broader range of entitlements than their stationary counterparts in virtue of exercising their free movement rights. Instances of this possibility of differential rights for citizens or of nationals enjoying fewer rights than foreigners are deeply anomalous from the traditional standpoint of national citizenship, and presumably unlikely to persist for long. However, the fact that EU citizenship has the potential to generate more expansive legal entitlements and rights than those granted to the nationals of a given territory signals an important transformation and the gradual emergence of a supra-national site of citizenship.

EU citizens also enjoy important political entitlements traditionally reserved to national citizens, including the right to local political participation, diplomatic and consular protection, and freedom of movement with regard to entering and exiting their state of residence. While the rights of EU citizens to political participation have not undergone a similar expansion as that outlined above, having remained limited to voting rights and the ability to stand for office in local elections and the European Parliament, this may in fact be less problematic than we might suspect. A potentially salient reason why persisting limits on political participation within an EU citizen’s country of residency may be less *practically*, as well as *normatively*, important for the situation of EU citizens residing in another member state is suggested by the fact that their legal status is seemingly decoupled from national jurisdictions in important ways. As noted above, having crossed an internal

⁹ See Conant (2004) for a discussion of how these transformations are constraining German policymakers. With reference to the Fink Modell, she indicates how the “prospect of future ECJ interference altered the course of German policy making” (Ibid., p. 306). Another field in which the implications of EU citizenship for reverse discrimination produce particularly stark and surprising effects is in the area of family reunification.

¹⁰ For an account of the antecedent legal transformations that formed the extended conditions of possibility for this remarkable situation see Tryfonidou (2009).

frontier, EU citizens can now draw on Community law with regard to regulations affecting their status and situation, thereby partially detaching themselves from domestic jurisdiction and, consequently, the actions of domestic legislatures. Moreover, the actual behavior of EU nationals does in part ask us to reconsider the importance of this continued omission of more robust national-level political status.¹¹

While this is not the place to enter into a discussion of the value of active civic engagement in the practice of citizenship, such trends among EU citizens do in part provide a partial response to the charge that postnationalism is “a tribute to mass disenfranchisement” (Hansen 2009, p. 20; see also Hansen 1998, p. 7). This is because EU citizens do possess important political entitlements, despite showing a generally woeful aloofness toward exercising the important political rights of participation secured under their status. But, perhaps more problematically for those who might argue for the primacy of the right to participate in national elections, EU citizens show an equally striking lack of interest in naturalizing—the necessary prerequisite to participating in *Land* and national elections. Moreover, such trends have continued even in the wake of important shifts in Germany’s policies toward the naturalization of EU citizens.

Thus, arguably the strongest case for the growing significance of EU citizenship over national citizenship for Germany’s population of EU citizens is captured in their apparent near indifference toward acquiring German citizenship. As one scholar has noted, naturalization rates for EU nationals remained remarkably low from 2001-2008, hovering “between 0.4 per cent and 0.7 per cent” (Green 2010, p. 16). This is all the more striking since Germany has instituted the automatic toleration of dual nationality for EU citizens from 2007 onward, given that German resistance to dual nationality is widely perceived as the primary impediment to the broader naturalization of its third-country population. Indeed, even as dual nationality has become an available and accessible reality within Germany for privileged residents from EU member states, national citizenship is arguably waning in value in relation to EU citizenship.¹² Extrapolating from such behavior, we may conjecture that the benefits of naturalization are so marginal to this class of non-nationals

¹¹ In what should be a matter of some concern to those who celebrate EU citizenship, despite the granting of relatively expansive local political participation rights as foreigners, EU citizens on the whole express little interest in exercising their entitlements to civic participation—despite national initiatives aimed at informing EU citizens of their political rights. This is suggested by a 2002 European Commission report, which found that the proportion of EU non-nationals registered to vote was relatively low (EU Commission, 2002). The persistence of such trends has led one commentator to assert that there is “no strong demand for the current [political] rights and responsibilities of EU citizenship” (Chalmers 2006, p. 575). While such political indifference may be a lamentable fact, it seems that EU citizens residing outside their country of nationality themselves place a lesser value on this element of the practice of citizenship. Moreover, this trend with regard to civic engagement is reflected within Germany where, as a proxy of general political participation, non-national EU citizens registered to vote in the 2004 European Parliament elections stood at a dismal 6.1% (EU Commission 2006, p. 2).

¹² However, as Green notes elsewhere, the difference between formal citizenship and EU citizenship has not been rendered entirely irrelevant in the German context. As he writes, “compared with some other EU member-states, the material benefits of nationality in Germany are in fact comparatively high: as well as granting full voting rights, nationality is a prerequisite for civil service positions (*Beamte*), which in Germany includes most middle- and senior ranking positions in education, law enforcement, the judiciary and the administration at local, *Land* and federal levels” (Green 2005, p. 943).

within Germany that, even with the privilege of full access to German citizenship alongside their own, interest in naturalization remains low. The failure of EU citizens residing in Germany to take up national citizenship despite the liberalization of German nationality law and the formal tolerance of dual nationality would seem to suggest that they, on the whole, view their rights as on par with those of nationals. According to Simon Green, “this probably reflects the comprehensive availability of welfare and residential rights, and partial availability of political rights...which has rendered any material gain from naturalization for this group effectively meaningless” (Green 2010, p. 16.) If this is correct, we must concede that, in the eyes of EU citizens themselves, the status and rights conferred by EU citizenship closely approximate those of German nationals in all but negligible ways.

Third-country Migrants: Persisting Exclusions and the Re-inscription of the National

While the situation of EU citizens within Germany provides a striking testament to the emergence of postnational trends, the case of the country’s large third-country migrant population arguably has proven to be far more ambiguous in light of contemporary developments. As is well known, Germany’s sizable migrant population is to a great extent the result of the post-war guest-worker program instituted in the 1950s by the (West) German government to respond to labor shortages arising in the context of the *Wirtschaftswunder*. Viewing these labor migrants through the prism of Germany’s formal rejection of the status of a country of immigration, most Germans “assumed that foreigners were temporary sojourners” whose stay in the country would be far from permanent. (Chin and Fehrenbach 2009, p. 107). However, stay they did, and with some irony, as trends toward longer-term residence emerged, belated attempts of the German government to curtail its growing migrant population only “reinforced the process of settlement, sharply limiting back-and-forth migration and prompting a surge in the immigration of family members” (Brubaker 1992, p. 172). Thus even with the end of formal recruitment for its guest worker policy in 1973, Germany’s population of foreign nations continued to grow and become more settled as large numbers of ‘guests’ decided to remain within the country and also to sponsor dependents to join them. (Chin and Fehrenbach 2009, p. 107; see also Brubaker 1992, pp. 171-72). Coupled with the effects of Germany’s up until recently generous asylum policy, the country’s non-national population continued to expand, only stabilizing in 2004 (Green 2010, p. 4). As of 2008, Germany’s population of non-nationals not from EU member states, and therefore lacking the entitlements of EU citizenship, stood at an impressive 4.74 million or roughly 5.8% of Germany’s population (Eurostat 2009).

As the host of Europe’s largest population of non-EU nationals, recent developments in Germany’s citizenship and naturalization policies remain central to an assessment of the postnationalist position. Moreover, Germany’s experiences in its retrospectively acknowledged post-war history of immigration have formed an important, though perhaps potentially misleading, part of the story told by postnationalist scholars. Thus, the changing status and expanding resident rights of Germany’s guest worker population is cited as a component of Soysal’s claim that membership rights and national citizenship have become progressively decoupled, leading to the “decreasing importance of formal citizenship status in determining the rights and privileges of migrants in host countries.” (Soysal 1994, p. 132; see also pp. 122-30). Indeed, it was precisely because Germany’s notably exclusivist

approach toward citizenship, grounded in its 1913 nationality law, coexisted alongside the gradual unfolding of extensive social and economic rights for resident aliens that scholars could take up the case of Germany as an example of broader postnationalist trends. Moreover, read through this same lens, even Germany's recent dramatic liberalization of its citizenship policy could be viewed as a separating of forms of membership from exclusivist ethno-cultural notions of national identity, as a population long regarded as intrinsically foreign was finally becoming ostensibly incorporated into Germany's national citizenship regime through the removal of formal barriers to naturalization and the broader opening up of citizenship. These changes—including the introduction of *jus soli* citizenship alongside Germany's longstanding use of *jus sanguinis*—have been viewed by many as a historical milestone, both with regard to Germany's conception of membership and as conferring belated institution and legal recognition of its long-standing *de facto* status as a country of immigration, and thus potentially suggested the emergence of a conception of community membership seemingly characterized by the progressive “decoupling of the citizenry from a particular nation or ethnic group” (Joppke 2005, p. 53). Such developments should not be trivialized given Germany's past history of conceiving of nationality in rather narrow and exclusionary terms. While classically characterized by Brubaker as embodying a conception of its citizenry as a “community of descent,” these developments potentially point to the erosion or disappearance of an “ethnocultural inflection of German self-understanding and German citizenship law” (1992, pp. 14, 178). For what had remained “unthinkable in Germany” for Brubaker from the standpoint of the country's historically embedded national self-understanding—the adoption of *jus soli*—is less than 20 years later, a concrete reality. (1992, p. 185). Thus the combined trends within Germany of progressively expanding alien rights and a remarkable liberalization of access of citizenship seem to lend credence to the postnationalist claim that the “value of citizenship of has much decreased” (Joppke 2005b, p. 90).

Despite shifts in the conditions of access to important membership rights, as well as more recently undeniable landmark transformations in Germany's citizenship and naturalization policy, the postnationalist thesis arguably remains far too sanguine with regard to the status of third-country migrants. As I will indicate subsequently, focusing on the previously discussed developments should not lead us to paper-over important details in the complex dynamics surrounding membership, rights, and identity within contemporary Germany, lest we overlook important counter-trends that seemingly point to the persisting importance of the national. Three elements of the situation of third-country nationals stand out this regard.

First, in an important sense, the development of alien rights for Germany's migrant population does not point to the emergence of locations of citizenship outside the state. Unlike the evolution of EU citizenship outlined above, which has progressively decoupled a growing number of membership rights from national boundaries and jurisdictions, the status of third-country residents remains fairly rooted within a national context, with important consequences. This is particularly salient for two reasons. As Joppke has suggested in his most recent work, there is a clearly identifiable trend toward moving to ‘upgrade’ the value of formal national citizenship in contemporary government policies

across Europe. His analysis identifies such policy developments as attempts to compensate for potential political backlash with regard to a “significant opening for legal immigration in Europe” which, though primarily “highly selective and skill-focused,” has still proved to be highly unpopular in the eyes of anxious publics (Joppke 2010, p. 156). Joppke optimistically interprets such developments as “ultimately futile, rearguard actions against the inevitable lightening of citizenship in the West” with an eye to the increasingly substantive form that EU citizenship has taken (Ibid.). Tracking the effects of recent ECJ activism rehearsed above, Joppke suggests that any attempts to thicken the entitlements granted in virtue of national status are inevitably stymied by the trend toward virtual equality established between national citizens and residents from EU member states. Thus, in virtue of the non-discrimination provisions attached to their free movement, any differential improvement by governments of nationals rights will have to be opened up to EU residents. However, and this is crucial, while the supra-national status rooted in Community law of resident EU nationals provides an easy-in for Union citizens under the protective gaze of the ECJ, this same logic is not as effortlessly applied to the status of third-country migrants.¹³ This suggests that if European governments become serious in their efforts to “thicken citizenship” by delimiting the scope of economic and social welfare rights, or to render the internal frontiers of the Schengen Area increasingly semi-porous, it may very well be that non-EU resident aliens are the ones who will lose out. While such a situation is merely speculative, it remains an immanent possibility because resident aliens remain primarily the subjects of domestic law. Therefore the reemergence of a broadening divergence between the status of citizens and third-country nationals is not beyond the possible, but very much up to the vagaries of the domestic political climate. While Joppke argues that the increased status of EU citizens will only help the status of third-country nationals because it is “inherently hard to justify a distinction between to types of internal free movers” this follows less convincingly from his arguments (Joppke 2010, p. 169). Indeed, we must be careful to avoid the distortions that arise from simply assimilating the situation of EU citizens to that of third-country nationals, most obviously because the latter remain specifically severed from the particular legal status of EU citizenship formulated in the Maastricht Treaty. If governments persist in trying to raise the apparent value of national citizenship in light of its diminished currency in the face of Union citizenship entitlements, there is no strong reason flowing from the logic of an expansive EU citizenship that suggests why third-country nationals will not loose out instead, especially if European states witness growing trends of populist xenophobia and intolerance toward non-nation populations.

A second concern comes from the persisting differences in the entitlements of third-country nationals and German citizens that should cause us to remain skeptical of the postnationalist claim regarding the progressive decoupling of important membership rights from formal citizenship. While the above discussion highlighted how alien rights

¹³ The application of Community Law is triggered by movement from one member state to another and therefore covers all EU nationals residing within another member state. In contrast, third-country nationals “rights were originally entirely a matter for national law regulation” and while there has been movement to strengthen third-country nationals rights in recent directives, this has proceeded only very slowly. (Tillotson and Foster 2003, p. 351) At this stage there seems little possibility that the ECJ will be able to accomplish anything close to the revolution in EU citizenship with regard to third-country nationals, given that the latter process was driven by prohibitions against discrimination on the basis of nationality built into the status of EU citizens.

remain generally embedded within a domestic legal context and therefore potentially insulated from the expansionist thrust of developing EU citizenship, here I point to the empirical reality of a persisting gap between aliens and citizens.

Third-country nationals who have established permanent residency status do enjoy an impressive array of privileges, ranging from family reunification rights, unrestricted access to the labor market, as well as entitlements to education and many social security benefits on the same conditions as citizens (Groenendijk, Guild and Barzilay 2000, pp. 44-46). But though it may be true that at present the social and economic rights of resident aliens within Germany have come to increasingly approximate those of nationals, it would be inappropriate to equate resident status with full membership. As has been stressed more generally by others, certain rights of central importance remain crucially bound up with the possession of formal citizenship, and this certainly remains the case with regard to Germany's third-country nationals. (Hansen 2009, 1998). First, Germany's non-EU permanent residents lack entitlements to diplomatic and consular representation on behalf of the German government. This is an important omission given that, in crucial circumstances that have become an all too present possibility in our global security climate, the right to diplomatic protection "can be of decisive importance for the individual migrant's life chances" (Hansen 2009, p. 13). This of course contrasts with the enhanced status of nationals of EU member states who are in certain circumstances able to draw on the diplomatic representation of Germany by virtue of their Union citizenship. Second, unlike formal citizens, third-country nationals are not free from the threat of deportation and expulsion. This is an important vulnerability given that Germany is among the "chief deporting states in the advanced industrialized world" having conducted over 35,000 deportations in 2000 (Ellermann 2009, p. 4).¹⁴ It is true that in Germany *permanent* residents do enjoy a greater degree of protection against expulsion than temporary residents; however that protection is by no means total. For instance, third-country nationals may be expelled on grounds of posing a threat to public order, or on the basis of providing false information to gain residency status. (Groenendijk, Guild and Barzilay 2000, pp. 47-48).¹⁵ Remarkably, the latter provision has been applied to allow for the discretionary deportation of the children of migrants on the basis of their parent's deception with regard to immigration proceedings—despite the former having been born and raised to adulthood in Germany. Here the experience of Mohammad Eke is a disturbing reminder of the vulnerability to deportation of third-country nationals; despite having lived his entire life in Germany, Elke was deported at the age of 21 to Turkey, a country he had never even visited, on the grounds that his parents relied on false papers to gain residency status over two decades prior (Spiegel 2009). Indeed, it is important to note that in Germany receiving social assistance *may* provide legal grounds for the deportation of even permanent residents, though in practice such expulsions are rare (Groenendijk, Guild

¹⁴ This total reflects a three-fold growth in the number of expulsions over ten years, corresponding to "a period of highly politicized immigration politics that culminated in far-reaching policy reform" (Ibid.). The policy response was a historical tightening of Germany's asylum controls. (Ibid., 18-21)

¹⁵ In fact, "total protection from expulsion only exists for minor children under 14 years" (Ibid.).

and Barzilay 2000, p. 46).¹⁶ Thus, to view the situation of Germany's third-country migrants as one to be experienced as notably precarious, when contrasted with the status of citizens, would not be without reason. Whether pursued under the banner of national security or immigration policy, these trends point to the continuing salience of an unqualified right against expulsion for Germany's third-country migrants, the absence of which emphasizes the lasting importance of access to national citizenship for this population. Finally, a last crucial category of rights refused to third-country migrants in Germany concerns the continued denial of access to either active or passive political participation. Prior to Germany's at least partial easing of naturalization policies in 1992 and the more recent integration of *jus soli* into its nationality law, this total political exclusion of a inter-generational population of guest-workers turned long-term residents—what Michael Walzer called a “disenfranchised class”—was particularly scandalous from the standpoint of the normative commitments at the core of modern liberal democracies (Walzer 1983, p. 59). This is because, as Joppke has eloquently put it, “liberal democracy demands congruence between the subjects and objects of rule, irrespective of the ethnic composition of the population”—and it was arguably the persisting lack of such congruence that finally led to the emergence of a rights-based claim to naturalization and the reforms of Germany's nationality law. (Joppke 2005b, p. 87). Yet even following the partial liberalization of access to citizenship, Germany has continued to host a large population of third-country nationals whose continued disenfranchisement constitutes an important challenge to the postnationalist claim regarding the decoupling of rights from formal citizenship. Ironically, in many ways the presence and expanding entitlements of EU citizens only further throws into sharp relief the third-class status of third-country nationals within Germany. Unlike other member states that grant to third-country nationals the right to vote in local elections, and in some cases the right to stand for office, Germany has persisted in offering neither (Geyer 2007). This means that third-country migrants who may have been long-term residents, or perhaps even born within Germany, not only hold less political rights than German citizens, who possess full entitlement to civic participation on the local, *Land*, federal, and EU level, but also, remarkably, enjoy fewer political rights than non-nationals from EU member states who have resided within Germany for a far shorter time. Indeed participation in political organizations is limited because naturalization remains a precondition for candidacy in Germany's political parties, and under German law immigrants that have not naturalized cannot constitute the majority of members in any political party (Ögelman 2003). Moreover, unlike their privileged European counterparts, third-country nationals lack the robust protections granted on EU citizens by Community Law, while remaining politically excluded subjects of a framework of laws and institutions in which they have no say. Indeed, political rights seem all the more important given that there are persisting trends of social marginalization toward the largest minority group among German's third-country residents with unemployment at double the national average for Turkish nationals and 28% reporting discrimination when searching for employment. (Spiegel 2010; See also OSI 2010). What official political voice that Germany's non-naturalized Turkish nations possess is limited to the *Auslanderbeiräte*

¹⁶ This is particularly relevant in light of the prior discussion of the expanding status of EU nationals, given that ECJ rulings have expanded Union citizen's social rights to almost mirror those of nationals including so-called “mixed type” benefits. Also see Joppke (2009b) p. 46; Constant (2004) pp. 305-8.

councils established to articulate immigrant's interests, but these organizations are widely perceived as ineffective by those they are meant to represent (Ögelman 2003). In this context, given that the modern emancipatory thrust of the meaning of citizenship has been tied to the progressive extension of political inclusion, through which those subject to the laws of the state are allowed to participate, it is hard not to view arguments regarding the "postnational membership" of Germany's population of third-country nations as anything but a perverse tribute to second-class citizenship. Thus, because of these reasons, national citizenship continues to remain crucial to the securing of important rights for Germany's third-country immigrant population.

A final way in which the situation of Germany's third-country migrants seems to undermine assertions about the waning importance of national membership and the nation state is captured in the tensions that have emerged in the context of recent reforms in German nationality and citizenship law. Arguably on a superficial level, the gradual opening up of access to national citizenship to Germany's large third-party migrant population may be viewed as more grist for the mill for postnationalists. From this perspective, these progressive reforms are indicative of an emerging recognition of the rights of long-term residents, while the shift to more inclusive notions of citizenship suggests the decoupling of full membership status from particularistic and exclusionary conceptions of community and nationhood. However, I wish to suggest that the developments leading up to Germany's current regime of naturalization and citizenship with regard to third-country nationals should be understood as an important challenge to the postnational thesis.

On the one hand, if formal national membership has progressively become less important, then why has Germany's approach to citizenship law reform focused on opening up access to German nationality some 15 years after the postnationalist thesis initially emerged? Put otherwise, if the development of extensive membership rights for permanent residents suggests the waning importance of citizenship, how are we to explain the appearance of access to citizenship and naturalization as a central political issue? Following early Joppke, I suggest that the reemergence of a right to citizenship with regard to Germany's large non-EU national population should be read as counterpoint to the postnationalist claim that "the acquisition of citizenship has been rendered obsolete by upgraded alien rights" (Joppke 2001, p. 343). Such a view is supported both by the statements of German government officials who progressively came to view the continued exclusion from citizenship of the country's large guest-worker population turned settled residents as deeply problematic, and by the actions of third-country migrants, who responded to the easing of naturalization requirements by increasingly taking up German citizenship, that is until provisions disallowing dual nationality were tightened (Green 2010, p. 4).¹⁷ Therefore, the rise of citizenship reform in Germany indicates the persisting value and meaningfulness—both in the eyes of government officials and of third-country nations—of the formal status of national citizenship.

¹⁷ Thus as early as 1984 there was widespread agreement that the integration of Germany's large population third-country population represented an important government priority, with officials declaring that "no state can in the long run accept that a significant part of its population remain outside the political community." (Quoted in Brubaker, 1992, 78)

On the other hand, features of Germany's reformed citizenship and naturalization regime, while of course marking a historical departure from the country's prior approach toward its population of third-country nationals, arguably still betrays more than a trace of exclusionary forms of national membership. If postnationalists wish to suggest that our contemporary political context is marked by the progressive decoupling of citizenship from exclusionary forms of identity and membership, then Germany's contemporary citizenship regime, which cannot quite be called post-ethnonationalist, poses a further challenge to their claims. In this sense, not only does citizenship still matter, as dramatized in the politics of citizenship in Germany, but it seems to matter in ways that are strikingly contrary to the postnationalist position.

The exclusionary dimensions of Germany's approach to nationality have come out most clearly through the continued, though markedly selective, rejection of dual nationality in the country's contemporary citizenship policy, even while access to naturalization and citizenship have been broadly re-configured in light of the reforms introduced in 2000. Aspects of these and subsequent amendments to German citizenship and nationality law not only eliminated loopholes that had allowed Turkish nationals to gain dual citizenship through re-acquiring Turkish citizenship after naturalizing in Germany, but introduced *jus soli* in an importantly circumscribed form.¹⁸ This latter feature of the new citizenship regime is exemplified in the *Optionsmodell*, which sought to render possible cases of dual citizenship generated through the country's adoption of *jus soli* only temporary, by requiring individuals to opt out of other nationalities at the age of 23 or risk losing German citizenship. While this is not the place for a theoretical discussion of the merits or deficiencies of dual citizenship, in the German context the continued formal rejection of dual citizenship has particular importance for how we should understand citizenship more broadly. This is because the refusal to allow dual nationality for Germany's largest group of third-country nationals is widely perceived to be the chief deterrent against naturalization among Turkish immigrants. Thus in a development that would seem paradoxical for a series of policy reforms intended to both encourage and open up access to naturalization, since the introduction of the 2000 reforms naturalizations have reduced by half—falling from 2.6 % to 1.6 % from 2000-2007, with the drop in naturalizations Germany's Turkish population being considerably greater (Green 2010 p. 14).¹⁹ As Simon Green has put it, far from opening up citizenship to Germany's large immigrant populations, the new naturalization regime “is actually helping to create fewer citizens than the old, supposedly more restrictive law.” (Ibid., see also Green 2005, p. 946). But perhaps most problematically, this restrictive approach toward dual nationality for third-country nationals has developed alongside a far more permissive policy reserved for nationals from other EU member states. Recall that under Germany's post-2007 citizenship law amendments, dual citizenship has become automatically permitted for all EU citizen applicants. Reminiscent of Germany's long-running policy of automatically granted access to citizenship to so-called ethnic Germans who may have never resided within the country

¹⁸ For a more extensive discussion of the elimination of informal mechanisms for dual citizenship for Germany's Turkish population and the frequently resulting loss of nationality in the wake of the reforms introduced in 2000, see: De Hart and Groenendij (2007) p. 100.

¹⁹ Green reports that the reduction in naturalization among Turkish nationals represents “a fall from 1999 of over 75 per cent[!]” (Ibid.).

while effectively denying access to citizenship to its intergenerational population of Turkish immigrants, the country's current approach toward citizenship thus embodies a double-standard, formally tolerating dual nationality for EU citizens, as well as for "ethnic Germans," while effectively denying it to third-country nationals. This persisting pattern has rightly led Green to rightly suggest that German citizenship retains "more than a whiff of ethnocultural exclusivity" (Green 2005, p. 948). But more importantly for our discussion, this distinction stresses the differential treatment of EU citizens from third-country nationals within Germany and highlights how such divergent experiences should be understood as frustrating postnationalist expectations, if only because exclusionary conceptions of membership—now perhaps configured around a 'European' identity—seemingly continue to take precedence over norms grounded in a conception of universal personhood.

Germany's Persisting Ambiguities of Belonging and Membership

In closing, this paper has sought to examine the postnationalist's assertion that emerging forms of membership point to a important shift in the configuration of the rights, status, and identity attached to citizenship as traditionally understood, one in which the aforementioned components of membership have become decoupled in complex ways, leading to the diminished importance of the nation state and national citizenship. Taking contemporary Germany as crucial case for assessing the existence and meaningfulness of such trends, I have sought to examine empirically whether the present institutional arrangements of the largest host country of non-nationals within the European Union can be said to vindicate the postnationalist claim. Focusing on the position of EU citizens and third-country migrants, I have suggested that we are confronted with a deeply ambivalent situation. On the one hand, as I have tried to indicate above, the emerging status of EU citizenship, under an intrepid ECJ, has come to resemble a postnational form of membership, exemplifying a partial decoupling of both rights and status from the nation state, and in its increasingly robust form, paradoxically come to potentially empower EU citizens with greater rights than nationals. On the other hand, Germany's population of third-country nationals remains largely insulated from such developments, and their experience highlights the lasting importance of national citizenship in ways that undermine the postnationalist position. This is borne out in the many important rights that third-country nationals continue to be denied, and in the politics of dual citizenship that has unfolded in Germany in the context of its recent citizenship reforms, the latter highlighting persisting elements of ethno-nationalism. Thus, given the continued precarious position of Germany's large population of third-country migrants, a group frequently far more economically, politically, and socially disadvantaged than their EU national neighbors, we must admit that the postnationalist perspective is a deeply problematic lens for understanding what the current stakes of citizenship are today. Admittedly many scholars believe that Germany's present approach toward citizenship and naturalization with regard to third-country nationals is deeply unstable, with some suggesting that the denial of dual citizenship to third-country residents is likely to run afoul of the European

Convention, while others suggest that the *Optionsmodell's* effect of the automatic loss of nationality is likely to be equally problematic in the eyes of the German constitutional court, where a legal challenge is to be expected. That said, for the time being, it is hard not to view the position of Germany's third-country nationals as one tantamount to second-class citizenship.

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