

**EXAMINING THE NATURE OF POLICY CHANGE:  
A NEW INSTITUTIONALIST EXPLANATION OF  
CITIZENSHIP AND NATURALISATION POLICY IN  
THE UK AND GERMANY, 2000-2010**

by

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# **Abstract**

This thesis combines two burgeoning fields – New Institutionalism and migration studies – to explain the process of institutional change. It tests six hypotheses drawn from a hybrid theoretical framework drawn from Historical Institutionalism, Rational Choice Institutionalism, and Sociological Institutionalism, identifying concrete mechanisms of reproduction and sources of endogenous and exogenous change. It applies this framework to changes in access to citizenship in the form of citizenship and naturalisation policy in the United Kingdom and Germany between 2000 and 2010. Its greatest contributions lie in a more comprehensive explanation of endogenous factors and incremental changes, two aspects of institutional change that have received inadequate theoretical attention and empirical investigation. Testing economic, power-based, and ideational explanations for change, it concludes that each of the New Institutionalisms makes an important contribution to a complete understanding of the process of change and the dynamics of this policy area in two very different European countries.

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HMW  
Truckee, August 2011

# Foreword

I approach both of the countries examined in this thesis as a foreigner, though not as an ethnic minority. I have lived as a non-EU immigrant in both countries, and this ‘outsider’ perspective undoubtedly influences my interpretation of the policy process in both cases.

Where they exist, I have used the standard accepted translations of German institutional names, ministerial titles and parliamentary acts. Unless otherwise noted, all translations from German are my own. Where possible, these are accompanied by a footnote of the original German for the reference of speakers of both languages. This is especially important in Chapter 6 when citing speeches from transcripts. German words or phrases are indicated by the use of italics.

I have tried as much as possible to avoid the unnecessary creation of new terminology and excessive use of abbreviations. Most of the abbreviations used in this work are standard forms in their country of origin and are indexed in the list of abbreviations. Where the use of these terms requires further explanation, this is provided in a footnote on the first occasion of use.

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# Abbreviations

BAMF	<i>Bundesamt für Migration und Flüchtlinge</i>
BBC	British Broadcasting Corporation
BC	British Citizen
BCIA	Borders, Citizenship and Immigration Act
BGBI	<i>Bundesgesetzblatt</i>
BIA	Border and Immigration Agency
BNA	British Nationality Act
BNO	British National (Overseas)
BNP	British National Party
BOC	British Overseas Citizen
BOTC	British Overseas Territories Citizen
BPP	British Protected Person
BR	<i>Bundesrat</i>
BS	British Subject
BT	<i>Bundestag</i>
BVFG	<i>Bundesvertriebenengesetz</i>
CDU	<i>Christlich Demokratische Union</i>
CNP	Citizenship and naturalisation policy
CSU	<i>Christlich-Soziale Union</i>
CUKC	Citizen of the UK and Colonies
DICB	Draft (Partial) Immigration and Citizenship Bill
EEA	European Economic Area
ELR	Exceptional Leave to Remain
EU	European Union
EURLUmsG	<i>EU-Richtlinienumsetzungsgesetz</i>
FAZ	<i>Frankfurter Allgemeine Zeitung</i>
FDP	<i>Freie Demokratische Partei</i>
FRG	Federal Republic of Germany
GDR	German Democratic Republic
HC	House of Commons
HI	Historical Institutionalism
HL	House of Lords
IANA	Immigration, Asylum and Nationality Act
ILR	Indefinite Leave to Remain
IND	Immigration and Nationality Directorate
KoL	Knowledge of Life in the UK Test
MdB	<i>Mitglied des Deutschen Bundestages</i>
MP	Member of Parliament
NI	New Institutionalism
NIAA	Nationality, Asylum and Immigration Act
OECD	Organization for Economic Cooperation and Development
PM	Prime Minister
RCI	Rational Choice Institutionalism
SCE	Select Committee E
SI	Sociological Institutionalism
SPD	<i>Sozialdemokratische Partei Deutschlands</i>

StAG	<i>Staatsangehörigkeitsgesetz</i>
SVR	<i>Sachverständigenrat deutscher Stiftungen für Migration und Integration</i>
UK	United Kingdom
UKBA	United Kingdom Border Agency
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNPD	United Nations Population Division
ZuG	<i>Zuwanderungsgesetz</i>

# 1 Introduction

Since the period of what, with hindsight, appears to be remarkably uncontrolled migration to Europe ended in the late 1960s and early 1970s, Western European countries have spent untold hours legislating and regulating migration and access to citizenship. The changing expectations of liberal democracies combined with increasing global mobility, mass migration and the associated increased security threats have led to concerns that the Westphalian sovereignty of nation-states, core components of which are the abilities to control their borders and to regulate the membership of their societies, was eroding. Over the past ten years, further factors have added to the complexity of the situation, as most West European countries have begun to experience dramatic demographic shifts, and new security concerns have arisen in the wake of a series of terrorist attacks by Islamic Fundamentalists in the United States, Madrid, and London.

States are increasingly expressing concern about a waning sense of national identity and a failure to 'integrate' their own citizens, with too many citizens refusing to take up the rights and responsibilities entailed by their membership status. This has created little appetite to deal with other reluctant populations, especially in the form of migrants, whom the nation-state continues to have the right to exclude from its territory. It has also led to complete re-evaluations of the membership criteria. The result has been dramatic change to criteria for membership, from the vantage point of the end of the first decade of the new millennium.

The debate about entitlement to membership of a state is hardly a new phenomenon. It is a question that has increasingly occupied Western governments since the Enlightenment and that grew more complex in the twentieth century with the rapid extension of full citizenship to include many groups previously denied this elite

membership status, including women, minorities and the poor. All modern conceptions of citizenship have struggled to grapple with the expansion of citizenship — in the developed world, at least — to include nearly every national. Access to citizenship has historically been limited to very small segments of the population. The spread of liberal democracy has meant that it is no longer acceptable to exclude large numbers of people from the institutions, as had been the pre-twentieth-century norm. The lines between different groups have blurred with increasing international mobility, people of mixed heritage, and the rise of minority rights. This has confused states' attempts to identify those to whom they have responsibility.

The national understanding of citizenship is underpinned by views on many different aspects of membership, which are reflected in debates at both an academic and a societal level. On its most formal level, societal consensus is reflected in citizenship and naturalisation policy, which juridically defines members, non-members, and criteria for acquisition of membership. However, as debates about 'active citizenship', multiculturalism and integration show, membership is connotation-laden, and even a simple definition is incredibly contentious. These debates have placed citizenship and naturalisation at the centre of policy discussions in many Western European countries in the past decade. This thesis explores the process of change to the criteria to membership in two countries, Germany and the United Kingdom, in an effort to open the 'black box' of policy-making and to understand how and why the changes over the past decade have come about.

This thesis addresses several shortcomings in the current body of research. The research presented herein takes an interdisciplinary approach and combines two independent fields – migration studies and New Institutionalism – to strengthen both. With the emergence of migration studies as a specific field in the past few decades, scholars have begun to take notice of the lack of engagement with theory, fostering an expansion

beyond individual case studies that highlight uniqueness. The greatest theoretical development in this field, thus far, has come from economists (Hammar, Brochman, Tamas, & Faist, 1997; Massey, Arango, Hugo, Kouaouci, & Pellegrino, 2005; Stark, 1985, 1991), but there is a growing call for greater theoretical development in other disciplines under the umbrella of migration studies (Brettell & Hollifield, 2008; Castles, 2010; de Haas, 2010; International Migration Institute, 2011). There are four main sub-categories of study that fall under the heading of 'migration': asylum; immigration (including labour migration, illegal migration and the migration of dependents); citizenship; and integration, which tends to overlap between the first three.

This thesis addresses citizenship, analysing policies regulating acquisition and loss of nationality in two European countries: Germany and the UK. The focus of this thesis on central government, examining the process of policy transformation and seeking to offer a theoretical explanation of the changes that have occurred in the past decade. In the context of the European Union (EU), policies regulating acquisition and loss of citizenship are the easiest to study without having to account for the dynamics of supranational institutions, as setting the conditions regulating the body of membership is still viewed as an essential component of national sovereignty, and there has, as yet, been little appetite to interfere in other countries' policies, and argument that is developed in greater depth in section 5.1.3.

The choice of case study countries is an important addition to the literature. Many studies of citizenship involving Germany are either single-country studies (Eley & Palmowski, 2008a; Gosewinkel, 2001; Green, 2004; Martin, 2004; Mehrländer, 2001; Meier-Braun, 2002; Thränhardt, 1999); are coupled with France (Brubaker, 1990, 1992; Gosewinkel, 2008; Guiraudon, 1998; Hagedorn, 2001; Kastoryano, 2002); or are parts of large N comparisons (Bauböck, Ersbøll, Groenendijk, & Waldrauch, 2006; Brochman, 2002; Cesarini & Fulbrook, 1996; Howard, 2006; Joppke & Morawska, 2003; Koopmans,

Statham, Giugni, & Passy, 2005; Messina, 2007; Weil, 2001). In the British case, comparisons with France are also common (Baldwin-Edwards & Schain, 1994; Favell, 2001; Schain, 2008); or with the Anglophone world (Australia, Canada, New Zealand, USA), as occurs frequently in governmental research publications and policy papers (Communities and Local Government, 2008; Dustmann & Frattini, 2011; Home Office, 2001, 2002, 2011b; Kymlicka, 2003).<sup>1</sup> There are some notable exceptions that do compare the UK and Germany in small-N comparisons (Joppke, 1999; Karapin, 1999; Koopmans & Statham, 2000; Thomas, 2006; Todd, 1998), but these are less common than the other comparative choices. This is indicative of the general lack of knowledge exchange between Germany and the UK that is evident in policy choices made and is acknowledged by policy actors (Williams, 2009a, 2010a, 2010b).

This thesis, focused on the years between 2000 and 2010, provides an important contribution to the literature by updating the literature to the state of the art. There is a plethora of literature analysing the changes to German citizenship policy during the 1990s,<sup>2</sup> but few evaluations of the lasting effects of these changes and more recent policies have yet appeared. Much of the UK literature is focused on community cohesion and multiculturalism (Abbas, 2005; Bleich, 2011; Blunkett, 2002; Boswell, 2011; Heath & Tilley, 2005; Kim, 2011; Levesley, 2008; Vertovec & Wessendorf, 2010; Werbner, 2000) but less on the policy process itself and how the changes came about.<sup>3</sup>

To analyse this process of change, this thesis combines two extensive bodies of literature: that on access to citizenship and that on New Institutionalism. New Institutionalism suffers from the opposite problem to migration studies: there is an

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<sup>1</sup> Dustmann and Frattini's report, although not published until 2011, was commissioned by the Department for Communities and Local Government under the Labour government and is therefore reflective of the policy preferences during the time period examined in this thesis.

<sup>2</sup> See, for example, Green (2004); Hagedorn (2001); Hailbronner & Renner (2005); Herbert (2001); Howard (2008); Joppke (1999); Mehrländer (2001); Meier-Braun (2002).

<sup>3</sup> For exceptions to this, see, for example, Boswell, Geddes, and Scholten (2011); Statham and Geddes (2006)



abundance of theoretical literature (Cappocia & Kelemen, 2007; Clemens & Cook, 1999; Hall & Taylor, 1996; Mahoney & Thelen, 2010; Peters, 1999; Pierson, 2004), but despite the presence of some ground-breaking applications of theories to individual studies (Collier & Collier, 1991; Powell & DiMaggio, 1991; Streeck & Thelen, 2005b), it is frequently difficult to operationalise and apply the theoretical frameworks from individual studies to other research projects. Institutional empirical studies are dominated by studies of organisations (March, 1988; March & Olsen, 1984, 1989; March & Simon, 1958; Powell & DiMaggio, 1991), regime change (Collier & Collier, 1991; Skocpol, 1979) and economics and economic systems (Alston, Eggertsson, & North, 1996; Arthur, 1988; Campbell, 2004; Campbell & Pedersen, 2001; North, 1990), especially capitalism (Hall, 1992; Hall & Soskice, 2001; Hall & Thelen, 2006; Morgan, Whitley, & Moen, 2006; V. Schmidt, 2002). New Institutional literature permeates disciplinary boundaries – political science, economics, organizational studies, sociology, to name a few – but the writers in one discipline frequently seem unaware of developments in some of the others. Though New Institutionalism is beginning to receive attention in citizenship and immigration literature (Boswell, 2008; Faist, Gerdes, & Reiple, 2004; Favell, 2001; Green & Turner, 2007; Hansen, 2000, 2002; Koenig, 2007; Kostakopoulou, 2005), its theories are predominantly used to explain path dependency, not institutional change. As this thesis will show, although path dependency is certainly present in this policy area, it cannot explain why off-path changes come about.

One of the primary tasks undertaken in this thesis was to consolidate the predictions in these various bodies of literature about the mechanisms of institutional change and the typologies of change into a coherent, testable framework. This theoretical framework is then tested in application to citizenship and naturalisation policy in the UK and Germany.

This thesis specifically aims not to introduce unnecessary new jargon, seeking, wherever possible, to employ what seemed the most fitting existing terminology.

The theoretical framework is developed through the strategic combination of all three main strands of New Institutionalism: Historical Institutionalism, Rational Choice Institutionalism, and Sociological Institutionalism. It is controversial to combine these three traditions that frequently purport to stem from different and opposing ontological and epistemological presuppositions.<sup>4</sup> The first two have already been combined to some extent by leaders in New Institutionalism (Hall & Taylor, 1996; Katznelson & Weingast, 2005; Mahoney & Thelen, 2010; Pierson, 2004; Thelen, 2006), but there has, as yet, been little cross-pollination with Sociological Institutionalism. What this thesis shows is that each contributes to a better understanding of a different aspect of institutional change. As the tests of the theoretical framework will show, no one of the three offers a complete explanation of change; yet together, they propose testable hypotheses and reproductive mechanisms that provide an enlightening picture of the dynamics of institutional change.

As the data from the case studies in this thesis will show, economics, history, and culture each create factors that encourage institutional stability or change, and at different times, different factors weigh more heavily. Importantly, the latter two New Institutionalisms lead to a better understanding of why the changes might not always be ‘rational’ when judged by a cost-benefit analysis. The powerful explanatory potential of ‘irrational’ decisions in the face of other factors that are deemed more important than economic variables is one with which economists are only beginning to grapple. This thesis also aligns itself with more recent theories in its rejection of other classical assumptions, such as the availability of complete information and the primacy of reason over emotions.

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<sup>4</sup> For a good overview of the similarities and differences as well as the major researchers in each of these areas, see V. Schmidt (2009).

Both of these prove important in actors' decision-making processes regarding changes to citizenship and naturalisation policy in the cases discussed.

Before proceeding with this discussion, however, it is important to define the parameters of citizenship as utilised in this thesis. As hinted earlier, 'citizenship' is a very contested term, and it is inextricably bound up in debates about national sovereignty. This section provides a necessarily fleeting overview of the multi-faceted discussions of citizenship. Drawing from a vast body of literature in many disciplines, it begins with the challenge of defining citizenship before giving a brief overview of its historical development with specific reference to the United Kingdom and Germany, the countries examined throughout the rest of the thesis. The discussion then proceeds to a consideration of the relationship between citizenship and the nation-state, addressing on-going debates about national sovereignty.

## **1.1 Defining citizenship**

Although references to citizenship abound in everyday life, defining the term is far from simple. Debates about its meaning are present already in Aristotle's writings more than two thousand years ago:

The state is a compound made of citizens; and this compels us to consider who should properly be called a citizen and what a citizen really is. The nature of citizenship, like that of the state, is a question which is often disputed: there is no general agreement on a single definition: the man who is a citizen in a democracy is often not one in an oligarchy (Aristotle, 1941: 1275a).

Citizenship, as commonly used, can refer to national belonging, a body of rights, or participation in society; it can be a passive status or an active expression of membership; and it can be subjectively or objectively measured. In recent discussions across liberal democracies about 'citizenship' and 'active citizenship', the word has become laden with connotations that further complicate it. This section attempts to disentangle these interconnected meanings. The first step is to identify the components of citizenship, which

leads to a clearer understanding of citizenship and makes it possible to isolate the specific aspects of citizenship referred to in the remainder of the thesis. The final step is to distinguish between uses of the terms ‘citizenship’ and ‘nationality’.

### ***1.1.1 Components of citizenship***

Even the identification of the main aspects of citizenship is far from simple, and the lack of agreement means that discussants frequently talk past each other (Tilly, 1995: 8). Two of the most influential conceptions of the past century have come from T. H. Marshall (Marshall, 1964) and Jürgen Habermas (Habermas, 1994, 1995). More recently, both have come under attack, especially from post-nationalists, for the seeming inapplicability of their ideas to other countries and historical contexts (Barbalet, 1988; Giddens, 1985; Murphy & Harty, 2003; Sassen, 2003; Soysal, 1994; B. S. Turner, 1990, 2001). The number of academics publishing on citizenship has also expanded dramatically, adding historical, sociological, and economic interpretations to a field that was once largely limited to philosophers and political scientists. Each of these fields has deepened understanding of the complexity of citizenship and has issued systems of categorisation for the elements that make up the institution.

Marshall (1964) proposed a tripartite citizenship — civil, political, and social — that has established itself firmly within the classics of academic discussions. Long confined to meaning, ‘in the language of the law, political membership’, Marshall’s theory reflects early recognition of the evolution of citizenship to include civil rights (Habermas, 1995: 260-261). In a series of lectures, Marshall traced the development of citizenship in English history, identifying the historical aggregation of these categories of rights: civil rights, including rights necessary for individual freedom, and the existence of rule of law and the courts, were developed in the eighteenth century; political rights were added in the nineteenth century (though later for women); and social rights, including the right to the

prevailing standard of life, social services and education came in the twentieth century (Barbalet, 1988: 6). According to Marshall's conception, each category is a prerequisite for the development of the next, 'with each serving as a sort of platform for the others' (Giddens, 1985: 203). Jürgen Habermas echoes Marshall's hypothesis of 'a close relationship between citizenship and social welfare' (Eley & Palmowski, 2008b: 3-4).

Charles Tilly defines citizenship as a 'set of mutual, contested claims between agents of states and members of socially-constructed categories: genders, races, nationalities and others' (Tilly, 1995: 6). He then identifies four facets to which 'citizenship' can refer: a category, a tie, a role, or an identity, ultimately concluding that the characteristic of citizenship as a tie — 'an enforceable mutual relation between an actor and state agents' — is logically prior to the other three parts (Tilly, 1995: 7-9). Eley and Palmowski (2008b: 7) identify four main facets of citizenship: juridical, political, economic, and cultural. Caldwell (2008) and Canning (2008) propose three: individual belonging to the state; the collection of rights and duties enjoyed by citizens; and the subjective use of those rights. Lindblom (1977: 132-133) identifies a hefty nine, though Giddens (1985: 200) collapses these into Marshall's civil and political categories. Barbalet (1988: 5) summarises Marshallian citizenship in two main aspects: 'a status attached to full membership of a community'; and, derived from this status, 'those who possess this status are equal with respect to the rights and duties associated with it'. This two-part status and rights-based citizenship is frequently utilised (Barbalet, 1988: 15; Habermas, 1995: 261; Joppke, 2010: 28-29). Gawert defines citizenship as 'the legal institution via which the individual member of a nation takes part as an active agent in the concrete nexus of state actions' (Gawert, 1987 in Habermas, 1995: 261).

Confusion then arises because someone can be considered a citizen by the criteria of one facet but not by another, which has led to arguments about the value of citizenship in which the different parties argue past each other. Dahrendorf, for example, states,

Citizenship is a non-economic concept. It defines people's standing independent of the relative value attached to their contribution to the economic process. The elements of citizenship are thus unconditional (Dahrendorf, 1994: 13).

This may be true for those born into citizenship in a liberal welfare state, but there is little support for such a claim for candidates for naturalisation in these same countries. Instead, the accepted naturalisation model in most West European countries includes a non-negotiable economic element in which applicants must prove their economic contribution and lack of dependence on the provisions of the welfare state.

Most of these categorisations agree — implicitly or explicitly — that citizenship pertains to the relationship between the individual and the state. Yet even this basic, largely accepted assumption — that citizenship is predicated on the relationship between the individual and the state — has been increasingly questioned. Political science definitions have been augmented by more sociological understandings of citizenship, just as within political science movements have arisen questioning the continuation of the Westphalian international order. Both Marshall and Habermas rely heavily on a strong link between citizenship and the welfare state, a link that has been scrutinised in the wake of the Thatcher and Reagan eras (Eley & Palmowski, 2008b: 3).

Post-nationalists have argued that, while political rights remain largely the preserve of citizens (Soysal, 1994: 130-131), 'most civil and social rights do not show such limitation' (Joppke, 2010: 29), with widespread international norms in liberal democracies that grant civil and social rights to legal migrants and refugees without citizenship. This has led to increasing recognition that, while Marshall's theory might have explained citizenship's

historical development in Britain to the middle of the twentieth century, it remains specific to both time and place and does not necessarily provide the best explanation of developments in citizenship in the past half-century. Furthermore, it is problematic in application to federal states like Germany, 'whose borders have frequently been revised and where a central state has existed for only a relatively short time' (Eley & Palmowski, 2008b: 17). This has led to the caution that 'the relationships among citizenship, the state, and the nation should not be assumed to be given' (Eley & Palmowski, 2008b: 17-18).

In response to such critiques, other authors focus on the more ideational aspects of citizenship, seeing membership as *a priori* or coincidental to the relationship between individual and state or moving beyond the concept of citizenship as status. Somers 'question[s] the definition of citizenship as a status or attribute of a category of persons', instead asserting that 'citizenship is a set of institutionally embedded social practices' (Somers, 1993: 589). This shifts citizenship from a passive status to an active expression. Drawing on Tilly (1995), Palmowski (2008) also widens the definition, rejecting citizenship as a status for its reduction of a complex relationship into a zero-sum game. 'Instead, citizenship is also the perception of individuals and groups living in a state and their use of elements of citizenship to define themselves within (or against) their state' (Blessing, 2009: 462). Habermas adds to such conceptions by insisting that the institution of citizenship cannot be perpetuated passively: it 'require[s] the cooperative efforts of the active *praxis* of citizens, something in which no one can be compelled by legal norms to take part' (Habermas, 1995: 263).

Clashes arise, however, when actors emphasise different aspects in the same debate:

The right prefers to speak of "active citizenship" in order to emphasise the obligations of the people. The left tries to develop a notion of "communitarian citizenship" which combines solidarity with welfare rights. The centre turns the concept into an almost

vacuous label for everything that is not to be regarded as either right or left (Dahrendorf, 1994: 12-13).

Habermas (1995: 261) also notes a long-present philosophical divide between an individualist/instrumentalist citizenship (à la Locke) and a communitarian/ethical citizenship (à la Aristotle), a divide also identified by Charles Taylor (1989: 178-179). What these arguments highlight is that citizenship can be viewed from the angle of membership in the state or as 'full participation in the community' (van Steernbergen, 1994: 2). Membership in the state represents a more status-based definition, while contribution to communal life underpins discussion such as the UK's recent fixation on 'active citizenship'. Although both employ the term 'citizenship', they should not be confused with one another.

### ***1.1.2 Juridical/political citizenship***

I now return to Eley and Palmowski's (2008b: 7) four facets of citizenship — juridical, political, economic, and cultural — because they provide an easily applicable framework. This thesis focuses on the first two. When the latter two are mentioned, it is in the context of how citizenship is discussed in the case study countries. It would be artificial to draw indissoluble boundaries between the four, as they are undeniably interconnected. However, the analysis in the following chapters is based on the juridical/political concept of citizenship, concentrating on how states officially distinguish between members and non-members and how membership can be acquired

The focus in my research is on access to the status of a full member, not on the exercise of the rights and responsibilities once this status is gained. Active citizenship does arise in the analysis in the context of various proofs required of integration, but when the term citizenship and naturalisation policy (CNP) is utilised, citizenship means membership of the state. 'Citizenship and naturalisation policy' refers to the policy of access to



citizenship, whether through birth, registration, or naturalisation. ‘Citizenship’ alone could be mistaken to refer to policies associated with the recent focus on components of ‘active citizenship’, while naturalisation would exclude those accessing citizenship through other routes. Thus, though cumbersome, citizenship and naturalisation policy is used to include a wider number whilst excluding the rights and duties of expressing membership after the acquisition of citizenship.

This thesis adheres to the ‘strict political definition of a citizen — with an emphasis on [the individual’s] relationship with the state’, largely ignoring the ‘broader somewhat more sociological definition, which implies a greater emphasis on the relationship of the citizen with society as a whole’ (van Steernbergen, 1994: 2). A basic definition of juridical or political citizenship is largely unproblematic. It is ‘a personal status consisting of a body of universal rights...held equally by all legal members of a nation-state’ (Somers, 1993: 588). Official attribution of the status of citizen is important for states to decide ‘the allocation of resources and participation rights’ (Eley & Palmowski, 2008b: 5). When used by states as an analytical category, it defines the limits of responsibility, which is especially important for modern welfare states. Following a political science definition, ‘citizenship helps determine...how borders are constructed and how those borders then determine the relationship between inclusion and exclusion’ (Eley & Palmowski, 2008b: 19).

This discussion shows that citizenship has multiple layers: it is both a status and a set of rights; it entails different rights and duties in different countries; and it is a sorting mechanism to allot humans to different states. The development of citizenship and nationality in different countries has strongly affected the rules of access to membership and the expectations of behaviour once membership is acquired.

### ***1.1.3 Citizenship and nationality***

The final tangle to address in defining citizenship is to differentiate between the meanings of citizenship and nationality, terms that are often conflated in discussions of belonging and the nation-state. Historically, the difference was much more apparent, but with the twentieth-century extension of citizenship to most nationals and the virtual disappearance of the status of ‘subject’ in liberal democracies, the line between the two has become harder to discern. Though there historically has been an assumed ‘marriage between citizenship and nationality’, the evolution of sovereignty and increasing mobility of populations have led to a decoupling of the concepts (Delanty, 2000: 19). Use of the terms ‘citizenship’ and ‘nationality’ is confusing at best, with inconsistencies even within a single country’s legal tradition. Nationality entails ‘membership of the political community of the state’, while citizenship entails ‘membership of the political community of civil society’ (Delanty, 2000: 19). As a result, immigrants ‘can possess formal citizenship in the sense of nationality and yet be excluded from participation in the society in which they live’ (Delanty, 2000: 19).

The pure concept of citizenship also implies a certain number of rights, while nationality is more obligation- or ethnicity-based. Citizenship typically carries with it the right to political participation, while nationality simply indicates the land of one’s birth. There is a certain degree of overlap between the two concepts, but they are not the same. Like the difference between a rectangle and a square, ‘[e]very citizen is a national, but not every national is necessarily a citizen of the State concerned’ (Weis, 1979: 5-6). As Jungnickel (Koslowski, 2000: 75) clarifies, ‘Ships, aircraft, and corporations (i.e., legal persons), as well as individuals, possess nationality, but only individual human beings can be citizens’. Nationality can include ethnic or other identity-based belonging that does not necessarily bring with it state-recognised rights and duties.

The legal framework for both the UK and Germany uses the term nationality. In the UK, 'British citizen' did not become a category until the British Nationality Act (BNA) (1981); heretofore, all relationships with the British state had been categorised as subjecthood, nationality, and dependency. Creation of the legal category of British citizen arose not from protestations about rights, as one might expect, but as a form of immigration control. Historically, all nationals of the British Empire (theoretically) had the right to travel to the UK, though this right was not exercised in large numbers until after World War II. The changes in the BNA (1981) limited the right of abode in the UK to holders of the newly minted status of British citizen.

There still exist six categories of British nationality, but only that of citizen affords the bearer the right of territorial access. Thus, although nearly all of the legislation analysed in this thesis carries the term 'nationality' in the titles, the changes to the rules are focused largely on acquisition of the status of British citizen, though there are some minor clauses addressing the other forms of nationality. Furthermore, even the UK itself — excluding its continuing territorial holdings — contains four recognised nationalities (England, Scotland, Wales, and Northern Ireland) that have no bearing on the six legal classifications of British nationality. Yet residence in the four different nations contained within the UK carries different rights, especially regarding healthcare and education; and these rights are grounded largely in territoriality, not ethnicity. This stratification of rights is very problematic for Marshallian citizenship because of the unequal application of social rights and the differentiated exercise of political rights in the form of different voting systems.

Germany's use of the term 'nationality' is more internally consistent than the United Kingdom's, and the legal framework is careful to distinguish between *Staatsangehörigkeit* (nationality) and *Staatsbürgerschaft* (citizenship). Nationality is used in the legal framework to denote the relationship between the individual and the state. Although it has historically

been connected to ethnicity and thereby used as a tool of exclusion (Brubaker, 1992; Gosewinkel, 2001; Green, 2000, 2004; Kanstroom, 1993), its modern, legal use in Germany contains little in the way of ethnic connotations. In fact, modern German law carefully defines a German as ‘someone possessing German nationality’ (Bundesregierung Deutschland, 2009: §1) to avoid codifying an ethnocultural construct. Citizenship, on the other hand, is used to connote the active exercise of membership, in the sense of ‘active citizenship’ discussed earlier, embodying the wider rights and obligations that arise from being a member, i.e. holding the status of a nation. The status of citizen also applies to those who are not necessarily German nationals but who are classified as having the status of a German, as in the case of the *Bundesvertriebene* (displaced ethnic Germans), *Aussiedler* and *Spätaussiedler* (immigrants of German extraction). For Germany, therefore, ‘citizen’ can include a wider range of people than ‘national’. This is the opposite of the British case, where ‘citizen’ is one of many categories of ‘nationals’.

What, then, is citizenship? Drawing on the juridical/political definitions, citizenship is membership of the state, a membership that brings both a status and a body of rights and responsibilities. Citizenship, as referred to in this thesis, is not the active exercise of these rights and responsibilities, as it is from the sociological perspective. The use of the terms ‘citizenship’ and ‘nationality’ to refer to the configuration of status and rights is confusing, especially in the case of the UK. As such, this thesis attempts, as much as possible, to use the terminology as it appears in the laws of the land, even when this creates conflicts with the strict definitions of the words. Thus, ‘nationality’ is predominantly used throughout, though the British case also draws on ‘citizenship’ when referring to the legal

definition of 'British citizen' as well as in the context of the Borders, Citizenship and Immigration Act (2009).<sup>5</sup>

## **1.2 Citizenship and the nation-state**

Having defined citizenship for the purposes of this thesis, the next debate that arises is the relationship between citizenship, sovereignty and the nation-state. Simply put, 'sovereignty can be understood in terms of a state's ability to control its borders and determine its membership' (Koslowski, 2000: 7). It is impossible to examine citizenship without acknowledging that it is inextricably bound to the nation-state in the current world system. Citizenship is a key expression of a state's sovereignty, as it 'allows the state to control access to its territory, because only citizens have a right to enter under international law, and everyone else can be denied entry or be expelled after entry' (Joppke, 2010: 16). The coupling of membership with the nation-state is generally accepted without question in the modern developed world. Yet the modern acceptance of the nation-state belies the historical reality that it has only recently become a rallying point for membership and identity, not to mention ethnic homogeneity. In fact, the nation-state only emerged as a 'locus of political identification' in the nineteenth century, and only after this point did it begin to be seen as a cohesive actor in the international system (Koslowski, 2000: 62). Thus, although the nation-state is now the overriding unit of organisation of humans, this has not always been the case and may not be the case in the future (Koslowski, 2000: 184).

The state is also the key construct for allocating responsibility for people in the modern world order. If anything, this role has been strengthened over the past sixty years through conventions to reduce statelessness, thereby ensuring that each person has membership of a state. However, whilst such conventions function to provide a universal

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<sup>5</sup> Although the Borders, Citizenship and Immigration act contained important clauses for changes to criteria for acquisition of nationality, the use of the term 'citizenship' in the title of the act is accurately reflective of the greater focus on 'active citizenship' in the changes to the nationality rules. Thus, it is, in this case used as a more expansive term than nationality, akin to the distinction between citizenship and nationality in the German system, rather than in the narrower sense of a specific reference to the category of 'British citizen'.

minimum standard of inclusion, they can also be used as a tool for exclusion. Rogers Brubaker identified this ‘intrinsic duality of modern citizenship’, noting that it was at once ‘internally inclusive and externally exclusive’ (Brubaker, 1992: 72). This duality is essential for the modern system of sovereignty, serving especially as a method of exclusion for immigration. Furthermore, despite its exclusivity and the rise of international conventions, citizenship has proven remarkably impervious to accusations of discrimination (Joppke, 2010: 14).

Over the past two decades, academics have divided over the question of whether nation-states continue to hold sovereignty in the tradition of the Westphalian world order. Adherents to the declining sovereignty thesis argue that nation-states are in retreat and that they are losing their sovereignty, whilst proponents of the continuing sovereignty thesis assert that the nation-state has proved surprisingly resilient in the face of globalisation and cannot yet be discarded as a prime actor. The opposite conclusions reached by these two sides from the same body of evidence leads to the question: ‘how can one author see citizenship “back with a vengeance”...while the other claims the “irreversibility” of its decline?’ (Joppke, 2010: 155). This section explores the evidence and ultimately concludes that the continuing sovereignty thesis is more convincing for an analysis of citizenship. Whatever the changing international conditions for other policy areas, citizenship remains the preserve of the state by widespread international agreement.

This thesis takes the position that national sovereignty has proven surprisingly robust in the face of mass movements of people and is still the central actor in questions of CNP. This section evaluates the evidence and arguments of the debate on sovereignty, concluding that proponents of the declining sovereignty thesis were too quick to dismiss the nation-state. This leads to the conclusion that it is still meaningful to examine CNP at the state level rather than EU (European Union) or regional levels.

### ***1.2.1 Declining sovereignty***

In response to the rapidly evolving social world in the late twentieth century, many authors began to argue that national sovereignty was in decline. Simply put,

Post-Westphalian rationality...implies that the nation-state has lost its historical usefulness, and that new solutions to problems of security and welfare therefore must be found increasingly in transnational, multilateral or...regional structures (Hettne, 2000: 38).

Citizenship literature largely draws on four main 'proofs' that the nation-state is in retreat, providing evidence from economic globalisation, increases in flows of people, crises of democratic legitimacy in liberal nation-states, and the continuing process of EU integration. This body of evidence has culminated in many authors predicting the development of a post-national world in which the nation-state is no longer the primary actor (Brodie, 2004; Falk, 2000; Hettne, 2000; Soysal, 1994).

With the flourishing of multi-national corporations, predictions began to appear that the market would gain more power than national governments and that the international system was moving towards greater economic and political integration (Brodie, 2004; Held, McGrew, Goldblatt, & Perraton, 1999; Hettne, 2000; Sassen, 1996; von Bredow, 1998). This has direct implications for both national sovereignty and citizenship, as in such cases

sovereignty shifts up to international trade and investment agreements that increasingly assume binding authority over national policies, democratic institutions and practices and, ultimately, fundamental citizenship rights (Brodie, 2004: 326).

Economic globalisation has been accompanied by increased international flows of people, which have led many well-known academics to propose that states have little power anymore to control unwanted immigration (Bhagwati, 2003; Cornelius & Tsuda, 2004; Heisler & Heisler, 1986; Hollifield, 1992; Jacobson, 1996; Sassen, 1996). As Gallya Lahav notes, immigration 'has blurred national and international arenas as it has challenged the traditional notion of state sovereignty, or the state's prime tasks of defining citizenship and

deciding who shall enter its territory' (Lahav, 2004: 15). This erodes sovereignty step by step:

First, penetration of state borders by unwanted migrants violates the premise of territorial sovereignty. Second, the presence of permanent migrants and their children who remain outside of the polity are anomalous to the concept of popular sovereignty over a given territory. State efforts to ameliorate such democratic anomalies, whether by increasing naturalization via permitting dual nationality or by extending local voting rights through EU citizenship, blur the boundaries of state membership. This raises the issue of exactly whom the state is sovereign over (Koslowski, 2000: 33).

Their decreasing ability to control the flow of people across their borders indirectly affects the nation-states' control over citizenship and naturalisation policy (Castles & Davidson, 2000: 182). Proponents of this explanation argue that citizenship policies are generally created in reaction to populations that have already been allowed in; yet if countries have lost control of the admissions process, then they have as a consequence lost control of their ability to determine national membership. Liberal democracies then face a trap because the presence of large populations of foreigners raises questions about the political legitimacy of the state (Jacobson, 1996; Layton-Henry, 1990; Rubio-Marín, 2000; Soysal, 1994).

Other arguments build on this to conclude that higher concerns, such as basic human rights, should have precedence over the right of a nation-state to make decisions concerning populations within its borders who do not possess civic rights (Brodie, 2004; Hettne, 2000; Linklater, 1998; Sassen, 1996; Soysal, 1994). Increased involvement in supranational human rights regimes and enforcement of treaty obligations have further undermined nation-states' ability to control their borders and regulate membership (Murphy & Harty, 2003). Perhaps the supreme embodiment of this limitation of nation-states' power lies in Article 15.1 of the United Nations (UN) Universal Declaration of



Human Rights (United Nations, 1948), which declares, ‘Everyone has the right to a nationality’. For proponents of the declining sovereignty thesis, this article ‘shows the intrusion of human rights considerations into a field that previously was at the total discretion of the sovereign state’ (Joppke, 2010: 27). David Jacobson argues that the Universal Declaration of Human Rights (United Nations, 1948) and the European Convention for the Protection of Human Rights (Council of Europe, 1950) have devalued citizenship by enabling successful enforcement of international treaties through the courts, transforming nationality ‘from a principle that reinforces state sovereignty...to a concept of nationality as a human right; the state is becoming accountable to all its residents on the basis of human rights law’ (Jacobson, 1996: 10). Other accusations of devaluation of citizenship have come from recognition of increasing rights granted to non-members (Schuck, 1989; Soysal, 1994), allowing migrants to ‘access the goods of citizenship without being born into the nationality of a state or naturalizing into it’ (Koslowski, 2000: 92). This was accompanied by the concept of ‘citizenship light: easy to access, with rights (and few obligations) that do not sharply distinguish citizens from certain aliens’ (Joppke, 2010: 147).

Others looking to support the declining sovereignty thesis in Europe turn to EU integration as a clear example of declining sovereignty as the EU takes over the regulation of policy arenas that have traditionally been the responsibility of the nation-state (Linklater, 1998; Murphy & Harty, 2003). As EU integration has deepened, the nation-states have been confronted by what James Hollifield (1992, 2000) has termed the ‘liberal paradox’: the increasing openness of the markets has led states to increasingly closed positions on the movements of people. EU member states have also pursued the harmonisation of immigration policies as well as the creation of EU-level policies in areas such as asylum and refugee policy. Furthermore, there is pressure from European normative consensus on naturalisation: ‘there has been a steady strengthening of the “as-of-right” component in

European states' naturalization rules, curtailing notional state sovereignty in this domain' (Joppke, 2010: 46).

### ***1.2.2 Continued sovereignty***

Yet other analysts have looked at the same evidence and come to nearly opposite conclusions. After an interlude in the late 1980s and early 1990s when there appeared to be a serious question about the retreat of the nation-state, many academics have more recently concluded that the nation-state is still firmly in control, despite globalisation, international regimes and European integration. Around the time that Soysal's (1994) influential work appeared, proclaiming the end of national citizenship, 'states rediscovered it as a tool of integration, with distinctly disciplinary and coercive connotations, in a marked departure from the multicultural laissez-faire of the past' (Joppke, 2010: 22). Recent scholarship has argued that the doomsday predictions of the decline of sovereignty were too hasty and that they reduced states to 'policy waiters following the orders of universal persons' (Hansen, 2009b: 4). A growing body of literature asserts that the nation-state has proven surprisingly robust, especially in decisions regarding access to citizenship (Bommes & Geddes, 2000; Brubaker, 1992, 1994; Castles & Davidson, 2000; Delanty, 1997; Heichel, Pape, & Sommerer, 2005; Leibfried & Pierson, 1992; Messina, 2007; Overbeek, 1995).

Unlike the declining sovereignty adherents, who seemed to assume that the sacrifice of national sovereignty was unstoppable and irreversible, continuing sovereignty theorists see such cooperation as neither; rather, it is a process that 'involves the lowest common denominator of interstate bargaining and strict limits on future transfers of sovereignty' (Lahav, 2004: 8). From this viewpoint, state involvement in intergovernmental or supranational bodies is utilitarian, 'an interest-driven phenomenon...that has been and primarily remains defined and governed by sovereign national governments and states' (Messina, 2007: 10). Thus, the choice to sacrifice a modicum of sovereignty to

supranational regimes is a calculated effort to maximize the success of policy outcomes (Messina, 2007: 242; Rittberger & Schimmelfennig, 2005). This has led to some reinterpretations of states' motives in participation in supranational institutions:

‘escape to Europe’ enabled Germany to make more restrictive reforms of its migration and asylum policy as well as to reclaim some of the sovereignty that the old Article 16 had taken away because the new policies placed security questions before human rights concerns (Prümm & Alscher, 2007: 77).

Furthermore, in the arena of citizenship, it is hard to deny that the nation-state is still responsible for setting the limits of citizenship and granting citizenship rights (Castles & Davidson, 2000). EU citizenship is dependent upon the bearer first being a holder of member state citizenship, which is still determined at the national level (Bellamy, 2008; Hansen, 1998; Maas, 2008). EU integration has retained the general characteristics of citizenship being internally inclusive and externally exclusive (Kveinen, 2002). Adrian Favell argues that questions about integration, including citizenship ‘are still so clearly the practical domain of national government and their local agencies’, and ‘the nation-state is still the dominant form of social organisation in Europe’ (Favell, 2001: xix). He then asserts that citizenship of a nation-state is key for defining ‘the unifying values, cohesion and identity of liberal-democratic states’ (Favell, 2001: 1).

This is not to say that supranational bodies have no effect on nation-states’ policies regarding access to citizenship, but these influences can only be indirect. For example, the number of refugees that a country admits will later influence the size of the population eligible for naturalisation as well as affecting toleration of dual nationality. The EU citizen’s freedom of movement affects the nation-state’s ability to limit the number of migrants passing over its borders annually, but because of the stability of EU citizenship, these migrants have expressed little interest in accessing citizenship in other EU countries. Thus,

the citizenship and naturalisation policies of EU states are largely directed at non-EU citizens and remain relatively separate from EU integration measures.

Arguments about shifting international norms on human rights regimes and their consequences for national sovereignty have assumed that democracies were unequivocally liberal in their intent to both insiders and outsiders. However, counter-arguments are appearing that note the divide between the protections afforded to citizens — and to some extent to denizens — and the lack of responsibility expressed towards non-members indicate continuation of national sovereignty and the Westphalian world order. In tightening laws against non-members, states express their sovereignty and reaffirm the importance of citizenship:

Widening the gap between citizens and ‘disruptive’ outsiders can be a means of proclaiming the protective capacity of the state, and a paternalist securitisation assuaging fears of an external threat...in exchange for accepting decreased protection and rights for outsiders, whether they be ‘terrorists’ or asylum seekers. The border protection affirms the difference between citizen and alien outsider (Kofman, 2005: 459).

In essence, the state has fought back against ‘citizenship light’, seeking to revalue it and reassert national sovereignty. States have made clear that, ‘contrary to the Enlightenment idea of the modern state as based on a contract, the state is *not* a voluntary association’ (Joppke, 2010: 16). After a few decades that emphasised the rights of the individual as citizens, states have recently re-established *their* rights and the responsibilities of the citizens.

Academics point back to the increase of measures to reassert national sovereignty at the expense of humanitarian commitments (Bloch & Schuster, 2005; Clayton, 2010; Uçar, 2001). Furthermore, the UN Declaration of Human Rights, like other codifications of international human rights norms, ‘is careful to place responsibility for the realisation of the rights [they] invoke on the state to which the individual in question belongs, leaving all

other states with only limited responsibilities in this respect' (Hindess, 2002: 129), and the European courts, particularly in the UK, 'are reluctant to imply any private rights for affected parties to challenge the state's power to control its membership or borders' (Clayton, 2010: 94). Sections 3.4.4 Changes in international norms and 4.3 Accumulation of unsuccessful marginal changes provide empirical evidence to support this point, showing that states' international obligations are observed selectively and do not exercise undue influence on CNP decisions. The current norm consensus has allocated CNP the status of *domain réservé*, leaving each state 'the right inherent in its sovereignty to determine who shall be its nationals and who shall be excluded' (McGarvey-Rosendahl, 1986: 306). The result of this is 'that immigration and nationality laws are often sealed off from that state's own domestic human rights machinery' (Stasiulis & Ross, 2006: 334-335). There is no current consensus between liberal democracies on the rights and duties attached to the status of citizen or the requirements for acquiring membership, nor does there appear to be one forthcoming (Barbalet, 1988: 5-6; Howard, 2009: 148; Marshall, 1964: 84).

Further support for the continuing sovereignty thesis attributes the transformation of citizenship and sovereignty to internal changes, domestic politics and historical traditions (Koslowski, 2000; Messina, 2007; Statham & Geddes, 2006) rather than to 'the proliferation of individual rights generated by international human rights regimes and secured by supranational institutions' (Koslowski, 2000: 37). One subset of the literature argues that sovereignty is not declining but evolving, pointing to evidence that the basic understanding of what is included in state sovereignty has shifted over time. In the world created by the Treaty of Westphalia, sovereignty included the right of the ruler to allocate his religion to his subjects under the principle of *cuius regio, eius religio*. Changing norms on sovereignty mean that the attribution of religion is no longer included, but this does not mean that states have lost sovereignty; it simply means that the conception of sovereignty

and the relationship between religion and the state have changed (Waeber, 1995: 417-418). Proponents also argue that '[n]ational citizenship never was the repository of comprehensive rights it is depicted to be in the postnational thesis' (Joppke, 2010: 73).

This evidence leads to the conclusion that, whatever its past and future roles, the nation-state still clearly remains the central actor in decisions regarding access to citizenship, and attempts have not yet appeared at the EU level to create a blanket citizenship and naturalisation policy. Having defined citizenship and located this thesis in the sovereignty debate, the next section of this chapter explores the historical development of citizenship to provide a background for the remainder of the thesis.

### 1.3 Historical development

The rules guiding modern access to citizenship and nationality are strongly rooted in the local historical development of membership and distinctive experiences of nation-building. As modern nation-states have evolved into liberal democracies, subjecthood has transformed into citizenship, and patterns of emigration and immigration have further influenced the rules of membership. The historical development of the nation-states in question here – Britain and Germany – have strongly impacted the development of their respective understandings of citizenship.

The two historical models of allocation of membership are *ius soli* (territorial citizenship) and *ius sanguinis* (inherited citizenship). A country using pure *ius soli* grants membership to anyone born on its soil; a country using pure *ius sanguinis* grants membership to anyone born to a citizen. Recent scholarship has traced the development of *ius soli* to feudalism, 'where the soil and everything that sprang from it belonged to the lord' (Joppke, 2010: 37), while *ius sanguinis* appeared more recently and 'had been the epitome of modernity and progress' (Joppke, 2010: 44).<sup>6</sup> Although *ius soli* is generally looked upon as

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<sup>6</sup> See also Koslowski (2000) for an extended discussion of the historical development of these modes.

more liberal in the modern world, it developed in the context of English feudal law and was used to bind those born on a lord's land to him; it was primary in delineating the boundaries of subjecthood to the king of England (Dummett & Nicol, 1990). On the other hand, *ius soli* 'has been in place *ab ovo* in all new settler states that owe their origins to British colonialism' (Joppke, 2010: 37). Both systems developed as a response to the specific requirements of the historical period: 'those states experiencing extensive immigration tended to adopt nationality laws based on the territorial principle of *jus soli* and those states experiencing significant emigration tended to adopt *jus sanguinis*' (Koslowski, 2000: 93).

*Ius sanguinis* was arguably more inclusive than exclusive for countries of emigration in the nineteenth century (Koslowski, 2000: 84) because it extended citizenship rights to the lower classes of society who had been forced to emigrate because of famine or lack of jobs. Thus, one could argue that Germany's historical position as a sending country had a stronger influence on the basis of its citizenship laws being *ius sanguinis* than its identity as an ethnic people. In fact, much of Germany's emigration was circular in nature, with large numbers of émigrés returning in any given year (Koslowski, 2000: 79; Moltmann, 1980: 386). If Germany had applied *ius soli* for inclusion in citizenship, large numbers of Germans living outside of the nation-state's borders would have been left without citizenship.

Germany's relatively late appearance as a nation-state also contributed to the use of *ius sanguinis*. Late unification meant that German citizenship developed in the local context and was only much later projected onto the level of the nation-state. Citizenship was attached to the place of one's birth, and most of the many German states, free trade areas, duchies, bishoprics, etc., had developed rules for citizenship and naturalisation by the early nineteenth century (Gosewinkel, 2008: 37). This strong local attachment was expressed in the 1913 *Reichsstaatsangehörigkeitsgesetz*, which essentially made any citizen of a German *Land* a citizen of the German Empire, much in the way that EU citizenship is regulated today.

Thus, each local authority retained the right to regulate the acquisition of nationality with very little interference from the central government (Gosewinkel, 2008: 37). This was fairly unproblematic and even liberal when Germany was largely a country of emigration. However, '[i]n the context of declining populations growth rates and increasing immigration,...jus sanguinis decreases democratic inclusiveness and thereby undermines the legitimacy of the democracies that abide by this principle' (Koslowski, 2000: 73).

Britain does not have such a strong history of extra-imperial emigration. Although thousands of British citizens left the British isles every year during the nineteenth century, many of them went to other Commonwealth countries, and the formal freedom of movement of the Commonwealth made *ius sanguinis* less important and *ius soli* more important. Subjecthood existed in the British Empire until more than halfway through the twentieth century, and relatively few of the inhabitants of the empire ever achieved the full status of a British citizen. In fact, 'the Imperial Act of 1914 stipulated that all inhabitants of the dominions and colonies were British subjects' (Koslowski, 2000: 69). Even of those who were citizens, there were tiers of rights that were regulated by race and the location the passport was issued, and the first British Nationality Act was not issued until 1948 when Britain was forced to define categories of nationality after Canada issued its own citizenship in 1946 (Hansen, 2000: 41; Koslowski, 2000: 70). Though generally regarded as a more liberal citizenship regime, *ius soli* was used by the UK in the 1960s to deny Commonwealth citizens holding a British passport entry into the United Kingdom. This restriction was applied on the basis of whether the passport had been issued in London or at one of the colonial offices (Hansen, 2000: 32, 108, 110, 163).

Thus, neither *ius sanguinis* nor *ius soli* is inherently liberal or restrictive; as with many things, the liberality or restrictiveness comes with application. Countries have frequently used *ius sanguinis* as a way to influence large 'ethnic' communities resident in other



countries. Germany used this to try to maintain influence over communities in the USA (Koslowski, 2000: 79), just as Turkey does today with the communities of its citizens in Germany (AFP/ks, 2011; Hermann, 2008). Most modern democracies have a hybrid system, with neither pure *ius soli* nor *ius sanguinis*. The prevalence of mixed systems for attribution of membership ‘reflects the fact that an unconditional *jus soli* system is as much unsuited to a world of massively increased cross-border migration as is a pure *jus sanguinis* regime, the former being as over-inclusive as the latter is under-inclusive’ (Joppke, 2010: 45).

#### **1.4 Summary of citizenship**

This brief foray into the literature should adequately indicate the level of confusion in discussions about citizenship. To take a very constructivist approach to citizenship, one could assert that citizenship is what one makes of it: if one sees citizenship as a unity of Marshall’s civic, political, and social rights, one will expect the institution to embody and protect these rights. If one believes citizenship is simply a modern evolution of feudal privilege and a utilitarian way to assign responsibility for people to various states, one will have very different expectations of the rights and privileges contained within citizenship. The different interpretations arising from the accepted ontological views on citizenship are reflected in the different configurations of citizenship in different countries. This has far-reaching implications for rules for access to membership, tolerance of dual nationality, views on integration, and divisions of rights and responsibilities between members and non-members. Rather than supporting one definition of citizenship at the cost of refuting all others, I argue that each contains elements of truth for different national contexts. This will appear throughout the thesis and is a powerful explanation for continued policy divergence in countries that face many of the same pressures. As the empirical research

presented in later chapters will demonstrate, ideas matter tremendously in identifying viable policy alternatives.

This thesis focuses on a narrow subset of citizenship. Casting aside the expectations of behaviour of citizens and the recent fixation on ‘active citizenship’, my research addresses only the membership criteria, examining access to citizenship. For my purposes, this means examining the rules for acquisition and deprivation of citizenship, specifically via naturalisation and denaturalisation to the exclusion of acquisition by registration and the loss of rights associated with certain crimes. Thus, I am concerned with the rights and duties for acquiring citizenship but not their exercise once someone has gained membership. The empirical work presented in this thesis assesses policy outputs but only engages with policy outcomes insofar as they influence subsequent policy outputs, which is limited to cases where the actors explicitly compare the actual and desired outcomes and use this information to shape policy outputs. This means that the differentiated policy implementation in the various German states, for example, is largely ignored. Immigration, asylum, and integration policies are also only analysed when they are coupled with CNP.

Of all of the elements of immigration policy — immigration, asylum, and access to citizenship — citizenship is the best for institutional analysis for one main reason: there still exists widespread agreement that the nation-state is sovereign over this policy area. As a consequence, it is not regulated by EU institutions, and despite international treaties, there is no supranational body that can force nation-states’ compliance with treaty obligations. The relevance of this becomes particularly obvious in the case of the UK, as discussed in sections 3.4.4 Changes in international norms and 4.2 Structural flaws/internal contradictions.

The argument thus far has established that the nation-state is still the reference point in the creation of citizenship and naturalisation policy. If this research were from the

perspective that the nation-state is losing control to various exogenous powers, it would nullify the logic of a cross-national comparison. This thesis does not take a position on globalisation or sovereignty in other policy domains, but it does assert that the nation-state is the ultimate source of decisions regarding citizenship and naturalisation policy, despite the exogenous pressures it faces. As mentioned earlier, this is an ideal policy domain to examine to understand the nature of policy change better because the EU has not sought to create a supra-national citizenship policy, confining itself to the somewhat opaque concept of 'European citizenship', which is still clearly organised around the nation-state and limited by the individual nation-state's decisions regarding whether to grant citizenship to foreigners. Thus, no matter what influence 'globalisation' and the EU might have even on other areas of immigration policy, citizenship and naturalisation policy remains firmly in the hands of the nation-state, where it will continue for the foreseeable future, allowing us the opportunity to examine the process of policy change from just one level.

## **1.5 Research design**

The final element of this chapter is the research design. This section elaborates further on the method of comparison and justification of cases, the definition of the outer limits of the period examined and the sources of empirical information. This thesis takes a small-N comparative approach, selecting two countries for empirical analysis. In using only two countries, the comparative research design does risk the presence of too many variables in too few countries (Collier & Collier, 1991; King, Keohane, & Verba, 1994; Peters, 1998). However, the limitations of time and resources necessitated a research project based on two countries: one would not be enough to provide a thorough test of the theoretical framework, but three would require more time than allotted to a doctoral thesis to conduct meaningful analysis. Despite this potential weakness, a two-country comparison can provide a deeper, more nuanced understanding of the cases and a more thorough

testing of the theoretical framework. This then improves the validity of the findings (Landmann, 2008: 69).

The British-German comparison undertaken in this thesis employs a Millsean (Mill, 1843) Most Similar Systems Design, also referred to as ‘concomitant variation’ (Przeworski & Tuene, 1970: 32). This design uses similar countries to explain variation of outcome. This method takes countries that have many economic, cultural and political characteristics in common to minimise the number of ‘experimental’ variables that could explain a phenomenon (Przeworski & Tuene, 1970). In keeping with this approach, this thesis is a system-level comparison and consequently ignores many of the sub-systemic factors that tend to be the focus of Most Different Systems Designs. This thesis argues that, despite some key differences (Table 1.1), the features of Germany and the UK are broadly similar; yet, despite convergence in many other policy areas (see Green & Turner, 2007), the two countries continue to diverge in their policy choices regarding citizenship and naturalisation. Most of the key differences have to do with the structure of the governmental system, focusing on the finer points of difference between these two parliamentary democracies. The effects of these differences are given lengthy treatment in section 5.1 Governmental system, which shows that, despite these differences, actors show a consistent ability to work around the institutional structure that largely negates the effects of differences between the two countries.

**Table 1.1 Key differences between the UK and Germany**

United Kingdom	Germany
<ul style="list-style-type: none"> <li>• Long colonial history that impacts current immigration trends</li> <li>• Recognised ‘country of immigration’</li> <li>• Traditionally <i>ius soli</i>-based citizenship policy</li> <li>• Centralised governmental system</li> <li>• First past the post electoral system</li> <li>• Two-party system</li> <li>• Unelected Upper House with largely ceremonial powers</li> <li>• Most parliamentary work conducted in the whole chamber</li> </ul>	<ul style="list-style-type: none"> <li>• Negligible colonial history that has little effect on current immigration trends</li> <li>• Still negotiating whether it is a ‘country of immigration’</li> <li>• Traditionally <i>ius sanguinis</i>-based citizenship policy</li> <li>• Federal government</li> <li>• Proportional representation</li> <li>• Multiparty/bipolar coalition system</li> <li>• Elected Upper House that frequently represents interests contrary to the Central Government</li> <li>• Most parliamentary work conducted in committees</li> </ul>

The other important differences have to do with historical legacies, with the UK having been a colonial power and a traditionally *ius soli*-based citizenship regime, while Germany’s immigrant population was recruited through guestworker agreements, and its citizenship policy was based on *ius sanguinis*. However, these historical legacies are not as different as they initially seem. Both countries had strong pre-World War II patterns of emigration (Bade, 2000; Castles & Miller, 2009), and both actively recruited foreign labour after the war to fill mainly un- and low-skilled jobs (Borris, 1973; Hansen, 2000; Herbert, 1990; Lucassen, Feldman, & Oltmer, 2006; Meier-Braun, 2002). The UK stopped recruitment at an earlier stage than Germany, however, in the face of violent public opposition, despite the on-going economic need for migrants (Castles & Kosack, 1973; Freeman, 1994). The legacy of the countries’ foreign labour recruitment as well as the on-going effects of family reunification immigration has been similar in both countries, as the size of the foreign<sup>7</sup> and foreign-born<sup>8</sup> populations as a proportion of the population as a whole is similar in both countries (Table 1.2).

<sup>7</sup> Foreign-born persons who are not nationals of the country in which they live.

<sup>8</sup> Foreign-born persons who have since acquired the nationality of the country in which they live.

**Table 1.2 Size of foreign populations, 2010**

Category	Germany		UK		EU27	
	Number	% of total pop	Number	% of total pop	Number	% of total pop
Non-EU27 born	6,415,700	7.8%	4,767,400	7.7%	31,367,900	6.3%
EU27 born	3,396,600	4.2%	2,245,000	3.6%	15,979,900	3.2%
<b>Total foreign-born</b>	<b>9,812,300</b>	<b>12.0%</b>	<b>7,012,400</b>	<b>11.3%</b>	<b>47,347,800</b>	<b>9.4%</b>
Non-EU27 citizens	4,584,700	5.6%	2,445,100	3.9%	20,157,200	4.0%
EU27 citizens	2,546,300	3.1%	1,922,500	3.1%	12,336,000	2.5%
<b>Total foreign</b>	<b>7,130,900</b>	<b>8.7%</b>	<b>4,367,600</b>	<b>7.0%</b>	<b>32,493,200</b>	<b>6.5%</b>

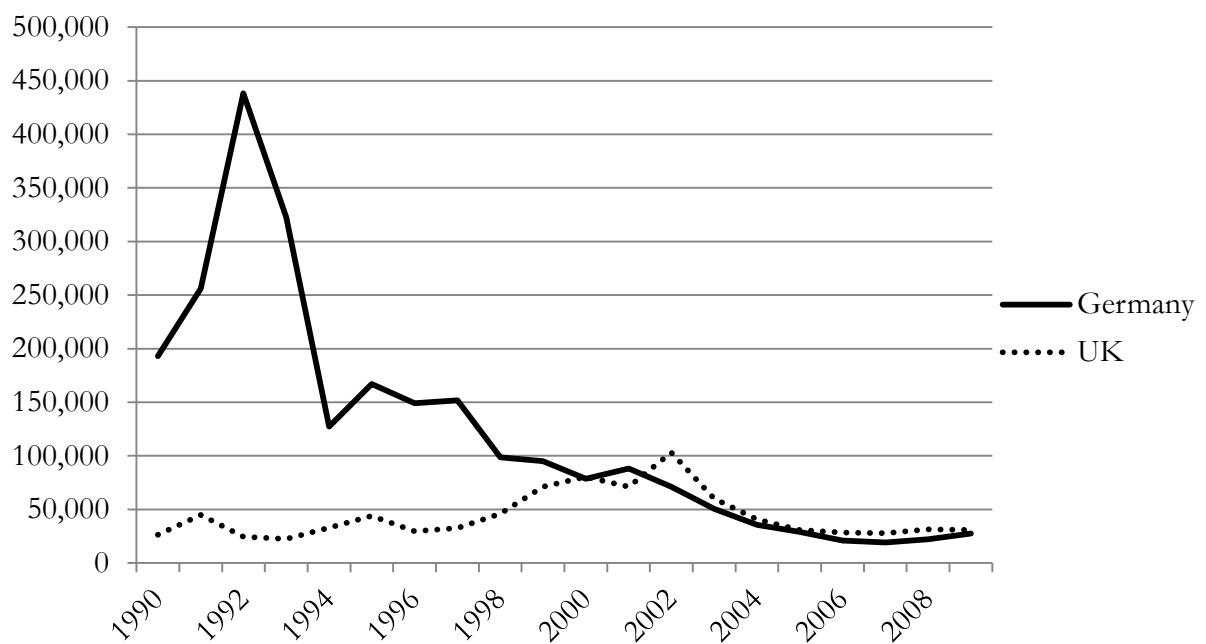
Source: European Commission (2012a) migr\_pop1ctz, migr\_pop3ctb; own calculations

Both countries have a strong history of post-war immigration, having recruited immigrants to fill the depleted labour forces. This has resulted in large immigrant populations, the size of which poses increasing challenges to their welfare states: foreign-born persons constitute more than one in ten of the residents in each of the case-study countries, of which roughly 65 per cent come from outside the EU-27 and therefore do not have the right to exercise freedom of movement (Table 1.2). Both countries are large welfare states, and the size of their immigrant populations poses increasing challenges to the welfare state as well as contributing to a recent fixation on the process of integration in both countries. Both now have large foreign-born and native-born, non-white populations at whom changes to citizenship and naturalisation policy are aimed; both are struggling to ‘integrate’ these populations; both have faced pressures from the rise in Islamic fundamentalism; and both have sought to use legislation in the past decade to address all of these factors and achieve the desired policy outcomes. In both countries, populations with migratory backgrounds (to use the German terminology) are less socioeconomically integrated than their white ‘native’ counterparts (Constant & Massey, 2002; Dancygier, 2010; Hampshire, 2009; Hansen, 2009a; Ireland, 2004; S. Schmidt, 1999; Stillwell & van Ham, 2010). Both face unequal levels of economic prosperity in different regions of the country (E. Turner & Green, 2007: 1), and people with migratory backgrounds are not

evenly geographically spread through the country (Schönwälder & Söhn, 2009; Wíngens, Wíndzio, De Valk, & Aybek, 2011).

Both countries have faced large influxes of asylum seekers in the past two decades (Figure 1.1), which has on-going impacts on integration and naturalisation policies as well as implications for the welfare state, as both countries provide housing, medical care and vouchers during the initial application process, in addition to granting those given refugee status or exceptional leave to remain access to benefits at levels equal to permanent residents and citizens. Germany and the UK have faced roughly equal influxes of asylum seekers for the past ten years, though Germany faced far higher numbers in the early 1990s during the breakdown of the Soviet bloc (Figure 1.1).

**Figure 1.1 Asylum applications, 1990-2009**

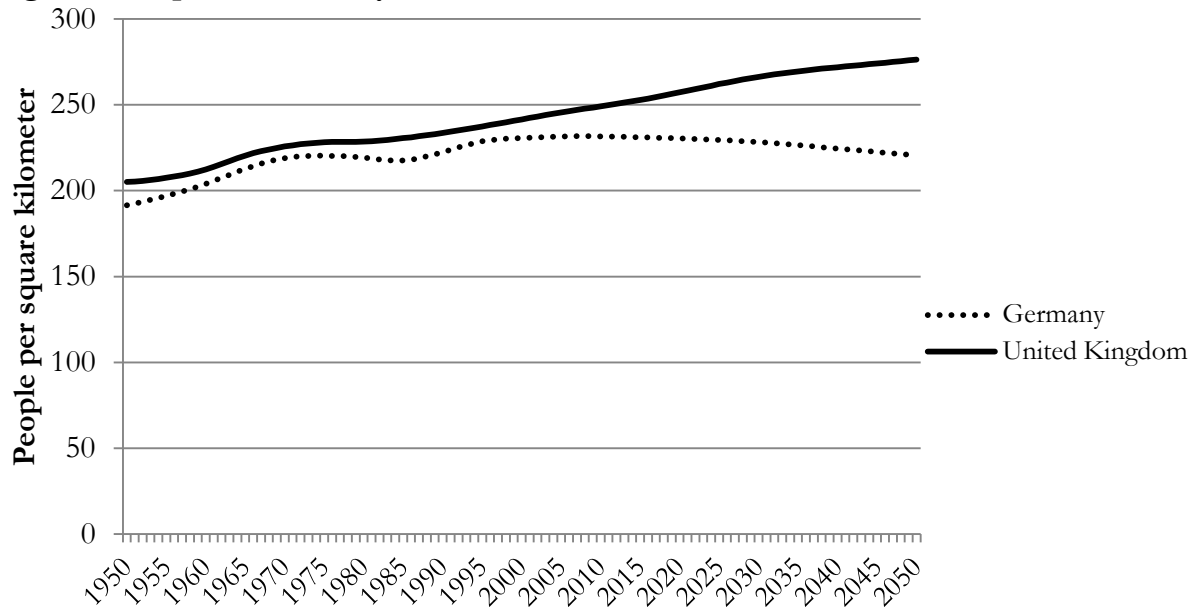


Source: OECD (2011)

Germany and the UK are two of the most populous countries in the EU, after Malta, the Netherlands and Belgium (European Commission, 2012b; United Nations Population Division, 2006), though recent higher levels of immigration to the UK mean that the

population densities of the two countries are predicted to diverge more in the next half-century (Figure 1.2).<sup>9</sup>

**Figure 1.2 Population density, 1950-2050**



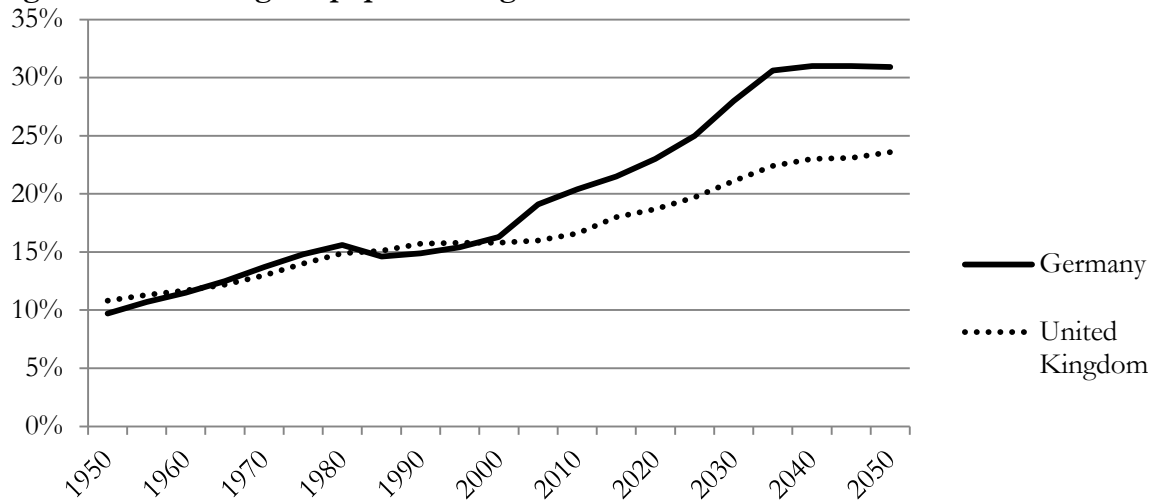
Source: United Nations Population Division (2001)

Both countries have ageing populations, though Germany's demographic shift has been more severe, while the UK grapples more with concerns about overcrowding. The average age in the UK in 2010 was 39.8 years, a rise of 2.1 years in a decade; in Germany it was 44.3 years, a rise of 4.4 years in a decade (United Nations Population Division, 2010). Even with a constant birth-rate, the projections for the coming decades are sobering. The proportion of people over sixty-five is expected to rise dramatically over the next few decades in both countries, from 15.8% (2000) to 23.6% (2050) in the UK and from 16.30% (2000) to 30.9% (2050) in Germany (United Nations Population Division, 2010; Figure 1.3). This has important implications for citizenship and naturalisation policies, as the countries seek to supplement their population with foreign labour, which will necessitate the integration of these populations.

<sup>9</sup> All projections stated here are based on the medium variant of the UN Population Division's population projections unless otherwise indicated. For a discussion of the differences between the low, medium and high variants, see United Nations Population Division (2001).



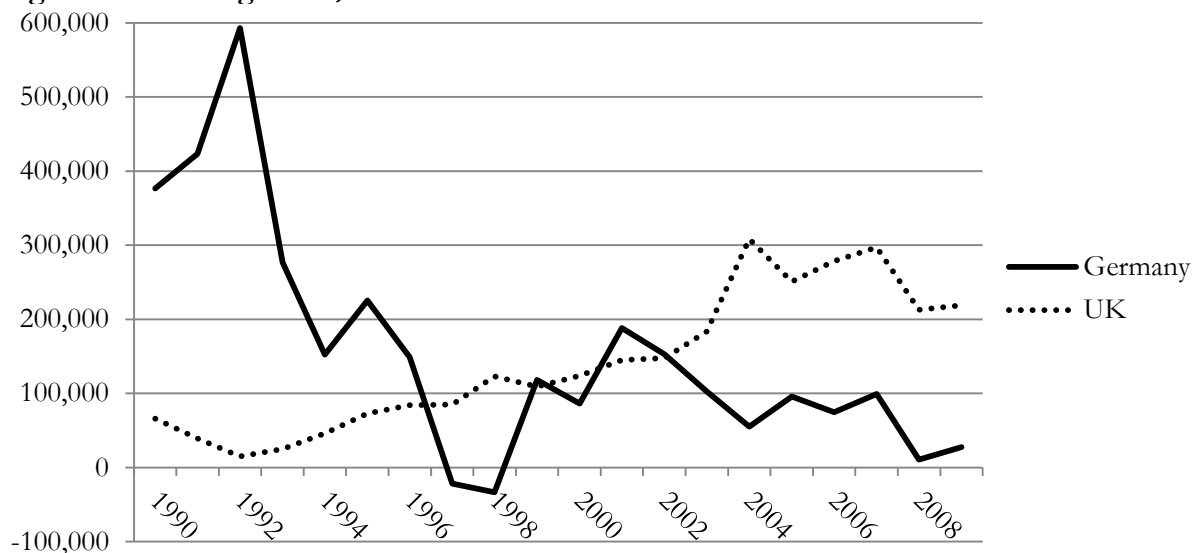
**Figure 1.3 Percentage of population aged 65 and over**



Source: United Nations Population Division (2010)

The UK's demographic structure would be closer to Germany's without the large influx of immigrants during the New Labour government (1997-2010), which significantly increased the net inflow of foreigners (Figure 1.4). The demographic pressures of an ageing population have led both to consider the UN Population Division's (2001) report, which suggested countries use migration as a way of off-setting the severe economic effects of a shrinking labour force and an increasing dependency ratio.

**Figure 1.4 Net migration,<sup>10</sup> 1990-2009**



Source: OECD (2011)

<sup>10</sup> Net migration is calculated by subtracting emigration from immigration. It is thus possible to achieve a negative result, as in the case of Germany in 1997 and 1998.

At the structural level, both countries are prime ministerial parliamentary democracies with executive capture of the lower house of the legislature, though the UK has a centralised form of government, while Germany has a federal structure. The effects of this are addressed in greater detail in section 5.1 Governmental system. They are both also members of the European Union, which has important implications for immigration and asylum policies, which then has indirect effects on citizenship and naturalisation policy, as immigrants and refugees form the later pool of potential naturalisation candidates. Very importantly, the UK has chosen to rely on the open labour market of the EU to provide its needs for low-skilled labour, increasingly shutting off non-EU routes, while Germany has recently struggled to keep its net migration figures above zero (Figure 1.4). Regardless of the current levels of migration flows, however, both countries now have large foreign-born and native-born, non-white populations at whom changes to citizenship and naturalisation policy are aimed. Both are struggling to ‘integrate’ these populations and reflect a growing interest in measuring integration in developed countries, instituting naturalisation exams and formalising language requirements. Both have also faced pressures from the rise in Islamic fundamentalism; and both have sought to use legislation in the past decade to address all of these factors and achieve the desired policy outcomes.

Despite these similarities, however, these two countries have taken very different approaches to changes in their membership criteria over the past decade, with the UK having unequivocally tightened access to citizenship, while the German changes offer a more mixed picture that, on balance, indicates a liberalisation. Both reflect the growing interest in measuring and testing integration, instituting naturalisation exams and formalising language requirements; yet these measures work very differently in practice. Thus, despite the general convergence of asylum and immigration policies (E. Turner &

Green, 2007) and similar underlying pressures, the two countries continue to diverge with regards to their citizenship and naturalisation policies. This similarity of underlying conditions but difference of outcome makes the two countries excellent cases for the Most Similar Systems method of comparison.

### ***1.5.1 Timescale***

The empirical research presented in this thesis begins on 1 January 2000 and ends on 6 May 2010. The new German Nationality Act came into effect at the beginning of 2000, providing a baseline for comparison; but the changes made in the Nationality Act, which was passed by the German parliament in 1999, are not dwelt upon in this thesis. An extensive body of scholarship is already devoted to the analysis of the Nationality Act itself (Bade & Münz, 2000, 2002; Göbel-Zimmermann, 2003; Göbel-Zimmermann & Eichhorn, 2010a, 2010b; Green, 2004; Hailbronner, 2002; Hailbronner & Renner, 2005; Howard, 2008; Meier-Braun, 2002; Schmid-Drüner, 2006), and the changes in the act were arguably more than incremental.<sup>11</sup> This thesis provides new analysis of more recent legislation and focuses on incremental changes; therefore, the changes of the 1990s in Germany are excluded. The end point is placed on 6 May 2010 as the date when the Labour government in the UK lost its parliamentary majority. This thesis makes occasional reference to events after May 2010, but this is the analytical dividing line because of the shift in power from the Labour Party to the Conservatives for the first time in thirteen years.

The past decade offers an ideal time period for evaluating a more incremental process of change: neither country passed a consolidation bill during this period, yet each passed several pieces of legislation that, taken together, constitute a significant change of

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<sup>11</sup> For a counterargument that the changes of the Nationality Act were less significant than commonly perceived, see Green (2012, forthcoming)

direction; each has also been significantly affected by first- and second-generation immigrants who have committed acts of terrorism during this period in the name of Fundamentalist Islam. Furthermore, when looking for incremental change, the analysis must necessarily be conducted at a more micro level than otherwise, as incremental change, by its very definition, must occur gradually, one step at a time. This employs a form of process tracing to identify the intervening steps in order to avoid the assumptions of upheaval that can arise from taking snapshots of the starting and ending points. This thesis seeks to understand this process of change better, looking at the exogenous and endogenous factors behind the movement that resulted in a paradigmatic shift, when the changes of ten years are added together.

### ***1.5.2 Sources of empirical information***

The primary empirical evidence is drawn from parliamentary debate transcripts, drafts of legislation, governmental research papers, national records, press releases and publications in the mass media. There are several assumptions implicit in this choice of sources, and like any methodology, this one has its shortcomings. This methodology is predicated upon interpretation and relies upon the actors' self-perceptions, their public images and the information they are willing to divulge in interviews. As a consequence, it is impossible, especially as an early career researcher, to obtain all of the relevant information, and there is frequently a double hermeneutic in the analysis. Despite this, the findings do make a valuable contribution to understanding the process of institutional change, tracing in the past decade a story of constant, incremental change in both countries. This section identifies the main primary sources used, addressing the strengths and weaknesses of relying on these as reliable sources of information.

Both the British and German governments strive for a great degree of transparency in legislative proceedings, making a wide number of documents and transcripts publicly

available. Both documents and actors are more accessible in these countries than many others, and there is less gate-keeping than in countries like France. However, each system has its own ways of limiting access to the full record. The process of policy development is fairly publicly available in Germany, with legislation frequently being requested or proposed by a parliamentary committee or one or more German states. One can trace a trail of press releases and draft legislative submissions in archives to follow the process of policy development. However, much of the business of the German parliamentary process is carried out in committees, and many of the committee hearings are neither transcribed nor accessible to the public. One of the main advantages of this system, according to the actors, is that they are able to set aside their public personas and party-political lines and to negotiate deals outside of media scrutiny. For those unhappy with the system or proposing unpopular ideas, this affords politicians a certain degree of protection; it can also help keep highly emotive, politicised policy areas out of the public eye. This has been especially important in the past decade for immigration-related policies in Germany, which the main actors have tried to de-politicise following the experiences of the 1990s. As such, one must read the parliamentary debates with a certain degree of scepticism, as many of the speeches are delivered specifically for public consumption and may not reflect the tenor of the closed negotiations. For a researcher, this makes the ‘real story’ much more difficult to access, and one becomes reliant upon the details that interviewees are willing to divulge about the negotiations that happened behind closed doors.

In the UK, on the other hand, the process of policy development is far less accessible than in Germany, and one here becomes reliant upon interviews with civil servants involved in drafting the legislation, as it is these experts who are presented with the politicians’ policy aims and are asked to write a bill within the provided constraints. There is far less interparty cooperation and negotiation in policy development in the UK than in

Germany, partly as a result of having a nearly two-party system with few periods of coalition government, partly because of the structure of the legislative system. Once a bill reaches Parliament, even committee transcripts are widely available, and there is very little that is inaccessible to the public. This, too, has its disadvantages, as the level of access can lead to constant political posturing and points-scoring rather than concentration on policy development. Such behaviour is less evident in Upper House debates, as the Lords are not subject to electoral politics, and those who participate in the House of Lords debates frequently have many years of expertise on that policy area, contributing to the more measured tenor of the debates. In some ways, this is the direct opposite of the German legislative system, where the Upper House is frequently under Opposition control and is used by the states to exercise power against the central government, which has control of the Lower House; the debates can become very heated, as discussed later in the context of the Immigration Act.

Despite these shortcomings, parliamentary debates contain valuable information, especially regarding changes in ideas and discourses. The debates, government documents and relevant press releases were coded according to a mixture of deductive and emergent coding. An initial coding framework was developed in NVivo from the hypotheses and sources and mechanisms of change identified in the theoretical framework (Chapter 2). As one might expect, however, coding did not remain purely deductive, as important but unexpected patterns began to emerge in the process of analysis. This necessitated a partial re-code of some of the earlier documents. Coding is, of course, a highly interpretive exercise. As a doctoral thesis, the documents were only coded by one person, where a heavily funded research project would employ more than one researcher to code independently and then compare the differences in outcomes in order to increase the reliability of the coding process. However, this thesis does not try to make claims about the

dominance of specific themes based solely on the coding framework; rather, NVivo was used as an organisational tool to help index large amounts of text in a manner that would make the data easier to recall. As such, the reliance on a single individual's coding patterns should not prove to be overly problematic.

The quotes presented in the empirical chapters were chosen as being representative of the general tenor of the debate, except where noted, as with quotes that were chosen specifically for being unrepresentative of the ideas commonly expressed. Although the transcripts cannot convey the intonation or vehemence of delivery, the stenographers do generally record shouted responses in the chamber, indicating when debates became particularly unruly. In some cases, modern technology has become so pervasive that videos of key German Upper House debates are available on YouTube (Bercanay, 2008).

All interviews were conducted in a semi-structured manner. This allowed the interviewees to prepare their responses somewhat and creates a certain level of consistency of information gleaned from the interviews whilst still allowing deviations from the set questions to follow up unexpected revelations. Interviews were conducted with two senior civil servants, one in the UK Home Office, and one in the German Interior Ministry. Four further interviews were conducted with German parliamentarians from a broad range of parties (LEFT PARTY,<sup>12</sup> FDP,<sup>13</sup> CDU and CSU<sup>14</sup>). Politicians from the Green Party and the SPD<sup>15</sup> were unresponsive. No parliamentary interviews were conducted in the UK. This lack of parallel data arises from the constraints of time, funding and inability to solicit

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<sup>12</sup> DIE LINKE is a coalition of left-wing parties, encompassing the former GDR's Communist Party of Democratic Socialism (PDS, Partei des Demokratischen Sozialismus) and the Electoral Alternative for Labour and Social Justice (WASG, Die Wahlalternative Arbeit und Soziale Gerechtigkeit).

<sup>13</sup> *Freie Demokratische Partei*, Free Democratic Party. The FDP is a free-market party, roughly equivalent to the Liberal Party in the UK.

<sup>14</sup> *Christlich Demokratische Union* (CDU) and *Christlich-Soziale Union* (CSU). The Christian Democratic Union and its Bavarian sister Christian Social Union are conservative parties; the latter sits farther to the right on the political spectrum than the former.

<sup>15</sup> *Sozialdemokratische Partei Deutschlands*, Social Democratic Party of Germany. The SPD sits on the left of the political spectrum, roughly equivalent to the British Labour Party.

a direct response from some of the most high-profile actors, as many are still active in politics and in high demand. These are, of course, the same problems that most junior researchers face. The number of interviews is not expected to be representative of party positions; rather, they were used in an exploratory manner and can supplement the documentary data with greater context and further detail. In the UK, the interview with the Home Office official (who requested to remain anonymous) was particularly fruitful, as the official was integral in the writing of two of the three British bills analysed in this thesis, and the interviewee answered all questions thoroughly. In the German case, FDP politician Dr Max Stadler provided great insight. Dr Stadler has been heavily involved as a party representative in negotiations regarding migration-related policies for close to two decades.

Further interview data is sourced through the transcripts of interviews conducted as part of a research project at the German University of Administrative Sciences Speyer<sup>16</sup> kindly provided by the interviewer (Nick-Magin, 2010). These interviews were conducted with the explicit aim of better understanding the internal workings of the German policy process and also followed a semi-structured pattern. Lists of the interview questions can be found in the Appendix.

The empirical work presented in this thesis assesses policy outputs but only engages with policy outcomes insofar as they influence subsequent policy outputs, which is limited to cases where the actors explicitly compare the actual and desired outcomes and use this information to shape policy outputs. This means that the differentiated policy implementation in the various German states, for example, is largely ignored. Immigration, asylum, and integration policies are also only analysed when they are coupled with CNP.

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<sup>16</sup> Deutsche Hochschule für Verwaltungswissenschaften Speyer



Of all of the elements of immigration policy — immigration, asylum, and access to citizenship — citizenship is the best for institutional analysis for one main reason: there still exists widespread agreement that the nation-state is sovereign over this policy area. As a consequence, it is not regulated by EU institutions, and despite international treaties, there is no supranational body that can force nation-states' compliance with treaty obligations. The relevance of this becomes particularly obvious in the case of the UK, as discussed in sections 3.4.4 Changes in international norms and 4.2 Structural flaws/internal contradictions.

This is an ideal policy domain to examine to understand the nature of policy change better because the EU has not sought to create a supra-national citizenship policy, confining itself to the somewhat opaque concept of 'European citizenship', which is still clearly organised around the nation-state and limited by the individual nation-state's decisions regarding whether to grant citizenship to foreigners. Thus, no matter what influence 'globalisation' and the EU might have even on other areas of immigration policy, citizenship and naturalisation policy remains firmly in the hands of the nation-state, where it will continue for the foreseeable future, allowing us the opportunity to examine the process of policy change from just one level.

## **1.6 Structure of the thesis**

This thesis contains five main chapters. The first is largely theoretical, while the subsequent four present the empirical work. Chapter 2 develops the New Institutional theoretical framework. It begins by defining institutions and justifying the classification of citizenship and naturalisation policy as an institution. This is followed by an overview of various theories presented in the literature for explaining institutional stability and change. This leads to the development of a concrete, operationalisable theoretical framework,

accompanied by the hypotheses tested and methodology followed in the remainder of the thesis.

Chapter 3 begins the empirical work, first giving an overview of the legislative processes of both countries. This is followed by a summary of the relevant aspects of the pieces of primary legislation evaluated throughout. The final section of Chapter 3 looks at the impact of exogenous pressures on institutional change during this period. The following three chapters refer to these exogenous pressures, but the focus of the analysis is on endogenous pressures for change, especially those that have caused the institutions to change incrementally. Chapter 4 tests the first two of six hypotheses and explores the mechanisms of institutional replication identified as utilitarian-functionalist in the theoretical chapter. This examines evidence for reproductive mechanisms that are broadly efficiency-based, including changes in the costs of institutional maintenance, the presence of structural flaws or internal contradictions, and the accumulation of unsuccessful marginal changes. Chapter 5 tests the next two hypotheses, examining reproductive mechanisms based on the distribution of power. This includes looking at the impact of different governmental systems, changes in the balance of power through elections and ministerial changes, and conflicts over authority for an institution. Chapter 6 tests the final two hypotheses, assessing mechanisms of reproduction based on cultural and sociological factors. This subdivides into an examination of behavioural and discursive scripts and the process of changes in ideas, looking at examples from ideas about dual nationality, integration, and national identity.

The empirical data shows that incremental change plays a clear role in the institutional change of citizenship and naturalisation policy in the United Kingdom and Germany between 2000 and 2010. Ultimately, the data upholds the theoretical framework and expands the level of knowledge of endogenous factors for institutional change, an area

that has been increasingly identified by New Institutionalists as one in need of further exploration (see Mahoney & Thelen, 2010). The data also provides a strong argument about the importance of the incremental steps, even behind changes that appear to be critical junctures or punctuations in an institutional equilibrium. The cases and theoretical framework also argue strongly in favour of the synthesis of the three New Institutionalisms, rejecting the ontological and epistemological arguments against combining them as artificial. Finally, the empirical evidence makes a case for the continued distinctiveness of the institutional make-up of citizenship and naturalisation policy in the two countries: despite facing many of the same pressures, both countries continue to choose different rules.

## 2 New Institutionalism

After a period of initial interest in the 1960s, New Institutionalism has renewed the vigour of research into institutions and institutional change over the past two decades. Incorporating new understandings of behavioural psychology with applications of natural scientific theories and social scientific observations, the New Institutionalisms that emerged sought to explain the reasons for institutional existence, their seemingly remarkable stability, and their ability to endure past the point of usefulness. Coming from such diverse fields as economics, International Relations, and sociology, New Institutionalists have contributed to a growing understanding of the nature of institutions and change. However, a consequence of the diversity of disciplinary backgrounds is the degree of chaos in the literature, with multiple terms to describe the same or overlapping phenomena and no overriding consensus on a single set of terms. This chapter develops a theoretical framework that consolidates the existing hypotheses and provides a greater basis for understanding the process of institutional change. Importantly, it highlights the significant contribution incremental changes make to the constitution of institutions. Much of the existing research focuses on periods of seemingly great upheaval, neglecting the build-up of pressures from endogenous sources. Better understanding of these endogenous pressures has many potential benefits: it helps actors to design more stable institutions through a greater understanding of successful feedback mechanisms that, when responded to in a timely manner, can help to prevent institutional breakdown; it helps researchers identify key mechanisms in the process of institutional evolution; and it gives a better explanation for why institutions do or do not change during the ‘windows of opportunity’ that occasionally open in the wake of unexpected, mainly exogenous events.

This chapter develops a theoretical framework that can be applied to the study of any institution, though this thesis tests the framework against access to citizenship in the UK and Germany. In order to develop a coherent theoretical framework that can be operationalised for empirical testing, this chapter first clarifies the terms and theories. This chapter begins with a brief overview of New Institutional literature, including the definition of institutions used throughout this thesis and the major arguments in the literature. This discussion makes it clear that New Institutionalism generally conceives of the process of institutional change as long periods of stability punctuated by great upheaval. Such conceptions ignore the process of incremental change, which this thesis argues is just as important and perhaps more common. The second part of the chapter develops an operationalisable theoretical framework, drawing on all three major strains of New Institutionalism to present concrete factors militating in favour of change and predictions about the types of change these pressures might produce. To the New Institutional theories is also added an understanding of how humans' risk-averse psychology makes incremental change more likely than punctuated equilibria. Finally, this leads to the formulation of the research questions, hypotheses, and methodology that the remainder of this thesis will test using empirical data on citizenship and naturalisation policy change in the UK and Germany between 2000 and 2010.

The first section of this chapter focuses on defining institutions, justifying the classification of CNP as an institution, and discussing the reasons for the existence of institutions and the roles they play. The second section then presents macro theories of institutional change, discussing the concepts of path dependence, critical junctures, feedback loops, punctuated equilibrium, and alternative typologies of change. The third section relies on these ideas to build a theoretical framework. This framework identifies

mechanisms of reproduction and sources of change proposed in the literature to construct the hypotheses that will be tested in the rest of the thesis.

## **2.1 Defining institutions**

Nearly every author seems to propose different definitions of institutions, different reasons why institutions are created, and different reasons for their continuation. The three major strands of New Institutionalism – Historical Institutionalism (HI), Rational Choice Institutionalism (RCI), and Sociological Institutionalism (SI) – each make different assumptions about these important questions. Authors have frequently sought to draw clear distinctions between these different approaches. They do, indeed, base their analyses on different conceptions of human behaviour, the nature of institutions, and the role institutions play. However, they have a great deal in common, and each approach has explained different aspects of institutions. It does not follow that institutions must be unidimensional. At some points, one approach may be able to explain institutional existence or change; at other points, a different one may provide the best account. This simply reflects that the purpose of the institution may change over time, just as the pressures it faces change. As this section will show, each approach contributes to a better understanding of institutional change. Synthesising the theories allows for a greater understanding of institutions.

### ***2.1.1 What institutions are***

This thesis tests New Institutional theory by classifying citizenship and naturalisation policy as an institution so the logical first step is to prove that this classification is accurate by clearly defining institutions. Given that fields as diverse as economics and organisational studies have each created many definitions of institutions, this is hardly a simple exercise. Defining an institution means not only identifying what it is but why it exists and its basic functions. This section begins with Douglass North's classic

definition before embedding it in New Institutional literature to emerge with the definition that will be used throughout the remainder of this work.

Douglass North provides a parsimonious definition, stating that institutions are ‘the rules of the game in a society or, more formally,...the humanly devised constraints that shape human interaction’ (North, 1990: 3). Baumgartner and Jones define institutions as ‘enduring rules for making decisions’ (Baumgartner & Jones, 2002: 24). Both of these carefully separate institutions from organisations in their definitions, describing the latter as the ‘players’ (North, 1990: 4-5) and thereby creating a clear differentiation between structure (institutions) and agency (organisations). This is an important distinction, yet these terms seem to be conflated remarkably often (e.g., Clemens & Cook, 1999: 454; Hodgson, 2006: 9; 2007: 96). Some of the confusion stems from the role that organisations play – organisations *are* actors, but at times have such clearly delineated structures that they can be difficult to differentiate from institutions (Hodgson, 2006: 10). This thesis treats organisations as actors and institutions as structures. The difference is perhaps more easily distinguishable in the cases chosen here because the organisations in question are the British and German parliaments, non-governmental organisations, and the executive branches of the governments; while the policy decisions and laws make up the institution of citizenship and naturalisation.

North’s definition alone is inadequate for a test of New Institutional theory and requires more detail. Each of New Institutionalism’s three strands offer definitions with different characteristics, but all of the definitions have consequences for human behaviour, as they imply a system of incentives and punishments to ensure the observance of these rules. For example, Stacey and Rittberger (2003: 861) see them as ‘conscious creations of political actors and strictly enforceable’. Clemens and Cook concentrate on the role of institutions as enforcers, tracing two general patterns: that of the ‘constraining, prescriptive’

institution and the ‘constituting, proscriptive’ institution (Clemens & Cook, 1999: 446). Institutions can either enforce their rules by defining the expected behaviours or by banning other behaviours; of course, most institutions use a combination of these techniques.

To a great extent, the different definitions simply reflect the foci of Historical Institutionalism, Rational Choice Institutionalism, and Sociological Institutionalism. Historical Institutionalists define institutions as ‘the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy’ (Hall & Taylor, 1996: 938). They are constellations of rules and assets taken over from the past (Clemens & Cook, 1999: 445; Thelen & Steinmo, 1992), emerging from and ‘embedded in concrete temporal processes’ (Thelen, 1999: 371). They are the outcome of ‘enduring legacies of political struggles’ (Thelen, 1999: 388). Rational Choice Institutionalists underline the purposive existence of institutions as sets of rules agreed upon by the actors to facilitate interaction and provide stability (Clemens & Cook, 1999: 445; Stacey & Rittberger, 2003: 867; Thelen, 1999: 371). Finally, for Sociological Institutionalists, institutions are the formal embodiment of societal scripts and norms (Clemens & Cook, 1999: 445; Thelen, 1999: 386). According to this view, institutions are ‘socially constructed...[They] embody shared cultural understandings...of the way the world works’ (Thelen, 1999: 386). A SI definition of institutions includes more informal structures than the previous two institutionalisms, adding ‘the symbol systems, cognitive scripts, and moral templates that provide the “frames of meaning” guiding human actions’ to the formal rules and norms that make up institutions (Hall & Taylor, 1996: 947). This definition also means that institutions are conceived of as influencing and determining the norms of acceptable behaviour, providing ‘scripts’ and determining the actors’ preferences and identity (Hall & Taylor, 1996: 948).



Drawing from these different strands of New Institutionalism, this thesis defines institutions as sets of rules that exist to facilitate human exchange, provide structure, guide human behaviour, reduce uncertainty, and create an incentive structure to encourage compliance with the rules. Using this definition, it is possible to classify citizenship and naturalisation policy as an institution. CNP is a set of rules that determine actors' access to citizenship. These rules facilitate human interaction by providing guidelines of the duties and rights of the organisations operating within the institutional framework: the nation-state and individuals. These rules delineate the people to whom the state has responsibilities and those to be allowed access to privileges such as voting and welfare benefits. CNP reduces uncertainty and structures behaviour by guaranteeing, within the standards of national laws and international norms and treaties, protection by at least one state. CNP creates an incentive structure through a system of rewards (enfranchisement, benefits, safety) and punishments (denaturalisation, disenfranchisement, removal of protection) to encourage compliance with the rules. Thus, CNP clearly fits the definition of an institution, and New Institutionalism provides a theoretical framework from which to examine and explain CNP's institutional change.

### ***2.1.2 Why institutions exist***

Clarifying the reasons institutions exist contributes further to understanding what they are. They must have a reason for existence, whether tradition or necessity, or they would not endure. Here again the three strands of New Institutionalism take different perspectives on the role of institutions. HI's focus on historical determinacy, RCI's focus on rational decisions, and SI's focus on the role of norms and ideas are again reflected in their views of the roles of institutions.

Rational Choice Institutionalism believes that institutions exist for a purpose (Stacey & Rittberger, 2003: 867) and play a coordinating role (Thelen, 1999: 371) that helps solve

collective action problems (Clemens & Cook, 1999: 445; Shepsle & Weingast, 1987). Rational Choice Institutionalists focus on the role of institutions as coordinators or facilitators of exchange, which generally works to maintain equilibrium rather than being open to large-scale change. They focus on the role of institutions in lowering transaction costs and solving collective action problems (Clemens & Cook, 1999: 445; Hall & Taylor, 1996: 943; Shepsle & Weingast, 1987). Institutions are seen as functional creations that will only endure as long as they serve a purpose; with this comes the prediction that institutional change or breakdown will be associated with institutional dysfunction (Stacey & Rittberger, 2003: 867). According to RCI, institutions originate because the actors find it in their best interest to create them voluntarily (Hall & Taylor, 1996: 945).

Historical Institutionalists, on the other hand, see institutions as ‘enduring legacies of political struggles’ (Thelen, 1999: 388). Their major role is in encouraging the actors to conform to the agreed-upon rules and to punish deviation. HI is much less clear on the emergence of institutions in the first place, providing stronger explanations for the endurance of institutions that have become unnecessary, inefficient, or even dysfunctional. The reasons for which institutions might initially emerge can be very unpredictable by these explanations. While they might have been created for the reasons RCI proposes, they might equally be nearly accidental creations during a ‘critical juncture’, a period during which seemingly small decisions have disproportionate effects on future institutional development. Critical junctures receive more consideration in the next section.

Finally, SI focuses on an angle the other two institutionalisms largely ignore: culture, identity and human behaviour, identifying the rise and persistence of institutions in social rules and norms (Stacey & Rittberger, 2003: 866-867). SI researches the diffusion of institutional norms through society, tracking institutional change through the dissemination of symbols, procedures and institutional structures (Hall & Taylor, 1996: 947). Institutions

are perceived as important for providing a set of behavioural norms and creating an incentive structure for the enforcement of these norms. SI's treatment of norms and ideas is critical for understanding the less 'rational' decisions humans sometimes take, but its explanations of the emergence and formalisation of these norms and discursive scripts remains as unclear as HI's explanation of institutional emergence.

All of these support different reasons for institutional existence. But just as institutions can serve different purposes, cannot they also have different reasons for emergence and existence? A summary of all the above attributes reveals the following reasons for institutional existence: Institutions exist to reduce uncertainty, lower transaction costs, enable greater efficiency and/or cooperation, and provide a system of incentives and punishments to encourage the desired behaviours. They establish certain structures of incentives and the methods of interaction (North, 1990: 3, 6, 7, 9).

### ***2.1.3 Why institutions endure***

Institutions may have been created for a purpose, but that does not ensure their continuation. Again, the three NIs offer different explanations for institutional endurance. For RCI, institutions have a functional existence (Stacey & Rittberger, 2003: 867). The institutions will only continue as long as they serve a purpose. Because the actors in the RCI conception function on a cost-benefit basis, they will seek change if they perceive a new configuration will benefit them more (Stacey & Rittberger, 2003: 866). According to RCI, institutions continue because they are more beneficial than the other options available (Hall & Taylor, 1996: 945). According to RCI, institutional change occurs when the institution is no longer fit for purpose or when actors perceive a different arrangement would be more beneficial (Stacey & Rittberger, 2003: 867).

According to HI, however, their existence is less efficient: they are the products of a combination of circumstances set in a specific historical context but tend to continue

beyond their functionality because of their embeddedness and the incentive system they create (Clemens & Cook, 1999: 445; Lindner, 2003: 916; Thelen, 1999: 371, 388; Thelen & Steinmo, 1992). Many researchers have noticed that they seem to become embedded and self-perpetuating (Clemens & Cook, 1999: 445; Hall, 1993: 277; Lindner, 2003: 916; Thelen, 1999: 371). This is best explained through HI's framework of path dependency and 'stickiness'. Historical Institutionalists have noted that institutions sometimes endure when the purpose for which they were created no longer exists, and they no longer seem to have a reason for continuation. However, institutions still rarely disappear because of the path-dependent processes in which they are embedded, making 'one of the principal factors affecting policy at time-1 is policy at time-0' (Hall, 1993: 277). The hallmarks of the HI approach lie in the belief that the effectiveness of an institution is inherently linked to its continuation and/or change and that the past plays a very strong role in defining the present institutional configuration (Clemens & Cook, 1999: 445; Thelen & Steinmo, 1992).

Finally, for Sociological Institutionalists, institutions are simply a formal reflection of the rules and norms governing society. Institutions 'are collective outcomes...socially constructed...embody shared cultural understandings...of the way the world works' (Thelen, 1999: 386). In this case, institutions exist to enforce the accepted rules and norms of the time, rewarding positive behaviour and punishing negative behaviour. They serve to tighten social networks, lowering transaction costs and uncertainty, to borrow the language of the other theories. SI recognises that informal change may – and often does – take place long before the institutions reflect these changes in their formal rules. Thus, there is often a gap between informally accepted change and its formal recognition.

Just as institutions might emerge for different reasons, it is equally plausible that they might endure for a variety of reasons. Certainly actors tend to add to the institutional stickiness of institutions in modern democracies as a method of guarding against radical,

negative change (Pierson, 2004: 43). Human psychology arguably tends to be risk-averse, encouraging actors to maintain the known costs of the current institutional configuration rather than contracting the unknown risks of change unless — and even sometimes when — the status quo becomes clearly untenable (Weyland, 2008: 286). Finally, '[t]he political world is unusually prone to positive feedback' (Pierson, 2004: 44), and the structure of the institution generally has built-in mechanisms of reproduction to ensure continuation unless the mechanisms break down or are overridden by unexpected shocks. All these explanations receive further treatment in the discussion of how change happens.

#### ***2.1.4 Structure and agency***

Institutional reproduction presents a classic tension between structure and agency. The existing institutional structure certainly constrains the behaviour of the actors, but they nevertheless do possess some power to effect change. Thus, it is also important to understand the actors' decision-making process. Social science theorists make many assumptions when trying to explain human behaviour. Rational choice theorists agree that actors make – what they at least think are – rational decisions (Elster, 1986; Levi, 1997; Parsons, 2005; V. Schmidt, 2009; Weingast, 1995), but they do not always choose to take advantage of windows of opportunity when they arrive (Kingdon, 2003). The objective rationality of these decisions may be questionable because the person had insufficient information or conflicting priorities and goals, but most decisions are taken for a reason, no matter how seemingly arbitrary. The different strands of New Institutionalism focus on different priorities for behaviour, leading to different explanations and predictions of 'rational' behaviour.

HI takes broadly two different approaches to the actors' behaviour, depending on whether one views the basis of action as a calculation, where the institutions play the role of reducing uncertainty, providing information and enforcement mechanisms; or whether

the rationale for action is 'bounded by an individual's worldview', acting more as 'satisficers' than utility maximizers (Hall & Taylor, 1996: 939). The explanations then given for the continuation of institutions through time differ: the former approach explains continuation because the risk of change could make the actor worse off; the latter explains continuation because the institutions are so ingrained into society that they remain unquestioned (Hall & Taylor, 1996: 941-942). RCI's assumptions about the actors are somewhat different to those of HI: the actors are assumed to have a fixed order of preferences, act as utility-maximizers based on strategic calculations and will reach sub-optimal outcomes in attempting to advance their preferences (Hall & Taylor, 1996: 944-945).

SI makes an important point about the role of socialisation and behavioural expectations in actors' decisions and reminds us that decisions are not always purely rational or cost-benefit calculations: sometimes the actors' preferences will make their behaviour appear irrational; or they make think they are making rational decisions, but they are based upon incomplete information. An important contribution of SI is its reminder that actors' behaviour is highly correlated to interpretations of the situation, and as such, the actors cannot reach entirely rational decisions because their understanding of the environment is always subjective and incomplete. Also, the actors' worldview determines the set of choices they even perceive (Hall, 1993: 279; Hall & Taylor, 1996: 949; Thelen, 1999: 386). As opposed to the calculus-based models of RCI and HI, actors in SI follow a 'logic of appropriateness' which is greatly determined by scripts — discursive or behavioural (Stacey & Rittberger, 2003: 866).

Yet none of these addresses the noted pattern that humans are predictably risk-averse and will only relinquish their current path or position when it becomes clear that it is no longer tenable without extreme costs. In other words, actors can prove to be as 'sticky'

and 'locked-in' as institutions. How do humans actually take decisions? This thesis adheres to the assumption that we act under the limits of a 'bounded rationality'. This means that actors take what they believe are rational decisions, but the information on which the decisions are based is inherently incomplete and biased. The solutions conceived for problems are limited by social scripts, individual experience, and incomplete information. Indeed, distinguishing between a condition (something negative about which one can do nothing) and a problem (something negative to be addressed) is contingent upon one's worldview (Birkland, 2005: 125). In these circumstances, it becomes irrelevant whether an inherent truth or correct solution actually exists because it is beyond the individual's ability to recognise it. The ability to 'know' things is contingent upon sensory processing, perceptions and experience. This goes a great way to explaining how something society deems right and justifiable at one time becomes something wrong and abhorrent at another, e.g. slavery. Furthermore, actors do not always behave in a manner that would be interpreted as rational with hindsight and more complete information. At times, people will go to great effort to avoid known losses, instead risking the unknown by keeping to the current path (Weyland, 2008: 286). This means that humans will sometimes wait 'unreasonable' lengths of time to address a problem then 'overshoot' and implement sweeping changes (Weyland, 2008: 287).

These assumptions and predictions have several implications for studying the process of institutional change:

1. The information available is always biased and incomplete. This is especially true when looking at political systems, where the actors are affected by pressures from voters and the need to give the impression of 'doing something' about the problems.
2. Actors are limited by bounded rationality. They will take decisions in line with their goals and preferences at the time and constrained by their experiences, belief systems, and the information available.

3. A policy area or institution may escape reform for a long time because the faults are seen as conditions inherent to the system rather than fixable problems. This only changes with exogenous shocks, a shift in belief systems that suddenly causes society to identify something as a problem, or the sudden availability of what seems to be a workable solution.
4. Policy actors may resist change entirely or simply tinker with the existing system until institutional survival is at stake and the relative costs of retaining the status quo increase steeply. At this point, they may opt for a route of change that is more drastic than necessary.
5. The actors' institutional goals and preferences may be very different in similar situations at different times because of factors like the election calendar.

## **2.2 Theories of institutional stability and change**

Though each of the theories discussed in this section arose from different studies, their conclusions about the nature of change have converged over time. Once separate, distinct theories, this section will demonstrate how the frameworks of path dependence and critical junctures, positive and negative feedback cycles, and punctuated equilibrium describe essentially the same phenomena.

### ***2.2.1 Path dependence and critical junctures***

Path dependence theories arose in social scientific literature already in the 1960s as researchers noticed the long-term effects of historical decisions. Since then, authors have devoted much effort to developing a theoretical consensus on the application of the term. Margaret Levi writes, 'Path dependence has to mean...that once a country or region has started down a track, the costs of reversal are very high' (Levi, 1997: 28). Paul Pierson draws upon Levi (1997), Arthur (1994), and David (2000) to create a comprehensive definition: 'path dependence refers to dynamic processes involving positive feedback, which generate multiple possible outcomes depending on the particular sequence in which events unfold' (Pierson, 2004: 20).

One of the most important contributions of path dependent theory is its recognition that 'history matters': decisions taken in the past continue to affect the decisions available



today. Path dependence is a key tenet of Historical Institutionalism, proposing that, '[o]nce a particular path gets established...self-reinforcing processes make reversals very difficult' (Pierson, 2004: 10). Path dependency highlights the strong, constraining influence past decisions have on current decisions (Hall, 1993: 277; Lindner, 2003: 916). Out of this theoretical framework arose terms like 'institutional stickiness' and the observation that it can be very hard to change democratic institutions even when the actors desire to do so. Actors frequently add tools that reinforce the stickiness in an attempt to safeguard against future policy change or to entrench their own interests in the longer term (Pierson, 2004: 43).

Path dependency theorists have also highlighted the importance of the sequencing and timing of events. Sequencing and timing means that, not only does history matter, but certain events in history wield a disproportionate influence on the modern structure of the institution. Pierson, describing the so-called 'polya urn process', writes:

“Small” events early on may have a big impact, while “large” events at alter stages may be less consequential...Thus, *when a particular event in a sequence occurs will make a big difference*. A crucial implication of path-dependence arguments is that early stages in a sequence can place particular aspects of political systems onto distinct tracks, which are then reinforced through time (Pierson, 2004: 10).

This recognition contributed to the development of the concept of 'critical junctures': periods during which decisions made exert a disproportionate influence on future decisions.

Collier and Collier's (1991) study of Latin American regime changes was the first major publication to employ this framework to explain periods of revolutionary change. They define critical junctures as 'a period of significant change, which typically occurs in distinct ways in different countries (or other units of analysis) and which is hypothesized to produce distinct legacies' (Collier & Collier, 1991: 29). Many authors before and since have

used similar terms to describe roughly the same phenomenon. The consensus definition is that these junctures are '*relatively* short periods of time during which there is a *substantially* heightened probability that agents' choices will affect the outcome of interest' (Cappocia & Kelemen, 2007: 348). A juncture is reached in a path-dependent process, and decisions taken at this juncture are critical because they will have a disproportionate affect on future decision-making. This is the proverbial 'fork in the road', and once the traveller has chosen his path, it becomes more difficult to switch to the other one with every step.

These theories are difficult to operationalise, with confusion arising when trying to distinguish between a path-dependent decision and a critical juncture on this path (see discussion in Cappocia & Kelemen, 2007: 342). In other words, though some decisions appear important, they are simply the 'inevitable' result of the current path of the institution, while other, seemingly small decisions can push the institution onto a different path. Here Levi's branching tree metaphor is useful to picture the differences:

Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the costs of reversal are very high...Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other—and essential if the chosen branch dies—the branch on which a climber begins is the one she intends to follow (Levi, 1997: 27).

According to this interpretation, a path dependent decision means continuing on the same branch, while a decision made at a critical juncture is a decision taken at a fork in the branch, where the institution must take one of multiple possible directions. It is not, however, always easy to identify which type of decision an institution faces at the time, which contributes significantly to the occurrence of unintended consequences from actors' actions.

A major weakness in the critical junctures literature, as Peters, Pierre and King point out, is that critical junctures ‘may be identified as such in retrospect but there were choices available at the time that may not make the process so inevitable as it may now appear’ (Peters, Pierre, & King, 2005: 1277). That is, it is easy to explain in hindsight, but could the proponents of critical junctures actually make predictions about the outcomes of future critical junctures or identify them at the moment of their occurrence? Without being able to identify critical junctures when they occur, actors will be unable to take advantage of them. This creates a sort of haphazardness to successful initiatives for change that seems unlikely for calculating actors. The opposite problem also occurs: sometimes moments are identified as ‘critical junctures’ at the time and shortly thereafter, but with greater distance, it becomes apparent that the changes actually had a relatively small effect. Thus, although critical junctures might be an appealing framework for explaining change, the theory’s limitations are significant. It is questionable how much it builds theoretical understanding of change if one cannot accurately identify critical junctures at the time or even in hindsight, leaving the theory with neither great predictive nor explanatory power.

### ***2.2.2 Positive/negative feedback loops***

Essentially a different description of the mechanisms behind path dependency, the ideas of positive and negative feedback loops were taken from the natural sciences, where they are used especially to describe electrical systems. Positive feedback loops have an amplifying effect, while negative feedback loops have an equilibrium-maintaining effect. Both of these, when applied to social science, cause an institution to maintain its current path and make path changes less likely. However, positive and negative feedback loops send different signals to produce this outcome (Knapp, 2007: 3-4).

Positive feedback describes the process of ‘self-reinforcement’ (Pierson, 2004: 21). As Paul Pierson points out, ‘The political world is unusually prone to positive feedback’

(Pierson, 2004: 44). It is this process that lays the foundation for theories of path dependence because it describes the mechanism by which decisions become 'locked in'. 'Given this feature, each step in a particular direction makes it more difficult to reverse course' because each step reinforces the previous ones (Pierson, 2004: 21). Examples of positive feedback processes include increasing returns and economies of scale. Positive feedback constantly raises the cost of changing paths. The actors are encouraged to support continuation on the same path because they have invested political capital and time in the creation of that path, and the cost of switching can never be fully known in advance. A metaphor for the amplifying qualities of the positive feedback process is the game of Monopoly (Knapp, 2007: 5). Though all players begin with the same amount of income and property, a winner eventually emerges through a series of accumulated advantages. The more property a winner accumulates, the more rent she collects and the more cash she has to buy more properties until the other players are bankrupt. Hegelian dialectics and Marxist historical materialism are also based upon a positive feedback loop, in which the system is seen to be on a self-destructive path (Knapp, 2007: 5).

Negative feedback, on the other hand, refers to patterns of self-maintenance (Knapp, 2007: 3; Stinchcombe, 1968: 101-103). Pierson writes, ' "negative feedback" means that disruptions to the status quo induce off-setting responses, returning the system to its prior equilibrium' (Pierson, 2000b: 85). Self-maintaining processes are focused on maintaining a specific equilibrium and will attempt to correct rises and falls. An example of a negative feedback mechanism is that of vested interests. Those with vested interests will strive to regain or maintain them if they are threatened (Knapp, 2007: 7-8). This is the basis of the lobbying system in democracies. It is also negative feedback that creates 'institutional inertia' or 'stickiness'. Negative feedback cycles are also present in the interdependent relationship between the structures and agents: the actors determine the rules of the game,

which encourage new actors to develop with the skills to exploit these rules. Institutions exist in a symbiotic relationship with organisations (North, 1990: 7). Knapp writes, 'The institutionalization of piracy leads to the evolution of more and more efficient pirates, which may be neither productive nor efficient for the society at large' (Knapp, 2007: 12).

Knapp uses the metaphor of a thermostat to describe the negative feedback process. A thermostat is set to maintain a specific temperature and will cycle on and off in order to maintain this temperature (Knapp, 2007: 3). In the political world, it would be best to imagine this thermostat as controlling not just heating but also air conditioning. In this case, if the temperature rose above the desired level, the thermostat would turn on the air conditioner, and if it dropped below, it would turn on the heating. There may not be just one possible way to address the desire to maintain a specific equilibrium, however; if the temperature rose too much, someone might choose to open a window rather than rely on artificial temperature regulation. While there might be several ways to maintain the desired equilibrium, though, the negative feedback system also includes selection against 'non-viable structures' (Knapp, 2007: 3). This means that negative feedback enforces a variety of institutional 'survival of the fittest'. Thus, RCI's functionalist view of institutional existence depends on the mechanism of negative feedback to eradicate institutions that are no longer fit for purpose.

This means that both positive and negative feedback mechanisms are biased against path changes, the former through reinforcement of the current path, the latter through corrections in response to deviations. An important difference in the functioning of these loops lies in the fact that self-maintaining (negative feedback) responses are more biased towards maintaining a specific point on the path, while self-reinforcing (positive feedback) responses are simply biased towards remaining on that path but may result in institutional shift (Pierson, 2000b: 85). Hence, positive feedback may bring change, but it will encourage

change along the chosen path. Both types of feedback may occur simultaneously, with vested interests campaigning in favour of the status quo and increasing returns making path changes more costly with every decision.

### **2.2.3 *Punctuated equilibrium***

The punctuated equilibrium framework looks much like a combination of path dependence and critical junctures. This theory, first popularised in the social sciences by Baumgartner and Jones (1993), borrows from evolutionary theory in biology. The punctuated equilibrium hypothesis predicts long periods of stability or incremental change due to institutional constraints and the bounded rationality of the actors, followed by ‘relatively sudden shifts’ (Birkland, 2005: 228) that create ‘windows of opportunity’ for change (Kingdon, 2003). Early forms of the social scientific conception visualised the punctuated equilibrium process as one of stasis and rapid change. ‘Positive feedback processes seem to generate only brief moments of “punctuation” in a largely frozen social landscape’ (Pierson 2004: 51). However, critics quickly argued that change ‘is seldom as discontinuous as it appears on the surface’ (North, 1990: 90). Rather, ‘more common is a lengthy period of uneasy and quarrelsome compromise’ (North, 1990: 90). Even though the equilibrium period may appear to be ‘frozen’, it is highly unlikely that there is no change occurring. For example, a legislature may spend weeks, months, even years debating a policy proposal. Though there may not be any output during this time in the form of new laws or bills, there are constant debates and negotiations that prepare the way for an eventual consensus. This consensus may arise because of a sudden change in environment that breaks the deadlock, such as a media event or overwhelming election results, but large-scale change would not be possible without the long hours of seemingly static preparation.

Thus, punctuated equilibrium over time has evolved to mean periods of incremental change and greater institutional friction – as a result of negative feedback – followed by

periods of greater change when the friction is overcome and the institution lurches forward (Baumgartner, Foucault, & François, 2006; Jones & Baumgartner, 2005). '[T]here can be great friction in the reaction of political systems. When this friction is overcome, the system virtually leaps forward, but if the forces pushing for change are too weak, gridlock dominated by 'veto players' results' (Baumgartner, Green-Pedersen, & Jones, 2006: 962).

Baumgartner and Jones propose that '[s]table functioning systems of negative feedback are in fact part of the same broader system of politics that makes the occasional disruption through positive feedback inevitable' (Baumgartner & Jones, 2002: 1). They also recognise the juxtaposition of 'peaceful incrementalism' and 'jarring change' in this system (Baumgartner & Jones, 2002: 4). The two greatest factors they propose to affect the magnitude of change are institutional friction (negative feedback) and 'cognitive overload' (bounded rationality) (Jones & Baumgartner, 2005). They label this the 'cognitive friction model'. Applications of this model to interpretations of legislative output in the USA (Jones & Baumgartner, 2005) and France (Baumgartner, Foucault, et al., 2006) have supported these findings. Importantly, the cognitive friction formulation of the punctuated equilibrium framework highlights the importance of the psychology behind actors' decisions, which is sometimes neglected or misinterpreted in other frameworks.

Hunt (2002: 73) identifies two major dynamics present in the process of policy change: 1) shifts in attention can lead to unexpected changes in the policy process; and 2) changes lead to pressures that affect the structural function and the agents' ability to control the process. The former factor applies more to the punctuations, while the structure/agency pressures apply more to the periods of incremental change. This is a more detailed application of the concepts of cognitive overload and institutional friction. This also highlights the importance of ideas (public understanding) and the role of reproductive mechanisms (balance of power) in the transformation of institutions. Birkland proposes

further reasons for the breakdown of an equilibrium, such as greater media attention and venue shopping (Birkland, 2005: 229).

Punctuated equilibrium theory in this incarnation can explain change in more instances than critical junctures and path dependency. It recognises the role of incrementalism in the process of institutional change. However, from this perspective, it is unclear why a system would ever settle: a 'punctuation' can occur from a sudden change in the status quo, such as a shift in power following an election. This leads to a period of changes as the system searches for a new equilibrium. During such a period of upheaval, both positive and negative feedback loops would be providing somewhat contradictory pressures towards different settling points. While positive feedback will generally allow for multiple possible equilibria, negative feedback will work to maintain one. Peters, Pierre and King (2005: 1293) write, 'once a dominant paradigm is disturbed, it may be difficult to re-establish equilibrium and one change may quickly follow another until there is some agreement on the validity of the new paradigm' (Peters, Pierre and King: 1293). Yet, like critical junctures, it can be difficult to define where the punctuation ends and a new equilibrium begins or the mechanisms that brought the period of change to a close.

Another weakness of the punctuated equilibrium framework is the same as that of critical junctures: how does one differentiate between meaningful punctuations that have long-term effects on the structure of the institution and symbolic punctuations that may cause a lot of upheaval at the time but were not, in hindsight, critical? To a certain extent, the 'punctuated equilibria' and 'critical junctures' frameworks create a picture of institutional change with very limited agency: if actors cannot identify 'windows of opportunity' (Baumgartner, Green-Pedersen, et al., 2006; Birkland, 2005; Kingdon, 2003) when they open, any changes achieved by their choices becomes blundering or accidental. However, the empirical findings of this thesis contradict such a conclusion, indicating that



actors have meaningful agency, are able to create their opportunities within the outer limits of the institutional framework, and are thereby able to achieve purposive institutional changes. Thus, despite the prominent place in the literature occupied by these theories, the theoretical framework developed in the following section largely ignores the grand concepts of punctuated equilibria and critical junctures.

#### ***2.2.4 Degrees of change***

Other authors have ignored the critical junctures/punctuated equilibrium debate in favour of a system of classification by degrees, which is less problematic for operationalisation. These systems lend themselves better to the classification of non-revolutionary changes, which would frequently be seen as institutional stasis by theories of critical junctures and punctuated equilibria. It is, of course, possible to have no change. However, no change is generally an unlikely medium- to long-term result, as most institutions must at least make minor corrections in response to unexpected exogenous events in the world in which they are embedded and their inherent internal contradictions or flaws. Institutions arise under certain conditions and to serve a specific purpose, and they must evolve to address changes in these conditions or the purpose for their existence in order to survive.

Though there are several different systems for classifying change, three of these have the greatest theoretical development and lend themselves to empirical application. The most meta-theoretical taxonomy is Thomas Lindner's (2003) two categories of 'on-path' and 'off-path' changes. At the next level of specificity are Peter Hall's (1993) first, second, and third order policy changes. Hall's first and second order change fit into Lindner's on-path changes, while Hall's third order aligns with Lindner's off-path changes. Finally, Streeck and Thelen's (2005a) five-fold typology provides the greatest level of detail for institutional change, but their typology does not fit as well into the first two taxonomies, as

the types that they identify can occur incrementally or more suddenly. While Lindner and Hall's categories can be used to judge the degree of change, Streeck and Thelen's are more useful for identifying the method of change.

On-path changes are 'adaptations of the existing path...are in line with the current mechanism of reproduction' (Lindner, 2003: 916). They are characterised by broad continuity and policy adjustment 'without challenging the overall terms of the given policy paradigm' (Hall, 1993: 279). The changes in CNP in both countries exhibit broad continuity of policy, in that there have been no major overhauls during the decade examined. Though noticeable institutional change occurs between the beginning and end points, all of the changes to naturalisation and loss of nationality follow a restrictive trend in the UK, while the changes to registration requirements have been liberalised in line with equalisation of the rights of fathers and mothers to pass on their nationality. Germany's changes offer a more mixed picture, with some liberalising and some restrictive changes, but all of the changes are achieved more by tweaking than upheaval. As such, the changes can be classified as on-path changes (Lindner, 2003: 916). Even the Immigration, Asylum and Nationality Act (2006) changes in the UK regarding deprivation of citizenship built on the changes instituted in the Nationality, Immigration and Asylum Act (2002), closing several loopholes.

German CNP change exhibits characteristics of several different types of institutional change. In response to the legal complexity and overlap of authority, many of the measures from 2000 to 2010 were concerned with consolidating the legal framework for CNP into the *Staatsangehörigkeitsgesetz*<sup>17</sup> (StAG, Nationality Act), removing various regulations from other acts that concerned nationality law, including several clauses from the Aliens Act (*Ausländergesetz*). These moves are indicative of the change in institutional purpose

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<sup>17</sup> *Gesetz zur Reform des Staatsangehörigkeitsrechts*

following the federal engagement with integration and naturalisation for the first time. The accumulation of these incremental changes, seen from the end of the decade, seems to be an off-path change, but a look at the steps in between indicates that these changes, too, are on-path.

First-order change ‘adjusts policy without challenging the overall terms of a given policy paradigm’ (Hall, 1993: 279). It is characterised by ‘incrementalism, satisficing, and routinized decision making’ (Hall, 1993: 280). This type of change does not involve new instruments and is still directed towards the same general goals, but dissatisfaction may lead the actors to behaviour that obeys the letter but not the intent of the institutional rules. One would expect that institutional corrections for internal contradictions (explored in section 4.2 of this thesis) and the incorporation of feedback (see Chapters 4-6) on previously implemented policies would fit into this type. First-order change is common in British and German CNP, as it encompasses the tweaking and response to policy outcomes necessary for institutional maintenance.

Second-order change, on the other hand, means the alteration of instruments or the creation of new ones but without altering the overall goals (Hall, 1993: 280-282). These changes are still on-path changes but have a greater magnitude than first-order changes. During periods of second-order change, ‘development of new policy instruments may move...in the direction of strategic action’ (Hall 1993: 280). These modifications ‘alter[] the instruments...without radically altering the hierarchy of goals behind policy’ (Hall, 1993: 281-2). Such changes move beyond the ‘incrementalism, satisficing, and routinized decision making’ of first-order changes (Hall, 1993: 280) but could not be classified as the ‘radical changes’ or ‘paradigm shifts’ of third-order change (Hall, 1993: 279). Many of the CNP changes in the UK and Germany are second-order. They exceed the tweaking changes of institutional maintenance, often in response to changes in exogenous pressures or as a

reaction to feedback, but they still constitute a logical progression upon the same path rather than a break with this path.

Third-order (off-path) change represents a disjuncture, a complete paradigm shift, entailing a change in discourse and questioning of authority (Hall, 1993: 279-280). They are changes that ‘replace the existing mechanism of reproduction and introduce a new one’ (Lindner, 2003: 916). At such times, ‘issues of authority are likely to be central to the process of paradigm change...[and] politicians will have to decide whom to regard as authoritative’ (Hall, 1993: 280). A series of failed experimental changes could lead to a greater demand for third-order change, as the costs of maintaining the status quo increase and the perceived risks of change are decreased by the uncertainty of the current situation. Third-order change could also arise from failure to respond adequately to institutional feedback over a sustained period of time. Equally, an institution experiencing second-order change could suddenly face off-path changes in the face of a great exogenous pressure, such as war, economic recession, or a change in the dominant actor(s) (explored in section 3.4 of this thesis). Importantly, while endogenous pressures generally lead to on-path changes, it appears to be largely exogenous pressures that create the opportunity for off-path changes (discussed further in section 2.3.2 of this thesis).

None of the changes in the UK and Germany during this period can be considered off-path changes, though the 2002 change in the UK did constitute a more dramatic philosophical change than the later changes, as will be discussed in greater depth in the rest of the thesis. Although the level of disjuncture the StAG (2000) changes represent is open to dispute, this act serves as the baseline, and the changes contained therein are not the object of analysis here. Looking at Tables 2.1 and 2.2, the changes do not seem to constitute a complete disjuncture or paradigm shift. The only changes that might constitute off-path changes are those concerning the criteria for deprivation of citizenship introduced

in the UK in the 2006 the Immigration, Asylum and Nationality Act (IANA), discussed in section 3.4.1 of this thesis. I argue that all of the other changes can be classified as on-path.

**Table 2.1 Naturalisation and deprivation of nationality in the UK, 2000 through 2010**

Criterion	2000	2002	2006	2010
<b>Naturalisation</b>				
1 Good character	Yes	Yes	Yes	Yes
2 Language (English, Welsh, Scottish Gaelic)	Casual, none for spouses	Yes, including spouses	Yes	Yes
3 Citizenship oath/pledge	Oath	New oath and pledge	Oath and pledge	Oath and pledge
4 Citizenship ceremony	No	Yes	Yes	Yes
5 Knowledge of Life in the UK test	No	Yes	Yes for settlement	Yes, possible second test
6 Cost	Approx. £150	Approx. £150	Approx. £575	Approx. £800
7 Length of residence	3 yrs (spouses), 5 yrs (residence)	3 yrs (spouses), 5 yrs (residence)	3 yrs (spouses), 5 yrs (residence)	3-5 yrs (spouses), 6-8 yrs (residence)
8 Absences from UK	Avg. 90 days/yr, 90 days in final year	Avg. 90 days/yr, 90 days in final year	Avg. 90 days/yr, 90 days in final year	Absolute 90 days/yr
9 Activity	No	No	No	Yes
<b>Deprivation</b>				
1 Naturalised on false information	Yes	Yes	Yes	Yes
2 British-born	No	Yes	Yes	Yes
3 Definition	Treason	European Convention on Nationality wording	‘conducive to public good’	‘conducive to public good’
4 Removes right of abode	No	No	Yes	Yes

**Table 2.2 Naturalisation and deprivation of nationality in Germany, 2000 through 2010**

Criterion		2000-2003	2003-2004	2005-2007	2007-2009	2009-2010
<b>Naturalisation</b>						
1	Criminal convictions	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 90 days' wages, prison sentences up to 3 months	Fines up to 90 days' wages, prison sentences up to 3 months
2	Language	Yes/No†	Yes/No†	Yes/No†	Yes, CEFR B1	Yes, CEFR B1
3	Citizenship oath	No	No	No	Yes	Yes
4	Knowledge of law and society	No	No	Yes	Yes	Yes
5	Naturalisation exam	No	No	No	Yes	Yes
6	Cost	500DM (adults)/100DM (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible
7	Residence length	8 years	8 years	8 years/7 years*	8 Years/7 years*/6 years**	8 Years/7 years*/6 years**
8	Residence permit	Residence permit or indefinite leave to remain	Residence permit or indefinite leave to remain	EU/EEA citizen, EU residence permit, or settlement permit <sup>18</sup>	Unlimited residence permit or citizen of Switzerland	Unlimited residence permit or citizen of Switzerland
9	Absences from Germany	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years
10	<i>Optionsmodell</i>	Yes	Yes	Yes	Yes	Yes

<sup>18</sup> *Niederlassungserlaubnis*

Deprivation of citizenship						
1	Statelessness allowed	No	No	No	No	No
2	Release on application	Yes; some categories not allowed	Yes; some categories not allowed	Yes; some categories not allowed	Yes; some categories not allowed	Yes; some categories not allowed
3	Relinquishment	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality
4	Adoption by foreigner	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent
5	<i>Optionsmodell</i>	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday
6	Entry into foreign military	Yes, unless bilateral agreement exists	Yes, unless bilateral agreement exists	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval
7	Treason	No	No	No	No	No
8	Application for foreign nationality	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval
9	Declaration	Yes	Yes	Yes	Yes	Yes
10	Naturalised by deception	No	No	No	No	Yes
11	Cost	100DM	100DM	€ 51	€ 51	€ 51

\* Upon successful completion of integration course. \*\* In cases of 'extraordinary integration', especially linguistic. † Proof of sufficient German knowledge required for naturalisation by right (*Anspruch*) but not for naturalisation by discretion (*Ermessen*).

### 2.2.5 Types of change

Streeck and Thelen propose a five-fold typology for classifying institutional change: displacement, layering, drift, conversion, and exhaustion. The German and British changes fit largely into the categories of layering, drift, and conversion with fewer examples of displacement and exhaustion. Drift and layering occur most frequently during the time

period in question in the UK. The five-fold typology can describe both on- and off-path changes, as some of the types can occur slowly or very quickly, evolving into third-order change if the cumulative effect is great enough or possibly in instances where multiple mechanisms of reproduction are interrupted simultaneously. This gradient of changes importantly points out that the movement from second- to third-order change may not be apparent at the time, just as a critical juncture may first be identifiable in hindsight. These gradual shifts can also lay the groundwork for a clear third-order change, slowly shifting ideas and rules to a point where they are more favourable to large change.

Displacement is ‘the removal of existing rules and the introduction of new ones’ (Mahoney & Thelen, 2010: 15). Displacement ‘can occur endogenously through the rediscovery or activation of previously suppressed or suspended possibilities’ or exogenously through ‘invasion...the supplanting of indigenous institutions and practices with foreign ones’ (Streeck & Thelen, 2005a: 21). Streeck and Thelen identify displacement closely with Sociological Institutionalism, proposing that it occurs when ‘new models emerge and diffuse which call into question existing, previously taken-for-granted organizational forms and practices’ (Streeck & Thelen, 2005a: 19). This is explored in greater depth in Chapter 6, which identifies the process of emergence of new ideas and problematisation of the status quo.

Displacement is frequently identifiable during the period in question, as in the case of the reintroduction of previously unpalatable suggestions in the UK (endogenous displacement) and the importation of ideas from other countries (exogenous displacement) (section 6.2 of this thesis). Both forces can work at the same time: ‘exogenous change is often advanced by endogenous forces pushing in the same direction but needing to be activated by outside support’ (Streeck & Thelen, 2005a: 22). At times, actors can exaggerate



the incremental appearance of such changes to make them look like the “natural” evolution of an existing social order’ (Streeck & Thelen, 2005a: 22).

The emergence of citizenship ceremonies (section 6.2.3) can be identified as institutional change by displacement: the previous model for granting nationality came into question in both the UK and Germany as the perceived devaluation and thinning of citizenship became problematised. This shift is also reflected in discussions surrounding integration (section 6.2.2 of this thesis), especially the introduction of naturalisation/integration tests in both countries and the introduction of language tests for spouses in the UK. Previous assumptions about the process of integration were called into question, and alterations to the requirements for acquisition of nationality resulted. This questioning also led to changes in consensus on deprivation of nationality in response to the post-9/11 world.

Simply put, in the institutional context, layering is ‘the introduction of new rules on top of or alongside existing ones’ (Mahoney & Thelen, 2010: 16). When layering occurs, ‘new elements attached to existing institutions gradually change their status and structure’ (Streeck & Thelen, 2005a: 31). This process allows ‘reformers to work around those elements of an institution that have become unchangeable’ (Streeck & Thelen, 2005a: 23). Layering does not in itself constitute off-path change, but ‘it can set in motion path-altering dynamics’ (Streeck & Thelen, 2005a: 23). In the process, proposed changes may seem negligible but have far-reaching effects. ‘Since the new layers created in this way do not as such directly undermine existing institutions, they typically do not provoke countermobilization by defenders of the status quo’ (Streeck & Thelen, 2005a: 23).

Layering involves active sponsorship of amendments, additions, or revisions to an existing set of institutions. The actual mechanism for change is differential growth; the introduction of new elements setting in motion dynamics through which they, over time, actively crowd out or supplant by default the old system as the domain of

the latter progressively shrinks relative to that of the former (Streeck & Thelen, 2005a: 24).

Layering is probably one of the most common forms of institutional change, especially in democratic governments, because of its ‘tweaking’ nature. The UK legislative system is especially well adapted for change through layering, during which the legislators make selective, incremental changes to certain aspects of institutions. In the case of CNP, periods of layering have occurred between each consolidation bill. Eventually, layering can create an unworkable complexity in the legal system or can result in an accumulation of unsuccessful marginal changes, and demands for simplification grow.

CNP has been consolidated only twice in UK history: the British Nationality Act (1948) and the British Nationality Act (1981). Pressure has been mounting inside the system for another consolidation, with both practitioners and legislators calling for reform, but exogenous forces have largely interfered with progress towards simplification. The consolidation bill published in 2008 was touted as the ‘biggest shake-up of Britain’s border security and immigration system for over 35 years’ (UK Government, 2008: 20), presumably making an oblique reference to the BNA (1981). Instead, the bill presented six months later became a classic victim of layering and exogenous pressures. The Home Office prioritised giving legislative approval to changes in the customs and immigration functions at ports of entry that it had already begun to enact, and only a few of the citizenship and immigration measures proposed in the Draft Bill (2008) were attached. The stated goal shifted from simplification to speed, with ministers underlining the necessity of swift passage of the bill to give post hoc validity to UK Borders Agency changes. This is explored further in sections 3.2.3 and 4.2 of this thesis.

During drift, ‘neglect of institutional maintenance in spite of external change result[s] in slippage in institutional practice on the ground’ (Streeck & Thelen, 2005a: 31). When

drift occurs, ‘rules remain formally the same but their impact changes as a result of shifts in external conditions’ (Mahoney & Thelen, 2010: 17). In the case of drift, institutional corrections have not addressed the structural contradictions and flaws, or the rules comprising the institution are not as strictly enforced, creating behavioural opportunities like those proposed by Clemens and Cook (1999). ‘As with layering, change through drift, while potentially fundamental, may be masked by stability on the surface’ (Streeck & Thelen, 2005a: 24). Drift can be consciously created by actors or can result from the evolution of the context in which the institution exists (Streeck & Thelen, 2005a: 25).

There is evidence of drift-driven institutional change in British CNP. In many of these cases, gaps appear between policy outputs and policy outcomes. Outputs are the pieces of legislation, which are created with certain ideas about what they will cause to happen. Outcomes, on the other hand, are what actually happens in response to the new legislation, which does not always align with the creators’ intentions. ‘This distinction between outputs (the activities of government at the point of delivery) and outcomes (the impact of these activities) is often slurred over...but it is an important one’ (Hogwood & Gunn, 1984: 17). One of the most common complaints about drift regards the Home Office’s poor track record with policy implementation (see section 4.2). In such cases, a gap appears between the formal (statutory) institutional make-up and the reality. Drift is less common during this period in the German case because of the prevalence of policy monitoring techniques deployed, which have created greater awareness of undesirable outcomes and have encouraged faster reactions. The German system is also less prone to see legislation as the primary solution to achieve policy aims, with a greater focus on finding workable solutions at the local level (see section 5.1.2).

Institutional conversion involves the ‘redeployment of old institutions to new purposes [or] new purposes attached to old structures’ (Streeck & Thelen, 2005a: 31).

‘Different from layering and drift, here institutions are not so much amended or allowed to decay as they are redirected to new goals, functions, or purposes’ (Streeck & Thelen, 2005a: 26). Importantly, this evolution does not occur through neglect but through purposeful change (Mahoney & Thelen, 2010: 17). This is sometimes an appealing solution, as the creation of a new institution may require a high initial investment. This happens when an existing institution is given competencies in a new area, such as making an institution established for regulating guestworkers also competent in the control of general immigration or the coupling of integration with CNP. Though the historical evidence of conversion is greater in CNP, there is evidence for institutional conversion during the decade in question. For example, section 6.2.2 of this thesis shows how the Knowledge of Life in the UK Test was developed for naturalisation applicants in the Nationality, Immigration and Asylum Act (NIAA, 2002), but its use was altered to examine applicants for settlement status in the Immigration, Asylum and Nationality Act (IANA, 2006), and the Borders, Citizenship and Immigration Act (BCIA, 2009) debates mentioned the idea of a civics test for naturalisation applicants for the first time.

Finally, exhaustion nears third-order change; it is the ‘gradual breakdown (withering away) of institutions over time’ (Streeck & Thelen, 2005a: 31). This category straddles the divide between on- and off-path changes, as the end result is a paradigmatic shift, but the process is incremental. If the process of exhaustion continues to completion, it becomes a third-order change, forcing actors to take off-path decisions. When exhaustion occurs, ‘behaviours invoked or allowed under existing rules operate to undermine these’ (Streeck & Thelen, 2005a: 29). Changes in behavioural mores are discussed in Chapter 6, but during the time period and countries in question, there is no evidence that CNP is ‘withering away’. As Chapter 1 pointed out, despite the prediction of post-nationalists, citizenship still

matters and, if anything, it has been significantly reinforced by both countries during this period.

### ***2.2.6 Incrementalism***

Though many studies have focused on periods of dramatic change, these represent a relatively short part of the institution's existence. Yet change generally continues between these intervals in an incremental manner, brought about through minor relaxations of scripts, power shifts, changes in costs, and the accumulation of advantages from coordination effects, among others. These intervening periods can be just as important as the dramatic punctuations for explaining the process of change, as it is during these periods that the pressure builds for change and that incremental changes can accumulate to equal greater change. '[T]ransformational change is not necessarily the results of a critical juncture; it can also be the result of an incremental process' (Cappocia & Kelemen, 2007: 368; cf. Streeck & Thelen, 2005a).

Institutions change in response to changing needs, norms and behaviours within society that, once accepted, become institutionalised as rules of acceptable behaviour. Institutions reflect the constant drive to decrease risk and costs in human exchange. As the nature of interaction and societal structure change, the institutions change in response. Institutions generally change incrementally, limited greatly by path dependence but constantly taking in feedback. The most effective changes cannot be limited to changes in formal institutions, which can be accomplished overnight with the agreement of the controlling actors, but must be accompanied by a shift in 'informal constraints embodied in customs, traditions, and codes of conduct [that] are much more impervious to deliberate policies' (North, 1990: 6). Institutions change through the negotiation of a new status quo between societal actors, each of whom have different agendas and perceive different policy options and incentives for the changes they propose.

This is not to argue that critical junctures or punctuated equilibria do not exist; rather, it is the incremental change that prepares the way for critical junctures:

In my view, both gradualistic evolution and punctuated equilibrium seem to be at work in different parts of the process. The agenda changes suddenly and non-incrementally, which makes agenda-setting look like punctuated equilibrium. But the alternatives are developed gradually, and a more Darwinian concept of evolution may be useful to describe that part of the process...When the window opens, it is too late to work up proposals from scratch; proposals must be ready long before that (Kingdon, 2003: 227).

The critical junctures/punctuated equilibrium framework concentrates so much on radical change that it frequently appears that institutions are in stasis in between. Critical junctures do matter, but the incremental change preceding these ‘windows of opportunity’ are just as important for the process of institutional change. Political systems cannot continue in a status of continuous upheaval. In a more perfect world, it is conceivable that, in the presence of a good system of monitoring and feedback, an institution could endure very long periods of gradual change without the need for punctuations. However, it is likely that nearly all institutions must have periods of relative equilibrium with short punctuations to relieve the accumulation of pressures.

### **2.3 Theoretical framework**

The previous section presented how New Institutionalists conceive of institutional stability and/or change with little in the way of concrete application. Although each of the theories acknowledges that there are long periods of stasis or minor change between periods of dramatic change, most of the theoretical work has focused on these short bursts, which make up a relatively small portion of the institutional existence. Fewer authors have explored the process of incremental change in much detail, even though it is this very type of change that must prepare the way for greater changes. As Pierson notes, ‘[c]ases of

fundamental or revolutionary reform in well-institutionalized political systems attract our attentions precisely because they are so rare' (Pierson, 2004: 44n).

The previous sections have focused on macro theories in institutionalist literature, defining institutions, theories of institutional change, and the psychology of actors. This section identifies specific mechanisms of reproduction. When the mechanisms of institutional reproduction function smoothly, institutional existence continues relatively unchanged. Understanding the reasons for institutional stability, therefore, can lead to an understanding of the ways that stability can break down, leading to change. However, as shown in the discussion of psychology above, actors do not always choose to exploit the failure of reproductive mechanisms because of perceived risks. This explains why 'windows of opportunity' or 'critical junctures' might result in little change and underlines the importance of studying both the structures and the agents to explain institutional change.

The identification of mechanisms of reproduction is followed by the consolidation of possible sources of change, leading to the development of the concrete hypotheses tested in the remainder of the thesis.

### ***2.3.1 Mechanisms of reproduction***

The previous section theorises what change looks like but provides few concrete applications of the theories. These theories all suggest that there are long periods of stability or gradual change followed by relatively short bursts of upheaval and rapid change. However, these discussions do not propose any concrete mechanisms that ensure stability or lead to upheaval. The discussion of actors' psychology has begun to form parameters within which to make hypotheses about institutional change. This section focuses on these mechanisms, analysing common factors in institutional reproduction. When the mechanisms of institutional reproduction function smoothly, institutional existence continues relatively unchanged. It is when these mechanisms break down that change

occurs. Therefore, 'a clear understanding of the mechanisms of reproduction provides an instrument for the investigation of change' (Pierson, 2004: 52).

As much disagreement reigns in the identification of mechanisms of reproduction as in the wider theories of institutional change discussed earlier. This thesis will use the term 'mechanisms of reproduction', though this largely describes the same phenomena as self-reinforcing and self-maintaining mechanisms and positive and negative feedback loops (Pierson, 2004: 52). However, the discussion of mechanisms of reproduction is more narrowly focused than that of positive and negative feedback loops above, as it seeks to identify concrete mechanisms that bring about institutional reproduction as opposed to classifying whether it is a self-reinforcing or a self-maintaining mechanism.

Mechanisms of reproduction identify the processes whereby an institution is perpetuated. 'Reproduction ensues when rules induce roles, which induce interests, which induce strategic exchanges, which lock in patterns of collective action that depend on the rules' (Padgett & Ansell, 1993: 1259-60). During the process of reproduction, 'positive feedback reinforces the trajectory initiated' when the institution began on a specific path (Pierson, 2000b: 76). Reproductive mechanisms explain the process of path dependence and why every new decision taken is dependent on, and situated within the context of, previous decisions. When reproductive mechanisms work smoothly, the institution rests in the period of 'equilibrium', 'negative feedback', or 'path dependence'. During this time, the institution may experience a gradual shift in response to internal contradictions, actors' goals, or new problems. This is not to say that change is absent, simply that 'it is bounded change until something erodes or swamps the mechanisms of reproduction that generate continuity' (Pierson, 2004: 52). Throughout this period of relative stasis, pressures will build, whether from structural flaws or from the lobbying of actors, that will eventually 'dislodge a long-lasting equilibrium' if they cannot be diffused (Pierson, 2000b: 76). Some



institutions appear better able to cope with these pressures, while others achieve change primarily through a sudden break-through in the build-up of friction. Jones and Baumgartner propose that ‘[s]ystems with more regular feedback processes built in are less likely to suffer extreme disruptions’ (Jones & Baumgartner, 2002: 300).

When researchers begin to name these mechanisms of reproduction, however, the field grows confusing. Clemens and Cook speak of ‘mutability, internal contradictions, and multiplicity’ (Clemens & Cook, 1999: 448). North and Pierson draw on Arthur’s proposed mechanisms: large start-up or fixed costs, learning effects, coordination effects, and adaptive expectations (Arthur, 1988: 10; 1994: 112-13; North, 1990: 94; Pierson, 2000b: 76). North also highlights the importance of increasing returns created by ‘the interdependent web of an institutional matrix’ (North, 1990: 95). Pierson (2000a) adds the ‘power of the dominant actor coalition’. Lindner (2003) generally follows Pierson, adding the idea of marginal changes. Kathleen Thelen, in an effort at consolidation, proposes the categories of utilitarian-functionalist, power-distributional, and cultural-sociological, under which headings specific mechanisms fall (Thelen, 2006: 211-212). Thelen’s categories provide the best tool with which to organise the various mechanisms proposed by other researchers, the result of which can be found in Table 2.3.

**Table 2.3: Mechanisms of reproduction**

<b>Utilitarian-functionalist</b>	<b>Power-distributional</b>	<b>Cultural-sociological</b>
Efficiency-based	Power-based	Culture-based
Costs	Authority	Behaviour
Structural	Actors/dominant coalitions	Adaptive expectations
Learning effects	Institutional interdependence	Coordination effects
Internal contradictions	Multiplicity	Mutability
Marginal changes		

Sources: Arthur (1988, 1994), Clemens and Cook (1999), Lindner (2003), North (1990), Pierson (2000a, 2000b), Thelen (2006)

The utilitarian-functionalist classification is efficiency-based (Thelen, 2006: 212). Under this heading fall the common economic arguments concerning costs as well as functionalist arguments for institutional existence, such as those forwarded by RCI. Costs include the cost of the initial investment (set-up/start-up costs) as well as minimum maintenance costs that contribute to the creation of economies of scale and lead to increasing marginal returns. When an institution can maintain itself at low cost, the uncertainty and costs of institutional transformation are too great for there to be a strong lobby for change. When, however, the costs of maintaining the institution in its current form increase and the uncertainty of change decreases, when enforcing the status quo becomes prohibitively expensive, actors will have much greater incentive to change (Lindner, 2003: 918; Pierson, 2000a).

Structural arguments also fall largely under the utilitarian-functionalist heading. This includes arguments about internal contradictions within institutions and the application of Hegelian dialectics to assert that the seeds of an institution's destruction are inherent within its structure (Clemens & Cook, 1999: 449). To take a classic example, one of the foundations of capitalism's success is its reward of human greed. However, when the gap between rich and poor grows too large because of this reward structure, the dissatisfaction of the poor leads to instability and decreases the risks of change for all but the elite who are profiting the most. When faced with structural flaws, the dominant actors may seek to make small, concessionary changes through a strategy of appeasement, shifting the edges of the institution slightly. These are marginal, on-path changes that can eat away at the institutional structure. Yet making several unsuccessful marginal changes may feed discontentment and increase the impetus for more fundamental change (Lindner, 2003: 918).

Change also comes to a certain extent from learning, after which the actors may consciously seek to adapt the institutions to achieve greater efficiency or seek to better address the problems for which the institution was created. In choosing two countries who are members of many of the same international organisations and facing similar internal pressures, one would expect to see evidence of learning driving institutional change in British and German CNP. Learning effects can also shift actors' cost/benefit analyses because actors gain knowledge of how the institution works and thereby how to increase their gains from it (Pierson, 2000b: 76). Thus, actors learn to manipulate the institution for personal gain, such as exploiting CNP to draw votes in an election.

Power-distributional mechanisms of reproduction encompass all the power-based mechanisms, including issues of authority, competition between actors and dominant coalitions, interdependence between institutions, and multiplicity. Unclear power hierarchies can have very damaging effects on institutional stability and reproduction. There can be competition between different institutions for authority over a certain area, leaving the actors uncertain of where to direct their efforts (Clemens & Cook, 1999: 449-450; Hall, 1993: 280; Lindner, 2003: 917). Crises of authority also undermine the system of punishments and rewards which inspire compliance with the rules because compliant actors may find themselves unrewarded, while rogue actors find themselves unpunished and therefore encouraged to continue to violate the rules of the game. At such times, the perceived costs of change may decrease for many of the actors. If an authority conflict is not resolved through the involvement of a higher level of authority or through an agreement between actors from the competing institutions, the institution will be destabilised because its rules will lose validity and enforceability. This will increase the costs of maintaining the status quo because previously unacceptable behaviour will become more common as it goes unpunished. Meanwhile, an opening has been created for the marginal

actors who could potentially benefit the most from institutional change. To decrease risk further, both the dominant actors and the opposition may agree to a form of layering, in which the new institution is created on the foundation of the old, rather than creating an entirely new entity.

Problems can also arise from interdependence (Lindner, 2003: 917; Pierson, 2000a): the institutions do not compete for authority over a certain area but rather are dependent upon one another for proper functioning and enforcement of behavioural expectations. In such cases, actors again become confused about where to direct their efforts. Institutions with high levels of interdependence may also be more difficult to maintain routinely, as the interlocking institutions will reinforce negative feedback and increase institutional stickiness.

Finally, cultural-sociological mechanisms of reproduction are largely behaviourally-orientated. It is here that SI makes its greatest contributions in highlighting the roles of norms, ideas, and expectations of behaviour. Behavioural expectations pre- and proscribe certain behaviours, and institutions provide an incentive structure that rewards compliance and punishes non-compliance. When there are clear behavioural expectations, Pierson's (2000a) dominant actor coalition will command more power because of widely accepted institutional constraints on appropriate methods of gaining power. Agreed-upon behaviours also require the presence of an incentive and punishment system for deviations from the accepted script (Clemens & Cook, 1999). This creates a situation in which the dominant actors benefit from the system because cause and effect are more predictable, and the dominant actors can identify the tools the opposition can use to try to remove them from power (Lindner, 2003: 917).

Weaker or unenforced scripts will lead to greater openness to institutional change (Clemens & Cook, 1999). Network theory here helps to analyse societal interaction and the

diffusion of norms. According to network theory, higher levels of stability are associated with social homogeneity (Blau & Schwartz, 1984; Carley, 1991; Clemens & Cook, 1999: 450; Suitor & Keeton, 1997). Societal homogeneity tends to be associated with higher levels of shared expectations and more agreement upon what constitutes unacceptable behaviour. Denser networks will increase the chances of successful institutional reproduction, ensuring stability (Zucker, 1988: 31). Where networks are densest, there will generally be greater levels of prescribed behaviour through a structure of rewards and punishments, with norms and expectations exerting a strong influence on the perceived choices available to the actors (Clemens & Cook, 1999: 450-451; North, 1990: 36-40).

Cultural-sociological mechanisms also include adaptive expectations. In the case of adaptive expectations, actors feel pressured to pick the 'winning' option from the beginning (Pierson, 2000b: 77). This can be widely observed in the media's behaviour during elections: media outlets will choose the few of the wide initial field of candidates who they think could win. As a result, these candidates receive far more publicity than others, thereby improving their chances of winning. Thus, adaptive expectations have a self-fulfilling element (Pierson, 2000b: 77). Related to adaptive expectations are coordination effects. Coordination effects lead to greater individual gain the more one's behaviour is adopted by others (Pierson, 2000b: 77). Coordination effects are especially prevalent in technology, where users tend to benefit from lower prices and a greater range of services and support by a growing pool of users. This is closely linked to adaptive expectations, as individuals will try to choose the piece of technology that they think will be the best investment, basing their decision at least partially on their expectations of others. Though technological examples are the most frequently given for coordination effects, these can also be present in policy-making in terms of building political capital in taking decisions. If one politician decides to push a green agenda, he may benefit very little from any political

gain. However, as more politicians join him and the public becomes convinced that a green agenda is important, the original politician will gain increasing amounts of political capital.

The final cultural-sociological mechanism of reproduction is that of mutability. Mutability is understood as how much room for change there is in the process of institutional reproduction: to what extent behaviour is prescribed or proscribed (Clemens & Cook, 1999: 448). In cases where behaviour is clearly defined, the institution is more likely to reproduce consistently. However, the greater the variance of behaviour allowed, the greater the likelihood that actors' behaviour will be able to influence institutional reproduction.

### ***2.3.2 Sources of change***

The discussion of mechanisms of reproduction above began to lead towards more concrete predictions of sources of change. Change does not always arise from the same pressure, and the pressures can vary in strength. Because of these variations, smaller pressures can be expected to create opportunities for smaller change, while larger pressures create opportunities for larger change. Such a conceptualisation of change employs Kingdon's (2003) policy windows framework. Kingdon proposes that there are micro- and macro-windows that can lead to micro- and macro-changes. However, simply because a policy window opens does not mean that change will occur. For change to ensue there must be an alignment of opportunity with solutions and the incentive to push through change. This means that there must be a weakness in at least one of the mechanisms of reproduction at the same time as an actor's calculations deem that change is worthwhile and a viable alternative is ready. As Kingdon points out, some windows open at predictable intervals, like budget renewals and scheduled elections, and actors can plan to take best advantage of these opportunities (Kingdon, 2003: 165). However, there are many other pressures that interrupt mechanisms of reproduction at unexpected times.

Analysis of mechanisms of reproduction can lead to many possible sources of change. Endogenous pressures can accumulate from structural flaws or contradictions, unclear behavioural scripts, or competition for authority. Exogenous pressures, which tend to be less predictable, include wars, changes in international norms, economic changes, demographic shifts, increased media or public attention, and a change in actor coalitions. Just as the sources of change vary, so do the degrees. Small or gradual pressures often encourage small, gradual, or risk-averse responses, while large or sudden pressures encourage more risk-taking and large-scale changes. Because humans are generally risk-averse, cost-benefit analyses do not often make sweeping change appealing unless the cost of maintaining the status quo becomes obviously too high. This is especially the case if dramatic institutional change will incur higher taxes or public spending cuts, thereby putting negative pressure on politicians.

The effects of endogenous weaknesses can be amplified by exogenous pressures. For example, the effects of an exogenous shock will be increased by greater societal heterogeneity because the scripts for responsive behaviour will be less clear (Clemens & Cook, 1999: 452). Equally, the interplay between politics and economics has long been documented, and a sudden economic downturn or upswing can have unexpected repercussions on institutional stability by changing the relative costs and benefits of change. Baumgartner and Jones conclude that most (visible) change comes ‘during periods of heightened general attention to the policy. In the process of agenda-setting, the degree of public indifference to given problems changes dramatically’ (Baumgartner & Jones, 1993: 20). Wars, economic change, elections, and media events can all put pressure on existent structural weaknesses. Additionally, the risk-averse behaviour of the actors may cause them to wait longer than is reasonable to implement meaningful change and then to ‘overshoot’ by opting for dramatic change.

As mentioned before, some of these pressures are more likely to create micro-windows, while others are more likely to create macro-windows, and some could create either, depending on the surrounding circumstances. A cumulative table of the pressures discussed appears in Table 2.4. From the table, it is evident that most of the reproductive mechanisms identified earlier are likely to result in micro/on-path/incremental changes. Exogenous events like 9/11 in the United States, the 2004 Madrid train bombings, and 7/7 in Britain can have unpredictable effects and lead to macro changes, but again such events are the exception rather than the rule of institutional existence.

**Table 2.4: Sources of change**

	<b>Micro</b>	<b>Either</b>	<b>Macro</b>
<b>Endogenous</b>	<ul style="list-style-type: none"> <li>• Changes in techniques for monitoring policy implementation</li> <li>• Feedback on policies already implemented</li> <li>• Constant adjustment for structural flaws/inherent contradictions</li> <li>• Shifting norms/behavioural expectations<sup>19</sup></li> <li>• Introduction of new ideas or feasible solutions</li> </ul>	<ul style="list-style-type: none"> <li>• Policy learning</li> <li>• Agenda-setting</li> </ul>	<ul style="list-style-type: none"> <li>• Sustained, heightened attention at governmental or policy-making venue level</li> </ul>
<b>Exogenous</b>	<ul style="list-style-type: none"> <li>• Media events, public opinion changes</li> </ul>	<ul style="list-style-type: none"> <li>• Treaties</li> <li>• Technology</li> <li>• Socioeconomic/demographic shifts</li> </ul>	<ul style="list-style-type: none"> <li>• Regime change or power shifts</li> <li>• War</li> <li>• Economic recession or depression</li> </ul>

Sources: Birkland (2005), Clemens & Cook (1999), Cortell & Peterson (1999), Hargreaves (2001), Kingdon (2003), Lindner (2003), Thelen (1999)

### **2.3.3 Hypotheses**

Despite the high level of public attention and great upheaval surrounding the CNP reforms of the 1990s, especially in Germany, hindsight shows that these changes were not as substantive as they appeared at the time. On the other hand, despite decreased attention

<sup>19</sup> Shifting norms/behavioural expectations will generally create micro-windows not because their impact is small but because ideas tend to change slowly over time.



to citizenship and naturalisation policy over the past nine years, policy has continued to evolve incrementally, and the governments have continued to alter their approaches to citizenship. This thesis predicts that there has been substantive change – shown in the difference between the positions of policies now versus at the beginning of the period – between 2000 and 2010 in response to growing pressures to address the large foreign populations within their borders. These pressures come from the structure of the welfare state as well as the general difficulties the nation-state faces when confronted with a long-resident foreign population: problems of socio-economic integration, questions about democratic legitimacy and more ideational debates surrounding national identity and what citizenship entails.

From the classifications, one would predict that micro-windows create the opportunity for on-path changes, while macro-windows open the possibility to off-path changes as well. An application of the earlier discussions of mechanisms of reproduction to these theories of change leads to seven hypotheses. Change is likely when one or more of the following elements occur:

1. A decrease in the relative cost of institutional change.
2. The presence of structural characteristics that force change.
3. A power shift in the dominant actor coalition.
4. Competition between authorities for rule-making competency.
5. Scripts are changing.
6. New ideas emerge that problematise conditions.
7. Actors show evidence of adaptive expectations or benefit from coordination effects.

These hypotheses are expanded and tested in later chapters. Hypotheses 1 and 2 are examined in Chapter 4: Utilitarian-functionalist reproductive mechanisms; hypotheses 3 and 4 are explored in Chapter 5: Power-distributional reproductive mechanisms; and hypotheses 5 and 6 are assessed in Chapter 6: Cultural-sociological reproductive mechanisms. Insufficient evidence to test the seventh hypothesis was found in these case

studies; thus, although the NI literature points to the final hypothesis, it remains untested in this thesis.

#### ***2.3.4 Application of the theoretical framework***

Having established a theoretical framework and a set of hypotheses, the final step of operationalisation is a discussion of the application of the theoretical framework. As stated above, the starting point of this thesis is 1 January 2000, when the new German Nationality Act came into effect; the ending point is 6 May 2010, when thirteen years of Labour government in the UK ended. Arguments about the nature of institutional change are irrelevant, however, if one cannot provide a robust method for measuring change. This thesis measures change by comparing conditions at  $t_0$  (2000) to  $t_1$  (2010). Change is deemed to have occurred if the conditions at  $t_0$  are different to those at  $t_1$ . This is measured by comparing the configuration of institutional rules at the starting and ending points.

The presence of institutional change becomes very obvious when one compares the starting point in 2000 with the ending point in 2010 (Tables 2.5 and 2.6, below). Boxes highlighted in grey indicate a change from the starting point. As this table shows, the only category that did not experience change during this period was the good character requirement for applicants for naturalisation, which was already in place in 2000. In every case, the changes in the UK created a more restrictive regime, while the changes to German CNP offer a more mixed picture. However, these changes were not achieved overnight. Instead, a few changes were brought forth in both countries with each piece of primary legislation (Tables 2.1 and 2.2, above).

**Table 2.5 Naturalisation and deprivation of nationality in the UK, 2000 and 2010**

Criterion		2000	2010
<b>Naturalisation</b>			
1	Good character	Yes	Yes
2	Language (English, Welsh, Scottish Gaelic)	Casual, none for spouses	Yes
3	Citizenship oath/pledge	Oath	Oath and pledge
4	Citizenship ceremony	No	Yes
5	Knowledge of Life in the UK test	No	Yes, possible second test
6	Cost	Approx. £150	Approx. £800
7	Length of residence	3 yrs (spouses), 5 yrs (residence)	3-5 yrs (spouses), 6-8 yrs (residence)
8	Absences from UK	Avg. 90 days/yr, 90 days in final year	Absolute 90 days/yr
9	Activity	No	No
<b>Deprivation</b>			
1	Naturalised on false information	Yes	Yes
2	British-born	No	Yes
3	Definition	Treason	‘conducive to public good’
4	Removes right of abode	No	Yes

**Table 2.6 Naturalisation and deprivation of nationality in Germany, 2000 and 2010**

Criterion	2000	2010
<b>Naturalisation</b>		
1 Criminal convictions	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 90 days' wages, prison sentences up to 3 months
2 Language	Yes/No†	Yes, CEFR B1
3 Citizenship oath	No	Yes
4 Knowledge of law and society	No	Yes
5 Naturalisation exam	No	Yes
6 Cost	500DM (adults)/100DM (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible
7 Residence length	8 years	8 Years/7 years*/6 years**
8 Residence permit	Residence permit <sup>20</sup> or indefinite leave to remain <sup>21</sup>	Unlimited residence permit <sup>22</sup> or citizen of Switzerland
9 Absences from Germany	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years
10 Optionsmodell	Yes (§29); must submit written declaration of intention b/w ages 18 and 23 or automatically loses German nat'lity; must prove loss of other nat'lity; request to keep both must be submitted by age 21	Yes (§29); must submit written declaration of intention b/w ages 18 and 23 or automatically loses German nat'lity; must prove loss of other nat'lity; request to keep both must be submitted by age 21
<b>Deprivation of citizenship</b>		
1 Statelessness allowed	No	No
2 Release on application <sup>23</sup>	Yes; some categories not allowed	Yes; some categories not allowed
3 Relinquishment <sup>24</sup>	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality
4 Adoption by foreigner	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent
5 Optionsmodell	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday
6 Entry into foreign military	Yes, unless bilateral agreement exists	Yes, except by prior approval
7 Treason	No	No
8 Application for foreign nationality	Yes, except by prior approval	Yes, except by prior approval
9 Declaration	Yes	Yes
10 Naturalised by deception	No	Yes
11 Cost	100DM	€ 51

\* Upon successful completion of integration course. \*\*In cases of 'extraordinary integration', especially linguistic. † Proof of sufficient German knowledge required for naturalisation by right (*Anspruch*) but not for naturalisation by discretion (*Ermessen*).

<sup>20</sup> *Aufenthaltsurlaubnis*

<sup>21</sup> *Aufenthaltsberechtigung*

<sup>22</sup> *unbefristetes Aufenthaltsrecht*

<sup>23</sup> *Entlassung*

<sup>24</sup> *Verzicht*

The following chapters will show that great change has taken place in the rules of CNP in both countries during the past ten years. Simply comparing the start and end points makes it appear that the changes constitute drastic, off-path changes. However, this thesis argues that, when one looks at the intermediate points, it becomes clear that this transformation was achieved incrementally, not through sudden upheaval. Although some changes arose in direct response to exogenous influences, the overall nature of institutional change in these cases is decidedly incremental.

## **2.4 Concluding remarks**

This chapter has presented the major theories of institutional change, presenting the mechanisms of reproduction that ensure stability and making concrete proposals about the sources and types of change. The discussion has led to the creation of six hypotheses about the occurrence of change, predicting that it might result from a decrease in the relative cost of institutional change, corrections of structural contradictions or flaws, the accumulation of unsuccessful minor changes, a change in the dominant actors, competition for authority over an area, and/or a lack of enforced discursive scripts. The remainder of this thesis will test these general hypotheses through a comparative study of the British and German institutions of citizenship and naturalisation policy over the past decade.

This chapter has explored the nature of institutions, the reasons for their emergence and continuation, and the sources and types of institutional change present in institutionalist literature. It has defined institutions as sets of rules that exist to facilitate human exchange, provide structure, guide human behaviour, reduce uncertainty, and create an incentive structure to encourage compliance with the rules. Institutions exist to reduce uncertainty, lower transaction costs, enable greater efficiency and/or cooperation, and provide a system of incentives and punishments to encourage the desired behaviours.

Institutions continue to reproduce successfully or are changed in response to both exogenous and endogenous pressures. These pressures can create interruptions in the mechanisms of reproduction that create windows of opportunity for institutional change. Small windows may lead to minor changes, while large windows, usually the result of an unexpected exogenous change, create the opportunity for larger, even off-path changes.

The pressures for and types of change can be applied to CNP to create specific research questions and hypotheses about institutional change. This thesis will demonstrate what these cases can explain about the nature of institutional change and why and how CNP changed between 2000 and 2010 in the UK and Germany. As the discussion in this chapter has shown, institutional change is expected to be largely incremental but to amount to a significant shift over time.

The coming chapters will present a comparative analysis of empirical data to test these hypotheses and evaluate the validity of the theories of institutional change presented in this chapter. The first empirical chapter provides an overview of the legislation of both countries during the past decade and classifies the changes according to the taxonomy developed in the first section of this chapter. This will be followed by empirical chapters structured according to the reproductive mechanisms with one chapter each devoted to testing the proposals of utilitarian-functionalist, power-distributional, and cultural-sociological reproductive mechanisms. This will culminate in a re-evaluation of New Institutional theory and a strengthening of the theoretical framework for future research.

### **3 Overview of legislation and exogenous influences**

Before moving into the empirical material, it is important to give a brief overview of the major pieces of primary legislation explored in this thesis to establish a rudimentary understanding of the changes contained in each act. Although the empirical analysis makes occasional references to secondary legislation, the focus is on primary legislation as an embodiment of change. In the British case, there are four bills, only three of which have passed through Parliament; however, the fourth is relevant to the analysis, so a summary is offered here. Germany passed two relevant acts during the period in question. However, a working knowledge of the 1999 Nationality Act is essential for analysis of the later legislation, so a synopsis is provided here. In addition, a general sense of the magnitude and direction of changes in each country is included in these sections.

The second half of this chapter marks the beginning of the empirical analysis, addressing the role of various exogenous influences on CNP change in each country. These exogenous factors are referred to in later chapters; however, the focus of this work is on furthering understanding of endogenous pressures for change. The unpredictability of exogenous influences largely limits understanding of resulting institutional changes to explanations made in hindsight rather than allowing for reliable hypotheses like those tested in Chapters 4-6.

#### **3.1 Overview of the legislative process**

Before delving into the legislation and exogenous influences, it is important to establish an understanding of the general policy-making process in each country. There are important differences between the legislative systems in the two countries. This section provides an overview of the policy-making process, from drafting of a bill through

approval of the final version. This process is, of course, affected by the governmental system as a whole, with the UK working within a centralised system and Germany within a federal system; the impact of these two types is explored further in Chapter 5.

In the UK, there are essentially two routes into the legislative process: through public bills and through private members' bills. In theory, any Member of Parliament (MP) could propose a private member's bill on CNP, but this is such a core policy area that it is normally left to the executive agenda, and private member's bills are rarely successful in instigating full legislation. Therefore, this overview will focus on the standard legislative route of a public bill. After the agenda-setting process, the executive requests a bill to be drafted in the relevant civil service division. Although many actors may influence the agenda-setting process, the executive ultimately controls the content of the legislation.

Draft bills or research papers preceding legislation may be made available for public consultation, and feedback is gathered from listed 'stakeholders'. Once a bill is drafted, it is formally presented in the First Reading to one of the Houses of Parliament. Although bills are normally first introduced in the House of Commons, this is not always the case; one of the acts examined in this thesis began in the House of Lords. The First Reading is a formal affair and is not accompanied by a debate. This is followed by a Second Reading, which again occurs in a plenary session of the house in which the bill began. The Second Reading debates can be very tense affairs, accompanied by party-political posturing. After Second Reading, the bill is consigned to committee, where the clauses are debated and amended individually. Throughout the process, the executive will always have a representative present with instructions to accept or reject amendments; when the representative agrees to further consideration, she takes the amendments back to the executive and a team of civil servants, who draft acceptable, legally sound changes. Following the committee stage, the bill is returned to the originating house for Report, in which the changes are debated in



plenary before proceeding to the Third Reading, which ends with a formal vote. Report and Third Reading generally follow each other closely. After receiving the assent of the originating house, the bill passes to the other house and follows the same steps. The final stage is Ping Pong, during which changes proposed by the two houses are reconciled; both houses must ultimately give their consent to the final version. The bill is then passed to the monarch for Royal Assent, and a timeline is set for implementation.

Like in the UK, the German executive announces a legislative agenda at the beginning of the electoral term. However, there are more routes into the legislative process in Germany, which is partially a reflection of the federal system. Civil servants and administrators may notice constant problems and request legislation. *Länder* may also approach the ministry responsible for a policy area or the Bundesrat with a request for legislation or a draft bill. This has happened several times in German CNP. Finally, interest groups, trade unions, and local authorities may approach parliament. Once legislation is requested, the relevant ministry is instructed to prepare a draft bill. This is followed by a consultation period similar to the UK. After this, a finished draft is sent to all ministries concerned before being forwarded to the Ministry of Justice to check for compatibility with existing legislation and legal requirements. The minister responsible for the bill then submits it for cabinet approval. The draft approved by the cabinet is passed to the Bundesrat for comments. These comments, with the government counterstatement, are attached to the bill and presented to the Bundestag for First Reading.

Like the UK, the First Reading usually precludes debate. After First Reading, the bill proceeds directly to the relevant committee. Much of the legislative work in Germany is performed in committee in a system modelled after the United States. During the committee stage, a Member of the German Parliament (*Mitglied des Deutschen Bundestages*, MdB) can request experts and stakeholders to give their views of the bill. When the

committee members are satisfied with the bill, it is released from committee to Report, when rapporteurs give recommendations based on committee debate. Second Reading follows Report, which includes general debate as well as debate on individual clauses. Third Reading then includes a final vote, after which the bill is submitted to the Bundesrat. Whether Bundesrat consent is required for the passage of the bill depends upon the content, as certain policy areas must receive Bundesrat consent. The Bundesrat may refer a bill to Mediation Committee if unhappy with its form. If the Mediation Committee proposes amendments, the Bundestag must pass the revised bill in a Fourth Reading. After Bundesrat consent, if required, the bill becomes law.

Though these processes are fairly similar, the different order of Second Reading and Committee Stage in the two countries indicates the prioritisation of different methods of policymaking. Different amounts of information are also available to the public during these stages. Transcripts are publically available for all of the legislative stages in the UK, while committees in Germany frequently have closed hearings, especially for controversial bills, which the public can access neither in person nor in transcript. The UK justifies the former as proof of transparency of the legislative process, while Germany defends having closed hearings on the grounds that it allows politicians to discuss highly emotive or politicised policy areas without pressures from public opinion. This has been especially important for CNP, as MdBs have revealed that important compromises are frequently reached behind closed doors, when they do not have to worry about electoral backlash for policy decisions.

### **3.2 Overview of UK primary legislation, 2000-2010**

With this understanding of the legislative process in both countries, we proceed to an overview of the primary legislation during the period in question. After a long history of formally unrestrictive policies (see Hansen, 2000), recent UK immigration and nationality

policies have shown an increasingly conservative trend, with restrictive changes made to nearly every criterion for naturalisation since 2000 in the UK (Table 3.1). This restrictive turn should not be seen as an anomaly in British history, however: such shifts have occurred several times in post-war British immigration policy, most notably in the aftermath of Enoch Powell's infamous 'Rivers of Blood' speech in 1968. The popular support that Powell drew gave him the power to force Heath towards a more conservative immigration policy (Hansen, 2000: 190).

**Table 3.1 Naturalisation and deprivation of nationality in the UK, 2000-2010**

Criterion	2000	2002	2006	2010
<b>Naturalisation</b>				
1 Good character	Yes	Yes	Yes	Yes
2 Language (English, Welsh, Scottish Gaelic)	Casual, none for spouses	Yes, including spouses	Yes	Yes
3 Citizenship oath/pledge	Oath	New oath and pledge	Oath and pledge	Oath and pledge
4 Citizenship ceremony	No	Yes	Yes	Yes
5 Knowledge of Life in the UK test	No	Yes	Yes for settlement	Yes, possible second test
6 Cost	Approx. £150	Approx. £150	Approx. £575	Approx. £800
7 Length of residence	3 yrs (spouses), 5 yrs (residence)	3 yrs (spouses), 5 yrs (residence)	3 yrs (spouses), 5 yrs (residence)	3-5 yrs (spouses), 6-8 yrs (residence)
8 Absences from UK	Avg. 90 days/yr, 90 days in final year	Avg. 90 days/yr, 90 days in final year	Avg. 90 days/yr, 90 days in final year	Absolute 90 days/yr
9 Activity	No	No	No	Yes
<b>Deprivation</b>				
1 Naturalised on false information	Yes	Yes	Yes	Yes
2 British-born	No	Yes	Yes	Yes
3 Definition	Treason	European Convention on Nationality wording	'conducive to public good'	'conducive to public good'
4 Removes right of abode	No	No	Yes	Yes

CNP has received a great deal of legislative attention in the UK in recent years. The British parliament passed three pieces of primary legislation directly concerning citizenship and nationality between 2000 and 2010, as well as a single clause from the Asylum and Immigration (Treatment of Claimants, etc.) Act (2004) regarding fees, which has had substantial repercussions for CNP, as discussed in section 4.1 Change in costs. There were sixty-one pieces of secondary legislation, mostly focused on the implementation of primary legislation and changes to fee structures, which also play an important role in institutional change (see section 4.3 of this thesis). This section briefly outlines the changes to CNP effected by the Nationality, Immigration, and Asylum Act (2002), the Immigration, Asylum and Nationality Act (2006), and the Borders, Citizenship and Immigration Act (2009). It also outlines the provisions of the Draft (Partial) Immigration and Citizenship Bill (DICB, 2008) that preceded the passage of the BCIA, as its content is relevant to this analysis.

### ***3.2.1 Nationality, Immigration and Asylum Act (2002)***

The Nationality, Immigration and Asylum Act (2002) was the first broad piece of nationality legislation since British Nationality Act (BNA) (1981), as the three intervening pieces of primary legislation were targeted specifically at dealing with British nationality in the Falklands (1983) and Hong Kong (1990, 1997). The professed aims of the NIAA were to ‘promote the importance of British naturalisation by: speeding up the process of obtaining citizenship’; ‘prepar[e] people for citizenship by promoting language training and education for citizenship’; ‘celebrat[e] the acquisition of citizenship by introducing citizenship ceremonies’; and ‘reform[] our nationality legislation’ (Home Office, 2002: 11).

The new requirements were very controversial and led to heated debates. The changes for acquisition of nationality included the introduction of the Knowledge of Life in the UK Test (KoL); a demand for more formal proof of English language skills, including spouses of British citizens for the first time; a re-wording of the citizenship oath

and the introduction of an additional pledge; the introduction of compulsory citizenship ceremonies; the extension of the good character requirement to those acquiring British nationality by registration; and the removal of the requirement of legitimacy for registration applicants. The NIAA also changed laws regarding loss of nationality such that people who lost their British nationality were then subjected to immigration control, a phrasing that led to unintended consequences in 2005.

### ***3.2.2 Immigration, Asylum and Nationality Act (2006)***

The 2006 Immigration, Asylum and Nationality Act was not originally intended to legislate on nationality at all; rather, the nationality clauses, largely revolving around loss of nationality, were brought in during the last day of committee debate in the House of Commons in response to the July 2005 terrorist bombings in London (UK Parliament, 2005c: c. 254). Only three of sixty-four total clauses in the final act concern nationality, and only one clause legislates on acquisition of nationality. The clause concerning acquisition of nationality changed the requirement of taking the KoL test for naturalisation forward to settlement applications, in contravention of government promises during the NIAA (2002) debates. The clauses on deprivation of nationality were written to close loopholes in loss of nationality as a direct result of the circumstances of the men involved in the London bombings. The NIAA's clauses meant that those deprived of British nationality were subjected to immigration control. However, the case of the 2005 London bombings showed that this was insufficient due to the right of abode Commonwealth citizens possess by virtue of their other citizenship, and a right of abode that is not dependent upon having British nationality. The IANA therefore sought to close this loophole so that people who lost British citizenship also lost the right to abode in the UK.

### ***3.2.3 Draft (Partial) Immigration and Citizenship Bill***

The Labour government (Home Office, 2008a) published the Draft (Partial) Immigration and Citizenship Bill in July 2008 to general acclaim and proceeded with a consultation process. Because of the number of pieces of legislation the bill intended to consolidate, its length was extensive: around 214 clauses. According to the Draft Legislative Agenda, the bill was intended to ‘replace all existing immigration legislation with a simplified, clear and coherent legal framework to control our borders, manage migration and reform the path to citizenship’ (UK Government, 2008: 57). In the Queen’s Speech on 3 December 2008, however, references to the consolidation bill were absent, and the mention of the Borders, Citizenship, and Immigration Bill (2009) discussed only the strengthening of border controls and the combination of customs and immigration powers (UK Parliament, 2008: cc. 1-3). This shift was also signalled by the change in name from Citizenship, Immigration and Borders Bill in the May 2008 Draft Legislative Agenda (UK Government, 2008) to Draft (Partial) Immigration and Citizenship Bill (Home Office, 2008a) to Borders, Citizenship and Immigration Bill (UK Parliament, 2009f).

#### ***3.2.4 Borders, Citizenship and Immigration Act (2009)***

Following the publication of the extensive Draft (Partial) Immigration and Citizenship Bill in July 2008 that aimed to consolidate much of the previous legislation (Home Office, 2008a), the content of the 2009 bill took most practitioners by surprise. While the draft bill had stated that it ‘intended to consolidate, simplify and repeal all the provisions of eleven major acts in this area since the Immigration Act 1971’ (Home Office, 2009), the 2009 bill as introduced in Parliament had lost entire sections of the draft bill, and the Home Office abandoned the aims of simplification and consolidation.

The BCIA restricted access to citizenship to levels not before seen. The concept of ‘active’ or ‘earned’ citizenship as a requirement for naturalisation was introduced for the first time. The minimum qualifying period for all applicants applying on the basis of

residence was lengthened from five to six years, or eight where applicants have not met and are not exempt from the 'active citizenship' requirement. The possibility of a second exam on civics was introduced during the debates, though it was not part of the legislation.

Finally, the BCIA altered the residency requirements of the qualifying period. Previously, applicants could be outside the UK for no longer than 90 days in the final twelve months before the naturalisation application was submitted and no more than an average of 90 days during the previous years of the qualifying period. This meant that spousal applicants could be out of the country for 180 days during the two years before the final application year, while residence-based applicants could be outside the UK for up to a total of 360 days during the four years preceding the final year. However, the 2009 Act limited applicants to no more than 90 days in any year, rather than allowing an average.

### **3.3 Overview of German primary legislation**

Germany's tumultuous twentieth-century history has had lasting effects on German nationality law. The Nazis famously used CNP to enforce their ideological agenda of racial purity, though post-World War II legislation largely reversed these changes, re-implementing the 1913 German Nationality Law. The Cold War division of Germany and Soviet bloc policies have had extensive ramifications. The legal construct of CNP in Germany has undergone drastic changes in the past decade, partly in response to mounting pressures from the increasing numbers of second- and third-generation unnaturalised immigrants and partly from the shift in conception of German nationality following the collapse of the Soviet bloc and the formation of a united Germany. This section briefly outlines the three pieces of primary legislation analysed in this thesis. The Nationality Act (1999) is taken as the baseline for comparison but is itself only analysed in comparison to the later changes throughout the following chapters. The Immigration Act (2004) and the

EU Directives Implementation Act (2007) are the other two pieces of legislation described here.

### **3.3.1 Nationality Act (1999)**

After legislative approval on 15 July 1999 (Bundesgesetzblatt, 1999), the new *Staatsangehörigkeitsgesetz*<sup>25</sup> (StAG, Nationality Act) came into effect on 1 January 2000. With the Nationality Act, the formal requirements for naturalisation changed drastically and brought German naturalisation procedures closer to those of other countries of immigration, like the United States and the United Kingdom. The Nationality Act was the first major piece of nationality legislation since the post-war reversion to German nationality was based on the 1913 *Reichs- und Staatsangehörigkeitsgesetz* (RStAG, Imperial Nationality Act).<sup>26</sup> The Nationality Act took years of (sometimes unsanctioned) cross-party meetings to gain legislative approval (Fischer & Müller, 2006; Green, 1999: 182; Weiland & Fischer, 2008). The Nationality Act brought Germany into line with its treaty obligations in the European Convention on Nationality by reducing the residence requirement from fifteen to eight years. For the first time, *ius soli* was introduced, allowing children of foreigners with permanent settlement status to be born with German citizenship. Although still officially against dual nationality, its stance was relaxed to allow EU citizens to hold dual nationality in cases of reciprocity and to recognise a greater number of circumstances in which giving up the previous nationality would cause the applicant undue hardship.

Perhaps the most controversial clauses in the Nationality Act created the *Optionsmodell*, a compromise between conservative blanket opposition to dual nationality and liberal support for widespread application of *ius soli*. According to this construct,

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<sup>25</sup> *Gesetz zur Reform des Staatsangehörigkeitsrechts*

<sup>26</sup> The decision after World War Two to ground German nationality in the 1913 RStAg effectively erased many of the race-based elements of the Nazi Nuremberg laws and maintained a broad definition that allowed the incorporation of many ethnic Germans who found themselves outside of Germany because of Germany's contracted borders.



children born in Germany to resident foreigners who would themselves qualify for naturalisation were granted German nationality at birth — with a catch. If these children also inherited a foreign nationality from their parents through *ius sanguinis*, they were only allowed to continue as dual nationals until the age of majority. Between the ages of eighteen and twenty-three, they were required to give up their German nationality to retain their other nationality; or they had to submit proof of release from their other nationality — or proof of having made a ‘reasonable effort’ to be released — to the German authorities in order to retain their German nationality. The *Optionsmodell* is discussed in more detail in section 4.2 Structural flaws/internal contradictions.

### **3.3.2 Immigration Act (2004)**

The Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (ZuG, Immigration Act)<sup>27</sup> of 2004 (Bundesgesetzblatt, 2004) had an arduous passage through the German parliament. The Nationality Act was seen as the first step in what was envisioned as at least a two-step reform process (Hailbronner, 2010: 8). It was to be followed quickly by an Immigration Act to update Germany’s immigration policy and further consolidate citizenship regulations into one comprehensive law (Hailbronner & Renner, 2005: v). Though the Immigration Act was introduced little more than two years after the passage of the Nationality Act, the process of change proved more difficult than expected, and the new Immigration Act was only implemented a full five years after the implementation of the Nationality Act.

The act addressed security concerns arising from the post-9/11 world, giving the Federal Republic of Germany (FRG, West Germany) the ability to refuse naturalisations of right on terrorism- and security-related grounds. The 2004 act increased the requirements

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<sup>27</sup> Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern (Zuwanderungsgesetz)

for naturalisation, obliging parents to possess a settlement permit or have the right to free movement – e.g. EU citizens – in order for their children to have a right to *ius soli*. In response to the continued ethnic German immigration on the grounds of family reunification for non-German spouses and descendants, the ZuG also instituted a basic German language test for family members.

The Immigration Act introduced proofs of integration beyond language requirements, offering a one-year reduction of the length of residence required as a reward for successful completion of an integration course (30.07.2004 ZuG §10 Abs. 3). It also saw the creation of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) and the simplification of residence titles. For the first time, integration measures were centralised and standardised, accompanied by a government body to oversee the implementation of laws.

### ***3.3.3 EU Directives Implementation Act (2007)***

The Act to Change the Immigration Act (EURLumsG, EU Directives Implementation Act)<sup>28</sup> focuses further on integration. The act introduced a requirement for naturalisation applicants to demonstrate knowledge of German law and society (Bundesgesetzblatt, 2007: §10 Abs. 1 Satz 7), widening the focus from linguistic integration. Definitions of mastery of the German language were clarified in the StAG (Bundesgesetzblatt, 2007: §10): ‘basic’ language mastery was defined as requiring third-party assistance to make oneself understood; ‘sufficient’ knowledge of the German language was set at the level of B1 according to the Common European Framework of Reference for Languages (CEFR) or the ability to communicate at a basic level in common situations without assistance (Council of Europe, 2001). It introduced the framework to develop a naturalisation exam, which was implemented on 1 September 2008 following an

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<sup>28</sup> *Gesetz zur Änderung des Zuwanderungsgesetzes (EU-Richtlinienumsetzungsgesetz)*

announcement on 5 August 2008 (Bundesgesetzblatt, 2008: 1649). Integration courses were also introduced for the first time and were made compulsory for anyone with insufficient knowledge of German. Following the new carrot-and-stick approach embodied in *‘fördern und fordern’*<sup>29</sup>, participants who successfully completed the integration course were allowed to naturalise one year sooner; but those who failed to attend a compulsory course could be confronted with a number of penalties, including reduction of benefits, fines of €1,000 and the refusal of a residence permit. Those who exhibited ‘exceptional’ levels of integration – generally suggested as surpassing linguistic mastery – were to be allowed to apply for naturalisation after six years (Bundesgesetzblatt, 2007: §10, Abs. 7, Satz 3).

The EURLumsG superficially addressed toleration of dual nationality for all EU citizens as well as renaturalisation for those who had been automatically denaturalised – sometimes without their knowledge – for acquiring foreign nationality. EU citizens were allowed to naturalise without ceding their foreign nationality, regardless of the existence of reciprocity, which had been a requirement under the ZuG (2005), itself a liberalisation of the StAG (2000). Equally, Germans were no longer required to obtain permission to keep their German nationality when applying for nationality in another EU country.

The act also gave proof of the evolving German approach to integration and increased state engagement with the question, creating the independent Council of Experts on Migration and Integration (*Sachverständigenrat deutscher Stiftungen für Migration und Integration*, SVR). These bodies were responsible for spearheading efforts to create the National Integration Plan and for providing ongoing proposals for the improvement of German integration policy.

Some of the measures sharpened German CNP: criminal convictions allowances were halved from six months to three months imprisonment, and the maximum level of

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<sup>29</sup> Roughly: encourage and demand.

finer from 180 days' wages to 90. There was widespread support for these measures on the grounds that previous allowances had been too generous. Government practitioners explained that these changes were in line with practice in several states as well as international norms (Jungnickel, 2006).

### **3.4 Exogenous influences**

With this overview of the legislative changes in each country, we begin the empirical analysis with an examination of the exogenous influences on CNP during this period. Exogenous events can have a remarkable impact on institutional change. CNP has shown its vulnerability to the influence of such events, especially in the area of deprivation of citizenship. Empirical evidence from both countries indicates the influence of exogenous factors in causing a rapid, unplanned response to events external to CNP. Section 2.3.2 Sources of change proposed seven possible exogenous sources of change: war (including informal acts of war like terrorism), economic recession or depression, treaties (as an embodiment of international norms), socioeconomic/demographic shifts, media events, regime change or power shifts, and technology. Technology is not explored here because it plays a relatively minor role in CNP; equally, there were no violent regime changes in either country. Shifts in the balance of power within the structures prescribed by democratic institutions are explored in greater detail in Chapter 5. The other five exogenous sources of change are present in both cases.

#### **3.4.1 *Terrorism***

The most obvious exogenous influence during this time was that of radical Islam. Across Europe, the spectre of Islamist terrorism caused securitisation and re-evaluations of CNP, especially deprivation of citizenship, with restrictive intent. The discourse surrounding CNP has shifted in response to the perceived threat. Where once discussions about CNP in Germany revolved largely around how to encourage the large foreign

populations to naturalise, twenty-first century terrorism has stirred debates about denaturalisation policies: under what circumstances can a country withdraw citizenship from offending members? In the UK, this resulted in great changes to laws that had remained relatively unaltered for decades. In Germany, legislators have not reached a solution acceptable to all parties, and security dilemmas continue to affect other areas of CNP, especially willingness to accept multiple nationality and alternatives to the optional model.

The influence of terrorism on CNP is also clear in the British legislation. The terrorist attacks in the USA on 11 September 2001 directly occasioned the addition of clauses altering laws regarding deprivation of citizenship (UK Parliament, 2002d). This link between terrorism and CNP is very clear in the case of the IANA (2006), which was presented to the House of Commons on 22 June 2005 without any clauses regarding citizenship (UK Parliament, 2005a). The government added the clauses on 27 October 2005 after hurried drafting. In introducing the clause on the last day of the Commons committee stage, Tony McNulty stated, 'We have come to a series of new clauses that relate not just to the events of 7 and 21 July, but in part reflect our wider response over the last year to the general terrorist threat' (Tony McNulty, speech to HC, UK Parliament, 2005c: c. 254). The connection between the policy change and the exogenous events could hardly be more explicit.

Germany's reassessment began in the wake of the 11 September 2001 Al Qaeda attack in the United States, when it became known that three of the hijackers – including Mohammed Atta, the leader of the attacks – involved had worshipped at a mosque in Hamburg that then came under surveillance for being a 'palladium of terrorism' (Scheuermann, 2010: 30). Germany was suddenly faced with non-white terrorists with German nationality; this led directly to questions about grounds for depriving such people

of citizenship. Discussions were further shaped by the 11 March 2004 terrorist bombings in Madrid, which featured heavily in security discussions during the passage of the ZuG. The 7 July 2005 London bombings occurred just before the final vote on the ZuG in the *Bundesrat*<sup>30</sup> and therefore are not mentioned. In 2006, the securitisation of migration and nationality led to criticisms from interior ministers that the criminal conviction allowances for naturalisation applicants were too lenient (Hailbronner, 2010: 11). This resulted in clauses in the EURLUmsG that reduced the allowable total convictions from 180 days' wages or six-months' prison sentence to 90 days' wages or three-months' prison sentences (Bundesgesetzblatt, 2007: 1978). German parliamentarians continue to identify terrorism and related security concerns as an important influence on CNP when presented with an open-ended question<sup>31</sup> (Williams, 2009c).

### **3.4.2 The Cold War**

The division of Germany after World War II and the rise of the Iron Curtain between East and West during the Cold War have had profound and lasting effects on German CNP. The division of Germany inclined the FRG to base its nationality law on the 1913 law in order to include Germans caught in the Soviet Bloc. In 1967, the German Democratic Republic (GDR, East Germany) proclaimed an independent Citizenship Act (*Staatsbürgerschaftsgesetz*). In response, West Germany's adherence to ancestry as the determining factor of citizenship allowed the FRG to claim citizens who escaped from the Soviet bloc as German with relative ease (Bundesverfassungsgericht Deutschland, 1991: 37, 59; Hailbronner, 2010: 5). 'The legal basis for this decision was the insistence upon an inseparable common German nationality attached to the legal continuation of the German empire' (Hailbronner, 2010: 5).

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<sup>30</sup> The upper chamber of the German legislature.

<sup>31</sup> 'Gibt es äußerlich entstehende Faktoren, die Sie meinen, Veränderungen verursacht haben?' (Are there external factors that you think caused changes?)

The Federal Expellees Act (BVFG, *Bundesvertriebenengesetz*) (1953) also enabled persecuted ethnic Germans to claim citizenship in the FRG upon entry. This continues to affect CNP, as the composition of those claiming German nationality under the BVFG has altered significantly in the past two decades. Where once around three-quarters of those who claimed German nationality spoke German and had little trouble integrating into German society, the majority of applicants now are non-German family members accompanying a German, and clear integration problems have begun to appear, which has politicised the rights enshrined in the Federal Expellees Act and the Basic Law. In response, the Immigration Act brought in a requirement for non-German spouses and descendants to prove sufficient knowledge of the German language before settling in Germany (Bundesgesetzblatt, 2004: 2000). This shift in the composition of the applicants has contributed to the re-thinking of the national identity, as it has become increasingly apparent that ‘German-ness’ has not been passed down to these descendants.

### ***3.4.3 Economic changes***

Changes in the economic situation exercise indirect pressures on CNP. During recessions, governments are under little pressure to increase immigration, which causes a stabilisation in the pool of potential naturalisation applicants five to eight years later. However, not all visas in either country even allow access to the naturalisation path. The influence of the economic situation can cause unpredictable reactions, as a recession might make naturalisation more appealing for qualified applicants by providing them reliable status and greater access to benefits. Neither of these trends has been well enough documented in either country to draw clear conclusions about the influence of economic changes on acquisition of nationality.

### ***3.4.4 Changes in international norms***

Changing international norms have exercised pressure on CNP. European norms on citizenship, particularly statelessness and dual nationality, have been enshrined in several treaties. The most relevant treaties are the Universal Declaration of Human Rights (United Nations, 1948), the European Convention on Human Rights (Council of Europe, 1953), the Convention on the Reduction of Statelessness (United Nations, 1961), the Convention on the Reduction of Dual Nationality (Council of Europe, 1963), and the European Convention on Nationality (ECN) (Council of Europe, 1997). The ECN replaced the Convention on the Reduction of Dual Nationality as the signatories' consensus shifted from the view that 'dual or multiple nationality is regarded as an evil that, if possible, should be avoided or eliminated, in the interest of states as well as in the interest of the affected citizen' (Hailbronner, 2010: 19) to a much greater level of toleration. This shift in the international norms is a result of many factors by the advent of the European Union, the lasting effects of guestworker policies and former colonial ties, and greater equality of nationality rules for men and women.

Germany has changed its CNP over the past decade to conform more closely to these changing norms, altering its nationality law in the reforms of 1999/2000 and renouncing the 1963 convention and adopting the ECN in 2002, with a reservation to accommodate the *Optionsmodell* (Hailbronner, 2010: 9). The UK, on the other hand, has shown little concern for international norms in its nationality decisions over the past decade. Some of the clauses adopted in the legislative changes of the IANA and the BCIA have placed it in contravention of treaties of which it is a signatory.<sup>32</sup> It has also 'refused to sign the Fourth Protocol to the European Convention on Human Rights, prohibiting the expulsion of its own citizens' (Sawyer, 2010: 10) because of its record in this area. Such disparate behaviour indicates that international norms only carry as much weight as the

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<sup>32</sup> This is explored in further detail in section 4.2 Structural flaws/internal contradictions.



countries allow, and conformity to treaty conventions should perhaps be viewed with a question about the country's ulterior motives.

### **3.4.5 Demographic shifts**

Like much of post-war Western Europe, demographic shifts are exerting a strong influence on immigration and nationality policy. The United Nations Population Division (UNPD) published a highly controversial report in 2001, analysing the demographic trends in developed countries and calculating the number of annual migrants each country would need for the dependency ratios to remain reasonable (United Nations Population Division, 2001). According to these estimates, Germany would need 204,000 immigrants a year to enter; it would need 487,000 per year to maintain a constant pool of people aged 15-64 (United Nations Population Division, 2001). Although there is recognition that immigration alone cannot solve the demographic problems most developed nations will face in the next forty years, German discourse explicitly accepts that immigration is necessary to mitigate the effects, which has an inevitable impact on integration and nationality policies.

Demographic changes in the UK have followed a somewhat different course to Germany; this is reflected in very different responses. The UK population is still growing, and discourse revolves more around fears of overcrowding that have interesting parallels to German obsession with *Lebensraum*<sup>33</sup> in the early twentieth century. Rather than focusing on the ageing population, demographic concerns in the UK concentrate on the size and integration of the non-white population. The race riots in 2001 prompted a widespread debate about integration, resulting in a Home Office review and the publication a report on community cohesion (Cantle, 2001).

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<sup>33</sup> Literally 'habitat' or 'space to live', this phrase has gained many negative connotations because of its use during the Nazi era.

Germany's elite response to demographic change at the level of central government has focused on the economic arguments: seeking greater immigration and naturalisation of young workers to moderate the effects of the ageing population on the welfare state. Even in the face of public opposition, German elites have generally accepted the economic premise of arguments in favour of immigration and the consequential greater need for formal integration structures. The British elite response has been far more populist and frequently rejects economic arguments, asserting the greater importance of achieving the 'right balance' and not exceeding society's capacity to integrate foreign populations. Thus, demographic shifts undeniably have an impact on institutional change of CNP, but the direction of the impact is unpredictable, with Germany taking a more liberal track despite public opposition and the UK taking a more restrictive track despite facing many of the same pressures.

#### ***3.4.6 Media and public opinion***

Finally, media events and increases in public attention influence CNP change. The media can play a role in setting the agenda by focusing public attention on policies, especially following an important event like an extremist attack on a Turkish family or revelations of fraudulently obtained citizenship. Shifts in public opinion can have strong ramifications for policy choices. Even when xenophobic parties do not gain a large portion of the vote, 'such populism indirectly influences policy making by way of mainstream conservative parties who, in protecting their right flanks, adopt some anti-immigration rhetoric and policies as their own' (Koslowski, 2000: 5). Howard takes this argument farther, showing that such responses are not limited to more conservative parties but that the existence of a far-right party with the capacity to mobilise a xenophobic public can influence even left-leaning governments (Howard, 2009).

The British case seems to be an anomaly: the Labour Party had a clear majority throughout the decade with no strong right-wing threat, yet it still chose to move its CNP to the right, significantly toughening naturalisation requirements (Joppke, 2010: 71). This seems to be more attributable to the individual agendas of important actors than pressure from the media or public opinion: Blairite politics was more populist than Labour predecessors, and David Blunkett entered office as Home Secretary with a pre-set legislative agenda (Williams, 2010b). Furthermore, politicians rarely expect reprisals for such moves because restrictions are popular with the majority of the electorate, and the people most affected by changes in CNP cannot use their votes to protest until they have navigated the naturalisation process.

Politicians in Germany have manipulated public attention towards immigration during election years with mixed results. During the past decade, there has been increased media and public attention to the state of integration in Germany, especially the purported lack of integration of Muslims. Publication of Central Banker Thilo Sarrazin's (2010) book led to public outcry against the book as 'injurious, defamatory and polemical' (Angela Merkel in CGH, 2010), 'completely unacceptable' (Merkel in CGH, 2010), and 'racist' (Crossland, 2010), but at the same time, many in the German media felt that it 'made some important points about the lack of integration of many Muslim immigrants' (Crossland, 2010). On the whole, however, the public outcry against Sarrazin and the pressure generated for him to step down from his position in the Central Bank and to give up his SPD membership indicate the same pattern evident in many of the more recent immigration-related media events: in response to extremist sentiments or assaults on minorities, the German public has moved slowly left.

### 3.5 Summary

This chapter has provided an overview of the primary legislative changes in the UK and Germany between 2000 and 2010. This was followed by a cursory exploration of exogenous influences on the institutional change of CNP. This exploration leads to several conclusions:

1. Terrorism, especially stemming from radical Islam, has had a resounding impact on loss of nationality in both countries.
2. The Cold War has ongoing ramifications for CNP in Germany because of the legacy of policies more liberal towards emigrants than immigrants and the effects of reunification in 1990.
3. Economic changes probably have an impact, but the effects are not consistent or well enough documented to lead to clear predictions.
4. Changes in international norms are more important in the German case than the British, as Germany remains more sensitive to its international reputation than the UK.
5. Demographic shifts have evoked different responses in each country, with British arguments focusing on overpopulation and German arguments focusing on the economic viability of the welfare state.
6. Media and public opinion have had a limited impact on CNP, with the UK pursuing a more restrictive policy despite the lack of a viable threat from the right wing, and Germany pursuing a more liberal policy despite vocal public opposition.
7. Centralised and federal governmental systems create very different structures for policymaking. However, the difference in outcomes between the systems has perhaps more to do with the ability of the actors to exploit the system than with the system itself.

Although exogenous influences, especially terrorism, appear to be important to CNP during the decade in question, their actual effect is arguable: they could simply be intervening variables that distract us from the underlying dynamics because they tend to be more visible than the quieter, endogenous pressures. For example, one could argue that the CNP responses to September 11<sup>th</sup>, Madrid, and 7/7 would not have been so strong if there had not already been a build-up of internal pressure from problems with societal cohesion and the integration of minorities, especially Muslims: the Oldham and Bradford race riots of 2001 preceded Al Qaeda's attacks on the US by several months. Elites in both the UK

and Germany translate similar demographic data into very different policies. The governmental systems impact the legislative process, but because CNP depends upon the implementation of acts, it is arguable that institutions with better monitoring of implementation and outcomes are more likely to achieve the desired institutional change than those who continue to change the formal rules of the game without monitoring whether the players changes their modes of play.

All of this leads to the conclusion that exogenous pressures, while important and highly visible, cannot effectively explain the process of CNP change in either country during the decade in question. They can lead to change, but only if endogenous factors have prepared the way. These endogenous pressures and the resulting — usually incremental — changes are the subject of the rest of this thesis.

## 4 Utilitarian functionalist reproductive mechanisms

Utilitarian functionalist mechanisms of reproduction focus on efficiency-, cost-, and structure-based explanations of institutional change. These mechanisms fall largely under the heading of Rational Choice Institutionalism, though there are some contributions to be found in the Historical Institutionalism literature. Institutional costs can include both quantifiable costs — the impact of changes on the budget and the economy — and non-quantifiable costs — gains or losses of public support and social capital. Structural mechanisms of reproduction include pressures for change from inherent structural flaws, internal contradictions, the larger institutional environment, and the accumulation of marginal changes. As this chapter will show, CNP suffers from many of these problems, especially from the accumulation of unsuccessful marginal changes. This chapter tests hypotheses 1 and 2 of the theoretical framework, which state that change is more likely if there is:

1. A decrease in the relative cost of institutional change.
2. The presence of structural characteristics that force change.

Hypothesis 1 leads to several concrete predictions: a decrease in the relative cost of institutional change will increase the chance of change as the costs of maintaining the status quo increase. This is likely to happen as structural flaws become increasingly apparent, making change more appealing to risk-averse actors. In a more subtle way, public attention to the institution can have an effect on the perceived costs, as politicians will seek electoral pay-off for institutional change if that is popular or will try to put it off until there is less public attention. The latter is likely to happen more frequently in CNP, as popular opinion

is rarely in favour of expanding the institution, even if the elite actors see that as the necessary solution to patch the structural flaws.

Hypothesis 2 expands to predict that every institutional structure has built-in weaknesses that will force change, whether minor or major. If the basic make-up of the institution is unsustainable, support for change will build over time. This is especially likely in institutions without well-structured responses to positive and negative feedback, as these institutions suffer from lack of maintenance, making significant overhaul more necessary. The accumulation of unsuccessful marginal changes will increase the likelihood of more dramatic change. A series of attempts at superficial institutional changes might only serve to reveal deeper problems and, through their failure, increase the impetus for change. This often combines with crises of authority or changes in dominant actor coalitions, as those in power try a drawn-out strategy of relatively empty concessions. Finding that this strategy no longer works, however, they are forced to change tactics, approaching the problems with new instruments or, occasionally, with a paradigm shift. The pessimistic responses to previous changes cause a push for deeper changes.

These hypotheses will be tested in three parts: 1) analysis of the change of institutional costs during the period in question; 2) analysis of the structural flaws and internal contradictions present in CNP; and 3) examination of the accumulation of unsuccessful marginal changes. The empirical evidence presented in this chapter leads to the conclusion that British CNP is less susceptible to pressures from changes in costs of institutional maintenance because the UK has largely externalised these costs, while Germany faces immediate budgetary consequences. On the other hand, this externalisation is likely to lead to larger indirect costs in the longer term in the form of lower naturalisation rates and more integration problems. The evidence also indicates that CNP in both countries is vulnerable to pressure from structural flaws, internal contradictions, and

accumulations of marginal changes. The speed and frequency of legislation in the UK makes its CNP perhaps more sensitive to these pressures, while the slower legislative process and greater frequency of policy monitoring strengthens the reproduction of German CNP and makes it less likely that Germany will respond with an upheaval.

#### **4.1 Change in costs**

Changes in costs can bring about sudden institutional changes because they greatly influence the feasibility of change. Costs can also change by sudden increases in the costs of institutional maintenance, making path changes appear less risky and less costly. Because of this, actors frequently choose to maintain the institution at the level of known costs than to make alterations with unknown costs. In the case of both British and German CNP, quantifiable institutional costs have changed drastically over the past decade, and the two countries have responded differently to these pressures.

As 2.3.1 Mechanisms of reproduction showed, there are many aspects of costs that affect endogenous pressures for institutional change. These include start-up costs, minimum maintenance costs, and uncertainty costs. In the case of CNP, start-up costs are irrelevant, as the institution was not newly established in either country during this period. Costs of institutional maintenance are very relevant, as CNP does not have what actors generally consider to be low maintenance costs. Uncertainty costs are also important, as the actors have to compare the costs of current maintenance against the unpredictable costs of change when considering modifications to the institution. These costs can include quantifiable costs, such as the price of administrative changes, as well as less quantifiable costs, such as societal fall-out and voter backlash.

The British and German cases show very different approaches to the costs of institutional maintenance. While costs have continued to rise in Germany, the UK has externalised the costs by putting the entire burden on the immigrants. The 2004 Asylum



and Immigration (Treatment of Claimants, etc.) Act drastically restructured the costs for maintenance of British CNP. The act did not directly legislate citizenship and naturalisation policy but has had a huge indirect impact through the fee system. Clause 42 states:

In prescribing a fee for an application...the Secretary of State may, with the consent of the Treasury, prescribe an amount which is intended to –

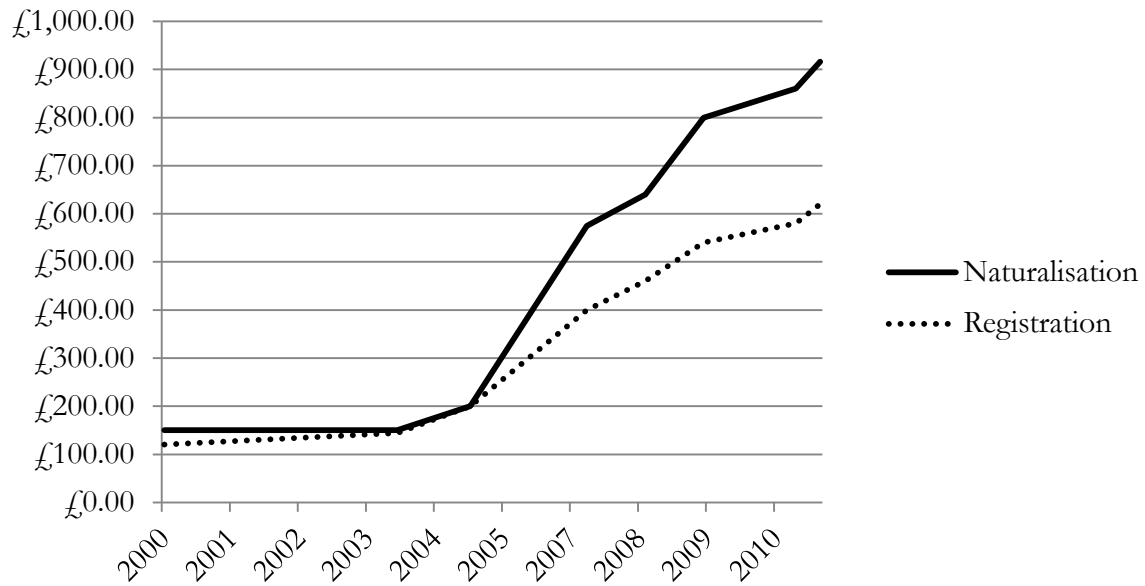
- (a) exceed the administrative costs of determining the application or undertaking the process, and
- (b) reflect the benefits that the Secretary of State thinks are likely to accrue to the person[...] (UK Parliament, 2004a: Clause 42, §1).

This clause gave the Home Office the authority to regulate fees for visas and nationality acquisition without parliamentary oversight. Although the Home Secretary had heretofore possessed the power to recover the *administrative* costs of visa and nationality applications, the 2004 changes allowed him to set the fees at levels reflecting the ‘likely benefit’ to the applicant, thereby virtually nullifying the costs of institutional change from the perspective of the government’s budget. As shows Figure 4.1, this has had a stark impact on the costs of naturalisation and registration. Since the passage of the 2004 bill, the cost of naturalisation has quadrupled, and the cost of registration has nearly tripled.<sup>34</sup> This has certainly impacted the appeal of applying for naturalisation (Dummett, 2006: 564; Goldsmith, 2008: 121; Levesley, 2008: 35), as fees of £800 are equivalent to nearly a month’s income on the average UK per capita disposable income, or roughly half the average UK household income (Linacre, 2002: 82; Office for National Statistics, 2009).

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<sup>34</sup> This is based on the naturalisation fee plus the compulsory fee for the citizenship ceremony for years after the citizenship ceremony was introduced.

**Figure 4.1 UK Acquisition of nationality fees, 2000-2010**



Source: Home Office records

While these measures have nullified the quantifiable costs of institutional change, the non-quantifiable costs can still fluctuate according to public opinion. UK public opinion, as in most countries, favours a conservative immigration policy (Facchini & Mayda, 2008), which includes a restrictive citizenship policy. During periods of heightened public and governmental attention, when threshold arguments are more widely employed, the cost of institutional change in a restrictive direction decreases, while the cost of liberal change increases. At such times, if the government decides to pursue a liberalisation of CNP, it must dedicate larger amounts of resources to information campaigns to convince the public of its reasons for such changes. However, during the time period in question, UK institutional change has been invariably restrictive and consequently has attracted little mainstream criticism, though it has drawn serious censure from immigrants' rights groups and even the UN High Commissioner for Refugees, especially for the lengthening of the qualification period for residence-based naturalisation applications (UNHCR, 2009). Such remonstrations were likely felt to be less threatening than the possibility of the voters' wrath, given the impending General Election.

The less quantifiable costs of immigrant dissatisfaction at policy changes does not seem to play a great role, given that they do not have voting rights, and the British minority groups who account for the largest number of spousal naturalisations – Indians and Pakistanis – are chronically underrepresented in the formal institutions of the UK political system. Besides this, Britain's international reputation as a land of refuge and wealth has caused it concern, with politicians frequently expressing the belief that so many immigrants arrive on this basis (e.g. Joppke, 2004a: 214; UK Parliament, 2002a: c. 410; 2002d: c. 701). Given that the UK is ostensibly trying to reduce the numbers of people coming to the country long-term, a negative reputation amongst the immigrant community could only serve to aid it in this purpose. However, there is a balance to be struck, since UK businesses also have a strong lobby in favour of continued recruitment of students and highly skilled workers. On the whole, British CNP does not suffer from strong pressures for institutional change due to rising maintenance costs because of the 2004 legislative changes. The greatest possible pressure point could arise from future dissatisfaction with naturalisation rates, a problem with which Germany has had to grapple for many years.

Unlike the British case, the legislative developments in Germany clearly reflect changes in the actors' perceptions of acceptable levels of costs. After decades of immigration, Germany has been increasingly confronted with the presence of millions of foreigners living permanently in Germany, many even born in Germany, yet unable to exercise the rights of a citizen, leading to steep non-quantifiable costs in the form of legitimacy deficits. On several occasions, local governments have tried to address this by granting the right to vote in local elections to long-term resident foreigners (Hailbronner & Renner, 2005: 152). However, each time these actions have been struck down by the

Federal Constitutional Court<sup>35</sup> as unconstitutional, though the court famously noted in its ruling from 21 February 1989 on the attempts in Schleswig-Holstein that the government needed to address the political integration of these populations (Bundesverfassungsgericht Deutschland, 1991: 37, 60).

Germany by the mid-1990s had begun to feel that the societal costs of ‘unintegrated’ foreigners were too high, resulting in recurring submissions of draft legislation from various parties. By 2000, the Red-Green government was willing to propose spending millions to fund language and integration courses for target groups, including some ‘catch-up’ integration for those already long-term resident (Deutscher Bundestag, 2000). However, the federal structure of the government featured heavily in the debates. Although there was widespread agreement that the situation could no longer be ignored, politicians from across Germany expressed concern about the financial burden placed on the individual *Länder* and exerted steady pressure on the central government to take over a larger portion of the costs, resulting in several rounds of negotiations. At the same time, however, complaints were voiced that the number of hours of language training was being cut drastically, from between 900 and 2000 hours to a maximum of 600, despite the grumblings about the costs of financing the bill (Deutscher Bundesrat, 2002b: Point 31). Finally, the central government promised to provide a greater percentage of the integration funding while also allowing further reclaiming of costs through course fees paid by the immigrants and their employers on a means-tested basis.

Unlike the UK, Germany does not seek to reclaim the full costs of its immigration, integration, and naturalisation policies directly through its fees. Thus, the fees have remained unchanged for the past decade, with the DM amount translated into Euros in 2002. Equally, despite intense discussions about making the participants bear the full costs

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<sup>35</sup> *Bundesverfassungsgericht*

of the language and integration courses, the legislative framework prioritises encouragement of participation over prohibitive pricing. The discussions also reveal a general consensus that any successful courses must be accompanied by provision of comprehensive childcare and reimbursement of transport costs. Because of these priorities, the costs of legal changes feature much more heavily in the German debates than in the UK.

The different approach to costs between the two countries is also apparent in the fee structure for the German naturalisation exam and the British KoL test. In both cases, the candidate may take the test as many times as necessary to achieve a passing score. However, the German test's €25 is included in the naturalisation fee, while the £34 KoL is taken separately and must be paid at each attempt. Germany also offers fee waivers or reductions for naturalisation, but the UK does not. However, Germany's willingness to internalise more of the costs does have its limits: the higher level of costs borne by the German state as well as the introduction of the principle of both demanding and supporting integration<sup>36</sup> led to proposals in the 2007 EURLumsG to institute a regime of penalties for failure to participate in a compulsory integration course, including having to repay the costs of the course to the state and/or pay a fine of €1000.

Because the UK has chosen to externalise rises in institutional maintenance costs, CNP is largely unaffected by direct increases in running costs. In the longer term, however, this is likely to create indirect costs such as those Germany is trying to mitigate: lower interest in naturalisation and resulting large populations of resident foreigners; and greater resistance to integration measures. Germany, on the other hand, is sensitive to rises in direct costs, with frequent conflicts arising between state and federal governments over who should bear the costs of integration courses, childcare and transport costs, and any

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<sup>36</sup> *'Integration fordern und fördern.'*

administrative costs beyond the naturalisation fee. Despite this, the German government has been fairly willing in the past ten years to pay the higher upfront costs in hopes of achieving greater long-term prosperity through better economic performance and greater societal cohesion. Thus, it is likely that the UK will encounter increasing indirect costs in the longer term that will affect the composition of CNP. In fact, the level of fees has been attracting more notice from policy analysts as being problematic and unsustainable in the long run (Dummett, 2006; Goldsmith, 2008; Levesley, 2008).

## **4.2 Structural flaws/internal contradictions**

As discussed in Section 2.3 Theoretical framework, nearly all institutions have inherent structural flaws or internal contradictions (Clemens & Cook, 1999: 449; Pierson, 2000b: 76). These arise for many reasons, including as a result of ‘quarrelsome compromise’ (North, 1990: 90) between the actors constructing the rules of the game.

One of the theoretical sources of institutional change is endogenous pressure. This can build up due to constant adjustment to compensate for structural flaws or as a result of inherent contradictions. CNP in the UK contains many structural flaws and contradictions. Many of these have come about from legislative layering (Streeck & Thelen, 2005a: 31): building slight changes onto structures laid out by previous legislation rather than consolidating legislation and building a fresh foundation. As a result, CNP has become an incredibly complex policy area, and significant portions of each act relate to the repeal or change of previous legislation. Practitioners and politicians have been calling for a consolidation bill for years, a thorough re-evaluation of the laws and codification in a single act. There have been two such previous acts, the British Nationality Act (BNA) (1948) and the British Nationality Act (1981). Thus, all the legislation since 1981 concerning nationality law has consisted of alterations to the BNA (1981).

Towards the middle of the period in question, civil servants had begun to draft a consolidation bill in response to requests from practitioners to consolidate and simplify the build-up of legislation relating to immigration and CNP. This was released in 2008 for consultation. However, the July 2008 Draft (Partial) Immigration and Citizenship Bill (Home Office, 2008a) was replaced by the Borders, Citizenship and Immigration Act (2009) (UK Parliament, 2009b) in the 2008-09 legislative period amidst government promises that it would be resurrected in autumn 2009 (Joppke, 2004b: c. 1128; UK Parliament, 2009c: c. 243). The government argued that the items in the BCIA (2009) required immediate legislation but that the Consolidation Bill had not been entirely abandoned (UK Parliament, 2009e: c. 1128). However, with a short legislative session before the General Election in May 2010, the consolidation bill was deprioritised and left out of the Queen's Speech on 18 November 2009 (Armstrong Kelly, 1995: cc. 1-3), and it has not been a priority of the new Conservative/Liberal Democrat coalition since the change of government (UK Parliament, 2010: cc. 5-7). The earliest it could now reappear is 2012, more than three decades after the previous consolidation bill, the British Nationality Act (1981).

Further endogenous pressure results from the lags between legislative output, policy implementation, and policy outcome. The Home Office is widely held to have 'the worst departmental record for administrative delay' (Keith Vaz, speech to HC, UK Parliament, 2002b: c. 377). The rate of legislation frequently outpaces the rate of implementation. For example, entire sections of the NIAA (2002) still had not been implemented before the IAN Bill (2006) was debated in parliament, and some of them were eventually abandoned. Many parliamentarians began to 'bill count', noting in their speeches how many pieces of related legislation there had been in the previous years (UK Parliament, 2009b: cc. 180, 206, 220, 221, 233; 2009c: cc. 249, 251-252). After sitting through nearly one immigration-

related bill a year in parliament, calls to 'get the legislation right' became pervasive. Though some of the pressure to legislate has certainly arisen from not having 'got it right' with previous legislation (Joppke, 2004b: c. 465; UK Parliament, 2002a: c. 5; 2009c: c. 1390), it is perhaps naïve to think that, in today's changing world, it is possible to create one piece of immigration legislation that will not require further changes for decades. However, it is undeniable that the pattern of legislation displays a large amount of tweaking and trial-and-error.

The drive to legislate has also resulted in bills being passed before all practicalities have been set. The NIAA (2002), for example, legislated the Knowledge of Life in the UK Test into existence while a concept committee was still working on the most basic details, such as the form and length of the questions. Parliamentarians, therefore, never had oversight of the content of the test. The BCIA (2009) instituted an active citizenship requirement for naturalisation applicants, but even four months after the passage of the bill, the concept committee still had not announced even how many hours of voluntary work this requirement would entail. In November 2010, the new Conservative government announced that the active citizenship clauses, which had occupied hours of the parliamentary debates, would not be implemented (UK Border Agency, 2010a).

One of the other inherent contradictions in the institutional structure of CNP is that which has already been mentioned: its dual function as a tool of immigration policy and an instrument of race relations. Long-term resident aliens are rarely discussed as a problem for democratic legitimacy in the UK as they are in much of German discourse. Instead, most arguments are framed either in terms of controlling numbers and demographic worries or in terms of problems with integration and intercultural conflict. Many of the changes to CNP have focused on integration-related goals, especially in the wake of race riots or in the examination of the backgrounds of the 7/7 London bombers. Of course, such arguments



also invariably find their way back to threshold discussions and Enoch Powell-like assertions of the existence of a 'threshold' of diversity that, if breached, will result in the downfall of the country. Popularity is gaining again for arguments that there is a limit to the amount of diversity that can be lived with in the UK.

Further internal contradiction results from the lack of a clear, legal definition of citizenship and its rights in the UK legal system (UK Parliament, 2002a: SCE cc. 041-043). This problem has received periodic attention, resulting in the All-Party Parliamentary Commission on Citizenship that worked between 1987 and 1989 on defining citizenship and the 2007 review of citizenship by Attorney-General Lord Goldsmith, QC, entitled 'Citizenship: Our Common Bond' (Goldsmith, 2008). However, the latter reflects the conflation of definitions common to the UK, in that there is rarely a clear distinction between citizenship as active participation in civic life and citizenship as a system of membership conferring rights and obligations. The BCIA's (2009) introduction of the 'active citizenship' requirement for people who do not yet possess institutional membership adds further confusion.

The British institution of citizenship becomes more complicated, however, because the institution functions as a mixture of nationality and citizenship, and it is officially labelled British nationality. When in possession of British citizenship, one may vote, but citizens in the UK do not constitutionally have a right to a passport. Instead, all passports are issued at the discretion of the monarch as exercised through the Home Secretary. Given that the issuance of passports is a discretionary act, this places the UK again in contravention of treaties and conventions to which it is a signatory. The United Nations Universal Declaration of Human Rights states that 'Everyone has the right to leave any country, including their own, and to return to their country' (United Nations, 1948: Art. 13). However, given that modern border controls require travellers to produce a passport

upon arrival and sometimes departure, a refusal to grant a passport interferes with this right. Furthermore, the UK has avoided signing, ratifying, or implementing clauses of some treaties because it refuses to grant its citizens the rights required by the protocols: 'The UK has for example persistently refused to sign the Fourth Protocol to the European Convention on Human Rights, prohibiting the expulsion of its own citizens, because of its at least ambiguous record, over a very long period, of such expulsions' (Sawyer, 2010: 10).

One of German CNP's structural flaws stems from a crisis of democratic legitimacy arising from the significant portion of the population who are resident foreigners and therefore excluded from participation. Some *Länder* have tried to address this problem by granting the permanent resident foreigners voting rights, but these were struck down by the Federal Constitutional Court as unconstitutional (Bundesverfassungsgericht Deutschland, 1991: 37, 59; Hailbronner, 2006: 220, fn. 5). In issuing its verdict, however, the Constitutional Court made clear that the large foreign populations needed to be addressed. Its statement read,

Nationality is the legal prerequisite for the same civic status that underpins the same duties on the one hand and, on the other hand, especially the rights through the exercise of which the state obtains its legitimacy in a democracy (Bundesverfassungsgericht Deutschland, 1991: 51).

However, it also warned that the large, non-voting population posed a threat to Germany's democratic legitimacy and encouraged the country to rethink its nationality law accordingly (Bundesverfassungsgericht Deutschland, 1991: 52). German elites recognise the structural flaw caused by the low level of naturalisations, but as yet, legal changes have had little success in motivating more foreigners to naturalise (Deutscher Bundestag, 2009: 51; Green, 2012, forthcoming).

An excellent example of an internal contradiction in the institution of German CNP is that of the *Optionsmodell* (optional model). The result of a difficult compromise, the

optional model tried to extend *ius soli* to second-generation immigrants while avoiding tolerance of multiple nationality. The components of the optional model came from a range of sources, including joint proposals from the CDU/CSU and FDP for the creation of a ‘children’s nationality’ and SPD/Green proposals focusing more on the introduction of *ius soli* into German nationality law (Hailbronner & Renner, 2005). The *Optionsmodell* is a very unhappy compromise, however, with both the liberal and conservative elements seeing it as unsustainable in the long run (Williams, 2009a, 2009b, 2009c, 2009d).

This finding seems to contradict the hypothesis that structural flaws or internal contradictions will bring about institutional change. However, there are two important points to make here: first, the presence of structural flaws or internal contradictions only makes institutional change more likely; but institutional stickiness can continue to fight these pressures for change. These pressures continue to make change likely within the next decade, especially as the estimated 300,000 *Optionsmodell* children reach the age of decision (Worbs, 2007: 25). Second, the main political parties continue to pull in opposite directions on this policy area, effectively creating institutional stasis: the left parties (SPD, Greens, the LEFT PARTY) favour permitting multiple nationality; while the right parties (CDU, CSU) absolutely reject multiple nationality, basing their objections on their philosophy of loyalty and integration, as discussed further in Section 6.2.1. These opposing pressures from the different actors have thus far negated each other, preventing institutional change.

The issue of multiple nationality has become an obvious internal contradiction in German CNP. Officially, applicants for naturalisation must submit proof of having given up their other nationality in order to receive German citizenship. This encouraged many people to remain permanent resident foreigners rather than naturalising because of the potential problems in visiting friends and family in their home countries or difficulties with inheritance and pension laws. However, this reluctance to naturalise combined with very

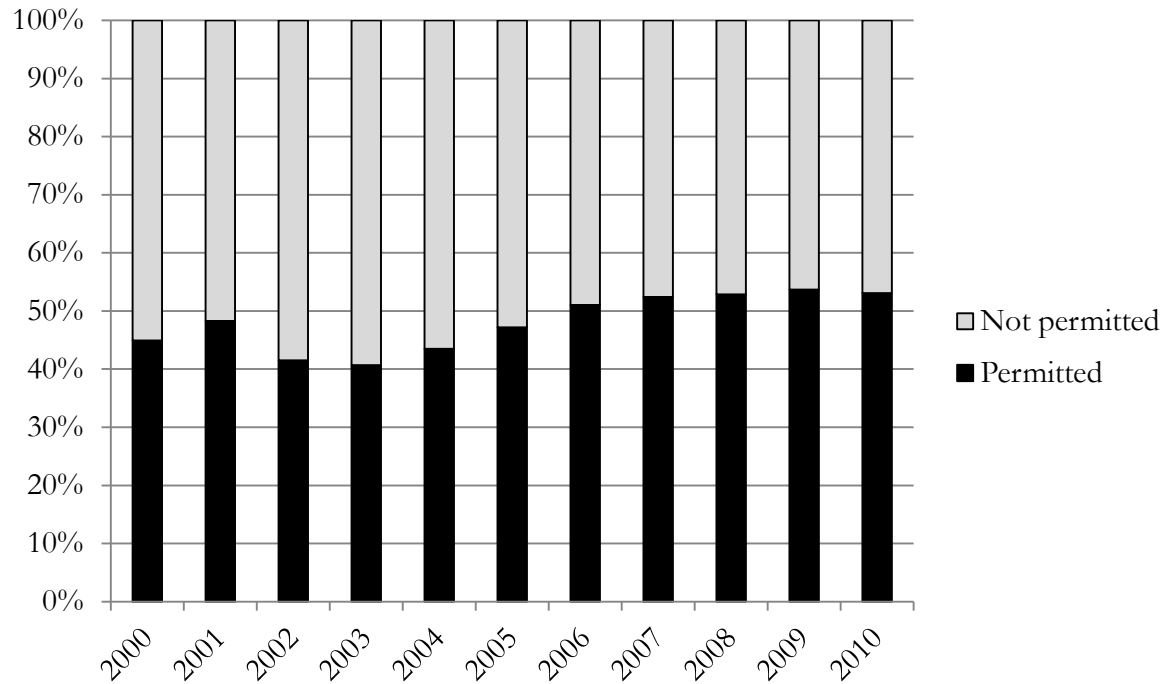
limited provisions for *ius soli* and very high requirements for naturalisation led directly to the growing community of second- and third-generation foreigners in Germany, creating a clear democratic deficit.

Prior to the Nationality Act, German CNP allowed for the retention of German citizenship upon voluntary acquisition of a foreign nationality as long as the applicant's main residence remained in Germany. Thousands of Turks long resident in Germany used this loophole in the 1990s by giving up their Turkish citizenship, naturalising in Germany, and almost immediately reclaiming their Turkish citizenship, a process eased by the Turkish government (Hailbronner, 2010: 22). However, the German government noticed and closed the loophole with provisions in the Nationality Act that meant anyone who naturalised in a foreign country without the express prior consent of the German government would automatically lose German citizenship. However, knowledge of this change did not spread quickly enough to Turks in Germany or the Turkish government, and approximately 40,000 Turks lost their German citizenship after implementation of the Nationality Act (Hailbronner, 2010: 22).

Disallowance of multiple nationality was, and continues to be, a key tenet of CDU/CSU conceptions of citizenship. This position has several sources. German citizenship is nearly impossible to take away (Bundesgesetzblatt, 1999; Hailbronner & Renner, 2005; Williams, 2009a), and current security concerns, especially about proponents of radical Islam acquiring German citizenship, create uneasiness at the prospect of being unable to 'get rid of' such people (Williams, 2009a, 2009c). Some Germans also feel disadvantaged by having only one nationality, while others have multiple (Aleinikoff & Klusmeyer, 2001: 80-83; Bauböck & Perching, 2006: 449-450; Böcker & Thränhardt, 2008; Boll, 2007: 6; Bundeskanzlerin Deutschland, 2012; Keskin, 1989).

Whatever its roots, this aversion to multiple citizenship has long hindered efforts at citizenship reform in Germany. Exceptions have been extended incrementally to waive the requirement of proof of relinquishment of prior nationality upon naturalisation in cases where it would cause undue hardship (e.g. where this would force the candidate to give up property or inheritance rights in the home country) or where the countries regularly refuse to de-naturalise their citizens (e.g. Iran). These exceptions are now comprehensive enough that since 2006, just over half of naturalisation applicants were allowed to retain their foreign nationality (Figure 4.2; Green, 2012, forthcoming; Hailbronner, 2010: 27). Meanwhile, arguments against allowing multiple nationality risk further hypocrisy, as those born with multiple nationalities are allowed to keep both, and EEA (European Economic Area) citizens have been permitted multiple nationality even in cases where reciprocity does not exist since the EURLUMsG in 2007. Furthermore, allowance of multiple nationality for *Aussiedler* and *Spätaussiedler* has never raised serious objections from the mainstream parties. Because of all these factors, rejection of multiple nationality remains an internal contradiction in German CNP that exerts steady pressure for reform.

**Figure 4.2 Acceptance of multiple nationality for naturalisation in Germany, 2000-2010**



Source: Statistisches Bundesamt (2010)

### **4.3 Accumulation of unsuccessful marginal changes**

The accumulation of unsuccessful marginal changes can also force institutional change. Because change is commonly achieved through legislative and governmental tweaking, this can lead to a build-up of unsuccessful changes. Unsuccessful changes are understood as changes that do not achieve the desired effect, such as when the policy output does not achieve the expected policy outcome. Build-ups of such failures are exacerbated by the rapidity of the legislation and change in organisational structure. Such accumulations can lead over time to pressure for more extreme change as the institutional framework struggles to function and actors begin to call for new structures. Citizenship and naturalisation policy appears to show evidence of such accumulations. In the UK, this has contributed to the increase in calls for the long-awaited consolidation bill. While British actors frequently rely on legislation as the primary method of achieving the desired ends, Germany tends to create more monitoring procedures of policy outcomes and allows

experimentation at the state level to find policy solutions. As a consequence, the UK's CNP shows greater evidence of accumulation of marginal changes than Germany's.

Each of the six pieces of primary legislation since the BNA (1981) has achieved change through a system of layering on and repeals of previous clauses. Sometimes only a few words from a clause are removed; other times an entire sub-section. The layering generally adds complications and further requirements to the existing legislation. The NIAA (2002) added to the complexity of the institution. Unsuccessful changes from this bill included the collapse of the appeals system to a single tier, which was reversed in the BCIA (2009) because of its disastrous results. The NIAA was supposed to bring UK citizenship deprivation policy in line with the wording in the European Convention on Nationality (ECN) (UK Parliament, 2002a: c. 52; 2002f: c. 280), which the UK had signed with reservations. It was hoped that the UK would be able to remove its reservations after this piece of legislation (UK Parliament, 2002c: c. 500). However, the wording was altered again in the IANA (2006), which again brought the UK into conflict with the ECN, among other international treaties (see Section 3.4.4 Changes in international norms).

While this formal institutional layering is occurring, further marginal changes accumulate through the process of implementation. Legislative institutional change is only part of the process: policies must still be implemented, and the Home Office has a clear record of delayed implementation. In fact, several clauses from the NIA (2002) still had not been implemented by the debates on the IAN (2006), and many of these were eventually abandoned. Thus, even when the UK Parliament passes laws to change the institutional structure in response to the build-up of pressure, legislative change cannot wholly relieve this pressure. As a result, there appears to be a growing scepticism in Parliament regarding further bills (UK Parliament, 2009c: cc. 249, 251-252). There are accusations that the Home Office is legislating ad-hoc, which seems to be supported by the publication of the

Draft (Partial) Immigration and Citizenship Bill (2008), followed in 2009 by a Borders, Citizenship and Immigration Bill that bore little resemblance to its draft form.

Because the character of the German government makes the legislative process more cumbersome than in the UK, it is more difficult to accumulate unsuccessful marginal changes. There is far less legislative ‘tweaking’, and though there were many proposals and requests for legislation related to CNP during this period, there are fewer pieces of passed legislation than in the UK during the same time period. Furthermore, Germany has created more formal monitoring mechanisms to gauge policy outcomes and reconcile gaps between intentions and reality (Nick-Magin, 2009c). As part of this, the position of integration minister has been elevated to cabinet level in Germany, and integration practitioners have instituted formal and informal exchanges of best practice at the local, regional and national levels (Nick-Magin, 2008a, 2008b, 2008c, 2009c).

However, that does not mean that no unsuccessful marginal changes have accumulated. As discussed above, solutions for dealing with multiple nationality remain inadequate. In interviews, all parties agreed that the optional model remains an unsatisfactory solution to the problem of second- and third-generation resident foreign populations. In fact, they universally expressed frustration with the existence of the optional model with no one really wanting to claim the idea behind the compromise in the 2000 legislation for their party. ‘The optional model is certainly not our [the CDU/CSU] child’, Stephan Mayer (MdB, CSU) explains emphatically, ‘and we should not speak erroneously by pretending that we’ve adopted this child in the meantime’ (Williams, 2009c). Although the compromise that is the optional model helped to ease the legislative passage of the Nationality Act, it remains very contentious ten years later, a constant pressure for change. However, while the parties agree that it is not a good solution, the parties also agree that there does not currently seem to be a viable alternative. Thus, this unsuccessful



marginal change may remain legal reality because of the actors' preference to remain with the known but dissatisfactory reality rather than risk the unknown as long as there is no clear alternative. Theories of institutional change would in this case predict that there will be an impetus for movement when a solution recognised as viable at both ends of the spectrum appears. For Dr Max Stadler (MdB, FDP),<sup>37</sup> this means waiting until the time is ripe that the public recognises that, in the changing world, possession of multiple nationality is no longer an extraordinary circumstance and acceptance spreads for a new CNP paradigm (Williams, 2009c).

Although the 2000 Nationality Act was heralded as a fundamental reform of German CNP, politicians and commentators have since grown more cautious in their assessment of the true breadth of change. As a FDP politician pointed out, the reform did not mean as much of a lightening of the requirements for naturalisation as originally thought, and in some cases, it actually made it more difficult (Williams, 2009c). The numbers of applicants were not as impressive as had been hoped, given that the act was supposed to address the democratic deficit resulting from the large resident foreign population by encouraging naturalisation.

#### **4.4 Summary**

This chapter tested the first two hypotheses of the theoretical framework, which predicted that change is more likely if there is:

1. A decrease in the relative cost of institutional change.
2. The presence of structural characteristics that force change.

The empirical evidence in this chapter appears to support both hypotheses: rising costs caused the UK to externalise further costs, which constituted a change in the make-up of

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<sup>37</sup> Dr. Stadler played a pivotal role in the 1990s negotiations of the Nationality Act, mediating discussions between the SPD and the Christian Union parties. He was responsible for FDP policy on immigration for four years (see Appendix: Table 8.1).

CNP; and structural flaws, internal contradictions, and marginal changes have exerted continuing pressures for change in both countries.

The first hypothesis was tested in Section 4.1 Change in costs, which showed that the UK has largely externalised the costs of institutional change, while German CNP faces direct pressures from rising costs of institutional maintenance. This means there is little internal pressure on CNP in the UK from the cost perspective because these costs are passed on to the foreigners wishing to acquire nationality. This also means that proposals for institutional change in line with actors' agendas are less dependent on restrictions of the government budget. In the longer term, however, indirect costs are likely to accumulate because of the decreasing appeal of British nationality due to the fee levels, which is likely to lead to decreased naturalisation rates. Germany, on the other hand, is more likely to respond to immediate rises in institutional costs, such as the provision of language and integration courses, the budget for which must be allocated from the government. However, Germany's experience with integration issues and low naturalisation rates means that the actors are — at least currently — more willing to bear the higher upfront costs in hopes of lower long-term costs.

The second hypothesis was tested in Section 4.2 Structural flaws/internal contradictions and Section 4.3 Accumulation of unsuccessful marginal changes, which indicated that these endogenous pressures are very important for instigating institutional change. The UK shows clear indications of structural flaws and the accumulation of marginal changes. Part of the confusion of British CNP arises from years of legislative layering on the BNA (1981) as well as the lack of electoral reward for passing a successful consolidation. Further, the strength of executive capture that enables the pursuit of the executive agenda with few hindrances combined with other structural aspects of the system have led to disjunctures between output, implementation, and outcome. The changes

during the period in question have drastically affected the formal rules of the game without allowing adequate time for the actors to adjust to the changing environment. The consequences of these changes are not likely to be visible for several years to come. This accumulation of changes and the apparent lack of a successful monitoring system for policy outcomes make upheaval more likely with each passing year in which these flaws and build-ups are unaddressed.

German CNP also suffers from structural endogenous pressures. The democratic legitimacy crisis arising from ineffectual historical policies exercises consistent pressure on the institution as the actors struggle to find an acceptable solution to 'fix' problems with integration and naturalisation rates. Further pressures arise from the 'quarrelsome compromise' reached in 1999 regarding toleration of multiple nationality for children of non-Germans granted German nationality under *ius soli*. The resulting *Optionsmodell* is likely to create strong pressures for institutional change in the coming decade as the first children reach the age of decision. However, a solution acceptable to both right and left has not yet emerged to resolve this problem. On the other hand, the incremental easing into acceptance of multiple nationality and *ius soli* could lead to greater willingness to consider permitting multiple nationality by the time the effects of the policy begin to be clear. On a positive note, Germany's past experiences with policy failures in this area have led to a substantial increase in policy outcome monitoring techniques. The greater awareness of the actors of the effects of policies decreases pressures for upheaval by increasing the ability of the actors to achieve goals through incremental tweaking until the desired result is gained.

## 5 Power distributional reproductive mechanisms

Power distributional reproductive mechanisms are largely addressed by Historical Institutionalists, though with some contributions to structural aspects from Rational Choice Institutionalists and additions to understandings of agency from Sociological Institutionalism (Hall, 2010; Mahoney & Thelen, 2010). As the name indicates, power distributional reproductive mechanisms concentrate on identifying changes in the balance of power that lead to institutional changes. Such explanations take into greater account the agency of actors than most utilitarian-functionalist accounts, yet there is less focus on the ideational aspects of institutional change than within cultural-sociological explanations.

This chapter tests hypotheses 3 and 4 from the theoretical framework, namely that change is more likely if there is:

3. A power shift in the dominant actor coalition.
4. Competition between authorities for rule-making competency.

Expanding upon hypothesis 3, one would expect the following: a power shift in the dominant actor coalition would undermine the ability of the previously dominant actors to continue to control institutional outcomes. Such shifts are likely to result from changes in the balance of power after elections. At such times, agency is also important, as the new dominant actors may enter with their own agendas for the institutions and may consciously exploit the window of opportunity opened with the sudden shift of power. Hypothesis 4 leads to the predictions that competition between authorities for rule-making competency or having multiple authorities who are responsible for different rules making up an institution will make institutional change more likely. Actors reap certain rewards for participation, encouraging them to continue competing. Some actors will intentionally use the dispersed control over the institution in cases of multiple authority competency to try

to induce changes through loopholes. Competition between many groups, like interest groups, NGOs, legislature, and executive, is likely for emotive, politicised institutions like CNP.

This chapter tests these predictions in four parts: 1) exploring the impact of the governmental system on policymaking; 2) assessing the period for changes in the balance of power or dominant actor coalitions; 3) analysing the presence of overlapping authorities or a lack of responsible authorities for the policy area; and 4) looking for evidence of institutional interdependence. The empirical data in this chapter leads to the conclusion that the distribution of power is important for explaining institutional change in these cases. Germany's federal government, stability of ministers, and greater monitoring of policy feedback incline its CNP towards stability and incremental change, while the UK's centralised government, frequent ministerial changes, and lack of monitoring procedures have led to a build-up of pressures that make continued institutional stability unlikely.

## **5.1 Governmental system**

The structure of the governmental system plays a very important role in determining the balance of power. Policymaking tends to proceed very differently in centralized states (UK) than in federal systems (Germany). To a certain extent, the line between endogenous and exogenous factors is blurred in the case of governmental systems, which leads to mixed treatment in this analysis. This section considers the consequences of the governmental system on changes to CNP between 2000 and 2010, analysing centralised government, federal governments, and the effects of the EU.

### ***5.1.1 Centralised government***

The Westminster model of centralised government has a clear impact on policymaking in the UK. There are few other modern Western democracies with a level of centralisation comparable to that of the UK. The UK is a parliamentary democracy with

power separated into the traditional executive, legislative, and judicial branches. The British case is fairly unique, however, in that both the executive and the judiciary are closely affiliated with the configuration of the legislature. Until the creation of the Supreme Court on 1 October 2009, the highest court of the land was situated in the House of Lords. The Prime Minister (PM) is head of the executive branch, but both he and his cabinet members serve simultaneously in the legislature, either as MPs in the House of Commons or by appointment to the House of Lords. The PM is customarily the leader of the largest party, which normally holds an absolute majority in the House of Commons. The executive controls the setting of the parliamentary agenda. Coalition and minority governments are rare in British history.<sup>38</sup> Consequently, the power of the executive is very strong. With a well-disciplined party, a Prime Minister can reasonably expect to pass any laws on his agenda. Because of these dynamics, the UK Parliament does not play as influential a role in the legislative process as the American Congress, for example.

The centralisation also affects budgetary decisions and the allocation of funds. Local authorities are dependent on central government for most of their funding, and most laws are created centrally, so power struggles between local and central government are far less common than in federal systems. In recent years, Westminster has begun to devolve power over certain policy areas and portions of the budget to the parliaments of Wales, Scotland, and Northern Ireland. However, matters of immigration and nationality are policy areas over which Westminster reserves full power. The Westminster model has a strong impact on CNP. Centralisation combined with executive capture of the legislature make the PM and his secretaries of state powerful actors. The best examples of this between 2000 and

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<sup>38</sup> In the twentieth century, minority governments occurred for three brief periods: Harold Wilson led a single-party minority government from February to October 1974 and again from 1977 to March 1979 following the collapse of Labour-Liberal coalition; John Major led a minority government from December 1996 to May 1997. Coalition rule existed 1931-1945 and after the 2010 General Election.

2010 are the Knowledge of Life in the UK Test (KoL), legislated in the NIAA (2002) and the 'active citizenship' clauses of the BCIA (2009).

The power of the executive capture of the legislature is clear in the case of the KoL test because Parliament was never given the opportunity to review the form of the test itself. Instead, the NIAA (2002) empowered the Secretary of the Home Office to oversee the creation and implementation of the test with virtually no parliamentary oversight. The test was written by a board of specialists appointed by the government and has since been the object of much derision for its lack of fitness for purpose. Numerous parliamentarians have taken the test out of curiosity and have failed because of the structure of the questions and the topics chosen. However, no one has been successful in altering the test.

The 'active citizenship' requirement brought in with the BCIA (2009) is another example of the executive primacy of the British system. Again the Home Secretary was empowered to set the requirements as she wished after the recommendations of an appointed body. Parliamentarians were offered no specific details of how the system would work during the period of legislative debate on the bill. The Home Secretary also had the ability to decide when to bring different clauses of the bill into force, with it being nowhere clear when the 'active citizenship' clause might begin. The executive again exercised its power under the new Conservative-Liberal Democrat coalition by announcing that active citizenship would be dropped entirely (UK Border Agency, 2010a).

### ***5.1.2 Federal government***

The structure of the German governmental system has a clear impact on institutional change. Because it is a federal system with staggered local and federal elections and an upper house composed of regional government representatives, the system has a tendency to create legislative deadlock. Unlike the UK parliamentary system, where separation between the executive and the legislature is nominal and the courts rarely interfere,

Germany's upper and lower houses frequently have different majorities, and the court system plays a key role. Especially in CNP, conciliation committees have had a decisive impact on the shape and passage of legislation because, even with a legislative majority in the Bundestag, the Chancellor cannot expect to pass controversial legislation easily.

In the German case, the combination of federalism and semi-sovereignty have cultivated a system in which legal norms have a 'strong effect...on the formulation and implementation of policy and possibly on public attitudes more generally' (Katzenstein, 1987: 382). The legal system in Germany and the different balance of powers between branches of government, compared to the British system, mean that, in Germany, 'the law is the embodiment of the state...shap[ing] and reflect[ing] political reality' (Katzenstein, 1987: 382).

The governmental system also creates a tendency to use legislative tools to manoeuvre past deadlocks. For example, the Red-Green coalition reshaped the 2004 Immigration Bill, removing key parts that subjected it to the approval of a hostile Bundesrat, allowing it to pass without the consent of the upper house. Equally, the CDU/CSU launched a successful campaign to strike down the 2002 Immigration Act after the controversial tally in the final vote in the Bundesrat.

The federal system and its tendency toward legislative deadlocks make incremental change more likely. Though the Nationality Act of 1999 represents a paradigmatic shift, the negotiations of its final form took nearly a decade and included countless hours of cross-party meetings to prepare the ground. Similarly, forms of the Immigration Act were introduced as early as 1997, and it was understood at the time of the Nationality Act's passage that an Immigration Act would follow quickly to introduce further changes; yet it took two more complete legislative processes and five more years, accompanied by extensive meetings and negotiations, to produce the expected act, which had been marked



‘especially urgent’ upon introduction. Even after the fifteen years required to pass these two pieces of legislation, there are still several contentious areas that both parties recognise require attention (Williams, 2009a, 2009b, 2009c, 2009d). The *Optionsmodell*, for example, was a compromise between left and right to address the need to decrease the number of second- and third-generation foreigners in Germany while still disallowing multiple citizenship.

Although Article 73 of the Basic Law reserves the right to legislate CNP for the federal government, the German states historically have exercised great freedom in the implementation of the policy. The relative freedom afforded to the federal states in Germany to set their own policies in many areas leads to a certain degree of policy ‘uploading’ to the federal level. Many of the proposals about German CNP in the past two decades have arisen first at the state level and then been brought into the central arena. As discussed elsewhere, for example, several states tried to grant long-term resident foreigners local voting rights in an effort to address their democratic deficits, but the Constitutional Court intervened because it interpreted the attempts as highlighting an important problem but proposing an inherently unconstitutional solution. This forced the debate to the national level, where politicians began to acknowledge that having such a large, long-term foreign population was problematic because ‘liberal democracy requires the congruence between rulers and ruled, which is violated by the long-term presence of sizeable non-citizen populations’ (Joppke, 2010: 31-32). The continued existence of such a large, ‘permanent, disenfranchised minority is, in the long run, unsupportable’, which has led directly to proposals by policymakers at both ends of the ideological spectrum to propose various ways of enabling greater levels of naturalisation, even though this has effectively meant ‘lowering’ the price of membership (Barbieri, 1998: 67).

Discussions about the need for greater German language requirements are a clear example of Germany's federal system in action. In this case, central policy change arose out of various policies implemented in different states to address linguistic integration. The federal system and lack of central regulation of naturalisation procedures had led to widely differing requirements for naturalisation as well as a wide range of naturalisation rates. Differing interpretations of 'sufficient German' led to a series of court cases, testing whether this included literacy or was confined to speaking and listening and to what conversational level (Jungnickel, 2006).

In the case of the EURLUmsG, practitioners noted that the Act simply regularised and constitutionalised what was already accepted practice in most of the states (Hailbronner, 2006: 241; Jungnickel, 2006), reflecting the pattern of policy uploading enabled by the federal system of government. Several states had been experimenting with naturalisation exams, first introduced in Baden-Württemberg and Hessen in 2006. However, given that each state had developed different requirements and interpretations of the requirements, the freedom of the federal system created a pressure for central legislation to avoid further disunity of practice. The EURLUmsG responded by creating a national exam with a uniform bank of rigorously tested questions compiled by a research team at the Institute for Quality Assurance in Education (IQB), attached to Humboldt University in Berlin.

In addition to the policy down- and uploading that occurs in Germany's federal system, the basic procedures for policy-making create a very different process to the British case. Although public members' bills are, in theory, create an opening in the policy-making process for legislative proposals from outside of the executive, in practice, very few of these ever proceed to Parliament. In Germany, on the other hand, there are multiple routes for the creation of legislation, all of which are in frequent use. Like the British system, the

Government's legislative programme outlines executive priorities for legislation, presented to the German parliament in a similar manner as the Queen's Speech but only once per four-year parliament. On the basis of this legislative programme, civil servants are requested to draft legislation. Thus far, the two countries have parallel systems. However, legislative requests can also come from several other sources without executive sponsorship: civil servants and ministries can request legislation in response to frequently recurring difficulties arising from previous legislation; German states can approach a relevant ministry or the Bundesrat with amendments and even entire draft legislation; the Federal Constitutional Court can amend legislation; and trade unions, interest groups and local authorities can all approach Parliament directly with legislative requests (Schreiner & Lin, 2006: 77-82). Around one-third of all legislation is introduced by bodies other than the federal government (Schreiner & Lin, 2006: 77), providing a stark contrast to the British model of legislation. Around fifteen per cent of legislation is introduced by the upper house (Schreiner & Lin, 2006: 74), which frequently means introduction by the opposition, unlike the British model, in which the legislative agenda is controlled by the party in power, with interest groups and opposition parties only able to submit requests.

There are several different aspects of the governmental system that impact the process of CNP change. At the level of central government, the staggered elections of the upper and lower houses of parliament frequently lead to the same kind of legislative deadlocks as appear in the American system. At the national level, the federal system creates a variety of multilevel governance that allows the federal states great power to set their own policies, especially as the upper house of the federal legislature is composed of representatives from the states. Especially in CNP, this has led to federal adoption of policies originally enacted at a state level. Finally, at the international level, the multilevel governance of the European Union impacts the shape of German CNP, though not as

much as the EU affects other policy areas, as the member states still cling strongly to the rights of national sovereignty to regulate CNP.

### ***5.1.3 Multi-level government***

The system of multi-level governance created by membership in the European Union has some impact on the composition of CNP. However, this impact is generally indirect, usually as a result of actors selecting the EU as the best venue to pursue a policy agenda. Each EU country implements EU directives in a different manner. In Germany, all EU directives must at least receive formal approval from the national parliament. The required implementation of EU legislation can be used as a tool to bypass the normal legislative procedure, as in the EU Directives Implementation Act of 2007. In this case, twenty-four amendments to the Nationality Act were attached to a bill that German legislators felt unable to speak against (Hailbronner, 2010: 10). EU obligations have also contributed to the internal contradictions examined in section 4.2 Structural flaws/internal contradictions regarding regulation of multiple nationality in German CNP.

The 2004 Hague Programme of the EU, including a set of Common Basic Principles on citizenship and integration (Council of the European Union, 2004: 15-25), has led to a sharing of national best practices across member countries. It has served as a forum for communication between states looking for policy solutions (European Commission, 2010). Germany again has engaged more directly than the UK with the Hague Programme: many of the points of the Common Basic Principles were integrated into the German National Integration Programme, unveiled in July 2007 to accompany the first integration summit (Bundesregierung Deutschland, 2007).

Perhaps unsurprisingly, multi-level governance appears more prominently in the German case than the British. There are several possible explanations for this: because German actors are used to working in the multi-level framework of federal government,

they are more able to exploit the advantages of supranational government to achieve their goals; Germany is a central actor in the EU; and British actors are neither accustomed to a multi-level system, nor does the UK seek to be as involved in the EU. On the whole, the EU is not currently a central force in the institutional change of CNP, as member states continue to agree that nationality should be regulated at a national level, and supranational/international agreements tend to follow rather than precede policy changes.

Although the UK and Germany have very different policymaking processes as a result of the different characteristics of centralised and federal government, the governmental systems do not offer a strong independent explanation of institutional change. In both cases, actors show the ability to exploit the system to achieve their goals, and they show consciousness that agency can, in many cases, override the structures in pursuit of their policy aims (Nick-Magin, 2009b; Williams, 2010b).<sup>39</sup> The greatest direct effect of the governmental system is the level of ease or difficulty with which it is possible to pass legislation. The strong executive capture of the Westminster model makes it easier to pass legislation quickly, while the numerous checks and balances of the German system make slower change more likely. However, even these effects should not be overstated, as the UK has a record of passing legislation that is never fully implemented, and Germany's federal system frequently allows states the independence to implement policies without the prior approval of the national government.

## **5.2 Change in the balance of power**

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<sup>39</sup> 'Structural factors are important, but it is naturally depends very much on the person with the strongly personalised functions like the Commissioners for Foreigners and Integration...If a strong personality is located in the wrong administrative structures, it can be outplayed' (Nick-Magin, 2009b). 'I think David Blunkett as an individual, as Home Secretary, was quite influential in that. He came into the job knowing he wanted to make more of citizenship than it had been...I think what both David Blunkett and Jack Straw before him had wanted to try to do was to tell a joined-up narrative of how it all worked together' (Williams, 2010b).

Hypothesis 3 proposes that institutional change is more likely following a change in the balance of power. This can arise from reconfigurations within the dominant actor coalitions or from a change in the dominant actor coalition. The former can come in the form of a mid-term cabinet reshuffle, while the latter is most common following a national election that unseats the party or coalition in power. The UK and Germany provide a good basis of comparison in this case because the UK was continuously governed by the Labour Party during this period, though there were many intraparty changes; Germany, on the other hand, held a federal election in 2005 that saw a change in ruling coalition, but there were fewer intraparty changes in this policy area. This section explores the continuity and changes in power distribution in both countries between 2000 and 2010, exploring the effects of these changes.

The UK provides examples of both continuity and change in this period: the New Labour government was in power during the full period of study, but two General Elections occurred (2001 and 2005). Tony Blair was the Prime Minister until 2007, but Gordon Brown did not indicate a strong desire to digress from the immigration path set by the Blair government after becoming Prime Minister. At the cabinet level, this time period saw six Home Secretaries. The department of the Home Office responsible for immigration and nationality changed names and roles twice, beginning with the Immigration and Nationality Directorate (IND), which was succeeded on 1 April 2007 by the Border and Immigration Agency (BIA). The BIA survived only one year before the UK Border Agency (UKBA) replaced it on 1 April 2008. The title of the head of this department changed an equal number of times and was embodied by seven people (Table 5.1).

**Table 5.1 Home Secretaries and immigration ministers, UK, 2000-2010**

<b>Title</b>	<b>Name</b>	<b>Entered</b>	<b>Left</b>
Home Secretary	Jack Straw	02 May 1997	08 June 2001
	David Blunkett	08 Jun 2001	15 Dec 2004
	Charles Clarke	15 Dec 2004	05 May 2006
	John Reid	05 May 2006	27 Jun 2007
	Jacqui Smith	28 Jun 2007	05 Jun 2009
	Alan Johnson	05 Jun 2009	11 May 2010
Minister of State for Asylum and Immigration	Barbara Roche	28 Jul 1999	11 Jun 2001
Minister of State for Asylum and Immigration	Lord Rooker	11 Jun 2001	29 May 2002
Minister of State for Citizenship, Immigration and Community Cohesion (2002-2003); Minister of State for Citizenship, Immigration and Counter-Terrorism (2003-04)	Beverley Hughes	29 May 2002	01 Apr 2004
Minister of State for Citizenship, Immigration and Nationality	Des Browne	01 Apr 2004	06 May 2005
Minister of State for Immigration, Citizenship and Nationality	Tony McNulty	16 May 2005	23 May 2006
Minister of State for Citizenship, Immigration and Nationality (2006-07); Minister of State for Borders and Immigration (2007-08)	Liam Byrne	23 May 2006	03 Oct 2008
Minister of State for Borders and Immigration	Phil Woolas	03 Oct 2008	11 May 2010

Frequent ministerial changes are common in the UK (Riddell, Gruhn, & Carolan, 2011): on average, six different people held each cabinet post under the Labour government between 2000 and 2010 (UK Government, 1997-2010; own calculations). High ministerial posts, especially cabinet-level positions, are generally seen as political reward for good service rather than being allocated by expertise. Furthermore, leaving ministers in their offices for too long can lead to fears of them ‘going native’ (Puffett, 2009): identifying more strongly with the departmental ethos and priorities than the government’s agenda. Going native is seen as a detriment, not a benefit (e.g. Barnes, 2007; White, 2001). As a result, ministerial heads rarely have a strong background in the speciality

of their department. For example, Phil Woolas, Minister of State for Borders and Immigration from 3 October 2008 to 11 May 2010, has a degree in philosophy and a professional background in communications and television production. Liam Byrne's background was in business and venture capital; Tony McNulty in organisational behaviour and political theory; Des Browne in law as a solicitor and advocate; Beverley Hughes in social policy; Lord Rooker in production engineering; and Barbara Roche in law as a barrister.

The Ministers of Immigration are chosen for adherence to party line, and ministerial changes are thus unlikely to disrupt or alter the government agenda. However, if they have ideas that do not conflict with the executive agenda, they are frequently given a great deal of room to pursue their personal interests. This was important in the case of David Blunkett's period as Home Secretary: he entered with definite ideas he wished to pursue and imposed institutional change at a time when there was little endogenous pressure, at least from the perspective of civil servants in this policy area (Williams, 2010b). His enthusiasm for citizenship ceremonies and a naturalisation exam has had a profound impact on the composition of British CNP. While he did not change the direction of CNP change, he certainly brought about on-path changes.

The General Elections also affected the balance of power. Labour lost only six seats in the 2001 General Election, leaving it with 65 per cent of the seats in Parliament. In the 2005 General Election, however, Labour lost 47 seats in the House of Commons, decreasing its majority to 58 per cent and putting greater pressure on the party. The Conservative Party increased calls for reforms of immigration, asylum and nationality, reviving threshold rhetoric and asserting that an unsustainable number of people were becoming British citizens each year. The reform effected through the House of Lords Act (1999) has also strongly affected the balance of power, as it changed the balance of peers



from Conservative dominance to a greater balance (Table 5.2). This has affected the tenor of Upper House debates about CNP reforms. Further, the increased use of life peerages has meant an influx of more active members into the House of Lords, with many bringing legislative experience from the Lower House.

**Table 5.2 Composition of the House of Lords**

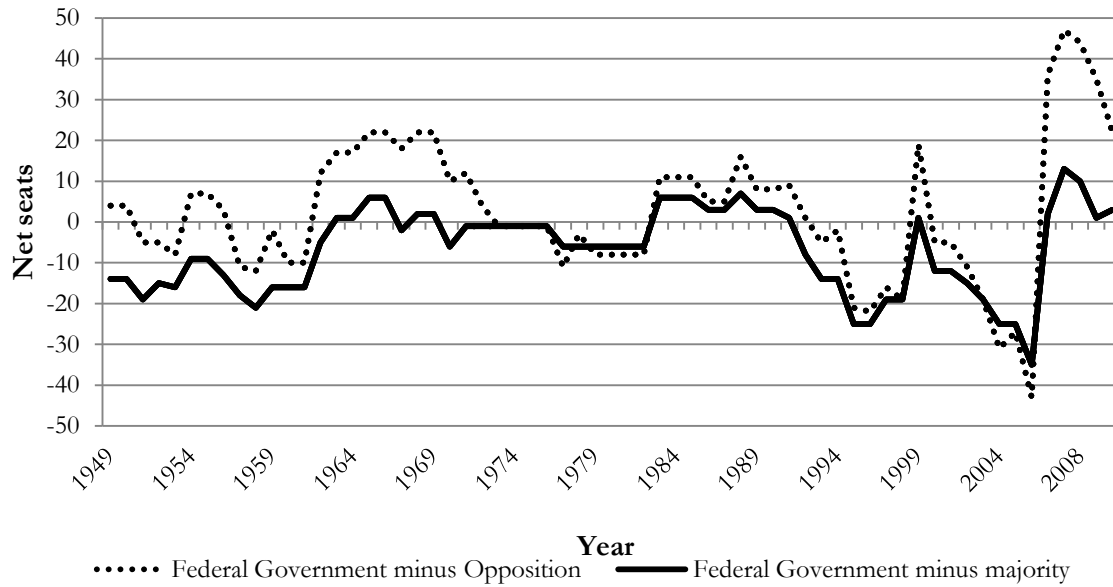
<b>Party</b>	<b>13 October 1999</b>		<b>02 May 2001</b>		<b>31 March 2004</b>	
	<b>Seats</b>	<b>% of total</b>	<b>Seats</b>	<b>% of total</b>	<b>Seats</b>	<b>% of total</b>
Conservative	471	39%	224	33%	207	31%
Labour	179	15%	195	29%	182	27%
Liberal Democrat	72	6%	61	9%	64	10%
Cross-Bench	353	29%	163	24%	179	27%
Other	138	11%	32	5%	32	5%
Total	1213	100%	675	100%	664	100%

Sources: UK Parliament (1999), UK Parliament (2001), UK Parliament (2004b), own calculations

On the whole, changes to the balance of power in the UK during this time period have had little effect on the institutional stability of CNP. As previously mentioned, the nature of ministry appointments reinforces the policy path, as ministers are unlikely to propose changes that are not in line with the executive agenda. However, within the confines of the consensus agenda, ministers have a great deal of flexibility, which can be very important, as David Blunkett's effect on CNP underlines.

Changes in the balance of power also play a key role in the institutional changes in Germany examined here, though in a pattern very different to that of the UK. As mentioned above, the structure of the federal system frequently creates legislative deadlock. As Figure 5.1 shows, the ruling coalition in the Bundestag has rarely had a majority in the Bundesrat since the inception of the Federal Republic of Germany in 1949. The number of neutral seats has varied widely, as is indicated by the difference between the trend lines, but the federal government has nearly always needed to negotiate with the upper house in order to pass legislation.

**Figure 5.1 Federal Government majority in Bundesrat<sup>40</sup>**



Unlike the UK, there is fairly strong continuity of ministers involved with CNP in Germany: since the creation of the first Minister for the Promotion of the Integration of Foreign Employees and their Family Members<sup>41</sup> in 1978, only five ministers have filled the role, only two during the time period in question — one under the SPD/Green coalition until 2005 and one under the CDU/CSU/FDP coalition since 2005 (Table 5.3). There is also far less fear expressed about ‘going native’, and the ministers tend to have a greater background in their ministerial areas than in the UK. Ministers and MdBs in Germany are also far more likely to have an advanced law degree or to hold a PhD, which also alters the decision-making process: with far more trained lawyers or representatives with advanced training in a policy area, the politicians are likely to be better informed of the possible outcomes of the legislation. Furthermore, the German elites frequently express a belief in the representation of what they judge to be in the best interests of their constituents, which is not necessarily that for which the public expresses a desire. This is very different to the

<sup>40</sup> ‘Federal Government minus majority’ is calculated by subtracting the number of seats necessary for a simple majority from the number of seats held by federal coalition party members. ‘Federal Government minus Opposition’ is a simple subtraction of the number of seats held by the opposition parties from the seats held by federal coalition parties, thus leaving out neutral seats.

<sup>41</sup> *Beauftragter zur Förderung der Integration der ausländischen Arbeitnehmer und ihrer Familienangehörigen*

UK, where far fewer of the MPs hold a postgraduate or law degree and are more responsive to the demands of public opinion. All of these factors, in addition to the dynamics of the federal system, create a much greater tendency towards stability in the German system. However, this does not mean that CNP is static.

**Table 5.3 Integration ministers in Germany, 1978-2010**

<b>Title</b>	<b>Name</b>	<b>Entered</b>	<b>Left</b>
Minister for the Promotion of the Integration of Foreign Employees and their Family Members	Heinz Kühn	21 Nov 1978	Dec 1980
Minister for the Promotion of the Integration of Foreign Employees and their Family Members	Liselotte Funcke	17 Dec 1980	15 Jul 1991
Federal Commissioner for Foreigners <sup>42</sup>	Cornelia Schmalz-Jacobsen	14 Nov 1991	1998
Federal Commissioner for Migration, Refugees and Integration <sup>43</sup>	Marieluise Beck	4 Nov 1998	2005
Federal Commissioner for Migration, Refugees and Integration	Maria Böhmer	2005	present

Sources: Bundesregierung Deutschland (2011a, 2011b), Nick-Magin (forthcoming)

Although the wider institutional structure in which CNP is embedded in Germany makes stability more likely, it is still vulnerable to politicking and the effects of the electoral cycle. Like in the UK, election campaigns starkly affect the legislative process in Germany. Though the StAG (1999) is not a central focus of this thesis, its passage is important for exemplifying the effects of a change in the balance of power. The change to a leftist coalition government in 1998 had profound effects on the passage of the bill in 1999 (Joppke, 2010: 52). Leftist parties tend to push towards liberalisations of citizenship laws (Howard, 2009: 59; Joppke, 2010: 52),<sup>44</sup> and nationality reform was important to many actors in the incoming SPD/Green coalition under Chancellor Gerhard Schröder.

<sup>42</sup> *Beauftragte der Bundesregierung für die Belange der Ausländer*

<sup>43</sup> *Beauftragte für Migration, Flüchtlinge und Integration*

<sup>44</sup> The Labour Party's CNP changes do not fit with this trend, but it could be argued that that is easily explained by Labour's realignment as a centre-right party under Blair, abandoning its historical leftist position.

Originally, the Red-Green coalition<sup>45</sup> proposed a dramatic shift in the policy paradigm to accept dual nationality across the board. However, the CDU responded with a populist signature campaign in the state of Hesse against the proposals, which contributed to the defeat of the state's SPD government in the regional elections of 1999 (Meier-Braun, 2002: 95-97). This defeat had profound implications for the passage of the reforms because it swung the majority in the Bundesrat so that CDU agreement was now required to pass any new laws, resulting in the continued rejection of dual nationality (Joppke, 2010: 53).

The debates during the first passage of the Immigration Act (2001-2002) reflect continuing intense animosity between the parties, and the legislative process exposes the use of many partisan tools to try to outwit the other side. The first passage of the Immigration Act took place in the months before the 2002 federal elections, and the speeches and position statements are flavoured throughout with electioneering. Commentators widely agree that even the disputed final vote in the Bundesrat on 22 March 2002 was a power play to establish supremacy before the elections (Angenendt & Kruse, 2004; Hailbronner & Renner, 2005; Spiegel Online, 2002a). CDU/CSU politicians frequently make interjections about the SPD/Green coalition being on its way out, and they seem to express confidence in their ability to block the Immigration Act during the 14<sup>th</sup> Parliament (1998-2002) to allow them to introduce it in a more desirable form after taking power of the 15<sup>th</sup> Parliament (2002-2005) (Deutscher Bundesrat, 2002a; Deutscher Bundestag, 2002; FAZ, 2002).

By the end of the legislative process, the negotiations and voting on the 2002 bill had far more to do with the upcoming elections than with the content of the bill itself. Each side accused the other of exerting pressure on its members to vote the party line (e.g. Otto Schily, speech to Deutscher Bundesrat, 2002a: 154-155). Three prominent CDU/CSU

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<sup>45</sup> The SPD/Green coalition was nicknamed the Red-Green or stoplight coalition because the SPD's party colour is red, while the Greens' is, unsurprisingly, green.

members who had been involved with the independent Immigration Commission rebelled and voted in favour of the bill, submitting written statements of justification (Deutscher Bundesrat, 2002a: 146), but other members confined their discontent to words and still voted as the party wished (Deutscher Bundesrat, 2002a: 171-172). The scandalous final vote in the Bundesrat on 22 March 2002 (Bercanay, 2008; Deutscher Bundesrat, 2002a: 172) highlighted the undisguised fight for power in outbursts that leading CDU/CSU members later admitted had been scripted but reflected true outrage and revealed just how far the parties were willing to pressure their members to win the fight over the bill (Spiegel Online, 2002a, 2002b).

In the final days before the Bundesrat vote, it became clear that the SPD/CDU coalition-ruled state of Brandenburg controlled the deciding votes in the upper house. The Bundesrat rules of procedure state that each *Land* must give a unanimous vote (Deutscher Bundesrat, 2011), and the coalition agreement in Brandenburg ruled that, in cases of disagreement, the ministers would abstain from voting in Brandenburg (Deutscher Bundesrat, 2002a: 147-148). However, Schröder intervened on the SPD side, pressuring the prime minister of Brandenburg, Manfred Stolpe, to vote in favour of the bill; meanwhile, the CDU exerted equal force on Schönbohm to vote against. In this case, Brandenburg should have abstained, but neither party was happy with that, and the members were enclosed all day in arguments and negotiations. Stolpe allegedly threatened Schönbohm with sacking if he spoke out in the Bundesrat against the bill (Klesmann, 2002; Schwennicke, 2002). On the day of the vote, Stolpe stated that Brandenburg's vote was for the bill, and Schönbohm quickly added that he was against it. At this point, the Bundesrat president, Klaus Wowereit, asked for clarification of the vote. Stolpe repeated his 'yes', and Schönbohm said, 'You know my position', rather than repeating his outright negative. A third time, Stolpe stated, 'Brandenburg declares in favour', and Schönbohm remained

silent. The aforementioned planned theatrics ensued, with fists beating on tables and accusations of unconstitutional voting (this section from Deutscher Bundesrat, 2002a: 171-172). The situation drew sharp criticism from Federal President Johannes Rau (Rau, 2002). The bill was declared unconstitutional because of breach of voting regulations in June 2002.

This example shows how strongly the struggle for dominance affected the legislative process. The arguments seemed to have little to do with ideological objections – though they certainly existed – and more with CDU/CSU determination to prove to the federal government that they controlled the power and therefore had no need to compromise, confident that they would be able to pass the bill in the next session in a more acceptable form. However, the CDU/CSU did not make its electoral gains in the 2002 elections and were faced with the swift re-introduction of the Immigration Bill in 2003 (Deutscher Bundestag, 2003a). They still proved largely unwilling to compromise and forced the bill into lengthy rounds of negotiations, but the bill did eventually pass in July 2004 after clauses requiring Bundesrat consent were removed, thereby circumventing the upper house in the legislative process.

### **5.3 Responsibility and institutional interdependence**

Responsibility and institutional interdependence include three general scenarios. First, institutions may encounter overlapping authorities, with multiple ministers or organisations competing for control over a policy area. This can come in the form of multiplicity, where multiple institutions compete to control certain behaviours, leading to uncertainty about authority and unpredictable actor behaviour (Clemens & Cook, 1999: 450). Second, at the opposite extreme, institutions may not fall under the direct authority of any ministries. This is relatively uncommon for CNP, as it is a policy area that has received consistent attention. Finally, authority structures may be relatively clear, but institutions

may be interdependent because they control different aspects of a larger process. CNP, because of its nature, is likely to suffer from issues arising from interdependence with immigration, asylum, and integration policies: '[b]ecause admission into the state is ineluctably dual – firstly into the territory and only secondly into the citizenry – immigration policy is citizenship's perpetual gatekeeper' (Joppke, 2010: 150).

Western European countries have increasingly noted this connection in the past few years, leading Joppke to purport that '[d]evelopments in continental Europe must be read as an invasion into the citizenship domain of immigration control concerns, thus fusing two areas that previously had been kept strictly separate' (Joppke, 2010: 56). From this has emerged a steady pattern of the creation of 'coercive "civic integration" requirements', originally required for new immigrants and used as a deterrent; these requirements have now been applied to acquisition of citizenship (Joppke, 2010: 56). The United Kingdom has followed the opposite path, however, by creating requirements for naturalisation applicants that have then been extended to include applicants for permanent residency, as in the case of the Knowledge of Life in the UK Test. Expectations of integration that were previously required only at the point of acquisition of citizenship have now been pushed forward and are increasingly expected of all immigrants, whatever the duration of their stay.

Immigration policy in turn is under constant pressure from other institutions, especially the state of the economy. When the economy is doing well, businesses demand foreign labour to fill empty jobs, and decades of labour migration have proven that not all foreigners return home during recessions, often trying to get by until the economy picks up again. Over time, this accumulation of residual labour migrants has come to represent a sizable portion of the population in Germany. By the end of 2002, 59 per cent of foreigners in Germany had been there for more than ten years; this reaches 67 per cent amongst Turks, the largest foreign group in Germany (Hailbronner & Renner, 2005: 151).

Thus, one decade's immigration policy is inherently linked to the next decade's pressures on CNP.

The accumulation of legislation has made nationality law in Germany at least as complicated as that of the UK. Each of the German bills in the last decade has attempted to consolidate at least one aspect of nationality legislation, importing clauses from other acts into a more comprehensive StAG. However, even after the 2007 EURLUMsG, actors still foresaw further steps (Williams, 2009c, 2010a). The general consensus is that the area was ignored for too long, which has resulted in negative outcomes. Talk now is of 'catch-up integration'<sup>46</sup> and greater monitoring of the immigrant integration process. The relevant minister is now required to present a formal report on the state of integration at least every two years. This period has also seen a flurry of creation of new government or independent bodies related to CNP, including the Federal Office for Migration and Refugees, the independent Federal Institute for Population and Migration Research, the autonomous Council of Experts on Migration and Integration. As the names of these bodies should suggest, there is an explicit connection between migration, integration, and citizenship. This creates clear lines of institutional responsibility, and the recognition of the interdependence between migration, asylum, integration, and nationality means that policies take greater account of the wider impact of changes. The clear authority structure and establishment of consistent monitoring processes should lead to greater institutional stability, as it enables German CNP to respond to unintended or undesirable outcomes incrementally, helping to avoid the accumulation of ineffective changes.

Citizenship and naturalisation policy has never had an independent institutional agenda in the UK. It has long functioned as an extension of immigration policy because of the UK's colonial connections and subsequent Commonwealth involvement (Dummett,

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<sup>46</sup> *Nachholende Integration*



2006; Hansen, 2000; Kofman, 2005; Schuster & Solomos, 2002). Since the British Nationality Act (1948), even attempts at consolidation have left the UK with six distinct types of British nationality: British Citizen (BC), British Overseas Territories Citizen (BOTC), British Overseas Citizen (BOC), British Subject (BS), British Protected Person (BPP), and British National (Overseas) (BNO). The very institutional complexity and plethora of categories of British nationality and citizenship have made it easy to use CNP for controlling immigration, as conservative interpretations of the entitlements of different categories of nationality have been used to prevent the arrival of certain groups of immigrants: only British Citizens have both the right to abode and the ability to pass on their citizenship to descendants. Because other categories of British nationality do not entail a right to abode, many people in British Dependent Territories have found themselves in possession of a nationality that does not give them the right to enter any country. Furthermore, even those in possession of the now-defunct nationality of Citizen of UK and Colonies (CUKC) — the precursor to the current British Citizen status — were subject to immigration control on the basis of the location where their passports had been issued (Hansen, 2000: 32, 108, 110, 163). Thus, when people in possession of this category of British nationality who were living in Kenya were forced to leave during the 1968 Kenyan Asians Crisis, they had no right to enter the UK and were rejected. In the weeks of farce that followed, some of the Kenyan-resident Asians with British nationality were shuttled back and forth between Kenya and the UK, with neither country allowing them entry (Hansen, 2000: 164, fn. 60).

Although the link between immigration and nationality is well recognised, the tie between asylum and CNP has attracted far less attention, despite the growing discourse concerning numbers of citizenship applicants. Roughly one quarter of the annual grants of citizenship are on the basis of registration, mostly of minor children (Danzelman, 2009:

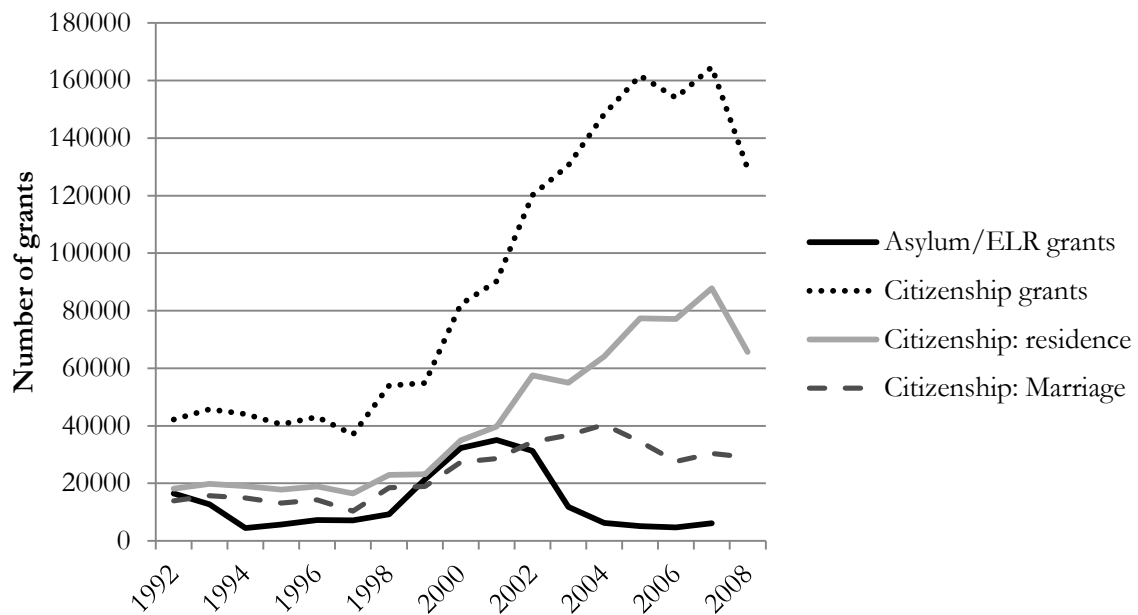
23). Many of these are cases of statelessness or registration on the basis of a parent becoming a British citizen. Another quarter of the annual grants of British citizenship are naturalisations on the basis of marriage (Danzelman, 2009: 13). As the UK is a signatory on several conventions regarding the right of British citizens to marry whom they please and of the spouses to become British citizens, the government cannot create legislation to impede these grants. The other one-half of annual grants are on the basis of residence (Danzelman, 2009: 13).

When asylum seekers are granted refugee status in the UK, they are given a residence permit and access to full benefits, but their route to naturalisation is otherwise no different than that of economic migrants who possess a qualifying visa. Thus, the naturalisation statistics on the basis of residence do not directly distinguish between refugees and labour migrants. However, the list of nationalities of successful asylum applicants mirrors the list of previous nationalities of naturalised British citizens on a five- to eight-year delay, the necessary residence period to apply for naturalisation on that basis. For example, a brief examination of naturalisation statistics shows that Commonwealth citizens (India and Pakistan) are the two largest source countries of new Britons, followed by the countries of origin of the largest numbers of refugees in the UK (Iraq, Zimbabwe, Somalia, and Afghanistan) (Danzelman, 2009: 7).

Again because of its commitment to international conventions on the treatment of refugees, the UK cannot hope to legislate a citizenship and naturalisation policy to address this group of applicants. As Figure 5.2 Asylum/Exceptional Leave to Remain Grants and Citizenship shows, there is a visible, roughly five-year lag between the asylum ‘crisis’ around 2000 and the citizenship ‘crisis’ of the end of the decade. Given that those granted recognised refugee status or exceptional leave to remain became eligible to naturalise around 2006 and could also marry spouses from their home countries, one should expect

the current high numbers of citizenship grants to decrease over the coming years. The effects of immigration legislation that bars labour migrants on lower tiers from accessing citizenship should also become apparent over the coming few years. In the midst of their panic about numbers, politicians seem to have forgotten the time lag between implementation of policies affecting CNP and visible results.

**Figure 5.2 Asylum/Exceptional Leave to Remain Grants and Citizenship**



Source: UK Home Office statistics

In addition to its role as an immigration tool and its interdependence with developments in asylum policy, CNP is also seen as a means of soothing racial tensions and promoting societal integration and adoption of ‘British’ values – though there is, as yet, no consensus on what these values are. Such institutional conversions — using the institution for a different purpose than that for which it was created — of CNP are seen in documents emphasising community cohesion and the concept of ‘active citizenship’. During these periods, the role of nationality is shifted from being one step along the integration process to being a reward granted at the end of a successful integration process. By explicit reference and implication, ‘successful integration’ means adopting the prescribed values

and contributing to British society. CNP's role as the reward for completed integration is also evident in requirements such as proof of language ability and a passing mark on the Knowledge of Life in the UK Test before being allowed to apply for naturalisation.

The UK consequently faces an institutional quandary. The overlapping authorities and impacts of immigration and asylum policies make it very difficult to achieve the desired policy outcomes in CNP. Politicians have expressed fears about the numbers of immigrants becoming British each year, with some citing the statistic that a new British citizen is created every five minutes (UK Parliament, 2009c: cc. 79, 132; 2009d: c. 182). Others have revived threshold arguments: 'The problem is simply one of numbers. There is clearly some limit' (Peter Lilley, speech to HC, UK Parliament, 2002b: c. 378). However, such assertions fail to grasp the fact that CNP can only realistically try to control the naturalisation of labour migrants, and this policy area is already very restrictive. Only migrants in possession of Tier 1 (highly skilled) visas can qualify for naturalisation. As a consequence, institutional interdependence creates pressures on CNP that make it difficult to regulate according to the actors' desires.

At the same time, politicians and government ministers have contradictorily complained about the low uptake of citizenship among people with settlement status, known as Indefinite Leave to Remain (ILR).

About 40 per cent. of people with ILR never apply for citizenship, so we are not talking about just a few people around the edges of the system, but about very significant numbers. The Minister appears to be advancing a new doctrine that those people are in some way a failure of the system and that he wants everyone on ILR to move towards citizenship (Damian Green, speech in HC, UK Parliament, 2009d: c. 236).

There is a parallel focus on trying to 'encourage' integration into 'British culture'. There is an inherent internal contradiction between a desire to limit the numbers of people becoming citizens on grounds such as overpopulation, on the one hand, and complaints

that not enough long-term migrants are applying for naturalisation, on the other. These arguments also fail to take into account the indirect pressures created by previous institutional changes, such as the effects the externalisation of costs have had on potential applicants' decisions about applying for nationality, as discussed in section 4.1. These complaints also ignore the institutional interdependence of British CNP on CNP in other countries, as some potential applicants will choose not to apply for British nationality because the country of their citizenship does not tolerate dual nationality. Furthermore, EU citizens and some Commonwealth nationals — predominantly those from the 'Old' Commonwealth countries — have few incentives to naturalise, as they already have access to many of the rights of citizenship. Thus, institutional interdependence is not confined within the borders of the nation-state.

## **5.4 Summary**

This chapter tested hypotheses 3 and 4, which predict that change is more likely to occur if there is:

3. A power shift in the dominant actor coalition.
4. Competition between authorities for rule-making competency.

This chapter explored several different aspects to the distribution of power, encountering influences from both structure and agency. The first aspect explored was the impact of the governmental structure on the policy-making process. This led to the conclusion that Germany's federal system is more inclined towards institutional stability, while the UK's centralised system is more open to upheaval because of the strong executive capture of the legislature. However, actors in both systems have shown the ability to manipulate the structures to achieve their desired ends. A second factor in the balance of power is the composition of the dominant actor coalition.

During the period in question, Germany experienced a fundamental change of ruling coalition following the federal elections in 2005, while the UK had continuity of rule under

Labour, though with a change of Prime Minister in 2007. However, Germany had much greater continuity of ministers than the UK during this period. The case of David Blunkett makes it clear that a minister's personal agenda, so long as it does not conflict with the executive agenda, can have a drastic impact on the rules of the institution. The frequent ministerial changes in the UK allow for less development of policy expertise, and the lack of strong policy monitoring processes — such as those Germany is attempting to develop — make the institution more likely to accumulate unsuccessful changes, increasing the likelihood of change by upheaval. This likelihood is reinforced by the British system, which gives the executive a very strong hand for pursuing the policy agenda. Germany's institutional makeup, on the other hand, inclines it towards stability and incremental change. As the case of the SPD/Green proposals in 1999 demonstrates, even when actors have wished to pursue greater change, the checks and balances of the system have incrementalised the process.

The final section of this chapter explored the effects of institutional authority and interdependence. This section demonstrated that CNP suffers from strong, unavoidable institutional interdependence with economic, immigration, asylum, and integration policies. Thus, any changes to these institutions will create pressures on CNP. Germany has responded by creating a clear authority structure that encompasses migration, asylum, and integration within one ministry. This has also been the response in the UK, but the policy remit reflected in the minister's title shifted during the decade (Table 5.1) from explicit inclusion of nationality within the Immigration and Nationality Directorate to a securitised focus on migration under the UK Border Agency.

This chapter's findings reinforce the conclusions of previous studies that the distribution of power is, indeed, very important for institutional change and that institutional interdependence continues to affect CNP in both countries. The effects of the

former are somewhat simpler to predict than the effects of the latter, though the exploration of the lag between recognition of refugees and citizenship applications in the UK shows that the effects of other institutions are not entirely unpredictable. This chapter has also shown that power-distributional reproductive mechanisms cannot entirely be separated from the utilitarian-functionalist reproductive mechanisms explored in Chapter 4, as institutional interdependence can contribute to the accumulation of changes and internal contradictions, and unclear authority structures can exacerbate structural flaws. The following chapter explores the final category of explanatory factors: cultural-sociological reproductive mechanisms.

## 6 Cultural-sociological reproductive mechanisms

New Institutionalists who focus on the more normative and ideational sources of institutional change generally fall under the header of Sociological Institutionalism, but Sociological Institutionalists are not the only researchers to address cultural/sociological reproductive mechanisms. Key mechanisms of reproduction in this category are scripts, continuity of ideas, coordination effects, and adaptive expectations. This thesis ignores the latter two, as there is little evidence of them in either country's CNP during this period. This chapter tests the first two mechanisms through the final hypotheses from the theoretical framework. These propose that change is more likely if:

5. Scripts are changing.
6. New ideas emerge that problematise conditions.

From Hypothesis 5, I predict that an absence of scripts — discursive or behavioural — will lead to previously unacceptable behaviours occurring without consequence or with consequences deemed acceptable by the actors. When clear scripts exist or new scripts are being developed, creating institutional stability, the presence of incentives to comply will be visible. These incentives might include electoral punishment for deviant behaviour, public chastisement for speeches made, or even prosecution. Exogenous events can be important in causing shifts in scripts, as they can cause sudden changes in actors' acceptance of specific behaviours and speeches.

Ideational changes can also cause institutional change. Hypothesis 6 envisages that this can be from the emergence of a new solution or a change in the feasibility of previously proposed solutions. Another aspect of ideational change is the shift from labelling a circumstance as a 'condition' to considering it a 'problem'. As Birkland writes, 'whether a problem really is a problem at all is an important part of political and policy



debate' (Birkland, 2005: 125). In these circumstances, even if the same number of naturalizations occurred year on year, at one moment the numbers could be acceptable, while an intervening ideational change could problematise them. Again, exogenous events can play an important role in driving these ideational changes.

This chapter tests these hypotheses in two parts: 1) looking for proof of the presence of scripts and for indications of whether they are firm or in a state of flux; and 2) finding evidence of changes in ideas, which can lead to the proposition of new solutions or to the problematisation of aspects previously regarded as conditions. The data analysed in this chapter leads to several conclusions: both countries have experienced both changes in scripts and in ideas that have altered the 'rules of the game' during this period. While the British changes have been consistently restrictive, the picture painted by Germany is far more mixed, though leaning towards liberalisation on balance. Despite important differences, there are quite a few striking similarities between the two countries at the end of the decade.

## **6.1 Discursive scripts**

When an institution shows a greater propensity towards mutability — room for change in the process of institutional reproduction — institutional change through discursive shifts is more likely to occur. Sociological institutionalism proposes that institutions are composites of discursive scripts that influence society. Thus, institutional change can be indicated through a change in scripts. When scripts are present, actors are punished for deviating from the accepted discourse, e.g. when Nick Griffin, the leader of the British National Party (BNP), is reviled for the expression of anti-immigrant sentiments. However, when scripts are changing, previously unacceptable behaviours go unpunished or are even rewarded, as occurs when centre-leaning parties adopt policy priorities advocated by extremist parties like the BNP because voters indicate a clear

affinity for such ideas. In this way, fringe actors can slowly shift the acceptable discursive scripts. To a certain extent, discursive scripts present a chicken-and-egg quandary: do the discursive scripts drive change themselves, or are they reflective of changes already ongoing? The answer could be a combination of the two: some actors might proactively be attempting to change the acceptable discourse and thus constantly test reactions, while others may be more reactive. In the case of CNP, discursive scripts and their breakdown can be identified in the language used in parliamentary debates and public speeches.

Changes in CNP scripts have occurred several times in post-war Britain, most notably in the aftermath of Enoch Powell's famous 'Rivers of Blood' speech in 1968. The popular support that Powell drew gave him the power to force Heath towards a more conservative immigration policy (Hansen, 2000: 190). It became acceptable to profess anti-immigration positions, as long as one was careful to make clear that comments were not of racist intent. A restrictive shift in discursive scripts like that of the 1960s is again evident in the UK in the period in question, 2000-2010. After a few decades of carefully constructed scripts and elite shunning of people expressing anti-immigrant sentiment, the discursive shifts between the 2002 and 2009 immigration bills indicate an increasing number of mainstream politicians openly expressing worries about 'thresholds', 'limits', and lack of integration, and they used language that would have been labelled as racist in 2002 and even 2006. Many of these discursive shifts appear in response to exogenous events that changed the actors' worldviews as well as from socioeconomic and demographic pressures.

Parliamentary debates from the NIA Bill (2002) indicate conscious discursive construction by the parliamentarians and clearly defined scripts from which few strayed. Discussions exhibit a lack of acceptance of greater restrictions on spouses of British citizens, especially the extension of a formal language requirement to include spouses as well as economic migrants. When the government introduced language requirements in the

BNA (1981) for naturalisation applications submitted on the basis of residency — thus excluding spouses — many organisations and parliamentarians expressed concerns about the potentially discriminatory nature of such a requirement. Before 2002, the general assumption was that spouses of British citizens would naturally acquire language skills in the course of marriage, but the government cited evidence that linguistic integration was not as high as it had been assumed or hoped (UK Parliament, 2002e: c. 1168). Even so, the introduction of a language requirement for spouses of British citizens proved very controversial, with MPs and Lords suggesting that it amounted to interfering with a British citizen's right to choose a spouse.

I have to say that the suggestion from a Labour Member of Parliament...that prospective spouses coming to Britain for arranged marriages should be required to learn English was rightly criticised as being a case of the state dictating who was to marry whom (Viscount Bridgeman, speech to HL, UK Parliament, 2002e: c. 1167).

Some of the legislators still expressed concern about having a language requirement for anyone: 'It worries me deeply that there is a requirement to learn English' (Baroness Uddin, speech to HL, UK Parliament, 2002d: c. 445); 'I do not believe that we should impose conditions which are not at present imposed on the citizens of this country' (Lord Bhatia, speech to HL, UK Parliament, 2002d: c. 451). However, there was a general consensus that economic migrants should be required to prove their proficiency.

By 2009, however, the debates indicate that the politicians no longer questioned the existence of such a requirement but rather were more concerned that the standard of proficiency expected was too low. In fact, some politicians congratulated themselves on the positive impact of having enforced the spousal language requirement, citing preliminary results indicating that it decreased the social isolation of spouses from non-Western cultures. While those in support of language requirements expressed them to be justified

for naturalisation applicants in 2002, the discursive shift by 2009 had led to requirements not only that immigrants must show language proficiency but to proposals to test visa applicants — including spouses — in their home countries before granting entry clearance (Home Office, 2008b; May, 2010; Sayeed, 2009). The politicians cannot expect reprisals for these moves because restrictions are popular with the majority of the voting populace, and the people most affected by changes in CNP cannot use their votes to protest until they have navigated the naturalisation process. The Conservative government formally announced the implementation of such requirements starting 29 November 2010 (UK Border Agency, 2010b).

During the 2002 NIA debates, limits on immigration were also discussed, but concerns about the number of people settling permanently in the UK were generally confined to Conservative politicians such as Peter Lilley (Hitchen and Harpenden), who did not receive a great deal of sympathy for their views (Peter Lilley, speech to HC, UK Parliament, 2002b: cc. 378-381). Several chastisements were given in the IAN Bill (2006) debates for behaviour politicising immigration during the 2005 General Election campaigns (Joppke, 2003: cc. 1062, 1065, 1067; UK Parliament, 2005a: cc. 31, 35, 170, 202, 227, 297, 312; 2005b: c. 201). However, by 2009, discursive scripts had shifted. Although actors coupled demands for ‘limited immigration’ with the catchphrase ‘firm but fair’ throughout the decade (Joppke, 2007a: c. 885; UK Parliament, 2002b: c. 379; 2002d: c. 523; 2009c: c. 255), the 2005-06 and 2009 debates show increasingly anti-immigration rhetoric (UK Parliament, 2005b: c. 275; 2009d: c. 190, 193, 207; 2009e: 1172). Proposals for ‘limited immigration’ were coupled with the catchphrase ‘firm but fair’, asserting that only a more restrictive immigration policy would be ‘fair’ (UK Parliament, 2009c: c. 496; 2009d: c. 233; 2009e: c. 1172).

Government documents also indicate the shift and coupling of naturalisation requirements and immigration policy. CNP's position as an extension of immigration policy ties it to a discourse of numbers (Dummett, 2006). 'Making migration work for Britain' was originally the subtitle of two government consultation documents: a five-year strategy for asylum and immigration published four months before the IANA was introduced in the House of Commons (Home Office, 2005) and one introducing the points-based immigration system (Home Office, 2006). 'Making migration work' was then reflected in the IANA debates, with MPs and Lords utilising the rhetoric (Joppke, 2001: c. 1154; UK Parliament, 2005b: c. 188; 2005d: c. 524). 'Making migration work' began to be linked explicitly with CNP and raising naturalisation requirements in 2009 (UK Border Agency, 2009a, 2009b; UK Parliament, 2009d: c. 174; 2009e: c. 1130-1131), accompanying a consultation period on points-based citizenship and assertions that too many people were acquiring British citizenship.

Arguments widely used in the 1960s about strains on resources, lack of space, and panic about numbers have resurfaced (Hansen, 2000: 182-190; Ipsos MORI, 2007), with many of the statements following the general formula: 'I'm not racist, but the UK simply cannot take on more people'. Comments like Peter Lilley's — 'The problem is simply one of numbers. There is clearly some limit' (UK Parliament, 2002b: c. 378) — have become increasingly acceptable, and MPs were not chastised for citing the statistic that 'citizenship is granted to a new person every five minutes' (UK Parliament, 2009c: cc. 79, 132; 2009d: c. 182). There were fewer mentions of the positive contributions of migrants and more expectations placed on them. Lord West, the Labour minister in the House of Lords during the BCI Bill, encapsulates the argument:

We want to encourage those with the right values to become citizens. With rights come responsibilities, and those responsibilities must first be demonstrated, ensuring that the

benefits of British citizenship are earned. This is at the heart of the Government's firm-but-fair system (UK Parliament, 2009c: c. 1130).

The discursive shift between 2000 and 2010 was clearly towards a more restrictive position. Despite expressions of concern from a wide array of immigrants' rights associations, the UK government lengthened the residence requirement for labour migrants and those on the protected route, for whom the path to citizenship could now take eight years from the time of acquisition of a qualifying residence status.<sup>47</sup> This drew harsh criticism especially from the UN High Commissioner for Refugees, whose office have long demanded that the path to citizenship for recognised refugees should not take more than five years (UNHCR, 2009: 1). The domestic political rewards for a restrictive citizenship policy have clearly far outweighed the international punishment for behaviour in violation of treaties of which the UK is a signatory.

Discursive scripts also play a very important role in the construction of the perceived reality in Germany. Shifts in discursive scripts have accompanied the change in national understanding of what it means to be German in the slow transformation from an inherited characteristic to a community that rallies around a common constitution and set of accepted societal values. The path of the Immigration Act from 2001 to 2004 and the Integration Summits of the Merkel chancellorship provide excellent examples of changing discursive scripts. The rate of changing norms was different on the left than the right, and each merits its own discussion.

SPD discursive scripts showed the greatest period of change before the introduction of the Immigration Act in 2001, and the debates between 2001 and 2004 show evidence of

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<sup>47</sup> The probationary citizenship path, which would be the source of this potential lengthening, has since been dropped (UK Border Agency, 2010a); it is not yet clear what the new government's position on naturalisation requirements will be.

the solidification of the ‘rules of the game’. In 1998, Minister of the Interior Otto Schily was famously quoted in the *Tagesspiegel* saying, ‘The capacity for immigration in Germany has been exceeded’ (Tagesspiegel, 1998: 4),<sup>48</sup> a quote that multiple CDU/CSU politicians cited during the 2003 debates (Deutscher Bundestag, 2003b: 3646B, 3657C, 3660B). However, in 2002, he was much more careful about his phrasing: ‘The limitation of immigration, taking into account the capacity for absorption and the willingness of the Federal Republic of Germany, must be the goal of this law’ (Otto Schily, speech to Deutscher Bundestag, 2002: 22045).<sup>49</sup> At the same time, he clearly stated that immigration must continue, citing the report of the Müller Commission: ‘Managed migration of skilled workers is, therefore, very much in the interest of our national economy and thus of the entire country’ (Deutscher Bundestag, 2002: 22045).<sup>50</sup>

The years between 2000 and 2005 were an important transitional period in discursive scripts because it was during this time that most of the politicians agreed to stop consciously politicising immigration-related policies in recognition of the great damage inflicted for minor electoral gains. Before this tacit – and sometime explicit – agreement, several politicians expressed frustration at the acceptance of the need for a coherent Immigration Act and comprehensive action on integration measures when speaking privately accompanied by outright rejection and insistence on an irreconcilable gulf between the parties when speaking publicly about the policy options.<sup>51</sup> Sigmar Gabriel

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<sup>48</sup> ‘Die grenze der Belastbarkeit Deutschlands durch Zuwanderung ist überschritten.’

<sup>49</sup> ‘Die Begrenzung der Zuwanderung unter Berücksichtigung der Aufnahmefähigkeit und der Bereitschaft der Bundesrepublik Deutschland muss das Ziel des Gesetzes sein.’

<sup>50</sup> ‘Eine gesteuerte Zuwanderung qualifizierter Fachkräfte liegt daher durchaus im Interesse unserer Volkswirtschaft und damit des gesamten Landes.’

<sup>51</sup> Kay Hailbronner disagrees that pleas for non-politicisation pay anything more than rhetorical lip-service: ‘The repeated attempts of the Social Democratic Party to reach an informal agreement between the major political parties about leaving controversial issues of nationality law out of the electoral campaigns were therefore never much more than rhetorical’ (Hailbronner, 2010: 26).

named this a *Vieraugengesellschaft*.<sup>52</sup> ‘Behind closed doors, we always say to each other where the problems lie, but when a camera is present and the microphone is turned on, we don’t do that anymore’ (Sigmar Gabriel, speech to Deutscher Bundesrat, 2002a: 143).<sup>53</sup>

Public opinion also played an important role in reinforcing the changes in discursive scripts during this key period, for although the CDU/CSU refused to listen to the warnings of the SPD about the dangers of politicising immigration for electoral gain, the voters did not give the Christian Union the victory they had predicted. Voters had shown signs of distaste for such tactics in the 2000 North Rhine-Westphalia *Land* election, when the CDU candidate Jürgen Rüttgers tried to politicise the issue under the slogan ‘Children, not Indians’<sup>54</sup> after a cross-party agreement to ignore immigration; Rüttgers lost his credibility and the election (Meier-Braun, 2002: 102).

Although discursive scripts were changing, the 2001-2002 parliamentary speeches are filled with speeches by CDU/CSU politicians decrying Germany’s status as a country of immigration and rejecting multiculturalism of any definition. In this context, the perceived meaning of integration remained very much a unidirectional process that consisted of the immigrants adapting themselves and blending into German society. Such arguments were accompanied by the famous phrase *Leitkultur*, the ‘leading/dominant culture’ of Germany. Understandings of *Leitkultur* impact CNP because they constitute understandings of membership, which influence the criteria for naturalisation and expectations of citizens.

The debate around the use of the word *Leitkultur* is, in itself, evidence of competition to establish new discursive scripts, as actors wrangled over an accepted meaning. The originator of the phrase, the Arab-German sociologist Bassam Tibi, had vastly different

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<sup>52</sup> Lit., a ‘four-eyed society’, the German phrase *unter vier Augen* means ‘in private’; the closest English idiomatic equivalent is ‘behind closed doors’. Gabriel’s phrase underscores the discrepancies between scripts employed for public consumption and the content of discussions behind closed doors.

<sup>53</sup> ‘Unter vier Augen sagen wir uns immer, wo die Probleme liegen, aber wenn eine Kamera dabei ist und die Mikrofone eingeschaltet sind, tun wir das nicht mehr.’

<sup>54</sup> Kinder statt Inder.



intentions for this phrase. He proposed the term *Leitkultur* to describe a common set of European values, an agglomeration of cross-cultural ‘western’ values that could be a rallying point for European identity (Tibi, 2000). Then-publisher of *Die Zeit* Theo Sommer drew on the term to support his argument that integration could not be a one-way street (Sommer, 1998). However, the term was adopted by political conservatives to describe Germany as a ‘guiding culture’ into which foreigners should integrate themselves. The term reached national popular attention when Friedrich Merz, then-leader of the CDU in the Bundestag, published an article in *Die Welt* that rejected multiculturalism in favour of compulsory assimilation into a German ‘core culture’ and identified Sommer as his inspiration (Merz, 2000). Sommer, however, quickly distanced himself from Merz’s application of the term (Sommer, 2000). The term recurs in debates, especially about multiculturalism and the place of Islam in Germany, throughout the period in question, including heated debates during 2004 (Deutscher Bundestag, 2004: 13439-13467). The Christian Union Parties’ adherence to a conservative interpretation of the term *Leitkultur* and rejection of multiculturalism as the model for integration resurfaced in Angela Merkel’s speech on 16 Oct 2010, which famously proclaimed that ‘multiculturalism has absolutely failed’ (Spiegel Online, 2010).

When the CDU/CSU returned to power in 2005, Chancellor Merkel laid out a new agenda for integration, ushering in a series of integration summits with representatives from a wide variety of NGOs, immigrant groups and practitioners. Her leadership seemed to indicate a change of direction from the traditional Christian Democratic understanding of integration. However, with the stark drop in popularity of the black-yellow coalition following the September 2009 elections and the euro crisis as well as the public discussion ignited by the publication of controversial Federal Bank chairman Thilo Sarazzin’s (2010) book in summer 2010, the Christian Democrats appeared poised for a shift to the right.

Rebellion amongst the ranks increased, with more politicians criticising the centrist shift under Merkel, blaming the party for leaving the right wing open by abandoning its conservative core (Vates, 2010). Although Merkel's personal popularity continued to outstrip that of her coalition, this had not translated into votes during the 2009 election, leaving members on the right dissatisfied and willing to consider the offers of more extreme right-wing parties.

The changes in discursive scripts in both countries mirror the developments in CNP: the British debates show a steadily more restrictive trend, which parallels the greater restrictions built into changes in CNP during this period, while the German debates exhibit greater uncertainty, which is reflected in the partly restrictive, partly liberal changes to CNP. Chancellor Merkel's weakness within her party and the weakness of the coalition nationally make more restrictive moves likely in the remaining years of her leadership. However, the national popularity of the Greens and the SPD could counter the conservatism somewhat by offering greater public support for more liberal policies than has historically existed.

## **6.2 Change in ideas**

An actor's understanding of an institution contributes to the structure of the institution, as humans act based on the perceived reality, whether or not that reflects 'objective' reality. Thus, what is understood as the 'facts' of a situation can change over time in the same way as actors can perceive the same set of circumstances as a condition or a problem (as discussed in section 2.1.4). Changes in ideas certainly play a role in the institutional change of CNP in both countries during the period in question. This section presents a few of the general ideational changes before focusing on the changes in understandings of integration and national identity. As this section shows, the emergence of new ideas, at times precipitated or magnified by the aftershocks of the 2001, 2004, and

2005 terrorist attacks, has been key in changes to the institution as actors have adopted new responses to the same phenomena.

### ***6.2.1 Loyalty and the value of citizenship***

Manifestations of loyalty to the state and the perceived value of citizenship clearly indicate changes in ideas. To trace the changes in ideas on dual nationality, it is necessary first to give a greater historical backdrop. The American statesman George Bancroft wrote his now famous opinion of dual nationality in 1849: states should ‘as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance which common sense so repudiates that it has not even coined a word to express it’ (Bancroft, 1849). Though often quoted now to justify rejection of dual nationality, his aversion was far more understandable in the context of the diplomatic headaches and complications of war caused by overlapping military obligations and no facilities for repudiating one’s former nationality (see Koslowski, 2000: 75-76). The political context of the nineteenth and much of the twentieth century created international norms against dual nationality. The recent changes can be attributed to several causes: the evolution of liberalism (Koslowski, 2000: 141), the post-war rise of women’s movements (Hammar, 1985; Joppke, 2010: 48; Koslowski, 2000: 141), a change in understandings of loyalties (Aleinikoff & Klusmeyer, 2002: 29; Castles & Davidson, 2000: 87), and reclassification of dual nationality from being a problem to being a condition (Faist, Gerdes, & Rieple, 2004; Stasiulis & Ross, 2006). Part of the reclassification has arisen from international treaties written at in the final decades of the twentieth century that have done much to address the practical problems of dual nationality and diplomatic protection.

The shifting norms on dual nationality are one part of the ‘collective redefinition of sovereignty’ (Waeber, 1995: 418) underway in recent years. In the traditional logic of sovereignty, multiple citizenship would be impossible because a citizen could only fulfil all

of the incumbent duties to one state (Koslowski, 2000: 152). This is underpinned by a belief in the uniqueness of states, individuals, and identity: 'States, like persons, are locked into singularity because they do not happen twice in the world. The question is how far "identity" hinges on singularity' (Joppke, 2010: 118). Where once identity was seen to hinge entirely on singularity, the consensus has shifted in recent years, with an opposing view proposing that people can hold multiple loyalties without them being in direct competition with each other. Most states no longer see civil society affiliations as 'incompatible with...loyalty to the nation-state' (Aleinikoff & Klusmeyer, 2002: 29), which, by extension, now includes competing international loyalties. This change has also changed the meaning of naturalisation such that it is no longer a 'loyalty transfer and migrant recognition of sole authority of a state' (Koslowski, 2000: 148). Furthermore, toleration of dual nationality is not the same as embracing it. Though close to half of sovereign states permit dual nationality (Faist, 2001: 4), this does not mean that they would not pursue alternative policies, were viable options to become available. Thus, despite the reclassification of dual nationality from problem to condition, should new options emerge, it is likely that dual nationality would be re-categorised yet again, as the status quo represents an uneasy compromise.

One further part of the reassertion of sovereignty discussed in section 1.2 appears in the form of discussions about the 'value' of citizenship. In the process of revaluation, CNP becomes very important, as 'formal state membership and principles upon which it is based can easily become very important as citizenship is "revalued" through legislative action' (Koslowski, 2000: 93). Politicians exhibited a growing perception that citizenship had been 'cheapened' by previous liberal policies (Joppke, 2010: 54). The liberal shift towards 'thin' citizenship had been led by key ideas from philosophers like John Rawls (1971) and Jürgen Habermas (1995), who purported that 'the ties that bind can only be thin and procedural,

not thick and substantive. Otherwise individuals could not be free' (Joppke, 2010: 116). Recently, a backlash against these ideas has become apparent as states have rejected the devaluation of citizenship. Reforms in the past decade have sought to move back toward 'thick' citizenship, 'to recover citizenship's more fundamental feature of being a privilege, received by the grace of birth, and jealously guarded if granted to people who are not already endowed with it' (Joppke, 2010: 54). Many states, including the UK, have adopted arguments that citizenship is being devalued and have sought to 'persuade an anxious public that populists do not in fact have the answers and that British citizenship...remains valued and protected by mainstream politics' (Goodhart, 2006: 55-56). Countries sought ideas that would make the process of naturalisation more ceremonial and meaningful and less like a simple bureaucratic procedure.

In the UK, talk was of 'citizenship through the post', and naturalisation certificates arriving 'in brown paper envelopes' (UK Parliament, 2002a: c. 16, 38, 44, 45). The Crick Commission, appointed to 'advise the Home Secretary on the method, conduct and implementation of a "Life in the United Kingdom" naturalisation test', rationalised its recommendations for increasing the requirements for naturalisation because 'citizenship is more esteemed and valued if it is earned, not given' (Crick, 2003: 3-4). This shift in conception has some parallels to Dutch portrayals of citizenship as the 'first prize' (Joppke, 2010: 58). The Crick Commission was followed by the Goldsmith Commission, which 'set out to consider what it means to be a citizen and to make proposals that enhance the meaning and significance of citizenship as the common bond that binds us together' (Goldsmith, 2008: 3), advised the British government to abolish permanent residency entirely: 'Permanent residency blurs the distinction between citizens and non-citizens. We should expect people who are settled in the UK for the long-term to become citizens' (Goldsmith, 2008: 6). This is reflective of the more general trend of limiting access to

citizenship and seeking to differentiate more clearly between the value of permanent residency and citizenship.

Citizenship ceremonies became popular, as discussed further in section 6.2.3. Both the UK and Germany issued new citizenship oaths, seeking to formalise the connection between the new citizen and the state further. Germany explicitly modelled its oath along the lines of the American naturalisation oath (Bundesregierung Deutschland, 2000: §16; Hailbronner, 2010: 12). Thus, the changes in ideas from the beginning to the end of the decade had strong repercussions for naturalisation applicants, significantly raising the requirements.

### **6.2.2 *Integration***

National understandings of integration are inherent in the composition of CNP, as countries are divided between seeing naturalisation as the end-point of integration or as a step along the way. ‘Naturalization has traditionally been conceived of in Germany as an exceptional act presupposing full assimilation and a clear state interest’ (Barbieri, 1998: 66), while it has traditionally held the position of being a tool of integration in the UK. However, these positions show evidence of change over the past ten years. In 1999, Germany’s political parties were divided about the role of naturalisation, with the SPD and Greens considering acquisition of nationality ‘an essential instrument in achieving integration’, the CDU/CSU adhering to the belief that ‘naturalisation should complete the process of integration rather than pave the way towards it’ (Hailbronner, 2010: 19), and the FDP proposing compromises between the two positions; in 2007, however, a CDU chancellor convened the first Integration Summit and has led an active reassessment of this position. Germany’s changes have not been unequivocally liberal, though, as the recent ‘anti-liberal backlash’ has shown (Joppke, 2010: 55). The UK, on the other hand, has traditionally seen naturalisation as one step of the process, a sentiment embodied in the

report of the Crick Commission: 'becoming naturalized should not be seen as the end of a process but rather as a good beginning' (Crick, 2003: 13). However, the 2009 proposals for 'active' or 'probationary' citizenship go some way to reversing this view, instead asking immigrants to demonstrate that they are 'virtuous' citizens (Joppke, 2010: 60) before actually gaining membership.

In most cases, 'the starting point of new thinking on naturalization and citizenship...has been an apparent failure of immigrant integration' (Joppke, 2010: 57). These changes also seem to reflect a shift away from the emphasis on rights to a reassertion of emphasis on 'the contractual nature of modern citizenship' (Joppke, 2010: 62). While the twentieth century saw a proliferation of international treaties and norms defending the rights of individuals against the state, the twenty-first century seems to be a backlash in the form of states defending themselves against individuals and seeking to emphasise the rights of the state.

Shifting understandings of integration are also reflected in the rise in integration or naturalisation tests across Western Europe. Though long used in the USA, Canada and Australia, the Netherlands was the only country in Europe to have a naturalisation/integration test in 2000. Since then, many countries have implemented them, including Denmark, Estonia, Germany, Latvia, Lithuania and the United Kingdom; and France and Belgium are contemplating following suit. These tests attempt to codify the terms of integration, identifying key values and knowledge that integrated persons will possess.<sup>55</sup> Before the emergence of new ideas about integration, 'it was presumed, and thus not explicitly tested, that integration would happen in the required legal residence time' (Joppke, 2010: 54). However, in the securitised post-9/11 world, both the UK and Germany reflect a growing sense of failure at having integrated post-World War II

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<sup>55</sup> For a discussion of diverse views on the restrictive or liberal nature of these tests, see Bauböck and Joppke (2010).

immigrants. Rather than feeling that integration was a process that would take time and occur fairly naturally, leading to a laissez-faire approach, both countries began to feel that it would not ‘just happen’ but would ‘have to be furthered, monitored, and — in the case of a negative outcome — sanctioned by explicit state policies’ (Joppke, 2010: 61). This emerging idea that there were large pockets of the population that had ‘failed’ to integrate focused especially on Muslims. In response, many countries began to develop formal tests (see Joppke, 2007b, 2010).

In the British case, however, the effects of 9/11 should not be over-emphasised, as the race riots of the summer of 2001 had already stirred the integration debate, as mentioned in Chapter 3. In the aftermath of the riots, Home Secretary David Blunkett commissioned a report that called for an ‘honest and robust debate’ (Cantle, 2001: 18); this was followed by a Home Office report with the securitised title *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (Home Office, 2002), which not only linked integration with security debates but also ‘re-associated immigration with integration by arguing that immigration should be contingent upon increased civic integration and “shared values”’ (Schain, 2008: 157). Shortly thereafter, the UK introduced its naturalisation test, the KoL test, in the NIAA (2002). It was debated hotly, and major objections were made on the grounds of it being discriminatory against non-EU nationals (UK Parliament, 2002c, 2002d). The government convinced the parliamentarians that it was not discriminatory, however, on the grounds that the test was not required for visa applications but only for naturalisation, and EU nationals would therefore be subject to the same criteria as non-EU nationals in the naturalisation process (UK Parliament, 2002a: c. 020). Several of the objecting Members subsequently withdrew their objections on the grounds of these reassurances.



In 2006, the government changed the point of application of the KoL Test (UK Parliament, 2006), making it compulsory for anyone applying for settlement in the UK. The UK government continued with this tactic in 2009, presenting the possibility of using the Knowledge of Life in the UK Test as a hurdle for settlement and a second exam focused on civics and history for applicants for naturalisation (UK Border Agency, 2009a: 5). This was justified on the grounds that the KoL test examines applicants on topics that are important to settlement, while a civics exam would make sure that applicants understood the political system and how to exercise the rights of citizenship, such as voting, to which applicants had not previously had access.

Germany's integration test was announced with the EU Directives Implementation Act (Bundesgesetzblatt, 2007) and implemented on 5 August 2008 to allow time for the test's development (Bundesgesetzblatt, 2008). Its form exemplifies the mixed character of integration tests. On the one hand, the creation of a federally designed exam finally standardised the naturalisation process, which had previously been different in each state, leading to vastly different naturalisation rates and requirements. Baden-Württemberg's issuance of 'interview guidelines' for Muslim applicants for naturalisation forces a national debate and

to an agreement among the German *Länder* to introduce the successful passing of a formal civic integration course and test as precondition for naturalization, and thus to apply to the citizenship domain what had already been part of immigrant integration policy (Joppke, 2010: 55).

On the other hand, there are always arguments that such exams always raise the bar for naturalisation. However, Germany's use of integration tests appears not to act as an instrument of exclusion, as initial figures indicate a ninety-nine per cent pass rate (Wöhrle, 2009), far higher than the UK's seventy-one per cent pass rate for its Life in the UK Test (Wray, 2010). Whether these changes are liberal or restrictive, the exchange of new ideas

about integration/naturalisation tests has certainly resulted in the institutional change of CNP in both Germany and the UK.

### **6.2.3 *National identity***

Understanding the debates about national identity is important because the actors' perceptions of the boundaries of national identity are highly relevant in deciding membership criteria. Put succinctly, 'citizenship itself serves as a primary basis of identity' (Barbieri, 1998: ix). Furthermore,

if citizenship is about the manifestation of community and about the negotiations concerning rights, duties, and other citizenship attributes, then it is integrally linked to many components of identity, such as self-representation and individual identification with the community and the state (Eley & Palmowski, 2008b: 21-22).

This link is certainly not undisputed. Patrick Weil (2002: 194) rejects the 'politics of identity' frame entirely, and Christian Joppke (2010: 18-19) and Jürgen Habermas (1994: 23; 1995: 259) refute the assertion that citizenship is closely linked to national identity. However, given the prevalence of the *nation*-state and ongoing support for self-determination — generally along ethnic lines — I argue that national identity is coupled with citizenship, as the embodiment of the national self-conception is the membership criteria.

There are two main aspects to the identity component of citizenship: one is a passive status; the other is an active expression of membership. 'The dominant conception of the nation [is] reflected in the concept of citizenship' (Gosewinkel, 2008: 27). Nation-states that emphasise the status of citizenship tend to see membership as a gradual part of integration, while those that emphasise membership tend to grant status only at the end of the perceived integration process.

There are essentially two opposing theories of identity: that of identity as a zero-sum game in which only one identity ‘wins’; and that of identity as a positive-sum game, in which the different constituent parts or layers of identity equal more than the sum of the parts, or at least as non-zero-sum (Bauböck, 2001; Kymlicka, 1995; MacIntyre, 1995; Skerry, 2005; Tilly, 1995; Wodak, De Cillia, & Reisigl, 2009). The former conception includes most formulations of ‘thick’ citizenship and underpins conservative philosophies of identity and promotions of ‘active citizenship’, which conclude that a person can only be truly loyal to one state. The latter conception of identity is more common in formulations of ‘thin’ citizenship and in liberal philosophies, contending that people can hold multiple identities at any given time and that loyalty to multiple states is possible without loyalty to one detracting from the other. These theories directly impact conceptions of nationhood and citizenship, especially with regards to toleration of dual nationality. Proponents of the latter theory argue that humans consistently hold multiple loyalties but that it does not necessarily follow that these loyalties must be mutually exclusive.

Citizenship undoubtedly implies certain obligations and rights to the state of belonging. Yet it has a strong normative, identity-based aspect. It is a system to differentiate between members and non-members, between those to whom the state has certain obligations and those for whom it must do nothing. A country’s understanding of citizenship is key to understanding the naturalisation process. In a country where citizenship is merely a politically defined membership consisting of a citizen’s duty to pay taxes and vote and thereby receive benefits from the state, the naturalisation policy will be relatively simple. An applicant should then merely need to prove his or her ability to fulfil these civic obligations before being granted membership. However, most countries understand citizenship as a far deeper form of belonging, one that requires acceptance of common societal values and that expects behaviour that conforms to cultural norms. These

countries will wish applicants to prove themselves not only capable of carrying out civic duties like paying taxes but also that, in times of war, for example, their sympathies lie with their adopted state and not with another country.

Some scholars seek to interpret the rules regarding access to citizenship by focusing on the concept of identity (Habermas, 1994, 1995; Kymlicka, 1995; Miller, 2000; Müller, 2007). Under this umbrella come discussions about things like integration and the role of citizenship, for example: should a country offer citizenship as a step within the integration process, as the British do? Or is citizenship only the final reward granted after successful integration, as in the general German interpretation? Within the theme of identity, there is great room for politicization of the issue of access to citizenship, as debates about national identity easily become emotional and divisive. One of the classic academic works on citizenship and national identity is Brubaker's (1992) analysis of citizenship in France and Germany. In this still highly-cited work, Brubaker laid out the French citizenship paradigm as one of 'civic membership' based on one's place of birth (*ius soli*), while he characterised the German paradigm as one of 'ethnic membership', based on blood (*ius sanguinis*). He then argued that conceptions of national identity, which spill over into citizenship and naturalization policy, were highly unlikely to change and very historically path dependent. This was, of course, nearly immediately contested by upheavals in citizenship and naturalization policy in both countries during the remainder of the decade, and Brubaker later distanced himself from this 'Manichean myth' (Brubaker, 1999). The fact that Germany's policy paradigm did change during the 1990s reveals a great deal about the nature of national identity and path dependency. Though identity certainly has strong historical roots, it is far from static and is a synthesis of national myth, common history, tradition, and contemporary politics and experiences.

National identity theories are important for understanding the policy process in this field because of the recognition, gaining more prominence recently, that ‘individuals behave according to a *perceived* reality’ (Klandermans, 1992: 77, cited in Statham & Geddes, 2006: 51). As Habermas argues,

The experts are debating the capacity of the economic system to absorb these people, but the readiness to politically integrate the asylum-seekers depends more upon how citizens *perceive* the social and economic problems posed by immigration (Habermas, 1995: 272).

Extending this to understanding the CNP policy process means that conceptions of national identity affect the policymakers’ vision of citizenship, the meaning of citizenship, and perceptions of outsiders’ rights to access citizenship. Because the basis of national identity means defining who belongs and who does not and citizenship is an institutionalised method to enforce the divide between ‘us’ and ‘them’, arguments surrounding national identity and access to citizenship will always be intertwined.<sup>56</sup>

As a result of the development of Germany into a *de facto* immigration country with a high percentage of immigrants, nationality issues have become very closely connected with general migration issues and questions of homogeneity and identity. This explains why naturalisation and toleration of dual nationality have been very closely connected to a general debate on the right concept for the integration of foreigners into German society (Hailbronner, 2010: 25-26).

Yet efforts to increase the identification of foreigners and naturalised persons with the dominant national self-understanding through legislation — as with the creation of integration tests, citizenship ceremonies, and oaths of loyalty — have not been very successful. One could argue that ‘identity cannot be legislated’ (Joppke, 2010: 121). Despite this, both Britain and Germany have sought to encapsulate the national self-understanding in the past decade.

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<sup>56</sup> For disagreements with this position, see Habermas (1994, 1995) and Joppke (2010).

The debate about national identity in the UK was stirred with the race riots in 2001.

The ensuing Crick Commission's report proposed a definition of Britishness:

To be British seems to us to mean that we respect the laws, the elected parliamentary and democratic political structures, traditional values of mutual tolerance, respect for equal rights and mutual concern; and that we give our allegiance to the state (as commonly symbolised in the Crown) in return for its protection. To be British is to respect those over-arching specific institutions, values, beliefs and traditions that bind us all, the different nations and cultures, together in peace and in a legal order... We neither need to define "Britishness" too precisely, nor to redefine (Crick, 2003: 11).

This, like most of the discussions in the UK, is very non-committal, with talk of 'values', 'tolerance', and 'respect for the rule of law'. Even as vague as it is, though, one could certainly find implicit judgments of Britain's Muslim community. Both Blair (2006) and Brown (2006) devoted speeches to multiculturalism and integration, carefully avoiding any hints of assimilation. Brown emphasised the non-zero-sum nature of identity strongly:

While we have always been a country of different national, and thus of plural identities — a Welshman can be Welsh and British, just as a Cornishman or woman is Cornish, English and British — and may be Muslim, Pakistani or Afro-Caribbean, Cornish, English and British — there is always a risk that, when people are insecure, they retreat into more exclusive identities rooted in 19<sup>th</sup> century conceptions of blood, race and territory — when instead, we the British people should be able to gain great strength from celebrating a British identity which is bigger than the sum of its parts, and a union that is strong because of the values we share and because of the way these values are expressed through our history and our institutions (Brown, 2006).

This seeming tolerance, however, contradicts the changes simultaneously at work. The Crick Commission signalled a change in ideas with its new emphasis on citizenship as something that is 'earned, not given' (Crick, 2003: 4). This became the 'motto of the new British citizenship policy' (Joppke, 2010: 59) and was further developed in the concept of 'probationary citizenship', which stipulated either approximately fifty hours of community service or an extra two-year wait for naturalisation (UK Parliament, 2009a). Ideas of

national identity have been shifting inexorably away from the loose, laissez-faire multiculturalism and towards one requiring greater demonstrations of loyalty from those wishing to acquire British nationality.

Changes in ideas about the German national identity have also resulted directly in changes to CNP. Discussions in Germany had long revolved around citizenship as the end-point of integration, a reward for taking on German values (Green, 1999: 188; 2004: 116-117). However, this idea had begun to break down by the late 1990s, and there now exists a clear divide between two interpretations of identity as concerns CNP:

While the more conservative parties have maintained that integration cannot be equivalent to a toleration of split loyalties and multiculturalism, the Social Democratic Party and the Greens have very much promoted the idea of a ‘republican concept’ of nationality, requiring the ‘members of the club’ to comply with the laws and to respect the basic principles of the Constitution as the only prerequisites for acquisition of nationality (Hailbronner, 2010: 25-26).

German unification in 1990 has forced this debate. The difficulties of reunification, especially the integration of *Ossies* (those from the German Democratic Republic (GDR)) into the capitalist democracy of the Federal Republic of Germany (FRG), raised serious questions about the nature of German-ness and that ability of different groups to integrate (Senders, 2000; Wolff, 2000; Zank, 1998). As (West) German policy until reunification had been to allow anyone of proven German descent access to (West) German citizenship, this system was based upon the assumption that anyone of German descent understood ‘what it means to be German’ and would not have difficulty integrating himself into German society. The arrival of hundreds of thousands of ethnic Germans after the collapse of the USSR brought a reality check to these assumptions, as it became clear that the ethnic Germans sometimes faced greater hurdles – and even linguistic barriers – to integration than other groups who had long been the target of arguments about their ‘inability to

integrate’, like the Turks. The arrival of so many ethnic Germans led to debates about how many generations German-ness can only be handed down in exile (Dancygier, 2010: 221-260; Senders, 2000; Zank, 1998: 224-242). This has led to a re-evaluation of German identity in the past two decades.

Once an institution that focused on descent as the main criterion for nationality, the changing national identity is reflected most starkly by the dividing line of the Nationality Act. Hailbronner writes, ‘Since 1 January 2000, naturalisation and acquisition of German nationality is considered as being in the public interest of Germany rather than as an unavoidable fact’ (Hailbronner, 2010: 17). With this go the changes in discourse about whether Germany is, in fact, a country of immigration. This discursive script began to break down in the 1990s, with the early 2000s acting as a transition period during which acceptance of Germany’s status as a country of immigration was still limited. During the ZuG debates, CDU/CSU politicians began to recognise that Germany had a large, permanent foreign population, but many were still reluctant to apply the label of ‘country of immigration’ to their nation: ‘We are not a classical country of immigration and can never become one because of our historical, geographical, and societal actualities’ (Deutscher Bundestag, 2003b: 3647C).<sup>57</sup> By the time Angela Merkel came into office in 2005, however, CDU/CSU politicians began openly to admit that Germany *is* a country of immigration (Krupa, 2000; Nick-Magin, 2008c, 2009b; Süßmuth, 2001; Woelk, 2010). In the meantime, the debate about whether Germany is a country of immigration has become one of semantics: some politicians dispute the definition, declaring that a ‘country of immigration’ is one that actively recruits immigrants and that Germany has never done this (Dernbach, 2006; Nick-Magin, 2009a; Williams, forthcoming). This shift in the discussion indicates that all sides have more or less reached a consensus that people ‘with a migration

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<sup>57</sup> ‘Wir sind kein klassisches Einwanderungsland und können es aufgrund unserer historischen, geographischen und gesellschaftlichen Gegebenheiten auch nicht werden’.



background'<sup>58</sup> are here to stay; as a consequence, the debate now revolves around how to integrate these people better.

As chancellor, Merkel made a national discussion of integration a priority, inviting many different migrant interest groups, including the major Turkish societies, to a series of Integration Summits, where a National Integration Plan (Bundesregierung Deutschland, 2007) was created. Although the summits have been subject to criticism for producing little in the way of concrete changes, they still mark a turning point in German CNP. As Reimann points out, 'the very idea behind the events was revolutionary. It was the first time that the federal government officially sat down with migrants and Muslims' (Reimann, 2009). Furthermore, the prominent CDU politician Wolfgang Schäuble publicly proclaimed in 2008 that 'Islam has been part of Germany for quite some time'<sup>59</sup> (Frankfurter Allgemeine Sonntagszeitung, 2008), quite a shift from his 2006 proclamation that Germany 'has never been a country of immigration and still isn't today' (Dernbach, 2006).<sup>60</sup>

Both foreigners and Germans seem to have a tacit understanding that the acquisition of German citizenship is not simply a membership to the state and all its civic responsibilities but also indicative of a cultural understanding. This cultural membership seems to be a form of expression of loyalty to the German state, a central theme in many of the policy discourses in the 1990s in Germany (Green, 2004: 104). This mutual understanding then appears to be reflected in the uptake of German nationality amongst eligible foreign citizens, which, though it has increased dramatically compared to the past, is still far behind other countries (Sartori, 2011: 3).

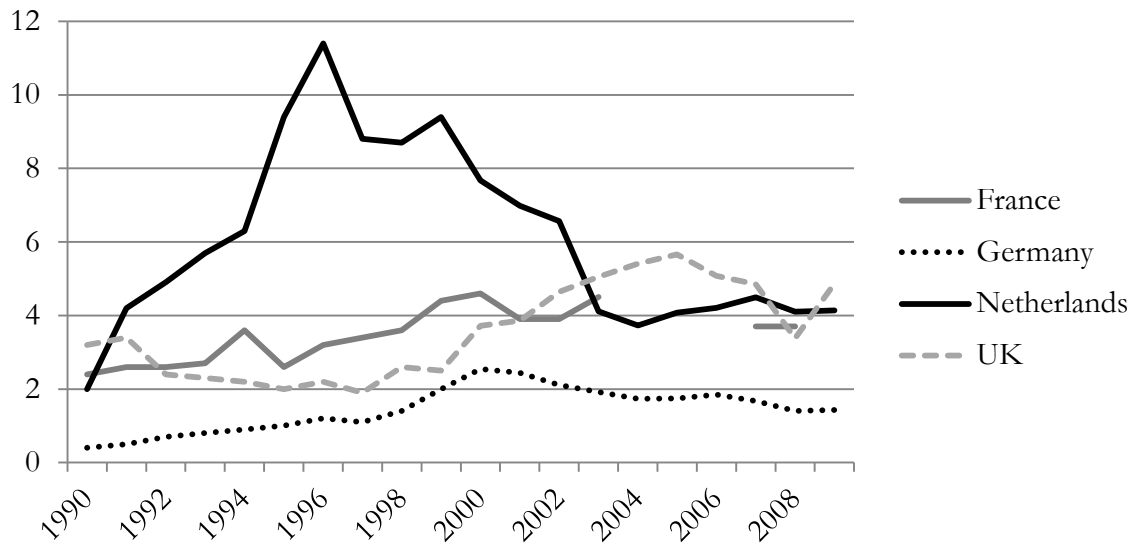
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<sup>58</sup> 'Personen mit Migrationshintergrund'.

<sup>59</sup> 'Der Islam ist schon längst Teil unseres Landes'.

<sup>60</sup> 'Wir waren nie ein Einwanderungsland und wir sind's bis heute nicht'.

**Figure 6.1 Comparison of naturalisation rates<sup>61</sup>**



Source: OECD (2011), own calculations

In the process of renegotiation of national identity and integration, actors have identified two general paradigms: ‘others’ must either assimilate into the culture, becoming virtually indistinguishable — a model that is generally seen as unacceptable in the wake of colonialism — or they must subscribe to a set of common values but may keep their other cultural practices. The latter has been the route chosen by both the UK and Germany, but this raises its own problems: there are few differences between ‘British values’ and ‘German values’, as they are the common values of liberal democracy (Joppke, 2010: 143): ‘In a nutshell, citizenship identities, to the degree that they fall within the ambit of state policy, have become universalistic’ (Joppke, 2010: 33). This becomes readily apparent in looking at the value statements of some of the key actors. CDU Interior Minister Wolfgang Schäuble identified the key criteria for successful integration: ‘Our values and principles have to be accepted and respected, like the equality of women’;<sup>62</sup> he also listed freedom of opinion and the rejection of violence (Averesch, 2005). Integration Minister Maria Böhmer insisted,

<sup>61</sup> Naturalisation rates are calculated by dividing the number of acquisitions of nationality in a given year by the total foreign population in the country; the result is presented as a percentage figure.

<sup>62</sup> ‘Unser Werte und Prinzipien müssen akzeptiert und eingehalten werden, etwa die Gleichstellung der Frauen’.

‘They must speak our language, know our history, recognise our values and our laws. And they must play by the rules of our society, as stated in the Basic Law’ (Möller, 2005).<sup>63</sup> Such statements are remarkably similar to the British context: ‘Respect for cultural differences has limits, marked out by fundamental human rights and duties. Some of these boundaries are very clear. [Some] practices are clearly incompatible with our basic values’ (Blunkett, 2002: 76). Prime Minister Blair spoke:

But when it comes to our essential values -- belief in democracy, the rule of law, tolerance, equal treatment for all, respect for this country and its shared heritage -- then that is where we come together, it is what we hold in common; it is what gives us the right to call ourselves British (Blair, 2006).

This, then, makes it more difficult to identify distinct characteristics of being German or British that are not connected to ethnocultural hegemony. Both, like many other nations, have focused on support for democracy and the rule of law, equality, history, and language. Both countries have also largely abandoned outright support for multiculturalism, now dubbing it a failure and purporting that integration policies based on multiculturalism simply promoted parallel societies (Cameron, 2011; Cantle, 2001; Commission on Integration and Cohesion, 2007; Grillo, 2010; Schönwälder, 2010; Spiegel Online, 2010; Vertovec, 2010).

The point to learn from all this is simply that identity and its effects on citizenship and understandings of who should be granted access to citizenship are fluid. Though there is an undeniable historical component to national identity, there is equally a portion that derives from shared experiences and the experience of the political system. The new consensus is that integration requires action on the part of both the immigrants and the host country; that more effort must be expected of the immigrants in the integration

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<sup>63</sup> ‘Sie müssen unsere Sprache sprechen, unsere Geschichte kennen, unsere Wertvorstellungen und unser Recht anerkennen. Und sie müssen sich auf die Spielregeln unserer Gesellschaft einlassen, wie sie das Grundgesetz vorgibt’.

process; and that a renewed emphasis must be placed on the responsibilities of citizenship after a period of over-emphasis of individual rights. This signals a change of ideas in both countries that has led to some degree of convergence between the two positions previously held.

### **6.3 Summary**

This chapter has tested the final two hypotheses of the theoretical framework, namely that institutional change is more likely if:

5. Scripts are changing.
6. New ideas emerge that problematise conditions.

There is a great deal of overlap between these two hypotheses, as changing ideas and shifts in societally acceptable language proceed simultaneously to a certain extent. The first half of the chapter explored the scripts identifiable in the debates during this period. Both countries give clear indications of changing societal norms. In the UK, this was reflected in the breakdown of previous scripts, with more mainstream politicians expressing concerns about ‘thresholds’, lack of integration, and devaluation of citizenship using phrases that were considered unacceptable in 2002. Much of the rhetoric in use at the end of the decade has remarkable similarities to discussions from the 1960s. The British scripts shifted dramatically towards a more restrictive CNP.

Germany’s experience has been nearly the opposite, with even conservative CSU politicians finding themselves under increasing pressure to face the now-accepted reality that immigration to Germany is permanent and that Germany must do more to make its new populations welcome and to help them to integrate. The process of change occurred differently in the SPD than the CDU/CSU, with the latter lagging several years behind, but both have moved noticeably towards a more liberal CNP. Right-leaning politicians have been increasingly punished for refusing to change their views. Germany’s move to the left, combined with the UK’s move to the right, is reflected in the now-identical Migrant

Integration Policy Index (MIPEX) rankings for the UK and Germany, who had formerly been far apart (Huddleston, Niessen, Ni Chaoimh, & White, 2011: 86-91, 200-205; Niessen, Huddleston, Citron, Geddes, & Jacobs, 2007: 74-79, 182-187). Germany's move should not, however, be seen as an inexorable leftward shift, as some of the policy changes have been less than liberal, leaving a much more mixed picture of institutional change during this period than that of the UK.

The second half of this chapter looked at the emergence of new ideas. This period has seen marked changes in actors' perceptions and expectations of the process of integration. This change began in both countries before the 2001 terrorist attacks in the USA, but the attacks magnified the debates already materialising. The British understanding of the relationship between CNP and integration has relocated the point of acquisition of nationality to a later stage in the process of integration, closer to the classical German view that nationality should be granted as a reward for successful integration. Germany, on the other hand, while somewhat uncompromising on this view, has nevertheless conceded that integration is a two-way affair and that foreigners must receive greater encouragement both to integrate and to acquire German nationality. This again reflects the mixed picture of German CNP changes and the restrictive direction of British changes during this decade.

Both countries have pursued more symbolic politics (Green, 2004: 104; Hagedorn, 2001: 173-218; Schönwälder, 2010: 153), with concerns about loyalty, integration, values, and the significance of citizenship translating into naturalisation exams, citizenship ceremonies, more formal language requirements, and greater hurdles for spouses, who had previously been exempt from many of the stipulations on the grounds that marriage to a British/German national would support their integration without necessitating more formal means. Both countries have also shown a preoccupation with national identity, though neither has managed successfully to define a national identity separate from either

an assimilationist definition or a generic identity based on adherence to liberal democracy. Both are reluctant to promote (openly) an ethnocultural construct — reflecting acceptance of common norms regarding integration — yet they wish foreigners to identify and integrate into the national self-construct. This can, of course, prove confusing even for foreigners with an active desire to integrate. However, both countries show an interest in engaging with integration on a formal level, tying it to the regulation of CNP.

## 7 Conclusions

We now return to the theoretical framework, bringing together all of the empirical evidence to test the hypotheses. This thesis tested six hypotheses, namely that change is more likely to transpire when one or more of the following occurs:

1. A decrease in the relative cost of institutional change.
2. The presence of structural characteristics that force change.
3. A power shift in the dominant actor coalition.
4. Competition between authorities for rule-making competency.
5. An absence of behavioural or discursive scripts.
6. New ideas emerge that problematise conditions.

Furthermore, the theoretical framework also proposed a division of endogenous and exogenous sources of change, predicting those that were most likely to cause incremental change versus great upheaval. These predictions took the following form:

**Table 7.1: Sources of change**

	Micro	Either	Macro
<b>Endogenous</b>	<ul style="list-style-type: none"> <li>✓ Changes in techniques for monitoring policy implementation</li> <li>✓ Feedback on policies already implemented</li> <li>✓ Constant adjustment for structural flaws/inherent contradictions</li> <li>✓ Shifting norms/behavioural expectations<sup>64</sup></li> <li>✓ Introduction of new ideas or feasible solutions</li> </ul>	<ul style="list-style-type: none"> <li>● Policy learning</li> <li>✗ Agenda-setting</li> </ul>	<ul style="list-style-type: none"> <li>✗ Sustained, heightened attention at governmental or policy-making venue level</li> </ul>
<b>Exogenous</b>	<ul style="list-style-type: none"> <li>✓ Media events, public opinion changes</li> </ul>	<ul style="list-style-type: none"> <li>✓ Treaties</li> <li>✗ Technology</li> <li>✓ Socioeconomic/demographic shifts</li> </ul>	<ul style="list-style-type: none"> <li>✓ Regime change or power shifts</li> <li>✓ War</li> <li>✓ Economic recession or depression</li> </ul>

Sources: Birkland (2005), Clemens & Cook (1999), Cortell & Peterson (1999), Hargreaves (2001), Kingdon (2003), Lindner (2003), Thelen (1999)

<sup>64</sup> Shifting norms/behavioural expectations will generally create micro-windows not because their impact is small but because ideas tend to change slowly over time.

As this table indicates, most exogenous factors are more likely to cause upheaval or off-path changes, while most endogenous factors are likely to cause incremental or on-path changes. This thesis did not directly examine all of the possible sources of change, as not all of them occurred in these cases during the period in question. Those tested are indicated by a ✓, while those not explored are marked with a ✕. The empirical evidence upheld both the predictions contained in the hypotheses and the predictions regarding the degree of change to be expected from different sources.

Chapter 3 explored the exogenous sources of change. It concluded that the role of the economic situation is not well enough documented to form any reliable conclusions, but treaties and socioeconomic/demographic shifts have both impacted the development of CNP. As noted, the effects of treaties and international norms are noticeable, but they should not be overestimated: the UK, at least, has generally observed treaty obligations in a utilitarian fashion, citing them when useful but otherwise giving them little thought, which has resulted in the past decade in the violation of several treaties. Germany, on the other hand, perhaps because of its twentieth-century history, has shown itself more sensitive to treaty demands and made a more conscious effort to conform to them during the past decade. However, even this should be concluded cautiously, as Germany comfortably ignored these same treaties for decades prior.

Socioeconomic/demographic shifts provide a better explanation for the behaviour of both the UK and Germany. The UK has expressed many worries about overpopulation in recent years, which is reflected in restrictions made to CNP intended to discourage people in the UK for employment from staying long-term or naturalising. This is most obvious in the slow whittling-away of work-based visas that allow the immigrant to qualify for naturalisation. Germany's worries have focused more on the burgeoning elderly population



and declining overall population as well as on long-term issues that mean that second- and third-generation immigrants are not yet fully integrated into the economy. This has contributed to Germany's recent interest in increasing naturalisation rates, reflected in the (partial) liberalisation of its CNP. The influences of both of these exogenous sources have been arguably more incremental than off-path, and to a great extent, they simply represent intervening variables that are more reflective of other underlying pressures.

Chapter 3 explored one further exogenous source of change that could cause upheaval: war. In this case, 'war' was applied more generally to include the terrorist events of 2001, 2004, and 2005, which have certainly impacted CNP in both countries. The effects have been remarkable in both cases, though focused largely on deprivation of citizenship, with less effect on acquisition of citizenship. In the UK, the new clauses about deprivation of citizenship instituted in the wake of the July 2005 London bombings could be said to represent an off-path change: for the first time, British-born British citizens could be deprived of their nationality, and their legal recourse was severely limited. Furthermore, the clauses opened the possibility of acceptance of this causing statelessness if the charges were deemed heinous enough by the Secretary of State. Coming in the wake of the bombings, these clauses have passed relatively unremarked by the British populace, yet they have they have huge potential ramifications. Germany's response to the terrorist attacks and its connection to them, especially to September 11<sup>th</sup>, has been to focus more on the integration aspects of CNP as well as altering clauses concerning deprivation of citizenship. These changes do not represent the level of upheaval of the British changes, but this has perhaps much to do with the constraints of the different governmental systems: the British system makes it much easier to achieve off-path policy outputs because of having fewer

checks and balances; legislation consequently moves far more quickly through the British system than the German.

Chapter 4 explored the first two hypotheses about endogenous change, examining the effects of changes in costs of institutional maintenance, structural flaws or internal contradictions, and the accumulation of unsuccessful marginal changes. This chapter indicated that changes in costs have had a marked effect on both countries' CNP. The response in the UK has been to externalise the costs, which may have long-term ramifications but, in the short-term, has eased endogenous pressure for change from this source. Germany has not externalised the costs in an effort to avoid the problems that the UK will likely face in the long term, but this makes German CNP more vulnerable to cost pressures, as the integration measures contained within its CNP can be very costly to the state.

Both countries' CNP contain many structural flaws/internal contradictions and accumulations of marginal changes, which significant sections of the legislation during this period attempted to address. Changes have been achieved by successions of layering, which means that each bill becomes more complicated in attempting to fit within the confines of previous changes. Furthermore, many of these changes have been unsuccessful in achieving the stated aims, leading to a desire for further changes. This has created a growing push for legislative consolidation in the UK, which is on the agenda but has been repeatedly de-prioritised because it is not a bill that draws wide public attention and support. One of Germany's greatest obstacles is its (formal) intolerance of multiple nationality, which consistently prevents its CNP from achieving the desired policy outcomes. The other structural flaw arises from the large foreign population living within its borders, which leads to a crisis of democratic legitimacy. To a certain extent, this is one

and the same issue, and large numbers of Germany's third-country nationals<sup>65</sup> would be more willing to naturalise if they did not have to give up their current nationality. The ongoing problems created by these flaws and contradictions mean there is a steady endogenous push for change. Thus far, the changes have been largely incremental, but the longer this pressure is ignored, the more likely it becomes that the change will be achieved through great upheaval in an attempt to correct large flaws.

Chapter 5 explored sources of change related to the distribution of power. This chapter examined the effects of the governmental systems on CNP, changes in the dominant actor coalitions, and incoherencies about responsibility for institutions. The effects of federal versus centralised government on CNP appear to be very important for the process of change in both countries. Germany's federal system creates a bias towards institutional stability, while the UK system makes off-path changes more possible. However, the importance of the governmental system should not be exaggerated, as actors in both cases have learned how to circumvent or manipulate the system, as is especially clear with the passage of the ZuG in Germany.

Changes in actors have been important in both cases. In the UK, David Blunkett's entrance as Home Secretary had an important impact on the shape of CNP, as he pursued a concrete agenda for change even though there was little endogenous pressure when he entered office. In Germany, the greatest difference arising from a change in actors occurred before the period of question when the German government passed from a Christian Union chancellor to a Social Democrat. However, Merkel's chancellorship has also been important for shifting the Christian Union's historic position on CNP. The British system of ministerial appointments has also led to a greater succession of actors, who have little

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<sup>65</sup> Non-EU/EEA citizens.

time to develop knowledge of the ministry, while Germany has had very few ministerial changes during these periods and expects greater knowledge of the policy area from its ministers. Finally, institutional interdependence plays an important role in both countries. CNP by its very nature is dependent upon developments in other policy areas, especially immigration and asylum policy. In the UK, it is frequently used as a tool of immigration policy rather than being seen as a distinct institution, while Germany tends to treat CNP as part of its general integration policy.

These pressures offer a mixed picture of incremental change. As the table predicted, power shifts can cause macro changes; it depends on the nature of the change in actors itself. In the case of the UK, where frequent ministerial changes prevent actors from developing a strong agenda for the institution, changes are more likely to be incremental and reactive; however, if an actor with a pre-set agenda enters, macro, pro-active changes are more likely. Even in cases where seemingly macro changes occur, they do not appear out of thin air: endogenous changes first prepare the way incrementally, and if the endogenous pressures are ignored, they can lead to sudden upheaval, a 'market correction' of sorts. German CNP currently has far more policy feedback monitoring mechanisms in place, making macro changes less likely, while the apparent unresponsiveness of British CNP during this period significantly increases the likelihood of upheaval in the longer term.

Finally, Chapter 6 explored cultural-sociological sources of change, examining the effects of scripts and changes in ideas. With these final sources, it is less clear whether institutional change or scripts and ideas are *a priori*: it is sometimes difficult to determine what changes have occurred because of marginal actors 'testing' the limits of behavioural scripts and what changes have arisen first and are then reflected in the behaviour of the

actors afterwards. To a certain extent, it is a cyclical process, with some of each occurring. Either way, there is clear evidence of institutional change manifested in shifting scripts and changes in ideas in both countries over the decade in question. In the UK, the shift has been unequivocally restrictive, with scripts from the 1960s seeing a revival as well as the acceptance of scripts at the end of the period that were still marginalised or rejected at the beginning. In Germany, the shift has been liberal on balance, but this is tempered by an anti-liberal backlash and ongoing tensions within the conservative-leaning parties. On the whole, Germany's Christian Union parties have moved towards the left, but the scripts do not appear to have reached a new equilibrium yet and are therefore still open to negotiation.

Changes in ideas also affected CNP change over this period. The perceived available policy options for integration and dual nationality during this period changed significantly, which accompanied changes in national self-conceptions. This is very apparent in the German case, where multiple nationality has shifted from being classified as a problem to being seen more as a condition about which little can be done. Multiple nationality is likely to continue to cause problems as the first generation of children are forced to decide between German and other citizenship before their twenty-third birthdays. Given that bilateral treaties have largely solved the earlier practical problems arising from multiple nationality, the conflict now is an ideological one predicated upon Germany's national identity. This arises from different understandings of the nature of citizenship, identity, and loyalty: one side asserts that people have complex layers of identities that do not pose an inherent risk to the functioning of a nation-state, while the other side holds that one cannot serve multiple masters and that identity is essentially a zero-sum game.

In both countries, changes in ideas about integration have led to changes in the requirements for accessing citizenship. In this context, the UK has floated the idea of ‘active’ or ‘probationary’ citizenship, effectively penalising those who do not fulfil the requirement by lengthening the required residency period by two years before becoming eligible for naturalisation. Germany has taken a different approach, offering reductions of one to two years for those who go to extra efforts to integrate by passing an integration course or showing exceptional mastery of the German language. In both countries, integration measures have focused increasingly on the command of the majority language. Although the requirements for the UK technically include English, Welsh, and Scottish Gaelic, most discussions revolve around the use of the English language. Integration tests, citizenship ceremonies, and new oaths of loyalty have been issued in both countries during this time, reflecting a general West European trend towards the uptake of these tools.

In terms of testing the hypotheses, it is more difficult to pinpoint the direction of causality with the cultural-sociological factors. It would be a reasonable hypothesis to conclude that marginal actors ‘test’ the firmness of behavioural and discursive scripts and, when weaknesses are identified, can cause change, as in the case of Enoch Powell in the 1960s. This does not seem to be present between 2000 and 2010, however, as the BNP, neo-Nazis and other rightwing movements have been largely ignored by primary actors. Thus, the scripts identified in this thesis seem more to be reflective of institutional changes already taking place, serving as evidence for so-called hidden structures or the effects of other underlying factors. Therefore, scripts have less explanatory power in these particular cases than the other hypotheses, though they help to provide evidence of institutional change. Changes in ideas, however, have a fairly clear causal relationship: when new ideas

are proposed to achieve the desired policy aims, uptake of these ideas causes changes in the institutional composition.

We now return to the theoretical framework for a final evaluation. In the case of German and British CNP between 2000 and 2010, the hypotheses that provide the strongest explanations of institutional change are: structural flaws and internal contradictions; the accumulation of marginal changes; changes in the balance of power (in the British case); and changes in ideas. This shows that each of the strands of New Institutionalism makes an important contribution to an explanation of institutional change. The empirical evidence should also show that incremental change is very important for the transformation of CNP. Tables 2.5 and 2.6 showed how the difference between the starting and ending points constituted a drastic change that could be mistaken as an off-path or third-order change if one did not look more closely at the incremental steps taken in between (Tables 2.1 and 2.2). Furthermore, even when a change appears to be a sudden change, such as in response to the terrorist events of the past decade, we should not forget that these events themselves had been developing for quite some time in the form of economic inequalities and tensions of parallel societies in both countries. All of this highlights the importance of good feedback monitoring systems for institutional maintenance. Germany has begun to develop a thorough system of central monitoring tools for policy outcomes, but the UK seems to lag behind on this front, increasing the possibility of a large institutional correction at some point in the future because of the accumulation of too many unsuccessful changes.

This research and some of the interviews conducted raise several directions for further research. First, the New Institutionalist theoretical framework merits testing in other policy areas and over a longer period of time. Another direction is to explore the

policy learning networks in far greater detail. The interviews indicated that Germany's actors actively look to other countries for policy solutions for CNP (Williams, 2009a, 2010a), while the UK tends to be far more inwardly-focused (Williams, 2010b). This in itself is a very interesting finding that merits further research. Another theme that emerges is that of the growing recognition of non-convergence of CNP. In the middle of the decade, predictions were widespread that immigration, asylum, and citizenship policies appeared to be converging. More recently, however, it has become clear that countries' institutions have maintained their unique configurations, despite extensive policy sharing. This leads to questions of whether the uniqueness arises from facing different endogenous and exogenous pressures or from continuing ideational differences.

The process of CNP change in the UK raises a fascinating method of institutional change. It follows a clear pattern of testing an idea, withdrawing it after a negative reaction, then subsequently re-introducing the idea successfully when the initial aversion has worn off. This method becomes apparent through an overview of government publications, documentation of public and parliamentary response, and parliamentary debates. It was used for the introduction of spousal language requirements and for the KoL test.

Finally, both Germany and the UK have also officially renounced multiculturalism in the past year, though pointedly without first defining multiculturalism. Without defining multiculturalism, it is difficult to isolate what these politicians believe has failed. If multiculturalism is defined as allowing the existence of parallel societies without requiring integration into the democratic institutions and the associated expectations of citizenship, this has certainly failed. If, on the other hand, it means increasing the tolerance of both the historically native populations and the new arrivals and the emergence of adaptations that create a new, synthesised culture, then it is difficult to argue that multiculturalism has failed:



both British and German cuisine has expanded remarkably over the past half-century, and few would wish to return to a narrower selection of foods. Immigrants have also affected music, art, holiday destinations, and awareness of other religions. In spite of its rejection of multiculturalism, Germany has simultaneously acknowledged that integration is a two-way street: immigrants will find it very difficult to integrate into German society if the Germans are unwilling to allow them to do so. This recognition indicates that Germany expects that the 'native' population will have to change some of its habits in order to foster an environment where integration is even possible. This again appears to be more acceptance than rejection of multiculturalism.

With this in mind, one can interpret both countries' official denunciation of multiculturalism in several ways: it could constitute a signal of institutional change according to the hypotheses of cultural-sociological reproductive mechanisms; it could be interpreted as part of a domestic party-political power struggle, judged by power distributional reproductive mechanisms; it could simply be a verbalisation of what was already the case. It is certainly part of an emerging discursive script, but without further research, it is difficult to say which part it plays in the process of change: that is, whether it is an independent or a dependent variable in the equation. The focus on multiculturalism, whatever its role, is indicative of the emergence of new ideas about citizenship and integration that will have practical implications for the rules of access of citizenship.

The discursive scripts in both countries are also fascinating for their general level of disconnectedness from the 'hard facts', reinforcing the observation that actors do not always behave 'rationally', and rhetoric, whatever the 'truth' of the situation might be, has a strong effect on behaviour. Germany has been talking about and – at the elite level – actively encouraging immigration, but no one is coming, and the uptake of citizenship, despite the liberalisations of the past decade, has been disappointing. This indicates that

potential candidates are sensitive to the national mood and still feel excluded. On the other hand, the UK has made significantly restrictive policy changes and pursues anti-immigrant rhetoric at the elite level, but the uptake of citizenship is still higher than in Germany. This appears to be connected to discursive constructions of national identity and perceptions of inclusiveness, whatever the reality.

The situation in both countries at the time of writing leads to several predictions for the coming years: it is likely that renegotiations of national identity will be at the forefront of policies related to citizenship and naturalisation in the coming decade; if the UK continues to pursue the path of politicisation that Germany followed in the 1990s, it is likely to result in a rise of anti-immigrant or anti-minority extremism; the exclusivity of rhetoric and increased restrictiveness and expense of access to citizenship in the UK will lead to decreased naturalisation rates and integration problems that could take two decades to emerge. It is more difficult to predict the outcomes of German policies in the coming years, just as the changes over the past decade present a mixed picture. Elites have already begun to note that the effects of the *Optionsmodell* are likely to have a significant impact in the coming years, as the first children reach the age of decision. Interviewees involved in this policy area felt that this question will be decided in the German courts and that the *Optionsmodell* will eventually be overturned, forcing a renewed debate about toleration of dual nationality (Williams, 2009a, 2009c, 2009d, 2010a). The outcome of this debate is likely to depend upon the national mood and the constellation of power at the national and state levels. It is also possible that a new generation of leaders will appear at the elite level, seeking to solve the problem by preparing a solution through informal means, as the Pizza Connection did in the 1990s. Whatever the outcomes, citizenship and naturalisation policy is unlikely to disappear from the national arena of either country for some years to come.

## 7.1 Normative evaluation

The empirical research in this thesis raises a multitude of normative problems. With regards to citizenship and naturalization policy, the importance of the national projected self-image becomes apparent: the UK's narrative of tolerance, welcoming and multiculturalism continues to draw larger numbers of highly skilled migrants and is connected to higher levels of uptake of British citizenship, despite the high cost of visas and naturalisation and an increasingly hostile public. Germany, on the other hand, continues to be more self-critical and intolerant in its national narrative, despite lower visa and naturalisation fees and a more welcoming public. The differences in attraction to the two countries are, of course, also affected by the UK's acceptance of multiple nationality and its position as an Anglophone country. However, these two characteristics cannot adequately address the differences in uptake of nationality, as over half of naturalisation applicants are in practice allowed to keep their previous nationality; and Germany advertises an increasing number of English-language jobs accompanied by subsidised language classes and other means of assisting integration.

The on-going issue of rejection of multiple nationality in Germany is one that will have to be addressed in the coming years. For the time being, the parties are still at an impasse, with the right-leaning parties still firmly rejecting multiple nationality and the left-leaning parties strongly in support. With a conservative coalition in place until autumn 2013 and the distraction of the euro crisis, it is unlikely that Germany will pursue any policy changes in this area during the current parliament. However, with support for the Free Democrats at levels so low that they currently look unlikely to break the 5 per cent threshold necessary to enter parliament and support for left-wing parties on the rise (Spiegel Online, 2012), the 2013 election could bring about a change in dominant political actors that would enable the breakdown of the current equilibrium in the same way as the

1998 election of the Social Democrat/Green government paved the way for changes to the Nationality Act. Furthermore, with five regional elections due to take place by the end of 2013, the composition of the Bundesrat could also be set for a change. Given the Bundesrat's key role in blocking changes to the Immigration Act, this could have important consequences.

The continued rejection of multiple nationality alone cannot explain Germany's low naturalisation rates, however, as other countries that also reject multiple nationality and – in some cases have much higher barriers to naturalisation, as in the Netherlands – still achieve higher rates of naturalisation (see Figure 6.1). Furthermore, as discussed earlier, in practice, more than half of naturalisation applicants are now permitted to keep their other nationality, a trend that has increased over the past decade (see Figure 4.2). This indicates that the importance of discursive scripts should not be underestimated, as many residents who qualify for naturalisation seem to be more influenced by the political discourse than the substantive hurdles to naturalisation, like integration course fees, exam pass rates and naturalisation fees. This also underscores a gap in the literature that is only beginning to be addressed: why do some countries have higher rates of naturalisation, even if the barriers to naturalisation are higher? What are the real reasons why immigrants decide to acquire nationality in their new country? This is an area that is only beginning to receive serious academic treatment.

Aside from the issue of multiple nationality, Germany's future in this policy area – and its wider field of integration – looks reasonably bright. The Christian Union-led federal government in place since 2005 has consistently recognised the need to continue subsidising language and integration classes, even in the face of severe budgetary pressures. Since depoliticising the issue, there has continued to be public debate, but despite occasional incendiaries like the publication of Thilo Sarrazin's (2010) book, public opinion

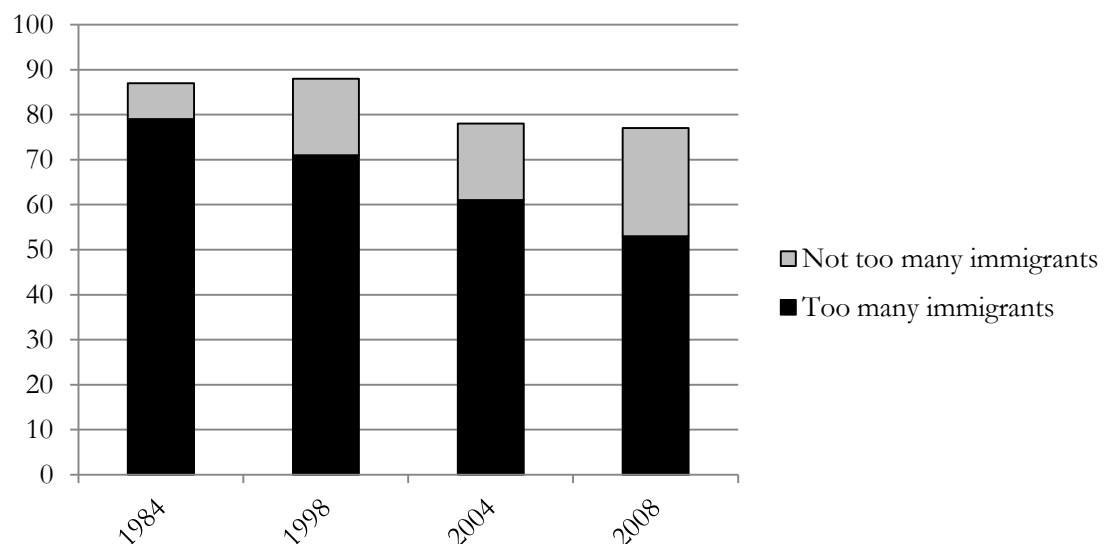
has grown steadily more welcoming towards immigration and more positive in the appraisal of immigrants' contributions to German culture and society (German Marshall Fund, 2011), especially in comparison to the UK (Table 7.1). The perception of immigrants does vary drastically according to the question asked (compare Figures 7.1 and 7.2), which can make the German public opinion look far more negative in response to some formulations (Figure 7.1). Despite these discrepancies, however, the general trend is towards more positive views of immigration and immigrants. Immigrant groups have also generally responded positively to initiatives like the integration summits, which have allowed them to partake in the policy process.

**Table 7.2 Perceived effect of immigration on national culture**

	Year	Germany	UK	France	USA
Immigration enriches culture	2009	60	44	68	65
	2010	60	45	58	60
	2011	66	42	62	55
Immigration negatively affects culture	2009	35	47	30	26
	2010	35	48	33	32
	2011	29	50	32	35

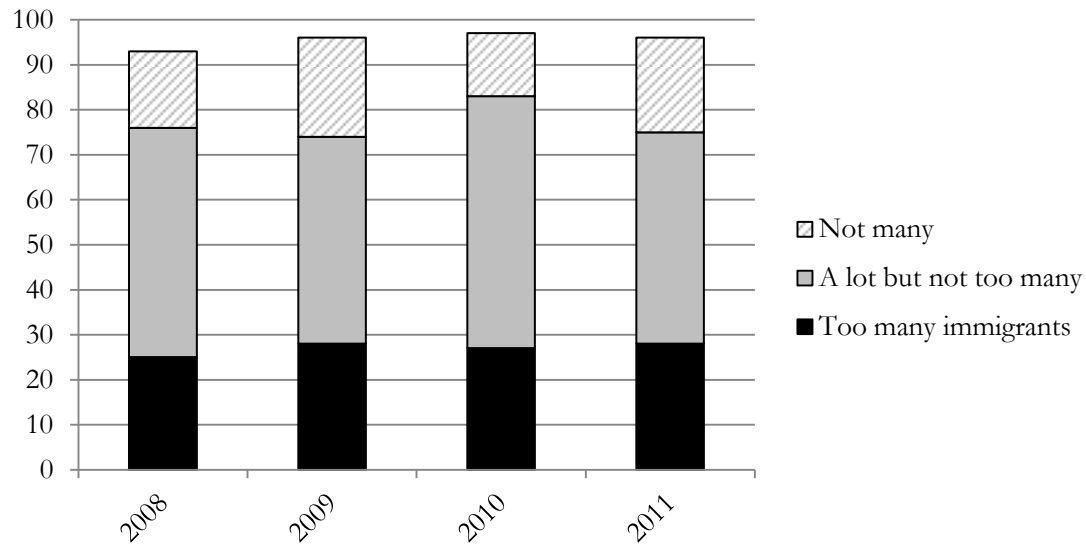
Source: German Marshall Fund (2011)

**Figure 7.1 Persons who think there are too many immigrants living in Germany**



Source: Abali (2009); Allensbach archives

**Figure 7.2 Perception of the number of immigrants in Germany, 2008-2011**



Source: German Marshall Fund (2011)

The UK has no pressing issue like multiple nationality likely to create strong pressures for institutional change in the coming years. However, the new Conservative/Liberal Democrat coalition's current decisions regarding family reunification combined with the unequal effects of government cuts on minority populations and continued rises in visa and naturalisation fees pose serious obstacles for successful long-term integration and uptake of British citizenship. In a time of austerity, high unemployment and declining real wages, the process of integration is far more difficult for immigrants, and the high price of citizenship makes it an unnecessary luxury. The cost of integration has been shifted almost entirely onto the shoulders of the immigrants, unlike in the German case, where the central and regional governments invest consistently and heavily in this area. The UK currently has no formal system of redistribution of the fees gathered to the regions most affected by immigration, which places heavy burdens on the healthcare and educational systems in these areas. This is likely to cause continued problems for integration and segregation of communities, contrary to stated aims to increase community cohesion.

Furthermore, the continued politicisation of this policy area make racism-fuelled attacks more likely, as Germany learned in the 1990s. The effects of this are already becoming apparent in increasingly hostile public opinion (German Marshall Fund, 2011; YouGov/Sunday Times, 2012; YouGov/The Sun, 2010) and rising incidents of racism-fuelled crimes (Athwal, Bourne, & Wood, 2010; Githens-Mazer & Lambert, 2011; Home Office, 2011a). Having placed immigration and integration at the centre of the policy focus, however, the Conservative/Liberal Democrat government would likely find it very difficult to depoliticise again.

The policy changes made in the UK since 2005 also pose problems for its status as a signatory of several human rights treaties. As cases begin to make their way to the European courts, it is likely that these discrepancies in British law will have to be addressed. In addition to this, the Conservative/Liberal Democrat coalition has thus far appeared uninterested in reviving the consolidation bill, which means that, for the time being, the legal framework will remain unwieldy and internally inconsistent, despite lobbying from practitioners and legal experts for reform. Because of this, despite the issue of multiple nationality, the future of integration looks more optimistic in Germany than in the UK.

## **7.2 Directions for further research**

As with any research project, the findings highlight several avenues for further research. There are four clear paths for which this thesis could provide a baseline of research. The first two of these relate to further testing of the theoretical framework, expanding it to further cases, policy areas or time ranges. The third relates to the importance of the federal governmental structure in Germany for this policy area; and the fourth envisions the further exploration of some of the more surprising findings relating to the spread of new ideas and scripts.

One direction for further research would be the application of the theoretical framework to a wider time period or a different policy area. It would be a logical next step to expand the study to include citizenship and naturalisation policy in the 1990s in Germany and the United Kingdom. This comparison could be very fruitful, as Germany faced far greater pressures from immigration and asylum from the end of the 1980s, while the UK was largely immune to these pressures until the late 1990s and, even then, faced numbers on a much smaller scale than Germany. Thus, Germany's exogenous pressures were arguably greater than the UK's during this period. The theoretical framework's proposed sources of change (Table 2.4, Table 7.1) would predict that change was more likely to happen in Germany. Furthermore, the 2000s were generally a period of greater economic growth than the 1990s, and the 1990s saw great political upheaval, especially for Germany, with the end of the Cold War and the unification of the Federal Republic of Germany and the German Democratic Republic.

A second route for further research would be to widen the policy areas examined to include other migration-related policies like labour migration, family reunification, asylum and integration policies. In some ways, the concentration of this thesis on citizenship and naturalisation policy created an artificial barrier between migratory flows and policies regulating access to citizenship. Though this was necessary for the limitations of a doctoral thesis, it would certainly create a richer understanding to expand the policy remit, as immigration, integration and citizenship are inherently intertwined. The link between asylum and citizenship policies has been one of the more neglected areas of this field, although the great increase in asylum applications to both Germany and the UK over the past twenty years has had an undeniable influence on the compositions of the populations and, as shown in Figure 5.2, has clear effects on applications for citizenship. As discussed in Chapter 5, family reunification and asylum, both policy areas protected by human rights



conventions, constitute the majority of long-term immigration and therefore applicants for citizenship. This has begun to receive greater attention in the UK, and the Conservative Home Secretary Theresa May and Immigration Minister Damian Green have made it clear that family reunification will be a high-profile policy area for some time to come (UK Border Agency, 2011a, 2011b).

The German case raised several important questions about the role of regional versus central policymaking that merit further exploration. This is particularly important for the spread of new ideas and for the gap between policy outputs and policy outcomes. The former was explored to some extent in Chapter 6 in the discussion of the spread of citizenship ceremonies and naturalisation exams in Germany. Here, Germany's federal structure played an important role, with several states independently developing policies over the space of several years before central legislation was issued. The involvement of regional ministers in the upper house of the German parliament is also important for the transfer of ideas from the regional to the central level. Furthermore, even after the creation of central legislation, the outcomes of the new policies are strongly affected by the implementation of the legislation, for which the regional governments bear responsibility. This continues to lead to differences in policy outcomes, especially with regards to CNP, with starkly different naturalisation rates between different German states (Worbs, 2007). The role of the regional governments in central policy creation and in the implementation of centrally-issued legislation in the area of CNP would lead to a much richer understanding of the process of policy change in Germany and provide further contrast to the British policy process.

Finally, the discursive scripts and changes in ideas explored in Chapter 6 merit much greater treatment. The empirical findings indicated a clear pattern of elite actors showing their awareness of established scripts when using phrases equivalent to, 'I'm not racist,

but...’ before proposing an idea that they are aware is unacceptable. This finding merits further research and documentation, especially in such a sensitive policy area as citizenship and integration. This is linked to the finding of the disproportionate effect of some solitary actors who entered the policy arena with a set of new ideas and an agenda for change, as some actors’ deviation from the accepted ideas and scripts has caused ripple effects and changing norms. This can be seen distinctly on the international level with the spread of the script asserting that ‘multiculturalism is dead’, a phenomenon that does not receive treatment in this thesis, as the first occurrence to receive a flurry of media attention was Chancellor Merkel’s speech in October 2010 (Spiegel Online, 2010), which falls outside of the time period examined.<sup>66</sup> Although perhaps appearing unrelated to CNP, the changing perceptions of multiculturalism or ethnic pluralism could have potentially huge ramifications for integration requirements for acquisition of citizenship. The rapid spread of this script, as well as others regarding national identity, integration and citizenship, deserve significant attention.

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<sup>66</sup> For further discussion of the spread of this script in the German context, see Williams (forthcoming)

## 8 Appendix

### 8.1 Interviews

Both the interviews undertaken by myself and those carried out by Stefanie Nick-Magin followed a semi-structured interview format, which allowed the gathering of roughly parallel information while still permitting deviations from the set questions. Because the underlying research projects differed, the questions posed show some overlaps but are not the same. Nick-Magin's research was focused on exploring the local-regional-central administrative structure and practice in Germany and its effects on the implementation of integration policies, while my research, while also interested in structures, was testing endogenous and exogenous institutional pressures that have brought about change. I give grateful acknowledgement to Stefanie Nick-Magin for the provision of the full body of transcripts from her interviews.

#### ***8.1.1 Interview questions: interviews conducted personally***

1. How have you been involved with this policy area?
2. How would you rate the importance of nationality/naturalisation policy in comparison with other policy areas?
3. What were some of the greatest influences during the decision-making process?
4. What role does public opinion play in your decisions?
5. Have you taken examples from any other countries?
6. Are there exogenous factors that you think have caused changes (e.g. economic recession, violent crimes)?
7. Are there times when there is a greater institutional openness to change?
8. Are there still discussions about the *Optionsmodell* [Germany only]?
9. Do you think that the reforms from 2000 have been effective, or do you foresee further changes?
10. With whom would you recommend that I should also speak?
11. Is there anything else you would like to add?

### **8.1.2 Interview questions: interviews conducted by Stefanie Nick-Magin**

1. How would you describe the general situation of integration policy in Germany?
2. What duties are included under your remit?
3. How does your staff work within the chancellery/how does your staff fit into the overall organisational hierarchy?
4. How did the current situation [of integration policy] develop?
5. What decisions and events (e.g. the thus far three integration summits) would you assess as meaningful?
6. What influence do administrative structures and politics have on the success or failure of integration policies?
7. What impact has the National Integration Plan had on integration policy in Germany?
8. How do central government, regional governments and local authorities coordinate their integration work with each other? (Are there, for example, uniform procedures for diffusing conflict if diverse social groups come into conflict?)
9. How can central, regional and local integration monitoring and evaluation, for example, be better coordinated? How could cooperation be extended?
10. How could integration policy be even more strongly integrated into legal administrative institutions?

## 8.2 Selected tables

**Table 8.1 Size of foreign populations, 2010**

Category	Germany		UK		EU27	
	Number	% of total pop	Number	% of total pop	Number	% of total pop
Non-EU27 born	6,415,700	7.8%	4,767,400	7.7%	31,367,900	6.3%
EU27 born	3,396,600	4.2%	2,245,000	3.6%	15,979,900	3.2%
<b>Total foreign-born</b>	<b>9,812,300</b>	<b>12.0%</b>	<b>7,012,400</b>	<b>11.3%</b>	<b>47,347,800</b>	<b>9.4%</b>
Non-EU27 citizens	4,584,700	5.6%	2,445,100	3.9%	20,157,200	4.0%
EU27 citizens	2,546,300	3.1%	1,922,500	3.1%	12,336,000	2.5%
<b>Total foreign</b>	<b>7,130,900</b>	<b>8.7%</b>	<b>4,367,600</b>	<b>7.0%</b>	<b>32,493,200</b>	<b>6.5%</b>

Source: (European Commission, 2012a) migr\_pop1ctz, migr\_pop3ctb; own calculations

**Table 8.2 Naturalisation and deprivation of nationality in the UK, 2000 and 2010**

Criterion		2000	2010
<b>Naturalisation</b>			
1	Good character	Yes	Yes
2	Language (English, Welsh, Scottish Gaelic)	Casual, none for spouses	Yes
3	Citizenship oath/pledge	Oath	Oath and pledge
4	Citizenship ceremony	No	Yes
5	Knowledge of Life in the UK test	No	Yes, possible second test
6	Cost	Approx. £150	Approx. £800
7	Length of residence	3 yrs (spouses), 5 yrs (residence)	3-5 yrs (spouses), 6-8 yrs (residence)
8	Absences from UK	Avg. 90 days/yr, 90 days in final year	Absolute 90 days/yr
9	Activity	No	No
<b>Deprivation</b>			
1	Naturalised on false information	Yes	Yes
2	British-born	No	Yes
3	Definition	Treason	'conducive to public good'
4	Removes right of abode	No	Yes

**Table 8.3 Naturalisation and deprivation of nationality in the UK, 2000-2010<sup>67</sup>**

Criterion	2000	2002	2006	2009	2010
<b>Naturalisation</b>					
1 Good character	Yes	Yes	Yes	Yes	Yes
2 Language (English, Welsh, Scottish Gaelic)	Casual, none for spouses	Yes, including spouses	Yes	Yes	Yes
3 Citizenship oath/pledge	Oath	New oath and pledge	Oath and pledge	Oath and pledge	Oath and pledge
4 Citizenship ceremony	No	Yes	Yes	Yes	Yes
5 Knowledge of Life in the UK test	No	Yes	Yes for settlement	Yes, possible second test	Yes, possible second test
6 Cost	Approx. £150	Approx. £150	Approx. £575	Approx. £800	Approx. £860
7 Length of residence	3 yrs (spouses), 5 yrs (residence)	3 yrs (spouses), 5 yrs (residence)	3 yrs (spouses), 5 yrs (residence)	3-5 yrs (spouses), 6-8 yrs (residence)	3 yrs (spouses), 5 yrs (residence)
8 Absences from UK	Avg. 90 days/yr, 90 days in final year	Avg. 90 days/yr, 90 days in final year	Avg. 90 days/yr, 90 days in final year	Absolute 90 days/yr	Absolute 90 days/yr
9 Activity	No	No	No	Yes	No
<b>Deprivation</b>					
1 Naturalised on false information	Yes	Yes	Yes	Yes	Yes
2 British-born	No	Yes	Yes	Yes	Yes
3 Definition	Treason	European Convention on Nationality wording	‘conducive to public good’	‘conducive to public good’	‘conducive to public good’
4 Removes right of abode	No	No	Yes	Yes	Yes

<sup>67</sup> This table includes the policy reversal on the implementation of the activity announced by the Conservative-Liberal Democrat coalition.

**Table 8.4 Naturalisation and deprivation of nationality in Germany, 2000 and 2010**

Criterion		2000	2010
<b>Naturalisation</b>			
1	Criminal convictions	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 90 days' wages, prison sentences up to 3 months
2	Language	Yes/No†	Yes, CEFR B1
3	Citizenship oath	No	Yes
4	Knowledge of law and society	No	Yes
5	Naturalisation exam	No	Yes
6	Cost	500DM (adults)/100DM (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible
7	Residence length	8 years	8 Years/7 years*/6 years**
8	Residence permit	Residence permit or indefinite leave to remain	Unlimited residence permit or citizen of Switzerland
9	Absences from Germany	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years
10	Optionsmodell	Yes (Section 29); must submit written declaration of intention b/w ages 18 and 23 or automatically loses German nat'lity; must prove loss of other nat'lity; request to keep both must be submitted by age 21	Yes (Section 29); must submit written declaration of intention between ages 18 and 23 or automatically loses German nat'lity; must prove loss of other nat'lity; request to keep both must be submitted by age 21
<b>Deprivation of citizenship</b>			
1	Statelessness allowed	No	No
2	Release on application	Yes; some categories not allowed	Yes; some categories not allowed
3	Relinquishment	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality
4	Adoption by foreigner	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent
5	<i>Optionsmodell</i>	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday
6	Entry into foreign military	Yes, unless bilateral agreement exists	Yes, except by prior approval
7	Treason	No	No
8	Application for foreign nationality	Yes, except by prior approval	Yes, except by prior approval
9	Declaration	Yes	Yes
10	Naturalised by deception	No	Yes
11	Cost	100DM	€ 51

\* Upon successful completion of integration course. \*\* In cases of 'extraordinary integration', especially linguistic. † Proof of sufficient German knowledge required for naturalisation by right (*Anspruch*) but not for naturalisation by discretion (*Ermessen*).

**Table 8.5 Naturalisation and deprivation of nationality in Germany, 2000-2010**

Criterion		2000-2003	2003-2004	2005-2007	2007-2009	2009-2010
<b>Naturalisation</b>						
1	Criminal convictions	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 180 days' wages, prison sentences up to 6 months	Fines up to 90 days' wages, prison sentences up to 3 months	Fines up to 90 days' wages, prison sentences up to 3 months
2	Language	Yes/No†	Yes/No†	Yes/No†	Yes, CEFR B1	Yes, CEFR B1
3	Citizenship oath	No	No	No	Yes	Yes
4	Knowledge of law and society	No	No	Yes	Yes	Yes
5	Naturalisation exam	No	No	No	Yes	Yes
6	Cost	500DM (adults)/100DM (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible	€255 (adult)/€51 (children)/reductions possible
7	Residence length	8 years	8 years	8 years/7 years*	8 Years/7 years*/6 years**	8 Years/7 years*/6 years**
8	Residence permit	Residence permit or indefinite leave to remain	Residence permit or indefinite leave to remain	EU/EEA citizen, EU residence permit, or settlement permit <sup>68</sup>	Unlimited residence permit or citizen of Switzerland	Unlimited residence permit or citizen of Switzerland
9	Absences from Germany	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years	Up to 6 months; further absences lengthen residence requirement by up to 5 years
10	<i>Optionsmodell</i>	Yes	Yes	Yes	Yes	Yes

<sup>68</sup> *Niederlassungsverlaubnis*



Deprivation of citizenship						
1	Statelessness allowed	No	No	No	No	No
2	Release on application	Yes; some categories not allowed	Yes; some categories not allowed	Yes; some categories not allowed	Yes; some categories not allowed	Yes; some categories not allowed
3	Relinquishment	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality	Yes, in cases of multiple nationality
4	Adoption by foreigner	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent	Yes, if acquiring adoptee's nationality and not related to a German parent
5	<i>Optionsmodell</i>	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday	If no choice submitted to German government before 24th birthday
6	Entry into foreign military	Yes, unless bilateral agreement exists	Yes, unless bilateral agreement exists	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval
7	Treason	No	No	No	No	No
8	Application for foreign nationality	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval	Yes, except by prior approval
9	Declaration	Yes	Yes	Yes	Yes	Yes
10	Naturalised by deception	No	No	No	No	Yes
11	Cost	100DM	100DM	€ 51	€ 51	€ 51

\* Upon successful completion of integration course. \*\* In cases of 'extraordinary integration', especially linguistic. † Proof of sufficient German knowledge required for naturalisation by right (*Anspruch*) but not for naturalisation by discretion (*Ermessen*).

**Table 8.6 Home Secretaries and immigration ministers in the UK, 2000-2010**

<b>Title</b>	<b>Name</b>	<b>Entered</b>	<b>Left</b>
Home Secretary	Jack Straw	02 May 1997	08 June 2001
	David Blunkett	08 Jun 2001	15 Dec 2004
	Charles Clarke	15 Dec 2004	05 May 2006
	John Reid	05 May 2006	27 Jun 2007
	Jacqui Smith	28 Jun 2007	05 Jun 2009
	Alan Johnson	05 Jun 2009	11 May 2010
Minister of State for Asylum and Immigration	Barbara Roche	28 Jul 1999	11 Jun 2001
Minister of State for Asylum and Immigration	Lord Rooker	11 Jun 2001	29 May 2002
Minister of State for Citizenship, Immigration and Community Cohesion (2002-2003); Minister of State for Citizenship, Immigration and Counter-Terrorism (2003-04)	Beverley Hughes	29 May 2002	01 Apr 2004
Minister of State for Citizenship, Immigration and Nationality	Des Browne	01 Apr 2004	06 May 2005
Minister of State for Immigration, Citizenship and Nationality	Tony McNulty	16 May 2005	23 May 2006
Minister of State for Citizenship, Immigration and Nationality (2006-07); Minister of State for Borders and Immigration (2007-08)	Liam Byrne	23 May 2006	03 Oct 2008
Minister of State for Borders and Immigration	Phil Woolas	03 Oct 2008	11 May 2010

Source: UK Government (1997-2010), own compilation

**Table 8.7 Integration ministers in Germany, 1978-2010**

Title	Name	Entered	Left
Minister for the Promotion of the Integration of Foreign Employees and their Family Members	Heinz Kühn	21 Nov 1978	Dec 1980
Minister for the Promotion of the Integration of Foreign Employees and their Family Members	Liselotte Funcke	17 Dec 1980	15 Jul 1991
Federal Commissioner for Foreigners <sup>69</sup>	Cornelia Schmalz-Jacobsen	14 Nov 1991	1998
Federal Commissioner for Migration, Refugees and Integration <sup>70</sup>	Marieleise Beck	4 Nov 1998	2005
Federal Commissioner for Migration, Refugees and Integration	Maria Böhmer	2005	present

Sources: Bundesregierung Deutschland (2011a, 2011b), Nick-Magin (forthcoming)

**Table 8.8 Comparative naturalisation rates in German states**

State	2003	2004	2005	2006	2007	2008	2009	2010
Brandenburg	0.46	0.43	0.53	0.49	0.69	0.63	0.69	0.61
Saxony	0.41	0.41	0.44	0.51	0.63	0.64	0.63	0.75
Thuringia	0.63	0.73	0.81	0.96	0.64	0.73	0.64	0.85
Baden-Württemberg	1.51	1.25	1.17	1.12	0.97	0.89	0.97	1.00
Bavaria	1.24	1.13	1.03	1.14	1.04	0.85	1.04	1.01
Berlin	1.48	1.43	1.52	1.73	1.33	1.43	1.33	1.17
Mecklenburg-Vorpommern	0.73	1.00	1.13	1.37	1.19	0.76	1.19	1.21
Sachsen-Anhalt	0.88	0.82	1.16	1.14	0.98	1.13	0.98	1.27
Saarland	1.63	1.39	1.38	1.77	1.63	1.48	1.63	1.32
<b>Germany</b>	<b>1.86</b>	<b>1.69</b>	<b>1.56</b>	<b>1.64</b>	<b>1.31</b>	<b>1.27</b>	<b>1.31</b>	<b>1.37</b>
Lower Saxony	2.16	2.05	2.04	2.16	1.38	1.47	1.38	1.37
North Rhine-Westphalia	2.26	2.06	1.82	1.92	1.41	1.38	1.41	1.50
Rhineland-Palatinate	2.21	2.11	1.76	2.22	1.64	1.67	1.64	1.70
Bremen	1.97	2.35	2.44	2.32	1.71	1.89	1.71	1.79
Hessen	2.46	2.16	1.98	1.95	1.87	1.98	1.87	2.04
Schleswig-Holstein	2.82	3.08	2.73	2.85	1.97	2.13	1.97	2.10
Hamburg	2.67	1.98	1.75	1.86	1.55	1.14	1.55	2.19

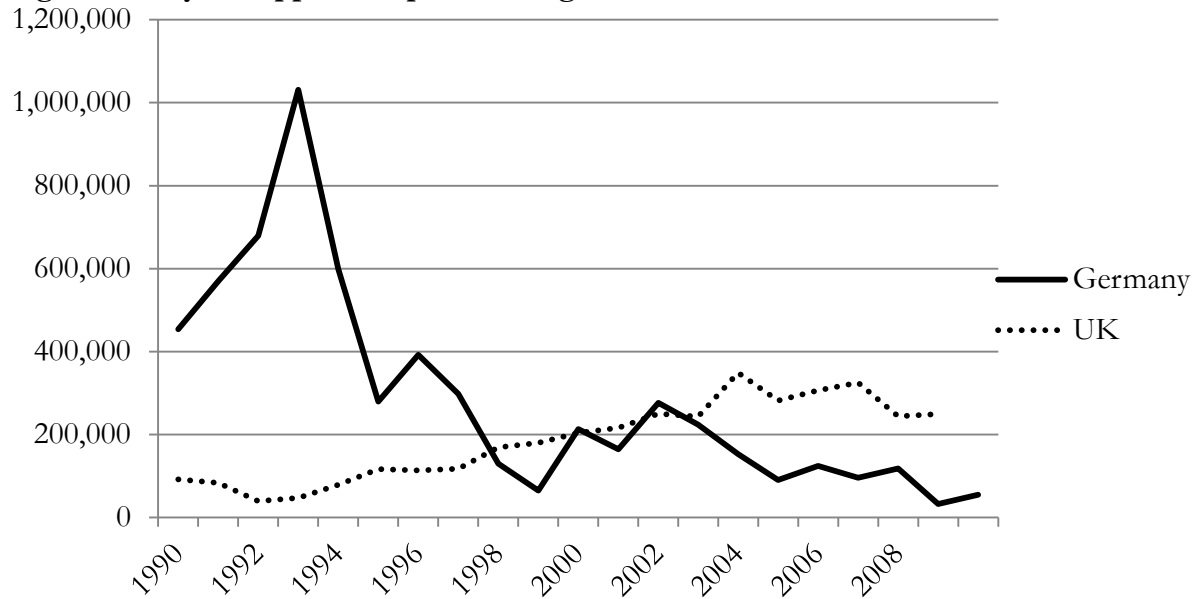
Source: Statistisches Bundesamt (2010)

<sup>69</sup> *Beauftragte der Bundesregierung für die Belange der Ausländer*

<sup>70</sup> *Beauftragte für Migration, Flüchtlinge und Integration*

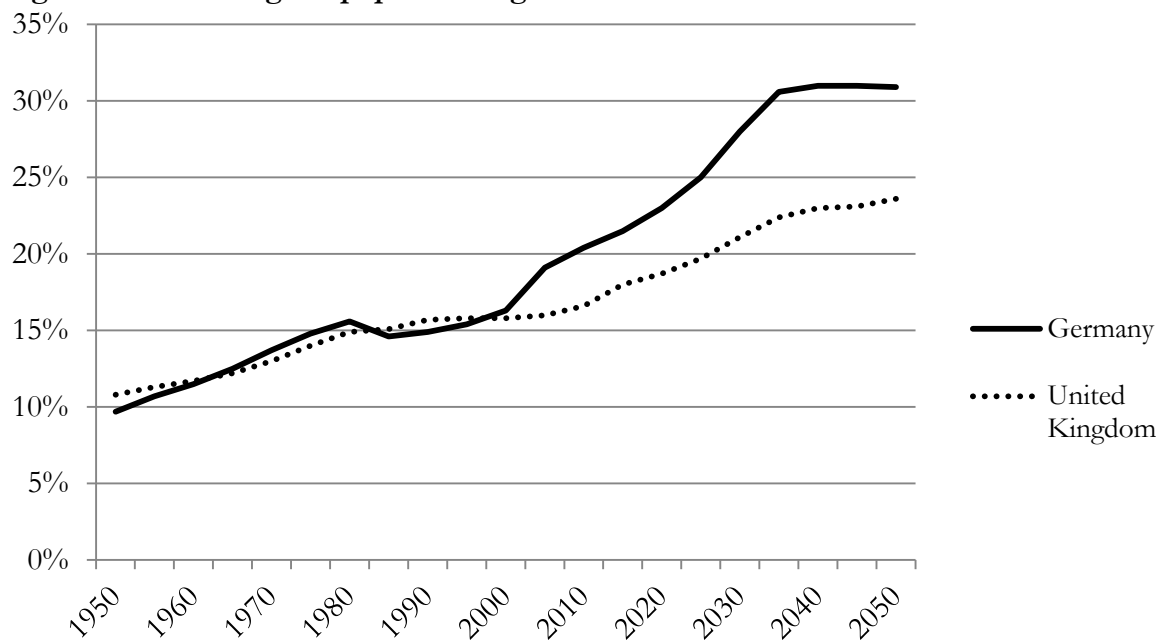
### 8.3 Selected charts

**Figure 8.1 Asylum applicants plus net migration, 1990-2009**



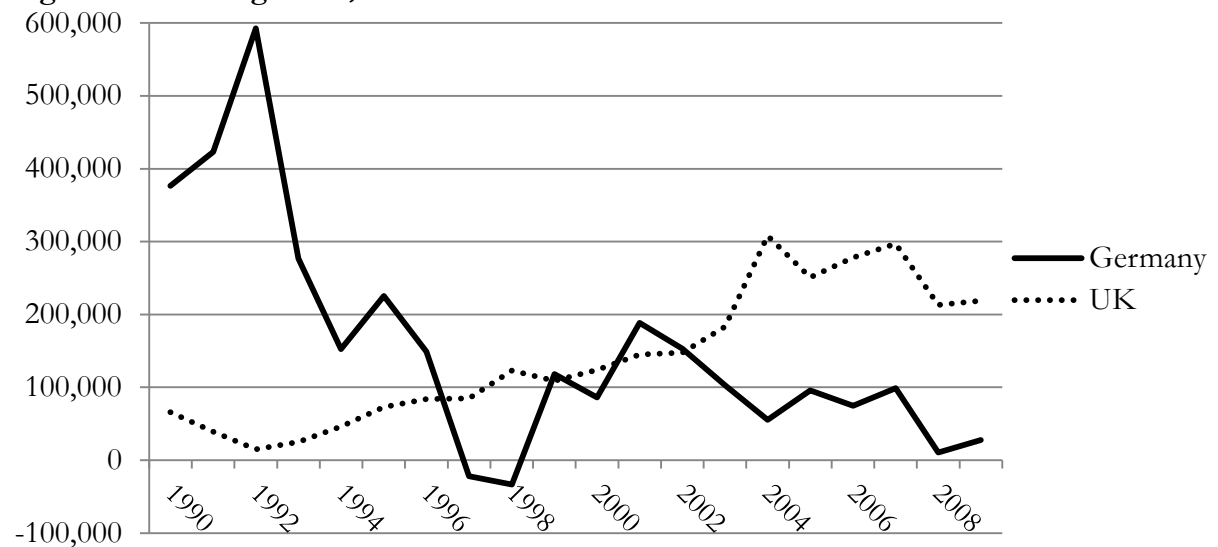
Sources: (European Commission, 2012a), OECD (2011)

**Figure 8.2 Percentage of population aged 65 and over**



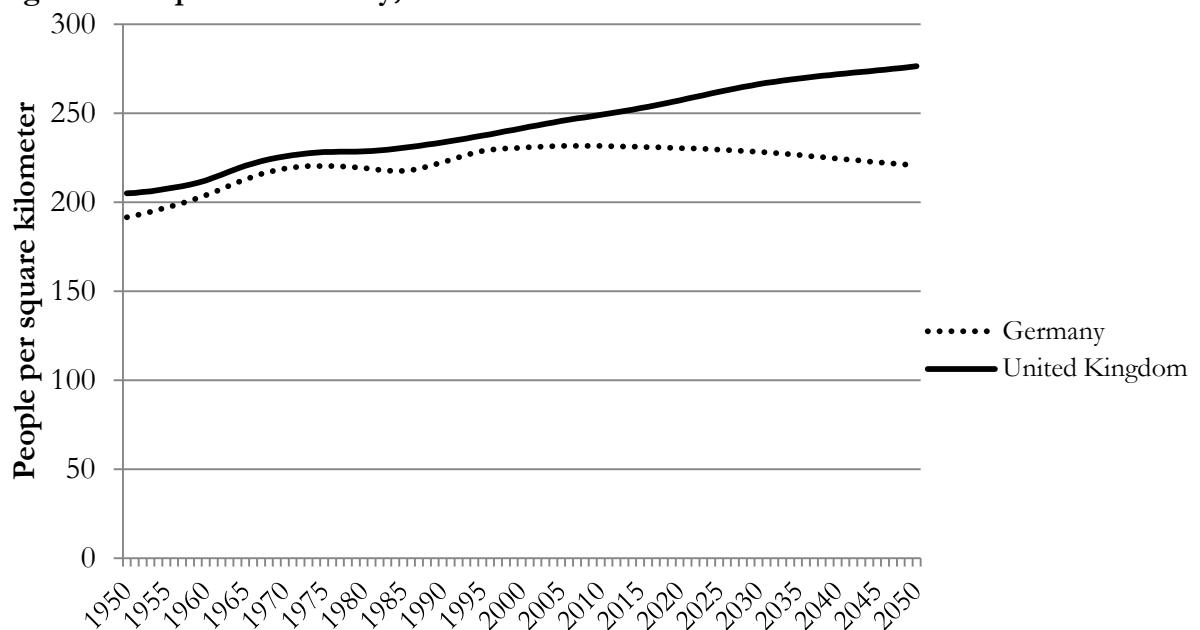
Source: United Nations Population Division (2010)

**Figure 8.3 Net migration,<sup>71</sup> 1990-2009**



Source: OECD (2011)

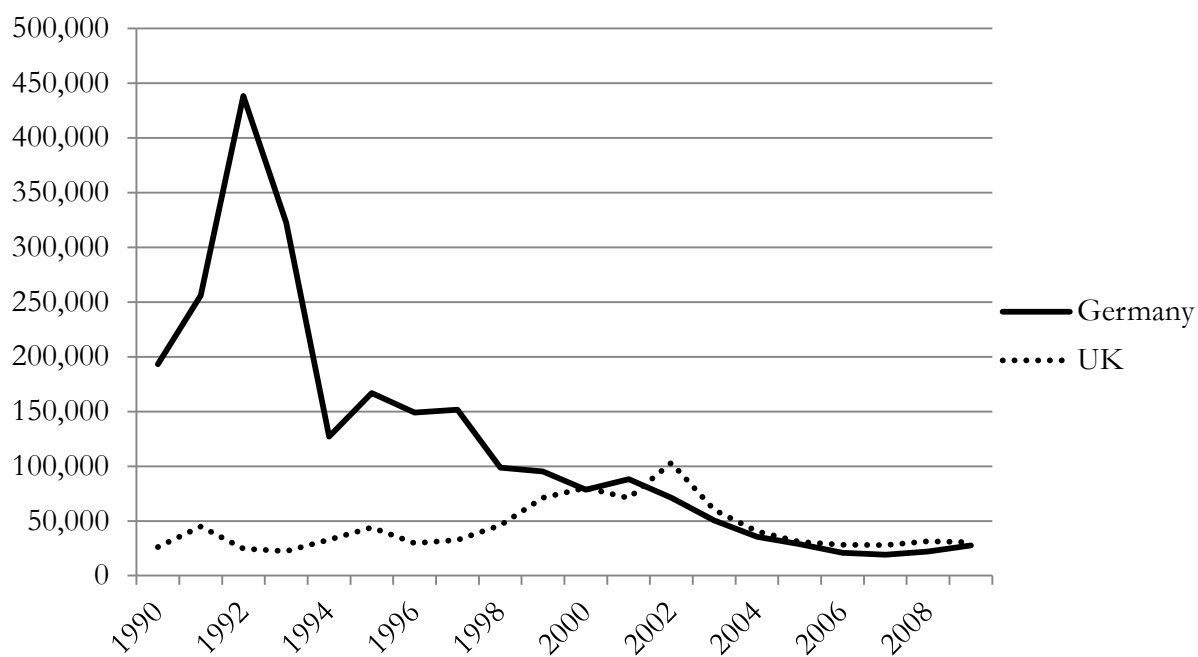
**Figure 8.4 Population density, 1950-2050**



Source: United Nations Population Division (2001)

<sup>71</sup> Net migration is calculated by subtracting emigration from immigration. It is thus possible to achieve a negative result, as in the case of Germany in 1997 and 1998.

**Figure 8.5 Asylum applications, 1990-2009**



Source: OECD (2011)

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