

European Forum

The Marshallian Triptych Re-Ordered:  
The Role of Courts and Bureaucracies  
in Furthering Migrant Social Rights

VIRGINIE GUIRAUDON

EUJ No. 99/1

EUI WORKING PAPERS



EUROPEAN UNIVERSITY INSTITUTE

European University Institute



3 0001 0036 3911 1

**EUI Working Paper EUF No. 99/1**

**Guiraudon: *The Marshallian Triptych Re-Ordered:  
The Role of Courts and Bureaucracies  
in Furthering Migrant Social Rights***

**WP 309  
EUR**



**The European Forum, set up in 1992 by the High Council, is a Centre for Advanced Studies at the European University Institute in Florence. Its aim is to bring together in a given academic year high-level experts on a particular theme, giving prominence to international, comparative and interdisciplinary aspects of the subject. It furthers the co-ordination and comparison of research in seminars, round-tables and conferences attended by Forum members and invited experts, as well as teachers and researchers of the Institute. Its research proceedings are published through articles in specialist journals, a thematic yearbook and EUI Working Papers.**

**This Working Paper has been written in the context of the 1997-98 European Forum programme on 'International Migrations: Geography, Politics and Culture in Europe and Beyond', directed by Professors Christian Joppke and René Leboutte.**



**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**

**EUROPEAN FORUM**

EUI Working Paper EUF No. 99/1

**The Marshallian Triptych Re-Ordered:  
The Role of Courts and Bureaucracies  
In Furthering Migrant Social Rights**

**VIRGINIE GUIRAUDON**

Jean Monnet Fellow, European Forum (1997-98)

**BADIA FIESOLANA, SAN DOMENICO (FI)**

All rights reserved.  
No part of this paper may be reproduced in any form  
without permission of the author.

© 1999 Virginie Guiraudon  
Printed in Italy in March 1999  
European University Institute  
Badia Fiesolana  
I – 50016 San Domenico (FI)  
Italy

Modern citizenship defined as a set of rights and obligations relating the state and the individual in a bounded political unit is a notion that expanded during the past two centuries so as to include larger segments of the population and a wider array of rights. As T. H. Marshall's famous lecture on citizenship rights argued (1965), first came the advent of *civil rights* protecting the individual against the arbitrary of the state and consecrating equality before the law. With universal suffrage, *political rights* developed. Finally, came *social rights* with the birth of the welfare state and universal and compulsory education. His framework is useful to disaggregate the different ties between the state and the individual, and to understand citizenship as an on-going historical process that expands and contracts (Bendix: 1964; Turner: 1986).

Marshall underlined that the development of citizenship coincided with the building of national communities. It found its origins in "the first stirrings of a sense of community membership and common heritage" (1965, p. 93).<sup>2</sup> Yet, foreigners residing in Western Europe have come to enjoy many of the rights of nationals (Brubaker: 1989; Layton-Henry: 1990; Soysal: 1994; Guiraudon: 1998). Tomas Hammar coined a word for this historical evolution by referring to settled legal immigrants as "denizens," waiting in the antechamber of full citizenship (1990). The extension of civil, political, and social rights to foreigners took place in an order that reverses T. H. Marshall's: welfare benefits were secured early on while political rights remain contested (Bauböck: 1995).<sup>3</sup> This is true in both Northern and Southern Europe.

How and why have non-nationals acquired social rights and welfare benefits since the 1970s? I have sought to answer this question through a comparative study of the evolution of the rights of foreigners in France, Germany and the Netherlands since 1973, when post-war foreign labor recruitment ended officially. I proceed in three steps. First, I explain why the reversal of T. H. Marshall's model of citizenship rights in the case of foreigners is puzzling given existing theories about migration or welfare and I examine the shortcomings of plausible existing hypotheses. I then describe the legislation with respect to social and political rights in the three countries. Finally, I develop an explanatory model that emphasizes the importance of the location of debate with respect to reforming foreigners' rights. This means focusing on the rules that govern the allocation of debate and the characteristics of the organizations (or venues) where decision-making is allocated.

---

<sup>2</sup> Or, as Jürgen Habermas once wrote, "nationalism [...] founded a collective identity that played a functional role in the implementation of citizenship" (1994, p. 23).

<sup>3</sup> For a discussion of this aspect of T. H. Marshall's model and its applicability to current developments in Europe, see Crowley: 1998.



Given the negative biases harbored by public opinion, the media and anti-immigrant parties whose voices can be heard in a large-scale debate, rights are more likely to be granted when they are confined to bureaucratic or judicial venues. I argue that welfare benefits could be granted through regulations after a bureaucratic debate or were the object of court decisions. In both cases, venues that, because of their *modus operandi* were biased in favor of equality before the law were responsible for the reforms. This is not the case for political rights where constitutional reform or at least legislative debate is needed. In the latter case, spillover in a wider electoral arena is more likely.

## I. The Marshallian Tryptich Reversed: A Puzzle

First, the equal social rights enjoyed by foreigners seem counter-intuitive given the restrictionist policy goals of European governments regarding migration flows after the first oil crisis. The consolidation of welfare entitlements made immigration a more attractive prospect for immigrants. Second, the economic logic of these reforms is not self-evident. They went against the logic of postwar labor migration as a mobile army of cheap labor since they narrowed the difference between native and foreign workers. This logic conceived of migrant workers as "birds of passage" creating a dual labor market, acting as shock absorbers in capitalist economies and preventing the inflation of wages (Piore: 1979). The consolidation of their labor and industrial rights as well as of their residence status contributed to persuading the birds of passage to stay "here for good" (Castles: 1985). Why governments submitted to changes that led to a *rapprochement* between foreign and native labor is what we must understand.

Third, the inclusion of foreigners in the welfare state after the long boom is also puzzling. During the first waves of labor migration, it was in the interest of European states to do so because migrant workers were mostly young, healthy men, who contributed more than they received from welfare services. This ratio changed as family regrouping took place and welfare provisions extended to family dependents. Yet, the move towards inclusiveness continued. The granting of welfare rights is not only counter-intuitive given the quantitative implications of the present context of immigration but also given welfare state theory. The principles of the welfare state require non-members to justify a departure from free-market mechanisms through a community-based solidarity (Freeman: 1986). Unlimited migration would undermine the high level of benefits in advanced industrialized countries; thus, the replacement of porous geographical borders by a guarded entry to the welfare state would seem logical.

If we compare social and political rights, there is a stark difference between the incorporation of aliens into welfare and education benefits and the

small headway that they have been allowed to make in terms of rights of political representation. This cannot be readily explained. Why would social rights that involve costs create less political controversy than more symbolic rights of representation, especially in a period when the welfare state came under fire for ideological, demographic and economic reasons? In fact, while only parties of the extreme-right and a handful of right-wing radical mavericks speak of denying provisions to aliens, opposition to the granting of political rights is much more widespread on the political spectrum.

How can we account for this sequencing of rights extension? Yasemin Soysal, when trying to understand why social rights have been extended more generously to aliens than political rights points to the importance of the timing of immigration in Western Europe (1994). Immigration occurred long after political and civil rights were codified in a strong 19th century nationalist context but it took place as welfare states expanded and provided a powerful source of consent. Thus foreigners may have borne the fruits of the social aspects of the postwar settlement. This general conclusion is appealing yet close historical scrutiny suggests that it needs to be amended. If we take the case of France – the case where there already were important levels of immigration in the nineteenth century, welfare was not reserved for nationals before the late nineteenth century.<sup>4</sup> Foreigners were not excluded from the provisions of the mutual assistance law of 1850 and local welfare bureaus ignored the nationality criterion in giving out aid (Noiriel: 1988).

There is a partly ideational explanation for this: at that time, social rights were still understood as "Christian charity" – and also materially the Church still played an important role– and this implied that, as God's creatures, the poor did not have a homeland (Houzé de L'Aulnoit: 1885). Moreover, in an odd alliance, the rise of economic liberalism also favored a lifting of restrictions on rights. It is only at the turn of the century that discriminations on the basis of nationality appear: some laws such as the 1893 law on free medical care and the 1910 law on state pensions did not apply to aliens (Noiriel: 1988). So, in effect, the granting of welfare rights to aliens is not an invention of the postwar settlement but a return to the past.

There might a cruder reason for the different patterns of rights extension. Stated bluntly, a government can't have people starving on the streets while you can have them not vote. In other words, governments bought out the social peace that was needed to their stability by granting aliens welfare provisions.

---

<sup>4</sup> There might be interference in the argument with T. H. Marshall's account of the evolution of citizenship rights since his focus is on Great Britain – a country that stigmatized social welfare much earlier than its continental counterparts (Esping-Andersen: 1990).



This point of view is also compatible with writings that, according to Mark Miller, portray migrants as passive citizens and equate their lack of political rights with political quiescence (1981). They emphasize passive rights as opposed to active ones. The argument is not altogether satisfying given that European governments seem not to have been concerned by the socioeconomic problems of foreign populations who, more than natives, suffered from unemployment, and who lived in dire housing conditions. These situations led and still lead to social unrest and tensions between aliens and natives without governments showing signs of feeling threatened.

Another line of analysis would focus on the calculus of political parties. Who benefits from granting political rights to aliens? The record so far indicates that working-class parties, social democratic parties, parties of the Left are likely to get most of the foreigners' votes at first. This can be deduced from what has already happened in countries such as Scandinavian countries and the Netherlands where they vote locally and, also, from looking at the electoral behavior of naturalized migrants or citizens from ex-colonies. There are exceptions (Thatcherite East Indian shopkeepers in Britain, *harkis* in France) yet they confirm the rule: migrants vote their class interest. Moreover, they might have been against right-wing regimes in their home countries (e. g. Southern European or Turkish migrants). Finally, they often see social democrats as the defenders of their cause (Layton-Henry: 1990). Still, in the case of the Netherlands, all mainstream parties voted to revise the constitution so as to allow foreigners to vote in local elections and even center-right parties such as the CDA are getting some electoral feedback (Rath: 1988). Either political calculus isn't everything or politicians are acting irrationally.

One can turn the question around and ask who benefits from the native backlash that can be expected if aliens get the vote? Are certain parties going to lose native voters who will seek anti-immigrant platforms? If these are parties of the Left, they might lose on one side what they get from another. It could be a zero-sum game or a losing one and, inversely, it could be a winning one for the Right. It is likely when one sees for instance the numbers of ex-Communist voters who switched to Le Pen's party in the 1980s in France. Pitting poor natives against poor migrants is a common and sometimes successful strategy in hard times. The French case actually shows divergent strategies within the Left. The Communists (the PCF and the CGT union) were the first ones to stigmatize foreign workers in the suburbs that they ruled over as they saw the latter as competing with their electorate for jobs, housing... The Socialists, in the first part of the 1980s, believed on the contrary that they could benefit from coopting second generation immigrants (Leveau: 1989). In brief, there is no simple partisan division on this issue.

A final approach that would explain the difference between political and social rights would be to focus on migrants' participation in the welfare state. The use of welfare services by migrants has been at the center of a political and academic controversy in the US in recent years. These debates have not been prominent in Europe, except perhaps in Germany, yet the cost/benefit ratio of aliens' participation in the welfare state cannot be overlooked when considering the extension of social rights to aliens. The issue is very complex and there are so many ways of calculating pluses and minuses that no two studies will yield similar conclusions.

What is known is that during the postwar recruitment period and the "guestworker era," aliens contributed more in taxes and social contributions than they received because of their age, family situation, and because of the conditions laid down in laws and agreements regarding benefits. In fact, the German State Secretary in the Ministry of Labor Kattenstroth emphasized in 1966 guestworkers' net contribution to the welfare state:

*...foreign workers in the Federal Republic pay income tax and social security deductions according to the same rules as indigenous German workers. Given the age of the foreign workers, this has a very favorable effect, at present especially in connection with old age insurance, because far higher revenues are taken from the foreign workers than are currently paid out in pension benefits to this category of individuals. (Quoted in Herbert: 1990)*

The German welfare state had all to gain from these young and healthy *Gastarbeiter* ...<sup>5</sup> as long as they did not stay too long nor grow old in the Federal Republic, as long as they stayed so little that they could not be eligible for the benefits enjoyed by Germans once they had stayed ten or fifteen years in the same firm (leaves, spa cures, early treatment).<sup>6</sup>

There was a change when family reunification changed the demographics of the population, when the number of foreign unemployed grew, and when foreign workers reached retirement age. The percentage of foreigners who were part of the workforce sharply dropped. Family allowances are very important because aliens have on average more children and fewer resources. Given that the birth rate has been declining in Europe, family policy (especially France's population growth policy) is organized so that benefits are higher for family of three children and more.

---

5 The labor contracts did not specify social welfare provisions (it was made clear however that aliens had the duty to pay taxes in Germany and generally had the right to send earnings home, for contract samples, see Schill: 1965).

6 Considerable savings were also made by neglecting housing conditions for guest workers.



Beyond the issue of costs, welfare benefits are seen as a pull factor for migration and, thus, counterproductive vis-à-vis migration control policy. For instance, at his party's *états généraux* on immigration in the spring of 1990, Jacques Chirac declared: "The situation regarding welfare benefits is apt to break all the barriers that we could elevate against increases in immigration. It is a vacuum pump phenomenon (...) We are not going to give a certain number of welfare benefits to people who risk being too attracted by our country." The *Assises de la droite* (Assembly of the Right-Wing Parties) had just proposed that social rights "could legitimately be linked to conditions of length of residence, nationality, and reciprocity."<sup>7</sup> In the Netherlands, academic advisers to the government have recently proposed to link the duration of residence with welfare state access so as to create internal gateways of entry into the Dutch system for newcomers.<sup>8</sup>

## II. The Evolution of Social and Political Rights in France, Germany and the Netherlands

In all three countries, nationality is generally irrelevant for the enjoyment of benefits whereas residence and its legality can be important conditions. Exceptions are few and becoming fewer. Aliens can also export benefits when they return home. Illegal aliens have few rights (besides emergency medical care) and asylum-seekers have a different status. A 1987 study of aliens' access to social services in six European and North American countries came to the same conclusion (North: 1987).

### WELFARE PROVISIONS

#### France

In France, the text of the Constitution does not distinguish between nationals and aliens in the area of welfare provisions. Specifically, the 1946 Preamble to the Constitution, states that "the nation guarantees to all, notably to the child, the mother, and to the old workers, health care, material security, rest and leisure." In a 22 January 1990 decision, the Constitutional Council had the occasion to affirm the principle of non-discrimination on the basis of nationality in this area. Three years later, when examining the constitutionality of the Pasqua-Méhaignerie laws, the Council made clear however that the legality of the stay of aliens was a prerequisite for the enjoyment of equal social rights.<sup>9</sup>

<sup>7</sup> *Le Monde Diplomatique*, May 1993. Translation mine.

<sup>8</sup> Han Entzinger's 1994 proposals to the Dutch government. Interview, Utrecht, 1995.

<sup>9</sup> In fact, the appearance of the condition of legality of stay dates back to a 1986 law on family provisions and it was extended in the August 24, 1993 law to health, family, invalidity and life insurance, as well as pensions. It is only after that law that the Constitutional Council

If one focuses on family provisions, known as *allocations familiales*, aside from the fact that foreigners need to prove that they reside legally in France,<sup>10</sup> they have the same access to family provisions as nationals.<sup>11</sup> If the children reside in the foreigners' country of origin, they have to show that they work the equivalent of 18 days of work per month. The exact modalities then vary according to the type of bilateral agreement that France has entered into with the foreigners' homeland<sup>12</sup> although, in all systems, aliens receive much less than if the children lived in France.<sup>13</sup> A number of other family benefits act as complements or substitutes to family allowances. Three are known as "legal social aid" and are handled by national and regional welfare agencies (aid to families, social aid to childhood, military service benefits). For the last one, residence in France is not required; the others do not set a minimum length of residence. There is also "optional social aid" that can be decided by authorities at any level (communal, regional, national). They include benefits to pay for childcare, or housing. Nationality is not a legitimate condition to receive these benefits according to a 1986 administrative court decision.

Foreigners contribute to the unemployment insurance system and are entitled to the same unemployed benefits as nationals or, if they want, grants given to start a company. Nationality is not a legally permissible criterion for the granting of additional locally-managed unemployment benefits (Prétot: 1987). In addition, the 1945 Ordinance on aliens protects them from seeing their residence permit not renewed should they become unemployed. Regarding pensions, there is no nationality criterion for employees' pensions or those for non-salaried residents. If the alien does not reside in France, s/he will receive a pension through systems set up in bilateral agreements or EU law (Chenillet: 1987). In addition, resident aliens have access to all additional benefits for the aged, poor or sick persons except the *Fonds National de Solidarité* that is reserved for nationals and *l'allocation aux adultes handicapés*, *l'allocation aux vieux travailleurs salariés* et *l'allocation aux vieux travailleurs non salariés* (Lochak: 1991). The Constitutional Council ruled in 1990 that this situation was not constitutional but a revision of the Social Security Code would be needed for

---

clarified its stance.

10 Article 512-2 of the Social Security Code (modified by the law 86-1307 of 29 December 1986 to add as a criterion for receiving provisions the legal status of children older than 16).

11 Article 512-1 of the Social Security Code states that "toute personne française ou étrangère résidant en France, ayant à sa charge un ou plusieurs enfants résidant en France, bénéficie pour ses enfants des prestations familiales dans les conditions prévues par le présent livre."

12 For a summary, see "L'immigré et sa famille: les prestations familiales des immigrés" in Alfandari (1987).

13 This inequality is partly remedied by the fact that the Fonds d'Action Sociale is funded in part by the money that aliens contribute without being able to get benefits in return.



aliens to enjoy these benefits. Since aliens pay taxes, the fact that these supplemental incomes are non-contributory benefits was not seen as a legitimate reason to exclude aliens. A report commissioned by the Prime Minister in August 1997 suggested that the Code be reformed to allow aliens access to these benefits (Weil: 1997).

Access to the health care system is not based on the nationality criterion but the legality of residence since the 1993 law except for emergency health care and, for some minor benefits, the legality of the entry on French territory of the alien's family. Should a foreigner go back home on holidays or need care for his/her family at home, international conventions apply. Only a definite transfer of residence would lead a foreigner to lose his right to medical insurance on the basis of the territoriality principle. As C. Nguyen van Yen points out, the poor medical facilities in many countries of origin more than the fear of losing coverage deter aliens from transferring their residence legally (1987).

### Germany

The German Basic Law states that the "pursuit of a just social order" is a state prerogative. This *Sozialstaat* principle has been applied to foreign residents as well as to nationals. The field of social legislation uses the principle of territoriality as the basis of rights (Hailbronner: 1989, p. 572). The Social Security Code "essentially makes no distinction between Germans and foreigners, but is geared to the residence of the beneficiaries in Germany" (Federal Government's Commissioner for Foreigners Affairs: 1994). Indeed, residence is a key criterion, not nationality. Equality of treatment regards unemployment contributory benefits and additional assistance, sickness, and accident benefits. It also concerns:

- Old-age pensions as provided by the Federal Republic's statutory pension insurance funds. Foreigners can derive entitlements in expectancy in pensions insurance from the times they spent bringing up their children if parents and child were in Germany throughout the period.
- Health insurance. The members of the statutory health insurance scheme's families are covered by family insurance provided they have their habitual residence in Germany.
- Child benefits. For children living in home countries, Germany has signed bilateral agreements and parents receive adjusted child benefits that are lower than for children residing in Germany.<sup>14</sup> To receive child benefits, one must be in possession of a residence permit or a right of unlimited residence.
- Federal child-raising assistance. State-level allowances exist. Some Länder

---

<sup>14</sup> The figures for benefits differ as follows: 10 DM as opposed to 70 DM for the first child; 25 DM as opposed to 130 DM for the second; 60 DM as opposed to 220 DM. (Federal Ministry of Interior: 1993).



(Bavaria and Baden-Württemberg) do not grant foreigners child-raising allowances when the corresponding Federal allowance comes to an end while others do (Berlin, Saxony).

In addition, resident aliens can receive certain non-contributory benefits pursuant to the Federal Act on Social Assistance (*Bundessozialhilfegesetz*) such as subsistence aid, help during illness, help for expectant mothers, women in childbed and nursing aid. Yet, receiving subsistence aid can be a basis for the non-renewal of an alien's residence permit. Finally, although the field of social legislation uses the principle of territoriality as basis of rights, it should be said that aliens can "export" benefits (pension insurance benefits, health or accident insurance and unemployment benefits), so that residence is not always required for the enjoyment of social rights. The Federal Republic has signed agreements with home countries to facilitate these money transfers.

### **The Netherlands**

The Dutch system is divided into three parts: workers' insurance, national insurance's and national assistance. Workers' insurance handles the financial consequences of unemployment, sickness, and disability. Insured people are paid irrespective of nationality. Illegal aliens are excluded from unemployment benefits unless they come from Turkey following a 1990 court case (Minderhoud: 1994) but they can receive sickness and disability benefits. National insurance provides child benefits, old-age pensions, and pensions for widows and orphans. All "residents" are insured. This includes legal aliens but, in some cases, illegal aliens as well. The Dutch Health Insurance Act contains elements of the workers' and national insurance and covers aliens.

The only Act that makes a clear distinction between Dutchmen and aliens was the National Assistance Act (*Algemene Bijstandswet*) adopted as the tail-piece of the social security system. It excludes illegal aliens from the right to welfare allowance. Moreover, receiving welfare allowances is considered a sign of "insufficient means of support" and, therefore, can be a reason for the non-renewal of a temporary residence permit. The difference between the 1970s and now is that this rule lapses for aliens with a permanent residence permit or who have resided 10 years in the Netherlands.

Discriminations on the basis of nationality nevertheless existed in practice in the 1970s as was the case for unemployment benefits until the intervention of legal aid groups led to a reaffirmation of equal treatment in this area. The Dutch have also been alert to regulations that put aliens at a disadvantage even if they did not contain a nationality criterion. They were listed in a 1983 report (Beune and Hessels: 1983). For instance, a worker could receive benefits while on holiday only if he was abroad for less than 20 days. Aliens often went for longer

periods. The directive is no longer applied. Another disposition that no longer applies regarded an extra once-only benefit for people with a minimum income. To receive it, you could not leave the country for longer than 6 to 8 weeks and, because the month of August was the month of reference, immigrants did not receive the benefit (Böcker and Minderhoud: 1994). Equality of treatment vis-à-vis social security is thus guaranteed in the Netherlands and efforts have been made to eliminate provisions that discriminated against aliens even if not nominally.

## EQUAL ACCESS TO EDUCATION AND TRAINING

In France, education is an obligation since 1936, not a right. In 1973, a decree opened up high school education grants to young foreigners under the same conditions as French youths (decree no. 73-1054 of 21 November 1973).<sup>15</sup> A circular in 1982 was issued as a reminder that education is for all including illegal aliens. Moreover, a 1982 Council of State decision stated that "the equal access of children and adults to education" written in the 1946 Preamble to the Constitution, France's "bill of rights," also applies to higher education (Council of State, 26 July 1982).<sup>16</sup> Since 1989, court cases involving veil-wearing foreigners' daughters who attended public schools have led to a consistent jurisprudence that prevents their expulsion from school unless they proselytize or disrupt school activities, even though a September 1994 Ministry of Education circular bans "ostentatious signs of religion."<sup>17</sup>

In Germany, education for all is a state mandate written into the Basic Law (Article 3). The Federal Law on Financial Assistance for Students (section 8, subsection 1) and the Employment Promotion Act (section 40) include provisions that give foreign nationals who have grown up in Germany and reside there permanently an equal right to educational financial assistance. Moreover, in 1985, the 7th law amending the Employment Promotion Act gave foreigners more opportunities to benefit from allowances for vocational training.<sup>18</sup> In a few cases involving foreign girls who refused to attend physical education class, the mandate of the state to provide education came into conflict with the right to practice one's religion. The Federal Administrative Tribunal and other lower courts seem to give freedom of religion priority (Federal Government's

15 The family of the youth has to reside in France, according to an internal letter of instructions (Lochak: 1991).

16 The case was brought by the GISTI and the CFDT (Heymann-Doat: 1994, p. 132).

17 For an extensive presentation of the existing jurisprudence, see Commission Nationale Consultative des Droits de l'Homme (1996).

18 The Federal Law on the Promotion of Education and Training was amended in 1986 to include a similar improvement (10th Act to amend the Bundesausbildungsförderungsgesetz, 16 June 1986).



Commissioner for Foreigners' Affairs: 1994, pp. 50-1).

In the Netherlands, education is compulsory until age 16 and some form of formal education is required at age 17 and 18. Aliens have access to financial assistance as well. The main difference between the Netherlands and the other two countries lies in the possibility offered to aliens to register their children in state-funded denominational schools (e. g. Moslem and Hindu).<sup>19</sup> In light of the high rate of unemployment among ethnic minorities in the Netherlands, there has also been an accrued effort in the area of job training.

## POLITICAL RIGHTS

Out of three cases examined here, the only country where aliens have gained electoral rights is the Netherlands. For the first time in 1986, aliens who had been legally residing for three years could vote and stand as candidates in local elections. Beforehand, foreign residents had been allowed to participate in elections for neighborhood councils, which had been introduced in big cities such as Rotterdam and Amsterdam. Another right traditionally considered to be reserved for nationals, the right to work in the public sector except in "sensitive posts" (*vertrouwenfuncties*), was also extended to aliens after a bill was submitted in 1985 to repeal the Act of 1858 on this matter.<sup>20</sup>

In Germany, since 1982, all parties except the CSU and the extreme-right accept foreigners. They had first been allowed to do so in 1967 (Dohse: 1981). Foreigners also participate in a number of consultative committees. Yet, there are a number of constraints on the political activity on aliens. Aliens cannot vote or stand as candidates in local, regional, and national elections. The only exception regards EU nationals in local and EP elections. The constitutional court voided an attempt by two *Länder* to grant resident aliens the right to vote in local elections in 1990. In this respect, "the tension between cosmopolitan and

---

19 In addition, one should mention that certain aspects of immigrant policy affect the education of foreign children but they are not individual or group rights. One would be the extra funds allocated to schools with a certain percentage of immigrant children (in the Netherlands and in French ZEPs (Priority Education Zones) since the 1980s). The other regard education in the language and culture of origin of the foreign parents.

20 The actual Act was published on 20 April 1988 (Stb 1988, n°4231). See Groenendijk (1989). In fact, there already were foreigners working for the state (in hospitals, schools, the railway system and cleaning services...) but in contractual precarious positions whereas, with the new law, they obtained civil servant status with all the benefits attached to it. See the 1983 Ministry of Interior survey *Ethnische minderheden bij de overheid*. If this was symbolically important as an example of the de-linking between nationality and citizenship rights and migrant participation in the *res publica*, it was also significant as a way of enhancing socioeconomic opportunities for migrants given that the public sector employed 825000 people at the time (1984 statistics excluding the army; Groenendijk: 1989).

ethno-nationalist constitutional norms that were originally incorporated in the Basic Law has not disappeared to this day" (Oberndörfer: 1991). A revision of the Basic Law would be necessary to allow resident aliens to obtain electoral and eligibility rights.

In France, prior to 1981, many aliens who were trade union activists or human rights workers were expelled on the grounds that they had not "respected the political neutrality to which any foreigner residing on French territory is bound" (Wihtol de Wenden: 1988). The grounds for expulsion was "breaching public order." There even were restrictions on political participation for aliens that had become French citizens. Until 1981, naturalized aliens could not vote or be eligible for a period of five years. They had to wait ten years to be granted electoral rights or work in the public sector until a law passed in April 1975 (Weil: 1991). Aliens cannot vote in local or national elections in France. The only constitution that allowed it was the short-lived Constitution of 1793. Exercising of political authority extends to the administration. Civil service is reserved for nationals in France (article 5, paragraph 1 of 13 July 1983 law) although exceptions exist since the late 1970s.<sup>21</sup> Some EU citizens now can since the passing of the law 91-715 of 26 July 1991 following France's condemnation by the European Court of Justice (for not respecting article 48, paragraph 4 of the Treaty of Rome).

Overall, there have been improvements in the status of aliens and the rights that they enjoy yet the process of rights extension has not gone as far in all countries for all types of rights.

### **III. When Rules Facilitate the Stealth of the Executive: Social Rights Versus Political Rights**

The rules that govern reform go a long way towards explaining why reforms extending certain types of rights are bound to spill over from the executive arena (political rights) whereas others will not (social rights). Granting voting rights to foreigners entails constitutional revision and thus legislative passage by a large coalition. This means that a public discussion on the issue is almost inevitable and bound to be long and divisive as all sorts of larger debates will resurface (e. g. on the definition of the nation) thus hampering chances for reform.

Welfare benefits do not obey the same rules as political rights. In their

---

<sup>21</sup> This means that one may find foreign teachers, doctors, or public employees in France who do not enjoy the same status as French public sector workers in terms of job guarantees, pay, benefits etc...



case, regulatory changes often suffice; or they can be extended by the passing of a bill that includes many social measures so as to divert attention from the benefits attributed to foreigners.<sup>22</sup> In any case, they only need to be adopted by a simple majority. In a number of cases, legal texts are neutral as far as nationality is concerned. The issue is to render effective rights that exist only on paper or inversely to stop applying old regulations rather than to adopt new laws. It is less likely that reforms that only require a clarification in the form of an information note to welfare providers or a circular will need the approval of other ministries. These are in some sense circulars that do not circulate. These facts facilitate the adoption of social benefits. It should be noted that rules here vary across types of rights rather than across countries.

Still, one may ask why state bureaucracies favor equal social rights for aliens? Starting in the 1970s, there was a concern with the costs of special programs for migrants (Penninx: 1979). What transpires from policy documents in the three countries studied however is that equality in law is important because it replaces special services and is thus less costly.

Furthermore, although each country had a different attitude towards the inclusion of migrants in society, they all converged around the idea of equal social rights. In Germany, scholars often state that equal social rights have been instituted in lieu of an incorporation policy. This was partly for cost reasons but also because having an incorporation policy would have meant acknowledging that Germany was an *Einwanderungsland* which governments did not want to do. In addition, it would have been difficult to realize given German federalism, a system that leaves the states leeway in the area of social and cultural policy. France does not deny that it is an immigration country yet balks at instituting policies that emphasize the right to difference. Equality of rights is therefore a more acceptable solution than differential treatment of populations and was compatible within the overarching Republican paradigm. The Netherlands set up a multiculturalist framework in the early 1980s yet both the expert report on ethnic minorities that inspired it and the government document that followed insisted that non-legal discrimination on the basis of nationality first needed to be achieved. It was a prerequisite. In summary, for different reasons, equal social rights fitted with the dominant norms on migrant incorporation and afforded bureaucracies a solution that required less organizational costs.

Welfare benefits have therefore been less discussed in a large public

---

22 French Minister of Health Simone Weil resorted to this technique in the 1990s to give equal professional rights to foreign doctors. In Germany, including the question of children benefits for aliens in a wide-ranging tax reform in the 1970s is another example of diversion.



sphere than political rights and has largely remained a bureaucratic problem. There is an interesting "false exception" to this general dynamic: child allowances. This benefit stands out as having been at the center of politically charged discussions in all three countries studied and one of the rare welfare provisions that clearly distinguish between aliens and citizens. Except in the Netherlands, aliens receive a lesser amount of allowance if their children stay in the alien's country of origin. In the Netherlands, however, there is a regular debate about the issue: whenever the budget is discussed in parliament, someone raises the issue, an occurrence Ruud Lubbers contextualized as part of the restructuring of the Dutch welfare state and the discourse on the abuse of the social security system by natives and migrants alike.<sup>23</sup> Budget discussions are one of the few moments when one can truly predict issue salience: every time a new budget is under scrutiny. We would expect allowances to be reduced for children abroad if it is politicized in a context of fiscal austerity and welfare-bashing. In the Netherlands however, reform has been delayed for lack of consensus although it is important to note that the Left and the Right have *both* changed their position.

The effect of linking the amount of children allowances and their place of residence is not a clear-cut issue. When the German government in the 1970s said that they would diminish *Kindergeld* for children residing abroad, they spurred a wave of family reunification. Therefore, from the standpoint of migration control agencies (at the Ministry of Justice),<sup>24</sup> it is counterproductive to give less money to aliens. It is now, in fact, those responsible for integration policy who want to use benefit differentials so that aliens bring their children sooner: this way children can adapt and do better in the host society educational system. These arguments are outcomes-oriented and typical of a bureaucratic perspective. They differ from those inspired by political rhetoric and ideology. In politicians' debates, the arguments oppose those who argue for equal benefits and stress the importance of equality before the law and those who favor unequal benefits and argue that "children allowances should not be paying for the development of entire villages in Turkey."<sup>25</sup> In brief, this is a case where there might be a contradiction between desirable policy outcomes and lucrative political discourse. It further shows that whether a state bureaucracy or an assembly of political parties representatives is responsible for policy decisions yields opposite results. No ideological camp can have their cake and eat it too,

23 Interview, Ruud Lubbers, Former Prime Minister of the Netherlands, Cambridge, MA, April 1996.

24 In the Netherlands, civil servants of the IND in the Ministry of Justice remember the German example. Interview, Mr. de Boer, Natalie Jonkers, Nicolas Franken, Ministry of Justice, The Hague, February 1995.

25 Example of discourse given by Ruud Lubbers. Interview, Ruud Lubbers, Former Prime Minister of the Netherlands, Cambridge, MA, April 1996.

this situation hampers reform.<sup>26</sup>

In cases where rules allow flexibility in the way in which policy change is enacted, the expansion of debate is more likely to come from the existence of conflict among policy makers since "where there is little or no conflict, policies tend overwhelmingly to be made by small groups of experts in specialized policy communities far from the view of the public" (Baumgartner: 1989, p. 213). In the case at hand, this refers to the governmental agencies in charge of immigrants. It is in their interest to do their work stealthily. It is significant that the main mode of change has been the enactment of unpublicized decrees and circulars. Stealth becomes arduous however when agencies have competing aims, for instance, between ministries in charge of social issues and ministries in charge of border controls as we have seen in the family allowances case. Still, social rights are much less politicized than political rights thanks to legal rules for reform.

Another venue that has been conducive to guaranteeing equal rights for aliens have been the courts. For example, in France, the Council of State and the Constitutional Council have been instrumental in consolidating the welfare rights of foreigners. In 1985, the Paris municipal council headed by Jacques Chirac, as part of its pro-fertility policy, decided to grant a new non-contributive benefit ("*l'allocation municipale de congé parental d'éducation pour le 3ème enfant*") only to nationals. The administrative tribunal of Paris tribunal cancelled the decision on 19 March 1986 and, when it was appealed, the Council of State confirmed the judgement of the tribunal on 30 June 1989.<sup>27</sup> Both jurisdictions insisted on a strict application of the universality of rights. On 22 January 1990, the Constitutional Council struck down a legislative measure that extended a non-contributive benefit ("*l'allocation adulte handicapé*") to non-nationals but only to EU nationals. It reaffirmed that exclusion of foreigners from welfare benefits is against "the constitutional principles of equality." All along the judicial chain, the principle of non-discrimination was further strengthened.

In Germany as well, high courts have affirmed the principle of equality before the law in the area of social rights for aliens. The landmark case dates back to 1979, when the Federal Constitutional Court ruled on a case involving pension payments to a Brazilian and a Guatemalan (decision of 20 March 1979, in *Entscheidungen des Bundesverfassungsgerichts* 51, p. 1). Under the Salaried Employees' Social Security Act, pension payments were suspended if a former employee or his/her surviving spouse left voluntarily the FRG unless s/he was

<sup>26</sup> One has to choose between (a) less family reunion but more benefits for aliens or (b) equal benefits for aliens but unsuccessful integration.

<sup>27</sup> See *Plein Droit*, February 1989 and November 1990 issues.



German or a national of a country that had signed a reciprocity agreement. The government justified the statute as a bargaining lever during the international negotiations of social security treaties. The Court did not find the argument convincing and invalidated the federal statute. The substance of the case involved social protection and German constitutional law sets as a government goal "a just social order" and the court underlined the importance of social insurance law. Yet, it is precisely on that account that the decision is interesting: the "social state principle" that defined postwar Germany was also in the eyes of the court to be enjoyed by non-Germans.

In the Netherlands, legal aid groups for migrants fought in the 1970s through the courts and through lobbying to overturn successfully discriminatory practices in the area of welfare benefits. Until the mid-1970s, immigrant workers only received unemployment benefits for six months and it was a customary administrative practice to take away their residence rights and expel them if they had not found a job after 3 or 6 months. Dutch workers are entitled to two and a half years of benefits but unemployment legislation did it state that legally employed foreigners were a special category (Groenendijk: 1980, p. 170). Moreover, municipalities would distribute benefits *à la tête du client* rather than the full legal amount –300 or 400 guilders instead of 1000 for instance.<sup>28</sup>

Given the relative insulation of courts from electoral politics, their attitude confirms my hypothesis that foreigners' rights are best discussed behind closed doors than in a media-covered electoral arena where xenophobic voices can be heard. Moreover, high courts have a positive bias towards equal rights of foreigners because of their mode of functioning. A crucial element if courts want to establish their legitimacy is consistency. In other words, if they treat different groups/constituencies differently, they will not be credible as neutral arbiters. What Martin Shapiro calls the "triadic model of justice" implies judges must maintain the illusion of neutrality to insure their legitimacy (1981). All the decisions on aliens are presented and debated in the courts as a balancing of state interests and individual freedom based on the notion of proportionality. Courts are more responsive than other branches of the state to "public interest" ideas such as ideas of equal treatment and due process (Schuck: 1984, 1993). European high courts drew on norms of constitutional and administrative law norms that had long been established in other areas.

There was also a constitutional basis for the courts to rule in favor of aliens' social rights. Constitutions often use expressions like "every one", "all" when outlining rights and therefore that, once the courts had been solicited, they

---

<sup>28</sup> Interview, Kees Groenendijk, Faculty of Law, Nijmegen, June 1995.

were bound to disregard nationality as a criterion for the attribution of rights. There again, the contrast with political rights is striking, since domestic constitutions but also international human rights texts such as the European Convention of Human Rights and Fundamental Freedoms (Article 16) reserve political rights to nationals.

The role of the courts will remain crucial as guarantors of the social rights of aliens during the age of welfare retrenchment and strict migration control policy. Recent developments where courts applied EEC association treaties with Turkey, the Maghreb, and ACP/AP countries to acknowledge certain welfare rights for migrants show that international and national legal texts can have great resonance once the juridicization of immigration politics has occurred. Even in the case of posted workers in European countries,<sup>29</sup> in particular project-tied workers, whose status seemed to exclude them from national social security and labor law protection, courts have tended towards integrating them in the receiving country's welfare state system and labor market (see Groenendijk and Hampsink 1995, especially chapter 7 on Yugoslav workers in the Netherlands).

## CONCLUSION

As we have seen, the inclusion of legally residing foreigners in the welfare state has been quite extensive during the last decades in spite of the fact that it ran against some of the policy goals of migration control policy and against the closed logic of the welfare state. It is also counterintuitive that the rights that entailed redistributive costs were granted more easily than regulatory ones. The reasons for such inclusiveness lie in the institutional trajectory of reforms. Unlike other rights such as voting rights, rules allowed for a lower visibility of the reform process. This implies that the voting public who might have felt the diffuse costs of the inclusion of foreigners in the welfare state was largely unaware of them. Moreover, the organizations where debate on the issue was allocated such as courts and social bureaucracies seem to have been positively biased in favor of equal treatment for reasons that originate in their own functioning. Put simply, bureaucracies standardize operations and courts seek coherence in the application of legal principles. This helped migrants gain access to welfare benefits. In this respect, the conclusions presented here concur with studies of social policy such as Hugh Heclo's that have underlined that much policy-making is elaborated away from the public eye (1974, 1981).

---

<sup>29</sup> This is notwithstanding in the case of posted workers that the tension between freedom of services and European social policy is most at odds and where ECJ rulings seem to favor the former. See Eichhorst 1998.



Moreover, they are relevant in the area of welfare state studies at a time of transformation and/or retrenchment.<sup>30</sup> In a word, welfare rights reforms can be labeled “unpopular” implying that parties in power can expect to be penalized at the next election for passing them. Therefore, they inscribe themselves within a much larger set of policies where one would expect policy haters to outweigh the beneficiaries and supporters of policy change in the current “politics in hard times” or “age of high unemployment” in Europe (Pierson 1994 and 1996 and Esping-Andersen 1985).<sup>31</sup>

If they want to maintain their chances of reelection or avoid social unrest, political leaders find it in their interest to avoid being blamed for the passing of unpopular reforms. Some scholars have identified a number of strategies to achieve “blame avoidance” (Weaver: 1986). They include playing constituencies against one another, compensating vital ones, making it hard to voters to trace the responsibility for voters either by seeking a wide consensus or by lowering the visibility of reform (Arnold: 1990). In the case of foreigners rights, these strategies include shifting debate to venues that are sheltered from electoral fallout and whose functioning is biased towards program or norms expansiveness.

---

<sup>30</sup> Just how much retrenchment has taken place is obviously a matter for debate among welfare state analysts. See van Kresbergen: 1997 for a review; see Alber: 1996 and Pontusson: 1998 for proponents of the retrenchment thesis and see Pierson: 1996 and Stephens, Huber and Ray: 1996 for comparative analyses emphasizing the resilience of the welfare state.

<sup>31</sup> For an interesting study on elite strategies and success at imposing welfare reforms in Spain and Portugal, see Glatzer: 1997.



## References

- Aberbach, Joel, Putnam, Robert, and Rockman, Bert (1981) *Bureaucrats and Politicians in Western Democracies*, Cambridge, MA, Harvard University Press.
- Alber, Jens (1996) *Selectivism, Universalism, and the Politics of Welfare State Retrenchment in Germany and the United States*, Paper presented at the 1996 Annual APSA meetings.
- Alfandari, Elie, ed. (1987) "Immigration et droits sociaux: Numéro spécial", *Revue du Droit Sanitaire et Social*.
- Bauböck, Rainer (1995) *Transnational Citizenship. Membership and Rights in International Migration*, Aldershot, UK Edward Elgar Publishing Limited.
- Baumgartner, Frank and Jones, Bryan (1993) *Agendas and Instability in American Politics*, Chicago, Chicago University Press.
- Baumgartner, Frank (1989) *Conflict and Rhetoric in French Policy-Making*, Pittsburgh, University of Pittsburgh Press.
- Bendix, Reinhard (1977) *Nation-Building and Citizenship*, Second Edition. Berkeley, University of California Press.
- Beune, H. H. M. and Hessels, A. J. J. (1983) *Minderheid - minder recht? een inventarisatie van bepalingen in de Nederlandse wet- en regelgeving waarin onderscheid gemaakt wordt tussen allochtonen en autochtonen*, Staatsuitgeverij. The Hague.
- Böcker, Anita and Minderhoud, Paul (1991) *Immigrants and Social Security: Perspectives of Dutch Implementation Officers and Turkish Clients*, Paper presented at the International Conference of Law and Society, 26-29 June.
- Böcker, Anita (1992) "Social Security in Turkish Migrant Families" in *Journal of Legal Pluralism and Unofficial Law*, 32, 1-18.
- Brubaker, Rogers (ed.) (1989) *Immigration and Politics of Citizenship in Europe and North America*, Washington, D.C., German Marshall Fund and University Press of America.
- Castles, Stephen (1984) *Here for Good. Western Europe's New Ethnic minorities*, London, Pluto Press.

Chenillet, Philippe (1987) "L'immigré et sa vieillesse", *Revue du Droit Sanitaire et Social*, n° special

Commission Nationale Consultative des Droits de l'Homme (1996) *La lutte contre le racisme et la xénophobie : Exclusion et droits de l'homme*, Paris, La Documentation Française.

Crowley, John (1998) "The National Dimension of Citizenship in T. H. Marshall" in *Citizenship Studies*, 2, 2.

Dauvet, Richard (1991) *Dossier sur le droit de vote des immigrants adressé au Président de la République le 25 août 1991 et transmis aux Affaires Sociales le 2 Octobre 1991*, Unpublished. Available at the library of the Direction de la Population et des Migrations, reference number: SC/8/D54708.

Dohse, Knuth (1981) *Ausländische Arbeiter und bürgerlicher Staat*. Königstein, Verlag Anton Main.

Eichhorst, Werner (1998) *European Social Policy between National and Supranational Regulation: Posted Workers in the Framework of Liberalized Services Provision*. Discussion paper series, Cologne, Max-Planck-Institut für Gesellschaftsforschung.

Esping-Andersen, Gösta (1985) *Politics against Markets: The Social Democratic Road to Power*, Princeton, Princeton University Press.

Esping-Andersen, Gösta (1990) *The Three Worlds of Welfare Capitalism*, Cambridge, Polity Press.

Federal Government's Commissioner for Foreigners' Affairs (1994) *Report by the Federal Government's Commissioner for Foreigners' Affairs on the Situation of Foreigners in the Federal Republic of Germany in 1993*.

Federal Ministry of Interior (1993) *Survey of the Policy and Law Concerning Foreigners in the Federal Republic in Germany*, Bonn.

Freeman, Gary (1986) "Migration and the Political Economy of the Welfare State", *AAPSS* 485, 51-63.

Glatzer, Miguel (1997) *Rigidity and Flexibility: Patterns of Labor Market Policy Change in Portugal and Spain 1981-1993*, Paper presented at the Conference on Unemployment's Effects, Princeton University (November).



de Graaf, Hein, Penninx, Rinus and Stoové, Errol (1988) "Minorities Policy, Social Services, and Ethnic Organizations in the Netherlands" in Shirley Jenkins (ed.), *Ethnic Associations and the Welfare State*, New York, Columbia University Press.

Groenendijk, C. A. (1989) "Nationality and Access to Employment in the Public Service: Law and Practice in the Netherlands", *Netherlands International Law Review*, 36, no. 2, 107-30.

Groenendijk, Kees and René Hampsink (1994) *Temporary Employment of Migrants in Europe*, Nijmegen, Reeks Recht & Samenleving.

Habermas, Jürgen (1994a) "Citizenship and National Identity" in Bart Van Steenberghe (ed.) *The Condition of Citizenship*, London, Sage, 20-35.

Hailbronner, Kay (1989) *Ausländerrecht*. Second Edition, Heidelberg: C. F. Müller Juristischer Verlag.

Hammar, Tomas (1990) *Democracy and the Nation-State: Aliens, Denizens and Citizens in a World of International Migration*, Aldershot, Avebury.

Heclo, Hugh (1974) *Modern Social Politics in Britain and Sweden: From Relief to Income Maintenance*, New Haven, Yale University Press.

Heclo, Hugh and Wildavsky, Aaron (1981) *The Private Government of Public Money: Community and Policy inside British Politics*, London, Macmillan.

Herbert, Ulrich (1990) *A History of Foreign Labor in Germany*, Ann Arbor, University of Michigan Press.

Heymann-Doat, Arlette (1994) *Libertés publiques et droits de l'homme*, Paris, Librairie Générale de Droit et de Jurisprudence.

Houzé de l'Aulnoit, A. (1885) *Les ouvriers belges à Lille. Etude sur les conditions d'admissibilité des indigents étrangers aux secours publics*, Lille, Banel.

van Kersbergen, Kees (1997) *The Declining Resistance of National Welfare States to Change?* Working Paper, Nijmegen, Catholic University.

Layton-Henry, Zig (ed.) (1990) *The Political Rights of Migrant Workers in Western Europe*, London, Sage.

Leveau, Remy (1989) "Les partis et l'intégration des 'beurs'" in Yves Mény (ed.) *Idéologies, partis politiques et groupes sociaux*, Paris, FNSP.

Lochak, Danièle (1991) *Egalité des droits*, Paris, Conseil National des Populations Immigrées.

Marshall, T. H. (1965) *Class, Citizenship and Social Development*, New York, Doubleday.

Minderhoud, Paul (1994) *Short Overview of the Dutch Social Security System Concerning Aliens*, Mimeo, Available from the author.

NGuyen Van Yen, Christian (1987) "La santé de l'immigré", *Revue du Droit Sanitaire et Social*.

Noiriel, Gérard (1988) *Le creuset français : histoire de l'immigration, XIXe-Xxe*, Paris, Seuil.

North, David, Wihtol de Wenden, Catherine and Taylor, Chris (1987) *Non-Citizens' Access to Social Services in Six Countries: Canada, F. R. G., France, Sweden, U. K., and U. S.* . Paper written for the Citizenship/Naturalization Conference. Sponsored by the German Marshall Fund of the United States, Berkeley Springs, West Virginia.

Oberndörfer, Dieter (1991) *Die offene Republik. Zur Zukunft Deutschland und Europas*, Freiburg, Herder Spektrum.

Pierson, Paul (1994) *Dismantling the Welfare State? Reagan, Thatcher and the Politics of Retrenchment*, Cambridge, Cambridge University Press.

Pierson, Paul (1996) "The New Politics of the Welfare State," *World Politics* 48 (January).

Piore, Michael (1979) *Birds of Passage: Migrant Labor and Industrial Societies*, Cambridge, Cambridge University Press.

Pontusson, Jonas and Richard Clayton (1998) *The New Politics of the Welfare State Revisited: Welfare Reforms, Public-Sector Restructuring, and Inegalitarian Trends in Advanced Capitalist Societies*, Paper presented in the 1997/8 luncheon seminar series of the Robert Schuman Centre, Florence

Prétot, Xavier (1987) "L'immigré et son travail", *Revue du Droit Sanitaire et Social*.



Rath, Jan (1988) "La participation des immigrés aux élections locales aux Pays-Bas", *Revue Européenne des Migrations Internationales* 4, no. 3.

Schattschneider, Eric (1960) *The Semisovereign People: A Realist's View of Democracy in America*, New York, Holt, Rhinehart and Winston.

Schill, Erich (1965) *Das Recht der ausländischen Arbeitnehmer in Deutschland*, Baden-Baden, Nomos Verlagsgesellschaft.

Shapiro, Martin (1981) *Courts*, Chicago, University of Chicago Press.

Soysal, Yasemine (1994) *Limits of Citizenship*, Chicago, Chicago University Press.

Stäck, Klaus and Karst, Inge (eds) (1982) *Macht Ali deutsches Volk kaputt?*, Göttingen, Steidl Verlag.

Stephens, John and Evelyn Huber and Leonard Ray (1996) "The Welfare State in Hard Times" in Herbert Kitschelt (ed.) *Continuity and Change in Contemporary Capitalism*, New York, Cambridge University Press.

Turner, Bryan (1986) *Citizenship and Capitalism*, London, Allen and Unwin.

Weaver, Kent (1986) "The Politics of Blame Avoidance", *Journal of Public Policy* 6, 4, 371-78.

Weil, Patrick (1991) *La France et ses étrangers. L'aventure d'une politique de l'immigration, 1938-1991*, Paris, Calmann-Lévy.

Weil, Patrick (1997) *Mission d'étude des législations de la nationalité et de l'immigration*, Paris, La Documentation Française.

Wihtol de Wenden, Catherine (1988) *Les immigrés et la politique*, Paris, FNSP.







# EUI WORKING PAPERS

EUI Working Papers are published and distributed by the  
European University Institute, Florence

Copies can be obtained free of charge  
– depending on the availability of stocks – from:

The Publications Officer  
European University Institute  
Badia Fiesolana  
I-50016 San Domenico di Fiesole (FI)  
Italy

**Please use order form overleaf**

# Publications of the European University Institute

To                    The Publications Officer  
European University Institute  
Badia Fiesolana  
I-50016 San Domenico di Fiesole (FI) – Italy  
Telefax No: +39/55/4685 636  
e-mail: [publish@datacomm.iue.it](mailto:publish@datacomm.iue.it)  
<http://www.iue.it>

From                Name .....  
Address .....  
.....  
.....  
.....

- ☐ Please send me a complete list of EUI Working Papers
- ☐ Please send me a complete list of EUI book publications
- ☐ Please send me the EUI brochure Academic Year 1999/2000

Please send me the following EUI Working Paper(s):

No, Author .....  
*Title:* .....  
No, Author .....  
*Title:* .....  
No, Author .....  
*Title:* .....  
No, Author .....  
*Title:* .....

Date .....

Signature .....





## Working Papers of the European Forum

### EUF No. 95/1

Diemut BUBECK  
A Feminist Approach to Citizenship

### EUF No. 95/2

Renaud DEHOUSSE/Thomas  
CHRISTIANSEN (eds)  
What Model for the Committee of the  
Regions? Past Experiences and Future  
Perspectives

### EUF No. 95/3

Jens BONKE  
The Concepts of Work and Care - An  
Economic Perspective Applied to Britain  
and Denmark

### EUF No. 95/4

Jens BONKE  
Education, Work and Gender -  
An International Comparison

### EUF No. 95/5

Henriëtte MAASSEN VAN DEN  
BRINK/Wim GROOT  
Household Production and Time  
Allocation, the End of the Male  
Chauvinist Model

### EUF No. 95/6

Andrés BARRERA-GONZÁLEZ  
Language, Collective Identities and  
Nationalism in Catalonia, and Spain in  
General

### EUF No. 95/7

Diemut BUBECK  
Gender, Work and Citizenship: Between  
Social Realities and Utopian Visions

### EUF No. 95/8

Miriam A. GLUCKSMANN  
Gendered Economies of Time: Women  
Workers in North-West England

\*\*\*

### EUF No. 96/1

David PURDY  
Jobs, Work and Citizens' Income: Four  
Strategies and a New Regime

### EUF No. 96/2

Barry EICHENGREEN/Andrew  
ROSE/Charles WYPLOSZ  
Contagious Currency Crises

### EUF No. 96/3

Yasemin SOYSAL  
Boundaries and Identity: Immigrants in  
Europe

### EUF No. 96/4

Yasemin SOYSAL  
Changing Parameters of Citizenship and  
Claims-Making: Organized Islam in  
European Public Spheres

### EUF No. 96/5

Giovanna PROCACCI  
Poor Citizens. Social Citizenship and the  
Crisis of Welfare States

\*\*\*

### EUF No. 98/1

Yuri KAZEPOV  
Citizenship and Poverty. The Role of  
Institutions in the Structuring of Social  
Exclusion

### EUF No. 98/2

Massimo LA TORRE  
Citizenship and Social Rights. A  
European Perspective

### EUF No. 98/3

Ewa MORAWSKA  
Structuring Migration in a Historical  
Perspective: The Case of Traveling East  
Europeans

### EUF No. 98/4

Virginie GUIRAUDON  
International Human Rights Norms and  
their Incorporation: The Protection of  
Aliens in Europe



**EUJ No. 98/5**

Patrick WEIL

The Transformation of Immigration  
Policies, Immigration Control and  
Nationality Laws in Europe: A  
Comparative Approach

**EUJ No. 98/6**

Public Services and Citizenship in

European Law

Mark FREEDLAND

Law, Public Services, and Citizenship -

New Domains, New Regimes?

Silvana SCIARRA

Labour Law - A Bridge Between Public

Services and Citizenship Rights

\* \* \*

**EUJ No. 99/1**

Virginie GUIRAUDON

The Marshallian Triptych Re-Ordered:

The Role of Courts and Bureaucracies in

Furthering Migrant Social Rights





