1. Introduction

This paper examines Germany’s attempts to construct a new immigration policy under the conflicting pressures of state, elite and popular values. It observes and evaluates government responses to shock events under conditions of attitudinal polarisation over immigration issues. Germany offers a number of advantages as a starting point for a comparative review of immigration policy in contemporary Europe. Since the Second World War, it has exemplified the western European model of the ‘reluctant’ host state. An archaic understanding of German citizenship founded on blood lineage has promoted perceptions of foreign incomers as essentially temporary residents. Naturalisation, seen as both an honour and a long path to full cultural and legal assimilation, has been restricted to the few. The absence of a cohesive legal and institutional base for the handling of immigration has constructed a somewhat artificial distinction between foreign incomers as temporary workers or alternatively as temporary seekers of sanctuary. More generally, the constitutional norm and pursuit of ‘militant democracy’ (a proactive approach to the defence of the constitutional order and liberal democratic values of the state) has led to the association of non-European incomers with the threat of infiltration. In these ways Germany has embodied, albeit exaggeratedly, typically western European values in relation to foreign incomers. These include the quandary of reconciling constitutional freedoms of expression with upholding the core liberal democratic norms of the state; the norm of assimilation with respect to naturalisation; the notion of liberal democracies as a haven for the unfortunate; and an instrumental and contingent view of foreign workers. Altogether, Germany typifies the central western European dilemma over immigration. Although a reluctant host, the combination of a vibrant economy and unusually developed legal protection for individuals and minorities encourages what is widely perceived as an excessive inflow of foreigners (see Hollifield, 1992: 216, 222).

It was not until 2001 that a post-war German government first introduced a bill for the regulation of immigration. Until German unification, the symbolic deployment of citizenship policy to challenge the status quo of the territorial division of Germany had effectively blocked the potential for policy development in the area of immigration (Hogwood, 2000). Thereafter, debate on citizenship, asylum and immigration issues revealed deep divisions between partisan, elite, popular and minority views on key values and issues. The salience of the immigration issue in the 2002 federal election and the troubled passage of the immigration bill to date have only served to underline the problems. Unlike other European countries, Germany has had little in the way of an institutional or policy legacy to fall back on. In this context, the response of the Social Democratic/Green government to immigration problems has been coloured explicitly by partisan tactical considerations and by contemporary pressures and events. In its attempts at policy innovation, it has shown itself to be particularly sensitive to public opinion and media coverage.
The German government has found its recent entry into making policy for immigration further complicated by the particularly strong impact of outside events and global forces. The shock events of 9/11 occurred at a critical time in the development of Germany’s new immigration policy, aggravating the long-standing tension between upholding civil and minority rights and the protection of the constitutional order (Heins, 2002: 135-6; Glaessner, 2003: 52; Haubrich, 2003: 16, passim). While the concept of militant democracy has been elaborated largely within the context of post-war Germany, the notion of the liberal democratic state’s right to defend its own constitutional order is one which is relevant to all western European countries. In post-war Europe, immigration, with its multiple links to other policy fields, including citizenship policy, economic policy and industrial policy, has traditionally occupied an ambivalent position between ‘high’ and ‘low’ politics. The 9/11 attack led western European governments to link security issues with immigration issues in a more explicit way than had been customary. Arguably, only in Germany had immigration issues previously occupied such a prominent position in the policy priorities of the state. The ‘German’ concept of militant democracy therefore offers an analytical focus for the discussion of some of the key problems relating to immigration both in Germany and in other western European democracies in the wake of 9/11.

2. Militant democracy in Germany: the proactive defence of an objective value order

As ‘reflexive’ democracies, western European polities invite and even promote limited forms of self-scrutiny and critical evaluation (Budge, 1994; Hogwood and Roberts, 2003: 244-5). In consequence, they experience a tension between allowing individuals to exercise freedoms central to the regime’s core values, and, on the other hand, upholding the democratic order against anti-system forces which would use those freedoms deliberately to subvert the regime. Whereas this is a tension experienced in all western European countries, in the FRG it was felt particularly keenly throughout the post-war years and on occasion threatened to spill over into hysteria. It is here that concerns with the defence of the constitutional order have achieved their clearest elaboration. Emerging from a right-wing totalitarian dictatorship to face an ideological opponent in the neighbouring German Democratic Republic (GDR), the FRG was keenly aware of the danger to the fledgling state of malicious infiltration. The question of internal state security could not be taken lightly. These circumstances produced an intense and enduring preoccupation with security in the FRG (Edinger, 1986: 318ff; Glaessner, 2003: 43). One initial response of the FRG’s state to its perceived territorial and moral vulnerability was to link its newly forged constitutional consensus with the concept of ‘militant democracy’, or, as it is sometimes referred to, ‘combative democracy’. Militant democracy has taken on various forms in the FRG. It has been developed as an abstract concept; a legal principle; and as a method for the realisation of internal security. The elaboration of militant democracy has marked Germany’s security regime with significant characteristics. These include a proactive defence of the constitutional order; the perception of the constitution as an explicitly normative consensus and the active engagement of the state and citizen in the defence of the constitutional order (FRG Ministry of the Interior, 2003: 11-12).

Militant democracy was first elaborated in the FRG as a series of legal measures for the defence of the constitutional order. The legal-normative heritage of the concept is found in the democratic-functional theory of basic rights, which justifies the limiting of individual freedoms in the interests of society as a whole. Accordingly, basic rights are conferred on the citizen not primarily in the interests of the individual, but rather in the public interest. In addition, the FRG’s Basic Law of 1949 was heavily influenced by the work of German philosopher Rudolf Smend, who believed that a constitution is essentially ‘an order based on values’ (Wertordnung) and as such imposes legal rights and obligations (Paterson and Southern, 1991: 57ff). It follows that the ‘objective value order’ established in the Basic Law
must be protected against the misuse of basic rights by individuals or groups, citizens or non-
citizens, and by state or quasi-state actors.

The state developed numerous institutional means to guard against the erosion of the
constitutional order. These are grounded in the Basic Law, the federal constitution. Article 20
of the Basic Law is an explicit expression of militant democracy: it gives all Germans the
right to resist subversions of the constitutional order if no other remedy is available (Smith,
1986: 237 fn17). Other more conventional forms of protection include unalterable measures
for the protection of human rights and dignity (Articles 1.1 and 79.3); measures for the
banning of antidemocratic parties and associations (Articles 21.2 and 9.2); rights of the
Federal Constitutional Court to rule against the abuse of constitutional freedoms (Art. 18) and
measures providing for the Offices for the Protection of the Constitution at the federal and
Land level (Articles 73, 10b and 87.1). Article 87.1 provides for ‘protection against activities
within the federal territory which, through the use of force or preparations for the use of force,
derange the external interests of the Federal Republic of Germany’ (FRG Ministry of the
Interior, 2003:12). Some constitutional lawyers believe a ‘basic human right of security’ is
cabinet founded the Federal Security Council as a cabinet committee. The council
coordinates the security and defence policy of the FRG and is also responsible for the export
of weapons.

In justifying state actions against groups and individuals, the concept of militant democracy
translated as a method for the realisation of state security in the FRG. Unlike the Weimar
republic, the Bonn Republic has been proactive in the defence of its democratic order, with its
inherent value system. In fact, it was through the active defence of the democratic order that
the key principles of militant democracy and the objective value order were more fully
defined and elaborated. In banning the neo-Nazi Socialist Reich Party in 1952 and the
Communist Party of Germany (KPD) in 1956 under Article 21 of the Basic Law, the Federal
Constitutional Court (FCC) noted that a ‘value order’ was an element of the ‘free democratic
basic order’ and that parties which denied these values placed themselves outside the
constitution. Later rulings by the Federal Constitutional Court established that an individual’s
freedom of expression must not damage the ‘objective value order’ inherent in the Basic Law.
More recently, the constitutional review conducted in the wake of unification in 1990 was
deliberately channelled through the forum of the Joint Constitutional Commission so as to
preserve, as far as possible, the substantive and normative integrity of the Basic Law. This
demonstrates the continuing attachment to the objective value order of the Basic Law as
expressed in the institutional framework of the FRG, at least in the centre-right circles in
government at the time.

The elaboration of militant democracy moved from the courts to the streets in the late 1960s
when the state was tested by a radical student protest movement and a violent left-wing extra-
parliamentary opposition movement. For the first time, the defence of the objective value
order was equated with an overt terrorist threat. The protective measures undertaken by the
state at this time included a ban on the employment of radicals in the public service. In 1976,
a ruling of the FCC upheld the ban with an explicit reference to the way in which the Basic
Law establishes a militant democracy. In the light of these developments, Smith posed a
pertinent question (1986:221-2): ‘…how far (can) a liberal democracy … proceed with its
militancy before it merely becomes an intolerant one’? Throughout its existence, the FRG
has had difficulty in finding a balance between state and public security on the one hand and
individual freedoms and basic rights on the other. In the view of civil liberties’ groups, the
FRG state authorities have tended to err on the side of the former, giving too high a priority to
the protection of a value order defined by the state itself. Particularly with respect to the
terrorist threat of the 1970s, sections of the public and political commentators did not so much
object to the state taking steps to control the violence, but rather to the excessive violence of
the state’s measures and to its demand for the total capitulation of captured terrorists. The

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state’s strategy backfired. It engendered widespread sympathy in left-of-centre opinion, if not for the aims of the terrorists themselves, then at least for civil rights’ groups’ claims that the state was becoming repressive and intolerant of world views other than its own, in a way which was in itself damaging to democracy (see Braunthal, 1990).

According to the Basic Law, security and police functions in Germany are divided between the federation and the Länder. Internal security and policing falls mainly to the Länder and local authorities, but the federation has accrued decisive competencies in border control; security measures at airports and railway stations; combating international crime; drug trafficking and counter-terrorism (Glaessner, 1993:47). The Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz (BfV)) has been particularly significant in the pursuit of internal security. The BfV is accountable to the federal government (specifically to the Ministry of the Interior) and the parliament (Bundestag) and the measures it undertakes are subject to review by the courts. The activities of the BfV and the corresponding Land authorities (the Landesämter für Verfassungsschutz (Lfv)) are regulated by statute law (notably the Bundesverfassungsschutzgesetz). These bodies carry out surveillance of activities suspected to endanger the integrity of the ‘free democratic basic order’. They work together with the intelligence service (Bundesnachrichtendienst (BND)) and the military counterintelligence service (Militärischer Abschirmdienst (MAD)). Although most of the information they gather comes from the public domain, they are empowered to conduct ‘proportionate’ undercover investigations under closely specified conditions, using informers, observing, filming and recording activities and monitoring postal and telephone exchanges (FRG Ministry of the Interior, 2003: 9-15). The BfV also conducts information campaigns together with the Ministry of the Interior and Land authorities, apparently with a view to constructing and maintaining an informed ‘living’ normative constitutional consensus as opposed to a simply legal one. In its most recent annual report, the BfV claims that, ‘The BfV’s publicity work offers information on its experiences that should allow everyone to arrive at their own judgement about the dangers facing our Rechtsstaat (state under the rule of law) through anti-constitutional forces’ (FRG Ministry of the Interior, 2003: 16).

The commitment to a proactive defence of the objective values of the constitutional order persists. Recent documentation from federal government authorities refers to the grounding in the Basic Law not only of the principle of ‘combative democracy’ but also the principle of a democracy ‘ready for combat’. It also notes the immutable nature of the constitution’s normative values (FRG Ministry of the Interior, 2003: 11; see also Backes (1989); Jaschke (1991); Jesse (1992) and Lange (1992)). Perhaps aware of the negative connotations attaching to militant democracy during the 1970s, the current SPD-Green government has not explicitly returned to the concept in its elaboration of measures to combat international terrorism, leaving this association to the right of centre CDU/CSU. Instead, the SPD Interior Minister Otto Schily has stressed that all forms of extremism and violence must be met with determined but considered legal state action and that beside control measures, priority should be given to preventative measures.

3. Germany: the archetypal European ‘reluctant’ host country

Early on in the post-war division of Germany, West Germany’s political elites made a strategic decision that was to prove crucial not only for its ostensible purpose of promoting a future German unification, but also in the handling of policy concerning foreigners. This was the decision to represent the new FRG as the sole legal heir of the German Reich. Following the logic of their ‘one Germany’ claim, the FRG extended citizenship rights to those ethnic Germans now living outside the de facto boundaries of the FRG, both in the GDR and in neighbouring countries settled under Hitler’s regime. FRG citizenship was never represented as ‘West German’, but always as ‘German’. The symbolic deployment of citizenship policy to challenge the status quo of the territorial division of Germany effectively blocked the
potential for policy development to meet those concerns more usually associated with citizenship policy in post-war European politics, including issues of immigration and the naturalisation of long-term foreign residents. Like other western European countries, the post-war FRG had accepted notions of constitutionalism and some elements of multiculturalism. However, the Citizenship Law, passed in 1913 and rooted in prior legal traditions, based citizenship on blood lineage (jus sanguinis), rather than on the membership of a state territorial community (jus soli) remained unaltered. Over the years of the Bonn Republic, deep divisions emerged between mainstream parties of the centre-right, which retained a deep ideological commitment to the traditional citizenship and immigration regime, and the parties of the centre-left, which increasingly viewed the polity’s stalled citizenship policy as an impediment to the handling of immigration issues and the integration of Germany’s resident foreign population.

The collapse of the Soviet Union, the liberalisation of the central and eastern European regimes and the unification of Germany removed the international constraints on the normalisation of citizenship and related policy areas in Germany. In accordance with its principles, the CDU/CSU, which had been returned to head the governing coalition in the first all-German federal election of 1990, remained reluctant to introduce changes to the traditional citizenship and immigration regime. By the early 1990s, though, Germany was facing a crisis of mass, unwanted immigration that made nonsense of its official stance of being ‘not a country of immigration’ (kein Einwanderungsland). In comparison with other European host states, Germany’s share of immigrants had always been relatively high. Lacking the colonial links of some other northern European countries, the FRG had pursued expansive labour recruitment programmes in the 1960s and early 1970s, founded on treaties with labour-exporting countries. After the Second World War until the Berlin Wall went up in 1961, the FRG actively encouraged the return of ethnic Germans from eastern Europe and Russia. Its thriving economy and exceptionally liberal asylum laws promoted the early establishment of immigrant communities which in turn acted as a base for further chain migration. In the early 1990s these factors were compounded by the collapse of border restrictions in the former eastern European countries and by the civil war in the former Yugoslavia. The country’s geographical position accounted for much of the influx at this time: asylum-seekers and illegal immigrants from eastern Europe headed for Austria and Germany as the closest countries to their own. The numbers of foreign entrants to Germany soared, particularly of asylum seekers. In 1992, the number of asylum applications registered in the FRG (438,200) exceeded the number for that year in all the other European OECD countries combined (SOPEMI, 1994). The numbers of foreign entrants completely overwhelmed the reception and care facilities available in Germany. In the context of economic downturn and a marked rise in attacks on foreigners, political elites viewed continuing mass immigration as profoundly destabilising. By the early 1990s, public attitudes towards foreigners had become severely strained and polarised. During 1991 and 1992, polls showed that issues related to foreigners and immigration had achieved very high salience with the public (Kanstroom, 1993: 156, fn9). With a federal election looming in 1994, this was the catalyst for the political parties to engage in debate on immigration issues more directly than ever before in the FRG.

4. Post-unification Germany: the debate on immigration issues prior to September 11.

In recent years, the public debate in Germany on issues concerning foreigners has followed a series of themes. The discussion has moved from the principle of the right of asylum; through whether Germany should or should not be considered a ‘country of immigration’; to a more differentiated and pragmatic engagement with concrete proposals on, for example, immigration policy, or the ‘green card’ initiative (Federal Statistics Office, 2003: 560). In the early 1990s, with the rate of foreign incomers soaring, the CDU/CSU-FDP government came under increasing pressure to amend the exceptionally liberal asylum provision in article 16 of
the Basic Law. In order to achieve the necessary weighted majority to alter a constitutional
 provision, the government had to recruit the support of the opposition SPD. The SPD agreed
to support the bill in exchange for a liberalisation of Germany’s archaic Citizenship Law
( Frankfurter Allgemeine Zeitung, 1993: 3; Hobe, 1993:71-2; Kansroom, 1993: 155, 174-5,
185-8, 210-11; G. Neuman, 1993: 517, fn 90). Article 16 of the Basic Law was amended in
1993, with the aim of excluding claimants from sending countries designated as ‘safe’.
Despite the more proactive policies on immigration pursued by the SPD/Green government
since coming to power in 1998, the extent of the consensus on immigration matters should not
be overstated. The debate on immigration issues polarised positions to an extraordinary
degree and challenged deeply-held social and partisan values. Evidence of this can clearly be
seen in the emotive exchanges which have accompanied SPD/Green attempts to change the
legal framework for immigration issues.

The revision of naturalisation policy

The asylum compromise opened up new possibilities for a much-needed overhaul of the
immigration regime, but these did not begin to bear fruit until the SPD/Green coalition came
to power in 1998 under Gerhard Schröder.9 The first SPD/Green policy initiative was the
revision of naturalisation policy agreed in principle by the CDU/CSU in 1992-3. Debate on
the issue during and after the deal over the asylum provision suggests that, over time, it will
become progressively easier for those foreigners living on German territory to acquire
citizenship, while ethnic German privileges will be progressively restricted and eventually
phased out. Nevertheless, the naturalisation debate reveals that there remains a profound
duality in normative perceptions of ‘German’ and ‘foreigner’. Moreover, normative
perceptions of the ‘foreigner’ continue to be associated, amongst significant sections of the
public and political elite, with a potential threat to the objective values enshrined in the
constitutional order. This duality, with its associations with internal security and with core
values, is key to understanding the initial moves towards the construction of immigration
policy in the post-unification 1990s. The unique international constraints on Germany’s
citizenship policy, detailed above, should not mask the fact that a profound attachment
continues amongst large sections of the people and the political elite to a citizenship concept
founded on blood lineage and to a distinction, perceived as inherent, between citizen and
foreigner. Particularly the Christian Democratic Union (CDU) and even more so its Bavarian
sister party the Christian Social Union (CSU), known collectively as the ‘union’ parties,
remain wedded to an entho-cultural conception of German nationality. Parties of the far right
adopt an extreme version of this stance. Prominent in opinion on the right of the political
spectrum is a deep-seated fear of the ‘alienness’ of the foreigner and an a priori assumption
that the unintegrated foreigner will somehow undermine German ‘order’, both in the sense of
cultural norms and state security. Both the attachment to the jus sanguinis principle and the
fear of the ‘other’ are reflected in attitudes towards naturalisation (Hogwood, 2000). For
proponents of an entho-cultural understanding of citizenship, naturalisation is understood to
be the exception rather than the rule. An applicant for naturalisation is expected to
demonstrate a high degree of emotional commitment to the German state and nation, such that
naturalisation is the legal culmination of a long path of assimilation. Dual nationality is seen
as unacceptable except in very exceptional circumstances. Parties on the left of the political
spectrum and also the liberal FDP, otherwise currently associated with a centre-right policy
stance, advocate a German nationality based on a more contemporary civic-territorial
conception. On the left of the political spectrum, there is little objection to dual nationality.
Even within this understanding, though, there is limited acceptance of multiculturalism or
reciprocal assimilation. The mainstream centre-left sees naturalisation based on a
unidirectional assimilation of ‘German’ attributes as a prerequisite for the integration of
resident foreigners10.

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Barriers to naturalisation were relaxed slightly through the SPD/Greens’ Law Reforming the Right of Citizenship, which came into force on 1 January 2000. However, the naturalisation process remains a long-term commitment and applicants must fulfil numerous conditions. The first draft of the Bill included a proposal for dual citizenship, but after a successful petition drive by the CDU/CSU, the measure was dropped from the final draft of the bill. This was the first time that the union parties had employed such mass, ‘extra-parliamentary’ tactics more usually associated with new social movements. Arguably, its resort to direct action showed how important the issue is for the union parties. The petition got over five million signatures, 1.8 million of these in Bavaria. The success of the drive rested on significant opposition to dual citizenship amongst the general public. Opinion polls revealed that by early January 1999, 53% of all Germans opposed unlimited dual citizenship; 71% of CDU/CSU supporters; 82% supporters of far-right parties (Holmes Cooper, 2002: 88-97).

Although successful, the petition action had pitted the modernisers within the union against the hardliners. With a view to the upcoming federal election in 2002, the modernisers, including Angela Merkel, wanted the party to use foreigners’ issues to compete for a more centrist electoral clientele. Their preference would have been to adopt a more multicultural approach to the integration of foreigners. However, party hardliners argued that, should the CDU/CSU adopt a more moderate stance, parties of the far right might make gains out of foreigners’ issues at the expense of the union. In fact, the compromise petition did not go as far as the hardliners would have liked. Although it did not advocate the *jus soli* principle (children born in Germany of foreign parents would not automatically be awarded German citizenship at birth and would never be offered dual citizenship), in introducing Rüttger’s ‘integration concept’ it did implicitly acknowledge the reality of the permanent settlement of resident foreigners. Under the ‘integration concept’ the CDU-CSU now proposed increased state funding for German classes for foreigners; measures to improve the position of foreign women and to aid small-businesses (Holmes Cooper, 2002: 94-6). Given the fundamental opposition of the CDU/CSU to dual nationality, a compromise over the SPD/Green bill was finally forged on the basis of the FDP’s ‘option solution’ (Optionslösung). Children born in Germany of long-term foreign residents would receive temporary dual citizenship but would have to choose between their two nationalities by age 23 (Holmes Cooper, 2002: 98).

**The SPD/Green Immigration Bill**

In July 2000, the SPD had introduced an Immigration Commission, known as the Süßmuth commission after its CDU chairwoman. The Commission was composed of representatives of the political parties, Länder, local authorities, academics, churches and NGOs active in the field of immigration. Supported by staff in the Ministry of the Interior, the Commission was to formulate practical proposals and recommendations for a new policy on aliens and immigration. These, together with inputs from the draft proposals drawn up by various political parties, formed the basis of the SPD/Green immigration bill, the first in the history of the FRG.

The SPD/Green’s draft immigration bill entered the public domain towards the end of July 2001 and was the subject of wide-ranging discussion in Germany. Formally proposed on 3 August 2001 and initially expected to enter into force in January 2003, the bill was trumpeted as the key legislation in the SPD/Greens’ long-standing aim to modernise and rationalise Germany’s dated immigration regime. Chancellor Gerhard Schröder hailed the draft as ‘an historic juncture for Germany’ (AS, 2001: 1). The liberal FDP supported the bill, but it was criticised for different reasons by the opposition union parties and the government’s own junior coalition partner, the Greens. After several weeks of negotiations with the Greens, the bill was finally introduced by the cabinet on 7 November 2001. Given the timing of the initiative, the final drafting of and debate on the measure were inevitably strongly coloured by the September 11 attack. (These, together with the difficulties encountered to date in
passing the bill, are discussed further below.) The bill aimed to set down, for the first time, a legal route to permanent immigration. Without impinging on the regulatory framework already existing through other laws, it would regulate the residence, employment, and integration of foreigners in Germany. The law aimed specifically:

- to consolidate the fragmented legal framework for dealing with immigration issues to bring together economic and humanitarian considerations
- to control and limit the number of would-be immigrants entering the country
- to prioritise the entry of highly–skilled immigrants who can contribute to the German economy
- to simplify the complicated legal position on foreigners’ residents’ permits
- to make it easier for European Union citizens to live in Germany
- to streamline and accelerate asylum procedures
- to improve the integration of foreigners.

After a few minor cuts, the bill - after all a product of lengthy consultations - initially received broad party support and the support of most relevant NGOs. By the time the immigration bill was scheduled for parliamentary passage in March 2002, an opinion poll conducted for ARD television found 51 per cent of respondents to be in favour of the proposed law and 30 per cent against. At this time, most business, union, and church groups were also in favour (Migration News, 2002). Some political commentators described the bill as representing a ‘paradigm shift’, allowing the FRG for the first time to acknowledge the realities of its situation as a ‘country of immigration’ (Bendel, 2003:5).

5. 9/11 and its consequences civil liberties and for foreigners in Germany

The shock events of 9/11 occurred at a critical time in the development of Germany’s new immigration framework, aggravating the long-standing tension between upholding civil and minority rights and the protection of the constitutional order (Heins, 2002: 135-6; Glaessner, 2003: 52; Haubrich, 2003:16, passim). The impact in Germany was particularly great given that some of the terrorists involved in the 9/11 attacks were foreign residents of the FRG. Mohammed Atta, suspected of masterminding the operation and piloting one of the planes in the attack on the World Trade Centre, had apparently entered the country with three different falsified passports. The prosecution services in Germany and in the US issued international warrants against three further Hamburg residents, Said Bahaji, Ramzi Binalshibh and Zakariya Essabar, for conspiring and organising terrorist crimes (Glaessner, 2003:50; Haubrich, 2003:6-7). Additionally, Germany plays host to the largest non-naturalised Turkish population of any western European state. In objective terms, a specifically Islamicist threat to the democratic order appears limited. Of the 7.3 million foreigners resident in Germany in 2002, only 30,600 were members of Islamic organisations (Schily, 2003). Nevertheless, the perceived threat posed by unintegrated foreigners to state security has become more pronounced since 9/11. Inevitably, then, the construction of a new immigration policy in Germany has gone hand in hand with developments in security policy.

The Schröder government was quick to respond to the new level of threat posed by international terrorism. Only eight days after the attack, the cabinet’s ‘First Security Package’ of laws (Sicherheitspaket I) proposed the amendment of the regulations governing the activities of private associations to remove the ‘religious privilege’ clause that had limited the government’s authority to ban extremist organisations designated as ‘religious’. This meant that religious fundamentalist groups could henceforth be included in the category of ideological extremist associations that may be banned if they are found to be involved in terrorist, criminal or anti-constitutional activities. The government stressed that the amendment was intended solely as a counter-terrorism measure and was not designed to erode religious freedom in Germany. Days after the Bundestag approved the measure, the ‘Caliph
State’ Islamic organisation in Cologne was banned, and its leader, serving a prison sentence, was ordered to be deported to Turkey (Migration News, 2002; Glaessner, 2003: 49).

A second and more comprehensive package followed (Second Security Package; Sicherheitspaket II). It was described by Interior Minister Schily, making explicit reference to the atrocities of September 11 and the worldwide threat posed by Islamicist fundamentalists, as the means of achieving an ‘early warning’ of the preparation of terrorist activities. This second package was passed by the Bundestag on 14 December 2001 and by the second legislative chamber, the Bundesrat, on 20 December 2001. It was the most wide-ranging package of laws to affect civil liberties in the FRG’s history and involved changes to seventeen existing laws and five regulations (Haubrich, 2003: 9-10). It also had far-reaching implications for Germany’s resident foreign population and for foreigners seeking to enter the country. The second package, also known as the anti-terrorism law (Gesetz zur Bekämpfung des internationalen Terrorismus), came into force on 1 January 2002. It proposed additional competencies for the police and intelligence services and new regulations for non-German residents and asylum seekers. The new anti-terrorism law awarded significant new powers to the Federal Office for the Protection of the Constitution (BfV). Under closely defined conditions, the BfV may now demand information from financial institutions, airlines and from companies providing telecommunications services. (As before, though, the BfV has no powers of arrest, search or to impound goods.) A special parliamentary committee has been convened to supervise measures taken by the BfV under its newly enhanced powers (Glaessner, 2003: 54-5). In addition to its new legal powers, the BfV’s budget was increased to just short of 124 million Euros in 2002, compared with just over 115 million in 2001. In response to the internationalisation of the terrorist threat, the BfV has stepped up its contacts with corresponding authorities in other countries. In contrast to the partisan divisions that characterised the debate on the government’s immigration initiatives, the new security and anti-terrorism laws passed by the Bundestag enjoyed broad support by opposition parties (Migration News, 2002; FRG Ministry of the Interior, 2003: 9-14; Glaessner, 2003: 43-4; 49).

Other measures adopted by the government in response to 9/11 impacted more directly on Germany’s immigration regime. These included amendments to the two laws currently central to the regulation of immigration into Germany: the Aliens’ Law (Ausländergesetz) and the Asylum Procedure Law (Asylverfahrensgesetz). A visa or residence permit may now be refused to any foreigner engaging in or supporting terrorism or acts of violence. Schily had originally intended to have these measures implemented on suspicion of such activities, but subsequently modified his proposal. The union parties criticised the modification vehemently, arguing that it is still too difficult to expel foreigners suspected of terrorist acts (AS, 2001: 2). The new anti-terrorism law requires German consulates worldwide to assess a visa applicant’s security status and German diplomatic missions may now include fingerprint identification in visa procedures. The rights of asylum seekers have been restricted by stricter interpretations of the Geneva Convention (1951) and stricter controls on the ‘abuse’ of asylum. The amended anti-terrorism law provided for an expansion of the Central Register of Foreigners (Ausländerzentralregister) to include data on visa applicants and on non-Germans entering Germany. It also gave the police access to the Central Register. On the basis of the new provisions, universities are now required to divulge data from student records on all students of Arabic and/or Muslim origin (AS, 2001:2; Migration News, 2002; Glaessner, 2003: 50-51).

Glaessner’s evaluation of these measures is blunt: ‘Taking all these measures concerning migration and asylum into account, one can hardly avoid the impression that the anti-terrorism bill proved to be a good opportunity to push forward restrictive regulations on asylum and immigration, which had been on the agenda for quite a long time but were met with stiff resistance by a wider public and relevant groups within the governing coalition’ (Glaessner, 2003: 51). In common with the anti-terrorist measures introduced in comparable countries, Germany’s new law bypassed the lengthy procedures that would normally have
accompanied any measures involving restrictions on civil liberties, including government negotiations with leading interest groups, political parties and expert committees. European governments justified their precipitous legislation with reference to fears of a repetition of the attacks in their own territories and to the parallel measures being taken at EU level (Haubrich, 2003:8). In Germany, whereas the emergency measures of the Schröder government’s first security package met with widespread support from political elites, the proposals of the second, with their wider implications for civil rights and foreigners, provoked greater controversy. This, though, was largely limited to the government coalition partners of Social Democrats and Greens. The coalition took two weeks to agree on an acceptable version – including the requirement for a re-evaluation of the legislation in five years’ time - leaving the Bundestag only days to consult on the government proposal. The Bundesrat’s 65-page response to the package, including suggested amendments, was largely ignored (Glaessner, 2003:52, 54; Haubrich, 2003: 9-10).

In common with France, Germany did not initiate constitutional changes in response to the perceived terrorist threat. Also, unlike the UK, Germany and France have opted not to invoke a ‘state of emergency’ or a ‘state of defence’ under existing constitutional provision (Haubrich, 2003:27). In international comparison, the new anti-terrorism legislation introduced in Germany in the wake of 9/11 was judged in a joint statement by leading human rights organisations 15 as the fifth most repressive, after that of the USA, UK, Canada and France. The legislation introduced in the UK, France and Germany has been described as, ‘panicked, ineffective, exaggerated, authoritarian and in breach of civil rights conventions’ (Haubrich, 2003:7). While maintaining a distance from the US, Germany has taken a proactive stance in the fight against terrorism at the EU level. Most recently, Otto Schily initiated an emergency meeting of the ministers of the interior of the EU member states in response to the terrorist attack in Madrid in March 2004. At the meeting an agreement was forged which will pave the way for a closer coordination of intelligence work across the EU, leading ultimately to an integrated force.16

6. The conflation of security and immigration issues after September 11

The ‘securitisation’ of the immigration debate, significant in the context of the intervening events of September 11, impacted on the construction and debate of the immigration bill in a number of ways. Interior Minister Schily structured the final draft of the bill according to measures relating to security as well as measures relating to immigration and the integration of resident foreigners (AS, 2001:2). The submission of the bill for parliamentary scrutiny was delayed for fear that the new provisions could too easily be abused by terrorists (Haubrich, 2003: 16).

Given the timing of the federal election in September 2002, it was a foregone conclusion that security played a key role both in party manifestos and more generally in the public debate. In the election campaign, the Greens gave the clearest reflection of the tension between upholding the democratic order and guaranteeing civil rights and freedoms. For the first time, the left-radical Greens acknowledged the preservation of law and order to be a legitimate aim for the state. However, they warned against overreaction to international terrorism to the point of damaging civil rights. Taking a more liberal approach to the new anti-terror legislation, their election manifesto argued for routine revision of any laws affecting civil liberties. In contrast the manifesto of the FDP, in spite of its liberal heritage, made little mention of the need to uphold civil liberties (Glaessner, 2003: 45). With Schröder’s selection as chancellor candidate virtually a foregone conclusion, it is interesting to see how the CDU/CSU’s reading of media and public opinion on immigration and security issues influenced their choice of chancellor candidate. Angela Merkel, who had taken over from Wolfgang Schäuble as chair of the CDU, was initially expected to be nominated as chancellor candidate for the union. Towards the end of 2001, though, opinion polls showed that Edmund Stoiber, Minister-
President (Prime Minister) of the Land of Bavaria and leader of the CSU, was consistently perceived as a better contender against Schröder. This preference became more marked after the terrorist attack on the World Trade Centre on September 11 2001 and arguably tipped the balance against Merkel (Hogwood, 2004 forthcoming). Merkel’s stance on the debate over the reform of naturalisation had placed her amongst the moderates. In contrast, Stoiber was much more bullish. His personal view was that liberalisation of the naturalisation laws would pose dangers equivalent to the Red Army Faction’s terrorism of the 1970s (Holmes Cooper, 2002: 95). Stoiber’s approach to the SPD/Greens’ immigration bill was equally uncompromising. He vowed to give the issue of immigration a role in his election campaign, given that the government had ‘forced through’ its new immigration law (Migration News, 2002). It is not known exactly how the public’s evaluation of the candidates’ ability to handle the security dimension and immigration issues featured in the party’s decision, but the outcome speaks for itself.

The security dimension is also noticeable in the proposed amendments put forward by the CDU opposition for the bill’s second attempt at passage in early 2003. In comparison with the amendments suggested by the opposition at the bill’s first reading in 2001, these were more restrictive and were dubbed the ‘Poison List’ (Giftliste). The Poison List contained 137 motions, including routine surveillance of foreign residents from ‘problem’ states and coercive detention for deportees (Bendel, 2003: 5-6).

It would be wrong to suggest that the conflation of security and immigration issues since September 11 was restricted to the problem of keeping unwanted foreigners out. A major concern remained the protection from violence of those foreigners already living in Germany. In May 2002 the Bundestag was presented with a ‘Report on the government’s current and planned measures and activities against right-wing extremism, xenophobia, anti-semitism and violence’ (Drucksache 14/9519), which included measures on promoting the integration of resident foreigners.

7. The troubled passage of the immigration bill

Having secured the agreement of the government’s junior coalition partner to the draft, the Ministry of the Interior prepared the ground for passage of the immigration bill by conducting negotiations with the christian democratic opposition both in the Parliament (Bundestag) and in the Federal Council (Bundesrat), the second legislative chamber, where the union parties had a majority (AS, 2001: 2; Bendel, 2003: 3). On 1 March 2002, the Bundestag voted 320-225 in favour of the proposed SPD-Green immigration bill. It was the vote in the Bundesrat on 22 March 2002 that exposed the deep partisan divisions over the issue. The vote was controversially passed in favour by the narrowest of margins: 35-34. However, the deciding vote was cast by the Land of Brandenburg. Brandenburg had been expected to abstain, given that there was no agreement on the proposed measure within the Land’s ruling SPD-CDU coalition. When the Land’s block vote17 was registered as a vote in favour, some of the christian democratic members of the Land’s own delegation shouted ‘no!’. Asked to clarify the position, Manfred Stolpe, SPD Minister-Präsident (prime minister) of Brandenburg confirmed the vote in favour, at which leaders of the CDU-led Länder walked out in protest. Federal President Johannes Rau signed the bill into law, but six CDU-led Länder later lodged a complaint with the FCC, arguing that voting procedures had not been complied with. In December 2002, the FCC upheld the objection (Migration News, 2002).

Whereas this setback for the bill is represented in government sources and in some of the evaluative literature as a solely procedural hiccup (see eg Bendel, 2003: 2), the divisions amongst the Brandenburg delegation in fact give a telling insight into the depth of political divisions on immigration matters. Certainly, the fragile consensus allowing the bill to progress as far as it did in 2001 and early 2002 was subsequently eroded, with party positions...
on certain immigration issues diverging significantly (Bendel, 2003:2). One factor in the divergence was certainly the pressure on parties to present an independent profile in the campaign for the federal election in 2002. In January 2003 the bill was presented for a second time, substantively unchanged, into the legislative process. The Bundestag passed the bill on 8 May 2003, but, on 20 June 2003, it was rejected by the Bundesrat. The bill was passed to the Joint Committee of the Bundestag and Bundesrat for mediation, where it remains. On 10 October 2003, given the failure to achieve consensus, the Joint Committee established a working group led by the prime minister of the Saarland (Müller). The working group has met on several occasions since November 2003 (FRG government, 2004a). Following recent meetings in March 2004, the mood has lightened considerably and both government and opposition sources claim to have discovered more common ground (FRG government, 2004b).

A general complaint of the union parties was, predictably, that the government immigration bill would allow too many immigrants to enter the country. They argued that the government should be taking steps to curb immigration, but that this bill would encourage it (AS,2001:1). The CDU also initially opposed the SPD/Green’s ‘green card’ initiative. This, one of the key points of the bill, set out to regulate the entry of foreign workers according to a points system based on a number of criteria, including age, level of qualifications, work experience, German language competence and so on. This overtly instrumental measure was designed to facilitate the selection of the most suitable workers to support the German economy. There was to be no quota imposed on the entry of such highly qualified incomers. The CDU discreetly dropped its opposition when it became aware of the support from business for the fast-track admission of computer experts (Holmes Cooper, 2002: 99). The union parties also increasingly criticised the bill’s focus on two matters which they viewed as relatively insignificant: non-state and gender-related persecution and the age limit for children applying for entry on the grounds of family reunion. The issue of enhanced legal provision for persons subject to non-state and gender-related persecution was introduced at the behest of the government’s junior coalition partner, the Greens (AS, 2001:1). For some time Germany, together with France and Switzerland, has lagged behind international standards on provision for these categories of persecuted persons and has been found lacking under judicial rulings in other EU states and by the European Court of Human Rights. Measures in the immigration bill would give people persecuted under the noted categories at least the right of temporary residence in Germany. However, the union parties are against widening the current scope of legal provision in these areas. The family reunion issue came to the fore in the federal election campaign in 2002. The government had intended to reduce the maximum age limit for children joining their families already resident in Germany from 18 years of age (under qualifying conditions) to 14. It is argued that such a reduction in the age limit is necessary for the successful integration of children into German society. CDU representatives stated preferences ranging from 12 right down to 3 years of age. After an interim agreement on 12 years of age with concessions in cases of hardship, in February 2003 the union parties demanded a new limit of 10 years. The petty squabbles over these issue have dominated the elite debate over the immigration bill, but have been estimated to affect only some 8,600 potential cases. Bendel attributes the squabbles largely to partisan tactical considerations rather than real substantive concerns about immigration provision (Bendel, 2003:11, 13). The necessary passage of the bill through the parliamentary scrutiny procedure — and with it, a long overdue modernisation of Germany’s immigration regime - therefore remains uncertain. Should mediation through the joint committee of the Bundestag and Bundesrat fail, it is likely that the government would attempt to pass its key provisions on non-state and gender-related persecution and measures for children’s reunion with their families. These would not require Bundesrat approval, but would still need to be passed by the Bundestag. These two issues were debated on 13 March 2003 when a compromise bill proposed by the FPD was rejected by the union parties (Bendel, 2003:6).
8. After September 11th. Democratic norms and immigration policy in Germany and in Europe.

Germany: policy learning

Given the FRG’s pioneer role in the development of immigration as a policy area within the European Union, it is perhaps odd that the European dimension has not been a strong feature of the German public debate on immigration during the early years of the 21st century. Although keen to initiate and shape policy on immigration at the European level, Germany has found the implementation of European directives relatively taxing. For example, Germany has been slow to implement the EU Directive on Racial Discrimination (2000/43/EC) and the Directive on Discrimination in Employment (2000/78/EC). This has been due in part to the numerous veto-points in the federal legislative process (Bendel, 2003: 14). In the domestic debate, political elites in Germany largely ignored measures on family reunion proposed by Brussels, instead allowing domestic obligations and interests to dominate the discourse. European measures were used as a benchmark only in the discussion of non-state and gender-related persecution, and then particularly by the Green party (Bendel, 2003: 6-7).

In facing the pressures posed by contemporary mass immigration, Germany is in some ways disadvantaged when compared with other western European countries. Unlike other European countries, it has had little in the way of an institutional or policy legacy to fall back on. Under these circumstances it might have been anticipated that Germany, in constructing its new immigration regime, would look to other countries with more experience of running a government department or division explicitly allocated to dealing with immigration or with constructing a fully integrated immigration policy. In fact, Germany has drawn only very selectively on other tried and tested models for an immigration regime. The German debate has focused largely on economic instrumentalism and control measures, with ‘conscience’ matters of humanitarian aid falling largely to representations by the Green party. The government adopted the ‘green card’ approach originating with the traditional settlement host states with alacrity. Although a more sophisticated instrument than the Gastarbeiter policy, the green card approach is consistent with Germany’s traditional view of incoming foreigners as a tool of economic policy. Unsurprisingly, the use of quotas in immigration policy also featured large in Germany’s domestic debate. Although the integration of foreigners is hailed as a major new development in Germany’s approach to immigration, the measures proposed are cautious and fully assimilationist. The focus of the initiative is an orientation course on German culture, history, constitution and legal order and a (sanctionable) test of German language proficiency. The measures do not incorporate multiculturalist ideals nor even wider integrationist aims as have been attempted in some other western European states. It can be argued that they lag behind social realities on the ground in Germany, where the extension of selected political and social rights and patterns of social interaction are in practice producing a status of ‘denizenship’ between the ideal types of ‘citizen’ and ‘foreigner’ (Hammar, 1990; Klopp, 2002: 239-243).

Rather than look to other countries for a blueprint for an immigration regime, it appears that other influences have been more significant in the development of policy relevant to foreign incomers and foreign residents. Germany’s response to immigration matters has focused squarely on contemporary pressures, issues and events, and on its own past construction of the immigration debate. In common with other EU states and host states in advanced democracies, Germany has consciously linked immigration and security issues after the attacks of September 11. This securitisation of immigration policy can be expected to be a significant and lasting feature in the approach of all western European countries. Otherwise, though, the Schröder government has chosen to make a feature of policy aspects, which, although currently problematic, may prove to be transitory in the medium term. Bolstering this tendency is the sensitivity shown by political actors to media coverage and public
opinion. An example of these concerns is the fixation with the age limit for foreign children entering Germany to join resident parents. This issue has been allowed to throw the negotiated settlement on the immigration bill off course although in practice it applies to a very limited target group. Part of the problem in achieving a more balanced approach to immigration problems is that too many elements of a ‘regular’ immigration regime remain the subject of deep partisan divisions and are therefore difficult to bring into debate without the appearance of confrontation.

Germany: the revival of militant democracy

Germany’s response to 9/11 has promoted a revival and a fresh construction of militant or combative democracy in Germany. The term is featured and defined in government sources, such as, for example, the public report of the BfV. Nevertheless, even in the recent drive to promote internal security in the face of the Al Qaeda threat, the government has not to date elevated the term to a political slogan for the 21st century. There are at least three potential explanations for this. Firstly, it is possible that current government advisors see the association that developed between the concept and the heavy-handed response of the government to the terrorist threat in the early to mid-1970s as having tarnished the concept in the public eye. The historical connotations of the concept might make it appear inappropriate for engendering solidarity behind government projects. Secondly, given that the Schröder government was returned to power in the 2002 federal election largely on the peace ticket, the very terms ‘militant’ or ‘combative’ might appear overly aggressive. Thirdly, the term has been used very prominently by union party representatives in recent statements on security and immigration issues.

Is militant democracy, then, essentially a partisan concept? There are historic explanations for the union parties’ resurrection and apparent capture of the terminology. Established in the context of the Cold War, the state instruments for the protection of democracy were developed particularly to deal with the perceived dangers of communist infiltration. A particular complaint voiced from the 1970s onwards was that state control measures were directed disproportionately at left-wing radicals and that right-wing radicals were given more room to manouevre (Stöss, 1991). At this time, then, militant democracy might be perceived as an instrument of the right of the political spectrum. Since unification, the German government has taken steps to control any influence of the former GDR state socialist party, the Socialist Unity Party, in the new German polity. It has conducted exhaustive investigations of the party and of the former GDR Ministry for State Security (MfS, or ‘Stasi’). Again, this drive reflects the interests of the centre-right of the political spectrum more than those of the centre-left. There are dangers in allowing the political right to retain ownership of the term. Even without ideological attachments, militant democracy justifies a proactive defence against outsiders. Particularly the hard right of the political spectrum is more likely to associate foreigners as outsiders than those on the centre-right, centre-left and radical left. It would be damaging if militant democracy were to become a rallying cry for the hard right and turned against foreigners in general as opposed to the tiny fraction engaging in terrorist activity. A healthier development with respect to immigration issues would be the development of the term militant democracy as an integrative concept to unite all – citizens or foreign residents – in the integration drive. This would be an extension of the current usage of the term by government sources in relation to security issues.

Militant democracy and immigration in Europe

Is militant democracy a concept bound to its original setting, or might it translate to other settings? Key characteristics of militant democracy in Germany have emerged as: the perception of the constitution as an explicitly normative consensus; a proactive defence of the
constitutional order; and the active engagement of the state and citizen in the defence of the constitutional order. The idea that the state has the right to defend its own democratic order applies to all western European countries and has recently gained in salience. As the countries of western Europe develop individual and collective security measures in the wake of 9/11 and as they urge their population to renewed vigilance following the Madrid bombing, the last two have become central to governments’ approach to internal security. The international scope of the new terror threat and the deployment of terrorist bases within European host states has prompted governments to pursue overarching strategies linking internal security and immigration issues. Immigration issues are no longer confined to the ‘low’ politics of, for example, housing, industrial policy and social security, but have also become a relevant element in ‘high’ politics. In these respects, western European countries are already operating as militant democracies, with significant implications for these countries’ migrant populations. The other leading characteristic of militant democracy in Germany has been the conscious perception of the constitution as a normatively immutable order. This characteristic, a product of Germany’s unique constitutional background and historical experiences, might prove less adaptable to the wider European context and also less beneficial. Whereas all constitutions represent normative values, the specification of these, as demonstrated in the German context, may establish divisions between ideological or ethnic groups in society. To then insist that this order is immutable can only consolidate the problem. In the 21st century, Germany’s experience of functioning as a state under threat may yield valuable lessons – both positive and negative - for other European countries.

References


E. Jesse (1992) ‘Der verfassungsschutzauftrag der abwehrbereiten Demokratie: Theorie und Praxis’ in Bundesministerium des Innern (Hrsg) Wehrhafte Demokratie und Rechtsextremismus (Reihe: Texte zur Inneren Sicherheit), Bonn


Notes

1 I would like to thank Rhiannon Lypka for her invaluable help in locating sources for this paper. Translations from German sources are my own.

2 In this paper, the terms ‘German’ and ‘Germany’ comprise the pre-and post-unification Federal Republic of Germany (FRG). They do not include the former German Democratic Republic (GDR).

3 As Gordon Smith elaborated, ‘...the memory of the dictatorship makes it impossible to take a relaxed attitude towards right-wing extremism, and the proximity of the GDR makes it equally hard not to be wary of the potential danger of disruptive infiltration, of the setting up of democratic ‘front’ organisations, the major function of which may be to weaken the West German state or political system’ (Smith, 1986: 221).

4 Much of the early effort in developing an adequate response to malicious infiltration was directed against agents of the GDR, which the FRG refused to acknowledge as a sovereign state.

5 The Federal Security Council is composed of nine members: the federal chancellor (prime minister); the head of the chancellor’s office; the foreign minister; the defence minister; the the finance minister; the minister of the interior; the justice minister; the economics minister and the minister for economic cooperation and development. Its meetings are chaired by the chancellor and are strictly confidential (www.bundesregierung.de, status 8 October 2001, accessed 22 March 2004).

6 In contrast to the government forces, the SDP, the Greens and eastern interests believed that the normative values Basic Law were not adequately realised in the current system and that Germany needed wide-ranging social and economic reforms (Conradt, 1996:280).

7 Literally, ‘actions of the state under the rule of law (Rechtsstaat)’. Schily’s speech at the launch of the 2002 report on the protection of the constitution, 13 May 2003 www.bundesregierung.de/Verfassungsschutzbericht2002/ accessed 22 March 2004).


9 Following the 1993 compromise, the mainstream parties began to formalise their respective positions on immigration, asylum and German citizenship, which they represented in position statements and legislative proposals. The main documents were: FDP Gesetz über die Zuwanderung in der Bundesrepublik Deutschland vom 9.4.97; BÜNDNIS 90/DIE GRÜNEN Entwurf eines Gesetzes zur Regelung der Rechte von Einwanderern und Einwanderinnen (EinwanderungsG) vom 9.4.97, Bundestagsdrucksache (BT-Drs.) 13/7417; SPD Antrag zur Vorlage eines Gesetzes zur Steuerung der Zuwanderung und Förderung der Integration vom 23.4.97, BT-Drs. 13/7511 (Hailbronner, 1997: 39; Hogwood, 2000).

10 Helmut Schmidt, former SPD chancellor (prime minister), at once reflects these assumptions and questions their practicability, arguing, ‘We have seven million foreigners today who are not integrated, many of whom do not want to be integrated and who are also not helped to integrate. We Germans are unable to assimilate all seven million. The Germans also do not want to do this. They are to a large extent xenophobic.’ (In Schmidt ‘Hand on Heart’ cited in Migration News, 2002).


13 In fact, the full impact of September 11 on Germany’s laws has been more significant still. In total, it is estimated that security stipulations have been amended in 100 laws (Haubrich, 2003: 10). These included the Law on the Protection of the Constitution (Bundesverfassungsschutzgesetz); the Law on the Military Counterintelligence Service (MAD-Gesetz); the Law on the Federal Intelligence Service (BND-Gesetz); the Law on Federal Border Protection (Bundesgrenzschutzgesetz); and the Law on the Federal Criminal Office (Bundeskriminalamtgesetz) www.bundesregierung.de/Themen-A-Z/Innenpolitik-,7419/Zweites-Anti-Terrorpaket.htm (accessed 220304).

14 A fuller account of the BfV’s and other authorities’ new powers and their implications can be found in Gaessner, 2003 and Haubrich, 2003.

15 Human Rights Watch (HRW), Reporters Sans Frontiers (RSF) and the International Federation of Human Rights (FIDH).

16 www.bundesregierung.de/innenpolitik (accessed 220304).

17 Article 51 of the Basic Law requires the Länder of the federation to cast a single unanimous vote in the Bundesrat.
A fuller account of the debates on non-state and gender-related persecution and the age limits for children applying for entry on the grounds of family reunion can be found in Bendel, 2003: 7-13. The following section draws heavily on Bendel’s account.

Otto Schily later introduced the age-limit question which so fixated the German debate into the draft European Directive on the Reunion of Families passed in February 2003 (Bendel, 2003:11-12).

Explicit references to militant democracy and the need to strengthen militant democracy were common in CDU/CSU responses to the government’s 2001 measures on anti-terrorism. For example: the speech of the CDU/CSU parliamentary party group’s speaker on the interior Erwin Marschewski, 11 October 2001 www.documentarchiv.de/brd/2001/rede_marschewski_1011.html (accessed 4 March 2004); the speech of the CSU party group leader in the Bavarian Landtag, Alois Glück, ‘Den Begriff der ‘wehrhaften Demokratie’ neu durchbuchstabieren’ 9 October 2001 www.csu-landtag.de/htmlexport/2583.html (accessed 4 March 2004); the speech of the CDU party group leader of the Niedersachsen Landtag Christian Wulff, ‘Innere Sicherheit – CDU-Konzepte erweisen sich als richtig’ 24 October 2001, document no. 12. In this speech Wulff accused the SPD at the Land and federal level of never having committed to internal security and of having systematically hollowed out the consciousness that the FRG must be a militant democracy to the outside world as well as on the inside (Wulff, 2001:4).