



Capturing the alchemy of regularization

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Manifestations of citizenship in the German *Ausbildungsduldung*

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Foreword

*“Your asylum process is over. The final decision of the court is negative. From now on, the German state can deport you. I’m really sorry. But there’s one thing you can do to stay: you can try to get an *Ausbildungsduldung*.”*

I can’t recall the amount of times I have said these sentences to people over the course of my time working with migrants in Freiburg. In this sunny, southern German town, our collective of volunteers functions as a curious cross between lawyers and social workers, waging a paper war on German migration policy. In my early years there, I had little capacity to ponder the philosophical and sociological underpinnings of the system I was operating in. Only later, pausing this work to study International Migration and Refugee Law at the VU in Amsterdam, was I able to formulate proper questions and analyses around the legal constructs I had been working with.

One of those legal constructs is the *Ausbildungsduldung*. This particular German status effectively suspends a deportation for illegally staying migrants doing a three-year vocational training, and offers them the perspective of a residence permit based on work in their new profession. In our office, everyone speaks of it with ambiguity. On the one hand it appears to be a holy grail – a way out of toleration, a path towards regularization. On the other it seems a lousy deal – hard work in a badly paid, inglorious profession without a legal residence permit.

This ambiguity of the *Ausbildungsduldung* fascinated me. I couldn’t stop analyzing its legal particularities in my head. I wondered which political processes had spurred a deportation-eager country to construe a deportation-halting document. I dreamed of asking migrants how it felt to quite literally work towards a legal residence permit. I wanted to know whether it was a holy grail, or a lousy deal, or whether perhaps, somehow, it was both. It fascinated me to the point of disturbed sleep. There was only one cure: I had to write my master thesis on it.

The result lies before you. Some questions have been answered, others remain open; many more new ones were raised. I am grateful for the supervision of Martijn Stronks, who shared with me great chunks of his time and encouraged me to embrace the inherent complexity and tensions of the law. All translations from German are my own.

1. Introduction

1.1 Problem definition

We live in a world of fluid borders.¹ The traditional notion of bounded territoriality of a nation state is being replaced by the idea that sovereignty might be manifested anywhere in the world.² Within the field of migration studies this requires a change in perspective: the focus is no longer only on the moment people cross static land borders, but rather on all migration enforcement activities taking place across time and space.³

Scholars have noted that such a dynamic border influences normative and practical aspects of membership.⁴ The fact that people can experience the border in their everyday lives effectively blurs the fixed lines between who does and does not belong. Practices of internalization, i.e. when the border “bleeds into the interior,”⁵ mean that entry and subsequent presence of people do not automatically lead to their inclusion in the nation state. People can enter the spatial domain of the community yet remain to a certain extent outsiders with an alienage status.⁶

The study of migration is thus closely tied to the concept of *citizenship*: inclusion in a nation’s political community.⁷ Scholars have identified a general exclusionary approach of nation states towards people without a legal residence permit.⁸ Such exclusion from citizenship is attained inter alia through the internalization of the border, revealed in various laws and policies. These include (the threat of) deportation and detention and the exclusion from membership benefits such as access to education, work and health care.⁹

People without a legal residence permit are sometimes given the opportunity to regularize their status. Linda Bosniak has referred to such programs as “legal alchemy”, through which

¹ The term ‘border’ has gained traction across scholarly disciplines as a more general metaphor referring to the experiences of people crossing between various cultural, ethnic or racial lines of identity. Within critical race theory, it has long been established that the notion of the border “is rarely site-specific” and is rather “invoked as a marker of hybrid or liminal subjectivities.” See Fox C, ‘The Portable Border: Site-specificity, Art, and the U.S.-Mexico frontier’ (1994) *Social Text* 41, 61.

² Shachar A, *The shifting border: Legal cartographies of migration and mobility: Ayelet Shachar in dialogue* (Manchester University Press, 2020), 11. Some scholars have pointed out that this logic of sovereignty is older and has in fact driven colonialist projects of the Global North. See: Achiume E, ‘Migration as Decolonization’ (2019) 71 *Stanford Law Review* 1509-1574.

³ Shachar (2020), 7. See also: Menjivar C, ‘Immigration Law Beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization’ (2014) 10 *Annual Review of Law and Social Science*, 353-369.

⁴ Shachar (2002), 36.

⁵ Shachar (2002), 23.

⁶ Bosniak L, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton University Press, 2006), 9.

⁷ The notion of citizenship is an essentially contested concept. Throughout this thesis, citizenship will be defined as membership in a political community. See chapter 2 for a more in-depth discussion of this concept.

⁸ Vonk G, ‘Access to Social Protection for Non-Citizen Migrants: The Position of Irregular Immigrants’ in Plender R (eds), *Issues in International Migration Law* (Koninklijke Brill, 2015) 85; Menjivar C, ‘Immigration Law Beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization’ 10 (2014) *Annual Review of Law and Social Science*, 353-369.

⁹ Vonk (2015), 86-88.

“the irregular is made regular, the unlawful lawful”.¹⁰ Regularization is controversial since it breaks with the legal order outlined above. Concepts of citizenship can help us understand how states navigate and reconcile the interests of their own sovereignty with that of the migrant to turn outsiders into members.

Against this backdrop, I have opted to look at a relatively new, unique and understudied legal status construct: the German *Ausbildungsduldung*.¹¹ This is a specific form of the German *Duldung*, which translates as ‘toleration’ and is a three-month temporary document that certifies the suspension of the holder’s deportation. It is not a legal residence permit, but rather a way to document a person’s lack of legal residence in Germany while simultaneously acknowledging their factual residence on German territory. The *Ausbildungsduldung* was created in 2016 and is given to those following a vocational training, which lasts on average three years. The fact that the migrant is protected from deportation throughout those three years makes it an enhanced status as opposed to the regular *Duldung*. Yet its true appeal lies in the fact that upon completion of the training and finding work in his¹² field, the migrant receives a legal residence permit.¹³

The legal commentator Breidenbach calls the *Ausbildungsduldung* a ‘hybrid structure’ existing between the ‘normal’ status of unlawful and lawful status.¹⁴ Legally speaking it is merely a suspension of deportation. Yet people holding an *Ausbildungsduldung* are not undocumented, nor are they at risk of deportation and detention. They furthermore have access to most civil and social rights and follow a vocational training for which they receive a modest salary. People holding the *Ausbildungsduldung* are thus to a large extent included in the German political community – even German courts have equated the *Ausbildungsduldung* with a legal residence permit.¹⁵ The official status of migrants holding this document remains, however, one of exclusion.

It is this unique and complex position of migrants living in a ‘hybrid structure’ that fascinates me and that I set out to grasp. I am curious about the practical, direct consequences of this legal construct in the lives of migrants, specifically regarding their inclusion as members in German society. Furthermore, I am interested in what a close study of such citizenship manifestations means for the *Ausbildungsduldung* as a regularization program. These questions have not yet been researched yet are pertinent to better understand, more generally, possible state responses to people without a legal residence permit.

¹⁰ Bosniak L, ‘Amnesty in Immigration: Forgetting, Forgiving, Freedom’ (2013) 3 Critical Review of International Social and Political Philosophy 16, 344.

¹¹ As codified in § 60c of the AufenthaltG.

¹² All but one of the people interviewed during my ethnographic fieldwork are male. Therefore I have opted to use the ‘he/his’ pronouns throughout this thesis.

¹³ According to § 19d(1a) AufenthaltG, a migrant who had a *Duldung* on the basis of § 60c AufenthaltG and has successfully finished their vocational training is to be issued a residence permit for two years.

¹⁴ Breidenbach ‘Kommentar zu AufenthaltG § 60c Ausbildungsduldung’ in Beck O *Ausländerrecht* (BeckOK, 35th edn, 2021) para. 4.

¹⁵ See: VG Berlin, 14.01.2021 - 8 K 81/20, Par. 26. <<https://www.asyl.net/rsdb/M29312>> “The *Ausbildungsduldung* is a special case of *Duldung* because it effectuates a legal, i.e. lawfully regulated approval of residence.”

People without a legal residence permit tend to fall outside the scope of society's consideration. As Crépeau and Hastie point out, "little political, social and legal attention [is] paid to the situation of irregular migrants already settled in destination countries."¹⁶ In this vein, not much research has been done on the *Ausbildungsduldung* so far. A few German scholars have written legal commentaries on the *Ausbildungsduldung*.¹⁷ I found one qualitative study on the topic, namely by Drangslund, who explores the role of temporality in the *Ausbildungsduldung*.¹⁸ Other research projects are either outdated¹⁹ and/or disregard stratification by lumping people following vocational training while holding a *Duldung* into the more general group of "young foreigners/migrants".²⁰

This thesis provides a contribution to a better understanding of the *Ausbildungsduldung*. It looks at the various elements and dimensions of citizenship identified by scholars, the legal particularities and rights of people in the *Ausbildungsduldung*, how people in the *Ausbildungsduldung* experience citizenship, how the *Ausbildungsduldung* can be understood as a form of regularization through the lens of citizenship theory and which aspects of citizenship literature are confirmed or called into question by the *Ausbildungsduldung*. Using scholarly literature, legal analysis and semi-structured interviews, this thesis answers the following main research question:

Which aspects of the German Ausbildungsduldung facilitate or hinder the manifestation of citizenship for its holders and what does this mean for the Ausbildungsduldung as a form of regularization?

1.2 Methodology

To answer my research question, I used a mix of literature study, legal analysis and qualitative research.

1.2.1 Scholarly literature

There is a great amount of literature on citizenship out there. To outline a theoretical framework on the topic of citizenship and migration in which I wanted to operate, I opted to work with seminal works, some of which I had already read or seen cited. I took as my main

¹⁶ Crépeau F and Hastie B, 'The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights' (2015) 17 European Journal of Migration and Law 2, 158.

¹⁷ See for example: Breidenbach 'Kommentar zu AufenthG § 60c Ausbildungsduldung' in Beck O *Ausländerrecht* (BeckOK, 35th edn, 2021).

¹⁸ Drangslund A, 'Bordering through recalibration: Exploring the temporality of the German "Ausbildungsduldung"' (2020) 38 Environment and Planning C: Politics and Space 6, 1128–1145.

¹⁹ The following qualitative study provides an interesting analysis on the gatekeeping role played by local authorities, yet was conducted before the introduction of the *Ausbildungsduldung*: Schreyer F and Bauer A, 'Regional ungleiche Teilhabe – Geduldete Fluchtmigranten und duale Ausbildung in Deutschland' (2014) 63 Sozialer Fortschritt, 11, 285–292.

²⁰ See for example: Schröder J and Seukwa L, *Flucht – Bildung – Arbeit: Fallstudien zur beruflichen Qualifizierung von Flüchtlingen* (Von Loeper, 2007).

reference the works of Linda Bosniak,²¹ *The Oxford Handbook of Citizenship* edited by Shachar, Bauböck, Bloemraad and Vink²² and the *Handbook of Citizenship and Migration* edited by Giugni and Grasso.²³ I furthermore relied on articles and books suggested to me by my supervisor, Martijn Stronks. Using these scholarly literature sources, I identified the main elements of citizenship in the context of migration that I could operationalize in the following parts of my research.

1.2.2 Legal analysis

To understand the *Ausbildungsduldung* as a legal construct, I created an overview of the relevant German legal framework. I looked at the most important civil, social and political rights of migrants with a regular *Duldung* and then compared the *Ausbildungsduldung* to this. For this thesis I (re-)read the law, consulted handbooks on German migration and residence law and looked at legal commentaries. I furthermore researched the legislative history of the *Ausbildungsduldung* in the online databank of the German *Bundestag* (parliament) to better understand the foundations of its hybrid structure. Since the *Ausbildungsduldung* was introduced in 2016, I filtered until January 1st, 2017 using the key word ‘*Ausbildungsduldung*’. This resulted in five parliamentary documents.

1.2.3 Qualitative research

The more subjective elements of citizenship for people in the *Ausbildungsduldung*, participation and sense of belonging, were investigated using qualitative research methods. Specifically, I conducted seven semi-structured interviews each lasting between 30 and 40 minutes. This research method requires more clarification and reflection, which I will provide below.

The sampling strategy I used was ‘purposive’ sampling, which does not lead to the building of theory after the data analysis but is rather “informed a priori by an existing body of social theory on which research questions may be based.”²⁴ In my case, this body of social theory is the citizenship literature outlined in chapter 2. As to sample size, I followed the considerations of ethno-legal migration scholar Karolina Barglowski, who holds that the amount of interviewees is irrelevant as long as the data gathered covers “the diversity and differences in the empirical field”.²⁵ This is in line with general theories of qualitative methodology, which hold that a sample size is large enough when the results are ‘saturated’, meaning that we can stop finding new participants when our interviews produce no more

²¹ Bosniak (2006); Bosniak L, ‘Being Here: Ethical Territoriality and the Rights of Immigrants’ (2007) 8 *Theoretical Inquiries in Law* 2, 389; Bosniak L, ‘Status Non-Citizens’ in Shachar A, Bauböck R, Bloemraad I and Vink M (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 315.

²² Shachar A, Bauböck R, Bloemraad I and Vink M (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017).

²³ Giugni M and Grasso M, *Handbook of Citizenship and Migration* (Edward Elgar Publishing, 2021).

²⁴ Curtis S, Gesler W, Smith G, and Washburn S, ‘Approaches to sampling and case selection in qualitative research: Examples in the geography of health’ (2002) 50 *Social Science and Medicine*, 7–8, 1002.

²⁵ Barglowski K, ‘Where, What and Whom to Study? Principles, Guidelines and Empirical Examples of Case Selection and Sampling in Migration Research’ in Zapata-Barrero R and Yalaz E (eds), *Qualitative Research in European Migration Studies* (Springer International Publishing, 2018) 157.

deviating results.²⁶ Since it is the very nature of migration that people traverse boundaries – political, social and personal ones – it is within migration studies often hard to determine where an empirical field begins or ends.²⁷ However, since I sampled according to legal status (namely people in the *Ausbildungsduldung*) the boundaries of my field were rather clear. I also made sure to outline clear theoretical concepts to research; my aim was not to produce an exhaustive ethnography of people in the *Ausbildungsduldung* but to specifically investigate the level of citizenship possible within this construct. In my interviews I quickly noticed my participants had similar responses and viewpoints; after my seventh interview I thus decided I had reached my saturation point.

I reached my participants through my work at a legal aid clinic in Freiburg im Breisgau, a medium-sized city in the south of Germany. I had not met my participants before contacting them; I found them by searching for ‘*Ausbildungsduldung*’ in our database after which I contacted them via WhatsApp. Of the ten people I reached out to, five did not reply and the other five agreed to an interview. A snowball technique was used to recruit more participants: my first five interviewees recommended various people to me, of which two responded positively to my WhatsApp message. Of all seven participants, one was female and the other six were male. Five of my participants were still in the *Ausbildungsduldung* whereas two of them had recently transitioned to a residence permit after successfully finishing their vocational training. The seven of them were all in their late twenties/early thirties and had been residing in Germany for varying lengths of time, between three and eight years. My participants had their formal nationality in various African countries. All of them lived and followed their vocational training in the federal state of Baden-Württemberg.

Since my participants were (or, in two cases, had been) without a legal residence permit, I considered it of extra importance to account for their vulnerability during my data collection.²⁸ I began my interviews by shortly explaining who I was and in which context I was conducting my research project. Then I explained the confidentiality and anonymity of the interviews and explicitly mentioned that there were no right or wrong answers, that my participants could choose not to answer questions and that they were free to quit at any point throughout the interview. After receiving their consent to be interviewed, I still asked permission to record the interview. One interviewee indicated some reservations, and so I did not record that interview but took handwritten notes. The other six interviews were, however, recorded. I allowed my participants to choose the location for the interview. Three were held in the office of our legal aid collective; one was held in the participant’s home; three were conducted via video call.

²⁶ Barglowski (2018), 158; Gerring J, ‘What is a case study and what is it good for?’ (2004) 98 *American Political Science Review* 2, 341–354.

²⁷ Barglowski (2018), 152.

²⁸ Fedyuk and Zendai emphasize that the context of migration studies “calls for special reflexivity around power dynamics [...] and a high ethical benchmark.” See: Fedyuk O and Zentai V, ‘The Interview in Migration Studies: A Step towards a Dialogue and Knowledge Co-production?’ in Zapata-Barrero R and Yalaz E (eds), *Qualitative Research in European Migration Studies* (Springer International Publishing, 2018) 173.

My interviews were semi-structured, meaning that I made sure that the interview did not move away from the *Ausbildungsduldung* as its topic but did create “enough space for the interviewee to open up the discussion and introduce connected topics, thus making it more exploratory in nature and cooperative in terms of knowledge production.”²⁹ I wanted to know about the lived experiences of people with the *Ausbildungsduldung*, and so I asked questions like ‘Can you tell me why you decided to apply for the *Ausbildungsduldung*?’, ‘How does having an *Ausbildungsduldung* influence your daily life?’ and ‘How do you feel about living in Germany with an *Ausbildungsduldung*?’

Next to these exploratory questions about the general experience of having an *Ausbildungsduldung*, I asked my participants about the specific aspects of citizenship I had identified in my theoretical framework. To understand how the *Ausbildungsduldung* as a legal status might influence the extent to which citizenship can be manifested, I inquired into how having an *Ausbildungsduldung* was different from having a regular *Duldung* and how my participants imagined life to be different with a residence permit. Regarding their political and societal participation, I asked about the daily life of my participants and if they had ever joined an event related to politics (demonstration, lecture, benefit, etc.). I also inquired into their willingness to participate in other ways, such as being able to vote or join an organization, and how they were held back in this. Lastly, I probed their feelings of belonging in Germany. I did this by asking questions like ‘Do you feel like you belong in Germany?’ and ‘Do you feel accepted in Germany?’ and by asking what influences such feelings as well as how this has changed over time. I then directly asked my participants whether they felt like a citizen in Germany. To be able to derive any relevant conclusions from responses to this question, I also urged my participants to share with me what, according to them, it means to be a citizen.

After conducting the interviews, I proceeded with the analysis. First, I transcribed the six interviews I had recorded and anonymized the transcriptions. I wrote analytic memos with my first ideas and analyses directly after transcribing. Then I coded my data. I used structural coding, which “applies a content-based or conceptual phrase representing a topic of inquiry to a segment of data that relates to a specific research question used to frame the interview.”³⁰ The large theoretical framework of my thesis makes this a useful coding method for my purposes. I also used in vivo coding, which finds patterns and themes by focusing on the words and phrases used by the participants themselves.³¹ I used this coding method to ‘translate’ my abstract theoretical concepts to the reality and experiences of my participants. After coding I made an overview of relevant passages related to the codes I had identified. From there, I formed a written analysis of my data.

1.4.4 Reflection on positionality

It is the very nature of the interview as a method that I had a prominent role in my own research design. As Olena Fedjuk and Violetta Zentai explain, this does not mean that my

²⁹ Fedjuk O and Zentai V (2018), 173.

³⁰ Saldaña J, *The Coding Manual for Qualitative Researchers* (Sage, 2016), 66.

³¹ Saldaña (2016), 74.

role negatively influenced my interviews or that my results were purely subjective. However, it is “essential to be aware of and reflect upon the researcher’s role and position in all major stages of the research”.³² Many scholars within the qualitative epistemological debate focus on the idea of the researcher being either an insider or an outsider to the group being interviewed.³³ These categories are not fixed, however; an interviewer holds “multiple positionalities” spread over gender, age, and migratory experiences.³⁴ Which aspect of an interviewer’s (perceived) identity is relevant for the position of the researcher during the interview depends very much on the participant as well as on the topic discussed.³⁵

In my case, I was on many layers an obvious outsider: I am female and, most importantly, my Dutch nationality allows me to reside, work and move in Germany without restrictions. Due to the fact that I am white/blonde and speak German fluently, it is very likely that my participants assumed that I had German nationality. Since my interviews focused specifically on the experience of living with an illegalized status, this meant that I was mostly (perceived as) an outsider to my participant group. I noticed that this was, to a certain extent, beneficial for the quality of my interviews: since my participants assumed I had no firsthand experience with having any kind of *Duldung*, they went to great lengths to explain this to me in much detail. Yet I also noticed that there was a layer on which I was (perceived as) an insider: my participants knew that I was part of the legal aid clinic, a space where my participants have shared private and oftentimes sensitive information. Within the context of their legal status as a ‘struggle’, I was thus automatically seen as being on their ‘side’ and thus, to some extent, included. In a few interviews, when probing deeper into experiences of belonging and inclusion, I also opted to mention that although I lived in Germany, I was not a German national. Hereby I deliberately turned myself into more of an insider, sometimes opening up greater space for my participants to share their experiences.

1.3 Structure

The structure of my thesis is as follows. Chapter 2 provides a theoretical framework of the concept of citizenship and migration in which I want to operate. Chapter 3 introduces the *Ausbildungsduldung* as a legal construct by reflecting on its history, purpose and conditions and outlines the rights its holders are entitled to. Chapter 4 identifies the level of participation and sense of belonging for those in the *Ausbildungsduldung*. Chapter 5 brings together all findings of the previous three chapters and forms a conclusion around the extent to which citizenship can be manifested under the *Ausbildungsduldung*, and what this means for this legal construct as a form of regularization. Some recommendations for future research are also included.

³² Fedyuk and Zentai (2018), 179.

³³ See for example: Song M and Parker D, ‘Commonality, difference and the dynamics of disclosure in indepth interviewing’ (1995) 29 *Sociology*, 2, 241–256; Amelina A and Faist T ‘De-naturalising the national in research methodologies’ (2012) 35 *Ethnic and Racial Studies* 10, 1–18.

³⁴ Ryan J, “‘Inside’ and ‘outside’ of what or where? Researching migration through multipositionalities’ (2015) *FQS* 16, Art. 17, 2.

³⁵ Carling J, Erdal M and Ezzati R, ‘Beyond the insider–outsider divide in migration research’ (2014) 2 *Migration Studies* 1, 36–54.

1.4 Terminology

Within the field of migration studies, there is much debate around the terminology we can or should use with regard to the people involved in the processes we study. Words and discourse shape reality – they reveal and simultaneously shape power dynamics and hierarchies. People without a legal residence permit are often referred to as ‘illegalized’, ‘irregular’ or ‘undocumented’. Much literature in migration studies also refers to people as ‘migrants’. All of these terms are ambiguous and can be criticized for being ambiguous and problematic.³⁶

I consider it important to be clear with my terminology but to avoid any presumptive interpretations in the terms I choose to use. Since I am interested in the experience of citizenship for people with a specific document, I have chosen to categorize according to legal status. As Jacobs points out, “[c]ategorisation is a central feature and challenge for social scientific research.”³⁷ However, for both epistemological as well as anti-discriminatory reasons I do not wish to inadvertently impose any more categories on people than necessary. Throughout my thesis I will therefore simply refer to my subjects as ‘people in/with/holding an *Ausbildungsduldung*’. When reflecting more generally on the theoretical concepts of citizenship, I will use the challenged terms mentioned above. I will also introduce in Chapter 3 in more depth the terms ‘lawfully in’ and ‘lawfully staying’, since I consider these particularly helpful in the context of my thesis.

To echo the words of Robert Stake: “Good research is not about good methods as much as it is about good thinking.”³⁸ Let us therefore start thinking – that is, present, analyze and reflect upon citizenship, the *Ausbildungsduldung*, and regularization.

³⁶ See: Jenkins R, ‘Rethinking ethnicity: Identity, categorization and power’ (1994) 17 *Ethnic and Racial Studies* 2, 197–223; Bauder H, ‘Why We Should Use the Term ‘Illegalized’ Refugee or Immigrant: A Commentary’, (2014) 26 *International Journal of Refugee Law* 3, 327-332; Scheel S and Tazzioli M, ‘Who is a Migrant? Abandoning the Nation-state Point of View in the Study of Migration’ (2022) 1 *Migration Politics* 1, 2-23.

³⁷ Jacobs D, ‘Categorising What We Study and What We Analyse, and the Exercise of Interpretation’ in Zapata-Barrero R and Yalaz E (eds), *Qualitative Research in European Migration Studies* (Springer International Publishing, 2018) 147.

³⁸ Stake R, *The Art of Case Study Research* (Sage, 1995) 19.

2. The concept of citizenship as theoretical framework

2.1 Introduction

Before looking at the extent to which citizenship can be manifested for people holding the German *Ausbildungsduldung*, the current chapter establishes a theoretical framework around this concept in which to operate throughout the rest of my thesis. But first, it is important to take one step back and reflect on why the notion of citizenship has been chosen as the lens through which to view and analyze the *Ausbildungsduldung*. There are three main reasons for doing so.

Firstly, as mentioned in the previous introductory chapter, the *Ausbildungsduldung* is, legally speaking, a ‘hybrid structure,’³⁹ existing somewhere between an unlawful and lawful status. As we will see, the concept of citizenship acknowledges a kaleidoscope of membership in a political community and thus allows for a non-binary, non-linear approach that is required to understand the *Ausbildungsduldung*. Secondly, the *Ausbildungsduldung* offers migrants a relatively wide assortment of membership rights usually associated with and attached to legal residence. Citizenship theory acknowledges legal status as only one factor influencing the level of membership in a political community. Analyzing the *Ausbildungsduldung* through the lens of citizenship theory thus offers a unique opportunity to sharpen our understanding of the relevance of legal status as opposed to membership rights for the experience of citizenship. Thirdly, it can be argued that citizenship is “the primary social good” and thus intrinsically valuable.⁴⁰ From this perspective, the level of citizenship attainable for people in the *Ausbildungsduldung* becomes both an individual and a political issue. Migrants and their supporting networks will be able to make a more informed choice when applying for the *Ausbildungsduldung* as way to regularize their status. Political actors in all corners of the migration debate can furthermore adjust their positions and demands concerning the *Ausbildungsduldung* and regularization policies generally.

The specifics of the ‘hybrid structure’ of the *Ausbildungsduldung* as well as the membership rights attached to it will be discussed in chapter 3. This chapter focuses on a theoretical understanding of citizenship that informs the analysis of the *Ausbildungsduldung* found in chapters 3 and 4. It starts by looking at various philosophies of exclusion that underlie the concept of citizenship. Next, the term ‘citizenship’ is discussed in the context of migration by analyzing to what extent such philosophies of exclusion allow for regularization programs that turn irregular migrants into citizens. From there, various concrete elements and dimensions of citizenship are identified. The chapter ends with a discussion.

³⁹ Breidenbach (2021), para 4.

⁴⁰ Walzer M, *Spheres of Justice: A Defense of Pluralism and Equality* (Perseus Books, 1983), 31. Researching the experiences of those in the *Ausbildungsduldung* through the lens of citizenship theory might in turn also reveal new perspectives on the extent to which (certain groups of) migrants desire “the primary social good” of citizenship as opposed to the status of alien or guest, which might offer them benefits on the labor market. This in turn could help us critically analyze the moral value of current laws and policies regarding access to labor and material wealth. Although I consider this an extremely interesting issue, it is beyond the scope of my thesis to address it.

2.2 The foundations of citizenship

There is no fixed definition of citizenship. It is a contestable concept⁴¹ that can mean various things by “taking on certain aspects and significance for people in different circumstances.”⁴² The anthropologist Antina von Schnitzler describes citizenship as “a set of techniques, imaginaries, and practices,”⁴³ closely echoing Robert Bauböck who claims that citizenship can, depending on the context, refer to practices, duties, rights, identities and statuses.⁴⁴ Alexander Diener holds that citizenship appears in literature as “a legal category, a claim, an identity, a tool in nation building, and an ideal.”⁴⁵ Most interpretations of citizenship nonetheless concentrate around the idea of membership within a political community.⁴⁶ The question of who ought to be or who is a citizen thus equates to the question of who ought to enjoy or who enjoys the entitlements of members in a political community.

The definition of citizenship presented above inevitable raises the questions of what constitutes a political community. This is described by Michael Walzer as a “bounded world within which distributions takes place.”⁴⁷ Members in this bounded world have a “special commitment to one another and some special sense of their common life,”⁴⁸ and in this sense operate by the concept of self-determination. It consists of people that commit themselves to “dividing, exchanging and sharing social goods” as a community.⁴⁹ The “primary good” distributed is membership within that community.⁵⁰

The fact that people can be members of a political community automatically accounts for the existence of non-members. Boundaries between insiders and outsiders are drawn.⁵¹ The concept of citizenship thus “speaks of inclusion and points to exclusion,”⁵² and constitutes “an

⁴¹ Van Gusteren, H, ‘Notes on a Theory of Citizenship’ in Birnbaum P, Lively J and Parry J (eds) *Democracy, Consensus and Social Contract* (Sage, 1978); Leca J, ‘Immigration, nationality and citizenship in Western Europe’ paper presented to conference on Social Justice, Democratic Citizenship and Public Policy in the New Europe, ECPR/Erasmus University, Rotterdam (1991); Cohen E and Ghosh C, *Citizenship* (Cambridge Polity Press, 2019) 10-11.

⁴² Diener A, ‘Re-scaling the Geography of Citizenship’ in Shachar A, Bauböck R, Bloemraad I and Vink V (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 37.

⁴³ Von Schnitzler A, ‘Performing dignity: Human rights, citizenship, and the techno-politics of law in South Africa: Performing dignity’ (2014) 41 *American Ethnologist* 2, 336.

⁴⁴ Bauböck R, *Transnational Citizenship: Membership and Rights in International Migration* (Edward Elgar Publishing Ltd, 1994) 1.

⁴⁵ Diener (2017), 37.

⁴⁶ Marshall T, *Citizenship and Social Class* (Cambridge University Press, 1950) 8; Stewart, A, ‘Two Conceptions of Citizenship’ (1995) 46 *The British Journal of Sociology* 1, 63; Bosniak L, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton University Press, 2006), 18; Charrad M and Zarrugh A, ‘Constructing Citizenship: Gender and Changing Discourses in Tunisia’ in Danielsen H, Jegerstedt K, Muriaas R, & Ytre-Arne B (eds), *Gendered Citizenship and the Politics of Representation* (Palgrave Macmillan UK, 2016), 137; Bauböck R, ‘Political Membership and Democratic Boundaries’ in Shachar A, Bauböck R, Bloemraad I and Vink M (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 65.

⁴⁷ Walzer (1983), 31.

⁴⁸ Walzer (1983), 46.

⁴⁹ Walzer (1983), 31.

⁵⁰ Walzer (1983), 31.

⁵¹ Bauböck R, ‘Political Membership and Democratic Boundaries’ in Shachar A, Bauböck R, Bloemraad I and Vink M (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 65.

⁵² Danielsen H, Jegerstedt K, Muriaas R, & Ytre-Arne B (eds), *Gendered Citizenship and the Politics of Representation* (Palgrave Macmillan UK, 2016), 4.

exercise in [...] othering.”⁵³ Members within a political community decide on the criteria of membership and guard the process of inclusion and, by default, exclusion.

Citizenship is relational, meaning that it relates “an individual or group to a larger social entity,”⁵⁴ namely the political community. A political community can exist at various levels, yet since the 20th century, the most obvious and strongest political community is that of the nation state.⁵⁵ Rogers Brubaker refers in this sense to citizenship as “an international filing system, a mechanism for allocating persons to states.”⁵⁶ This is where citizenship theory and migration studies meet: a state as a political community distributing membership is reflected practically in its admissions policy. States, as sovereign political communities, are free to decide whom to exclude from their territory and thus whom to offer citizenship.⁵⁷ This is necessary, Walzer argues, since “admission [is] at the core of communal independence.”⁵⁸

2.3 Turning people into citizens

Such a theoretical foundation of citizenship as outlined above relies, however, on territorial borders of states as the gatekeepers of membership. In reality, large numbers of people enter the territory of states without official approval of the community; in other words, people enter irregularly.⁵⁹ What follows is a clash of interests between the political community – the state – and the individual seeking entry to this community – the irregularly staying migrant.

Positions around how to navigate this situation fall into two camps that Ayelet Shachar has identified as “the competing visions of ‘a nation of laws’ and that of ‘a nation of immigrants.’”⁶⁰ The first vision entails that those who have entered irregularly have violated the very foundations of the political community, an ‘original sin’ that cannot be overcome through subsequent inclusion at a later moment. The second faction believes that irregular immigration is not an abnormality or ‘sin’ but rather a vital component defining and building such societies. This faction therefore holds that people must at some point become full members in these societies. According to Shachar, this “fundamental tension” keeps the question of whether such individuals can somehow be turned into citizens at “stalemate”.⁶¹

⁵³ Cohen E and Ghosh C, *Citizenship* (Cambridge Polity Press, 2019) 52.

⁵⁴ Bauböck (2017), 65.

⁵⁵ Smith R, ‘Citizenship and Membership Duties Toward Quasi-Citizens’ in Shachar A, Bauböck R, Bloemraad I and Vink M (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 819.

⁵⁶ Brubaker R, *Citizenship and Nationhood in France and Germany* (Harvard University Press, 1992) 31.

⁵⁷ The European Court of Human Rights has famously formulated this as follows: “Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, to control entry, residence and expulsion of non-nationals.” See: *Vilvarajah and others v. UK* ECHR [1991] 13163/87, para. 102.

⁵⁸ Walzer (1983), 46.

⁵⁹ A study by the Pew Research Center estimated that there were between 2.9 and 3.6 million undocumented people in the European Union in 2017. Compared to a population of 447.7 million EU inhabitants. These numbers exclude asylum seekers. Connor P and Passel J, ‘Europe’s Unauthorized Immigrant Population Peaks in 2016, Then Levels Off’ (2017) Pew Research Center. <<https://www.pewresearch.org/global/2019/11/13/eu-unauthorized-immigrants-appendix-c-unauthorized-immigrant-population-trends-without-waiting-asylum-seekers-by-country/>> accessed 8th June 2023.

⁶⁰ Shachar A, ‘Earned Citizenship: Property Lessons for Immigration Reform’ (2011) *Yale Journal of Law & the Humanities* 23, 110.

⁶¹ Shachar (2011), 110; 113.

As a general rule, states tend to regard themselves as ‘a nation of laws’ and fail to acknowledge people without formal status as members. By adopting such a generally exclusive approach to people that did not acquire formal approval to enter its bounded world, states carry out their membership policies ‘in retrospect’ and insist on their right to self-determination.⁶² States often determine that those who entered without permission are allocated the status of ‘undocumented’ or ‘illegal’ as opposed to those with a legal residence permit. This status-based approach is characterized by differentiation – a state’s admission system allocates a variety of statuses among its population and extends rights and recognition on the basis of that status.

Critical migration scholars have developed the alternative territorially-based approach, which holds that people should be given full rights and recognition by virtue of their physical presence on a state’s territory.⁶³ Walzer sympathizes with the territorially-based approach, claiming that once people have joined the territory of a state, which is the basis of this particular form of political community, they must “be set on the road to” citizenship.⁶⁴ Without it, he argues, there can be no democracy and no (distributive) justice. Anything else would amount to oppression and tyranny, creating a category of people with less citizenship benefits he refers to as ‘metics’. Rogers Smith argues similarly, stating that since nation states determine most institutions and social norms,⁶⁵ a person’s identity is “coercively enforced” by a nation state simply due to their presence and thus engagement with the state. From this follows that nation states have an obligation towards all those they have “coercively constituted” to enable them to engage freely and as far as possible with the nation state; in other words, enjoy citizenship.⁶⁶

Linda Bosniak is critical of the presence-based view, referring to it as ‘ethical territoriality’.⁶⁷ In her criticism she underscores an essential point: without formal status, this approach is an unattainable ideal. As we have seen, ideas of membership in a political community rely on the idea of a bounded world into which people are included, and thus automatically presume territorial borders on its outside that exclude others. This “hard-on-outside and soft-on-the-inside” conception of membership⁶⁸ does not, however, account for the internalization of the border. As Bosniak points out, via (the threat of) detention and deportation “exclusion functions also inside the territory”.⁶⁹ Offering people equal rights and recognition means little as long as the state reserves the right to remove them, at some future point in time, from its

⁶² Bauböck (2017), 62.

⁶³ Bosniak L, ‘Being Here: Ethical Territoriality and the Rights of Immigrants’ (2007) 8 *Theoretical Inquiries in Law* 2, 389.

⁶⁴ Walzer (1983), 45.

⁶⁵ Smith refers to “educational systems, religious practices, cultural practices, economic activities, recreations, marital and familial structures, modes of association and expression, and processes of governance.” Smith (2017), 826.

⁶⁶ Smith (2017), 825-826.

⁶⁷ Bosniak (2007).

⁶⁸ Bosniak (2007), 396.

⁶⁹ Bosniak (2007), 397.

territory. A legal status as noncitizen thus never produces full membership, Bosniak concludes.⁷⁰

Despite the fact that states tend to adhere to the ‘nation of laws’ vision, people that entered without authorization are occasionally turned into status citizens. This happens in the form of regularization programs or amnesties. The Platform for International Cooperation on Undocumented Migrants (PICUM) identifies a regularization as “any process or procedure through which undocumented people can obtain a residence permit from a relevant government authority authorising – ‘regularising’ – their stay in the country they reside in.”⁷¹ In the 2018 Global Compact regularization is referred to as practices “for migrants in an irregular status [...] that may lead to regular status.”⁷² For the purposes of this thesis, regularization will be considered any program or legal mechanism that enables an irregular status to be turned into a regular status, that is, into a legal residence permit.

These figures of migration law constitute a triumph of the ‘nation of immigrants’ vision over that of the ‘nation of laws’, or the territorially-based approach over the status-based approach. They tip the scales in the irregular migrant’s favor. Bosniak considers this phenomenon of regularizing people on the basis of their physical presence “legal alchemy”. She writes that “through such policies, the irregular is made regular, the unlawful lawful.”⁷³ Martijn Stronks identifies time as the defining element that makes this kind of alchemy possible. According to him, regularization “remembers the transgression but situates it in the past in order to stop the process of illegality and start anew.”⁷⁴

As PICUM states in a recently published report, regularizations have different underlying justifications, which are reflected in different criteria. PICUM concludes that current European regularization programs follow either one of two main logics: a humanitarian and rights based logic or a non-humanitarian and labor market oriented logic.⁷⁵ According to Albert Kraler, European policies have “a strong focus on integration and employability”,⁷⁶ meaning that even when regularization follows the first type of logic, individuals need to prove they belong to the category of what Garbi Schmidt calls the “good citizen”.⁷⁷ This is

⁷⁰ Bosniak (2007), 407.

⁷¹ Platform for International Cooperation on Undocumented Migrants, ‘Regularisation mechanisms and programmes: Why they matter and how to design them’ (2022) 9 <https://picum.org/wp-content/uploads/2023/01/Regularisation-mechanisms-and-programmes_Why-they-matter-and-how-to-design-them_EN.pdf> accessed 8 June 2023.

⁷² UN General Assembly (2018) Global Compact on Safe, Orderly and Regular Migration, objective 7 ‘Address and reduce vulnerabilities in migration’, § 23(i).

⁷³ Bosniak L, ‘Amnesty in Immigration: Forgetting, Forgiving, Freedom’ (2013) 3 Critical Review of International Social and Political Philosophy 16, 344.

⁷⁴ Stronks M, *Grasping Legal Time: Temporality and European Migration Law* (Cambridge University Press, 2022) 93.

⁷⁵ Platform for International Cooperation on Undocumented Migrants (2022), 12-13.

⁷⁶ Kraler A, ‘Regularization of Irregular Migrants and Social Policies: Comparative Perspectives’ (2019) 17 Journal of Immigrant & Refugee Studies 1, 96.

⁷⁷ Schmidt G, ‘Transnational Families among Turks and Pakistanis in Denmark: Good Subjects, Good Citizens and Good Lives’ (2008) 3 Finnish Journal of Ethnicity and Migration 3, 13-19.

reflected in requirements such as language certificates, minimum income and a clean criminal record.

Scholars have taken various philosophical approaches to the moral claim to regularization. Ayelet Shachar and Joseph Carens focus on rootedness as a justification for legal status. Shachar reconceptualizes citizenship as a kind of property and subsequently draws on the doctrine of ‘adverse possession’ to develop a new legal principle she coins *jus nexi*, where rootedness forms the basis for an individual’s legal title.⁷⁸ Carens argues that “with the passage of time” people “become more and more settled”, meaning that “their membership in society grows in moral importance”.⁷⁹ Martijn Stronks also focuses on temporality as justifying the obligation to regularize people. Regularization, he argues, “endeavors to mediate the complex interplay between the legal order and individual time of the migrant”.⁸⁰ He emphasizes the importance of what he dubs ‘the right to human time’, a form of time that has intrinsic value regardless of what occurs in that human’s life. Stronks therefore regards the above-mentioned criteria of Shachar and Carens not as rootedness, which he holds simply requires the passing of human time, but rather as integration, which demands social membership as a result of the passing of human time.

What we see implied in these presented theories around citizenship is the idea that the concept works according to a model of progressive temporality, where the future is an improvement of the past. Rights are considered naturally expansive for all. Recent scholarship on migration has, however, focused on the condition of ‘stuckedness’,⁸¹ which breaks with this progressive and linear model of citizenship. As Anne McNevin explains, stuckedness “is the combination of aspiration and the feeling of going nowhere, geographically, socially, or economically, in a world in which others are perceived as being unfairly and disproportionately mobile.”⁸² The fact that stuckedness is a pervasive experience highlights the fact that regularization programs are limited and are not accessible for most people with irregular status.

McNevin takes the argument one step further and holds that limited access to regularization programs functions to weaken dissatisfaction with stuckedness, since it draws people into “the promise of citizenship-to-come”.⁸³ Citizenship in this sense is an empty ideal that will never be attained by most people seeking it; it becomes a ‘horizon’.⁸⁴ Harry Pettit and Wiebe Ruijtenberg echo this when stating that migratory regimes “perpetually offer up the promise of the good life [...], while inhibiting the means of achieving it for the majority.”⁸⁵ This narrative of progressive linearity rationalizes differential access to citizenship in the present

⁷⁸ Shachar (2011).

⁷⁹ Carens J, *Immigrants and the Right to Stay* (MIT Press, 2010), 18.

⁸⁰ Stronks (2022), 89.

⁸¹ Hage G, ‘Waiting Out the Crisis: On Stuckedness and Governmentality’ in Hage, G, *Waiting* (Melbourne University Press, 2003) 97-106.

⁸² McNevin A, ‘Time and the Figure of the Citizen’ (2020) 33 *International Journal of Politics, Culture, and Society* 4, 547.

⁸³ McNevin (2020), 550.

⁸⁴ McNevin (2020), 551.

⁸⁵ Pettit H and Ruijtenberg W, ‘Migration as hope and depression: existential im/mobilities in and beyond Egypt’ (2022) 18 *International Journal of Law in Context* 2, 731.

moment. On top of this, it frames citizenship as being delayed rather than denied. “Waiting patiently, in the right way”⁸⁶ becomes part of the criteria for attaining citizenship. Since citizenship is, McNevin argues, only a ‘horizon’, waiting is in fact nothing but another tool to exclude people from it.

In her ethnographic work on the *Ausbildungsduldung*, Anne Drangland takes as her starting point this assumption of citizenship as a ‘horizon’ and time being used to temper people’s dissatisfaction. She concludes that with the *Ausbildungsduldung*, the German state “deploys techniques of future giving” and compels people to “wait well”.⁸⁷ With this, Drangland makes the tacit assumption that the *Ausbildungsduldung* has no intrinsic value and does not actually offer people a secure avenue towards full citizenship. She does not, however, provide a (legal) analysis of the content and consequences of the *Ausbildungsduldung* to back up her claim that it is only a way to “wait well”. As we will discover in the next chapter, a closer look at the legal particularities of the *Ausbildungsduldung* shows that Drangland’s analysis fails to capture the complexity of this hybrid legal construct.

I have thus far presented one way of looking at citizenship: a normative view on who should be included into the political community. There is also another way of looking at it, which is by asking the question of who actually enjoys citizenship. For the purpose of this thesis, it is relevant to also take a closer look at this second issue. In the following part I will therefore highlight various views on what actually constitutes citizenship in order to identify who can be considered a citizen.

2.4 Identifying citizens

There are various interpretations of who constitutes a member of a political community. The complexity of this issue lies in the already-mentioned impermeability of state borders, meaning that states are no “self-contained entities.”⁸⁸ Liberal-democratic states aspire to an “internal universality” of citizenship; the rhetoric of universal citizenship considers mechanisms of non-membership unjust.⁸⁹ And yet, there are millions of people living in these states that do not hold the legal status of citizenship. This forces us to rethink the equation of legal status with citizenship.

The concept of ‘social membership’ fills this gap.⁹⁰ People who live in a community inevitably grow roots there: they go to school, work, develop friendships, join clubs and start families. People become increasingly and complexly attached to the place they are residing.⁹¹ This means that they become members of these communities, regardless of their formal legal

⁸⁶ McNevin (2020), 550.

⁸⁷ Drangland (2020), 1128.

⁸⁸ Bosniak L, ‘Status Non-Citizens’ in Shachar A, Bauböck R, Bloemraad I and Vink M (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 315.

⁸⁹ Bosniak (2017), 318.

⁹⁰ Carens J, *The Ethics of Immigration* (Oxford University Press, 2013).

⁹¹ Joseph Carens highlights that even seemingly insignificant experiences people bind people to a place: “[...] birthdays and braces, tones of voice and senses of humor, public parks and corner stores, the shape of the streets and the way the sun shines through the leaves, the smell of flowers and the sounds of local accents, the look of the stars and the taste of the air—all that gives life its purpose and texture.” Carens (2010), 17.

status. The opposite also holds true: people with legal status might have never lived in the community they are formally a part of, and thus hold little to no social membership there. The question of who is a citizen can therefore not be answered simply by referring to a state's nationals, or even formal legal status generally.

Scholars have found various names for those falling somewhere between member and non-member. Bosniak refers to people that lack the legal status of citizenship as 'status noncitizens'. Thomas Hammar has coined the term 'denizenship' to refer to the status of long-term residents in states of which they did not hold the nationality. He identified a 'third gate' of access to denizenship, located in between territorial and citizenship admission.⁹² Rainer Bauböck uses the word 'quasi-member' to describe somebody that enjoys some of the benefits or bears some of the obligations associated with membership yet is not recognized as a member, and the word 'semi-member' for somebody that is formally recognized as a member but does not enjoy the rights and duties most other members have.⁹³ Walzer refers to resident aliens enjoying limited membership rights as 'metics.'⁹⁴

Yet just as we must be careful to avoid conceiving of citizenship as merely being a legal status, it is important to go beyond a static, formalistic conception of who is a citizen. Theories of citizenship performativity claim citizenship to be a practice.⁹⁵ Whenever people engage in what Seyla Benhabib calls "democratic iterations," meaning public debate on who holds which rights, they not only shape the meaning of what it means to be a citizen but simultaneously live out that imagined citizenship.⁹⁶ Matteo Gianni suggests that citizenship can perform itself "through practices that signify and resignify the meanings and moral values inherent in citizenship, showing their open, fluid and contested nature."⁹⁷ Citizenship in this sense becomes the act of people claiming to be citizens.⁹⁸

It is thus not only legal status or benefits of membership that constitute citizenship, but also individual action and perception. These elements are united in Linda Bosniak's theory on citizenship, which has been adopted by multiple other scholars.⁹⁹ She identifies four elements and two dimensions of citizenship.¹⁰⁰ We might regard these as colors and shapes inside a kaleidoscope – each can take on individual levels of intensity and prominence, forming boundless images of citizenship from the same material.

⁹² Hammar T, *Democracy and the Nation State: Aliens, Denizens, and Citizens in a World of International Migration* (Avebury, 1990). EU-citizenship can serve as a dominant example of denizenship.

⁹³ Bauböck (2017), 66-67.

⁹⁴ Walzer (1983), 42.

⁹⁵ Performativity is the idea that discourse has the capacity to effect social action and change. See also: Butler J, *Gender Trouble* (Routledge, 1990).

⁹⁶ Benhabib S, *The Rights of Others* (Cambridge University Press, 2004) 179.

⁹⁷ Gianni M, 'Normative perspectives on citizenship and migration: the challenge of integration into citizenship in immigration societies' in Giugni M and Grasso M (eds), *Handbook of Citizenship and Migration* (Edward Elgar Publishing, 2021) 31.

⁹⁸ Isin E, 'Performative Citizenship' in Shachar A, Bauböck R, Bloemraad I and Vink M (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 500-523.

⁹⁹ See inter alia: Diener A, 'Re-scaling the Geography of Citizenship' in Shachar A, Bauböck R, Bloemraad I and Vink V (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 38.

¹⁰⁰ Bosniak (2006), 18-23.

The first element is formal legal status – juridical membership in a political community. Legal status can again be subdivided into different categories. As mentioned earlier, there are nationals of a state, which are considered to have the ‘highest’ level of citizenship. Then there are those staying lawfully in the country, with either temporary or indefinite legal residence permits. Finally there is a significant group of people without a legal residence permit. Literature in migration studies refers to these as ‘undocumented’, ‘irregular’ or ‘illegal’. As will be explored in the next chapter, also those without a legal residence permit can hold different legal statuses.

Secondly, we can understand citizenship as entitlement to, and the enjoyment of rights.¹⁰¹ The scholar T. H. Marshall famously identified between three strands of rights constituting citizenship: civil, political and social rights.¹⁰² When Walzer argues that all people residing on the territory of a state should be at the very least prepared for citizenship, he refers to the enjoyment of civil liberties such as the right to vote and hold office and the freedom of association.¹⁰³ Yet status noncitizens can enjoy a much wider array of rights that do not depend on formal status, namely through the existence and enforcement of international human rights.¹⁰⁴ These include but are not limited to the right to housing, education, work, family life and freedom of movement.

A third element of citizenship is the practice of active engagement in political life. Neil Walker points out that this element refers to a certain agency of a person to participate in a community’s political institutions.¹⁰⁵ Irene Bloemraad widens this participation to “engagement in a state’s economic system and social relations.”¹⁰⁶ Participation can include work, sports, education, religious institutions, and much more. In this thesis I will use this broader conception of participation, which includes both political and social domains.

The last element of citizenship identified by Bosniak is the experience of belonging within the political community. It is also referred to as psychological citizenship, as it refers to “the affective elements of identification and solidarity that people maintain with others.”¹⁰⁷ A person is a citizen when they *feel* like a member of the political community. It can thus also be regarded as the self-identification of citizenship, or as the consciousness of all other elements of citizenship.

¹⁰¹ See also: Karst K, *Belonging to America: Equal Citizenship and the Constitution* (Yale University Press, 1989); Smith R, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (Yale University Press, 1998).

¹⁰² Marshall T, *Citizenship and Social Class* (Cambridge University Press, 1950) 12.

¹⁰³ Walzer (1983), 45. Throughout his work, Walzer uses the terms ‘citizens’ and ‘participants in politics’ interchangeably.

¹⁰⁴ Within the European context this includes the rights enshrined in the European Convention on Human Rights.

¹⁰⁵ Walker N, ‘The Place of Territory in Citizenship’ in Shachar A, Bauböck R, Bloemraad I and Vink V (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 555.

¹⁰⁶ Bloemraad I, ‘Does Citizenship Matter?’ in Shachar A, Bauböck R, Bloemraad I and Vink V (eds), *The Oxford Handbook of Citizenship* (Oxford University Press, 2017) 527.

¹⁰⁷ Bosniak (2006), 20.

The four elements described above can in turn be regarded and manifested in various dimensions. The traditional dimension in which citizenship is assumed to take place is the political. Yet as Bosniak makes clear, contemporary theories of citizenship have begun to include domains of social life beyond traditional political institutions as possible locations where citizenship might be lived.¹⁰⁸ Lucy Rodina and Leila Harris refer in this sense to “everyday citizenship” and “lived citizenship,” whose sites can be any space where an individual encounters and engages with the state.¹⁰⁹ Bosniak also points to a wide variety of areas such as “economy, culture, corporation, university, workplace, and civil society.”¹¹⁰

2.6 Discussion

This chapter provided a theoretical framework of the citizenship concept. Citizenship is defined as membership within a political community. These members live in what Walzer refers to as a bounded world in which they distribute goods amongst each other. A political community can exist at various levels, but this thesis focuses on the most important site, namely the nation state. States, as political communities, decide which people to include as members.

The fact that people enter such bounded worlds without prior permission produces what Shachar calls a ‘stalemate’ between a ‘nation of laws’ and a ‘nation of immigrants’. States tend to view themselves as the first and adopt an exclusionary, status-based approach to irregularly staying migrants. The alternative territorially-approach holds that people should be given full rights and recognition by virtue of their physical presence on a state’s territory. Bosniak calls this ‘ethical territoriality’ and emphasizes that a legal residence permit is necessary for people to obtain full membership.

Regularization programs allow irregular migrants to receive a legal residence permit, a process that Bosniak dubs ‘legal alchemy’. In Europe, such programs have a meritocratic character, focusing on integration and labor potential of irregular migrants. Shachar, Carens and Stronks identify a moral claim to regularization based on rootedness, integration and the passing of (human) time.

Recent scholarship on migration has focused on the condition of ‘stuckedness’, which breaks with a progressive and linear model of citizenship. McNevin holds that limited access to regularization programs functions to weaken dissatisfaction with stuckedness, since it draws people into a false promise, or ‘horizon’, of citizenship-to-come. ‘Waiting in the right way’ becomes a way to exclude people from citizenship. Drangsdland applies these ideas to the *Ausbildungsduldung*, holding that it is only a tool employed by the German state to make people ‘wait well’. The next chapter shows that this claim fails to capture the complexity of this hybrid legal construct and that the legal particularities of the *Ausbildungsduldung* call into question Drangsdland’s analysis.

¹⁰⁸ Bosniak (2006), 21.

¹⁰⁹ Rodina L and Harris L, ‘Water Services, Lived Citizenship, and Notions of the State in Marginalised Urban Spaces: The case of Khayelitsha, South Africa’ (2016) 9 Water Alternatives 2, 336-355.

¹¹⁰ Bosniak (2006), 23.

Citizenship can be seen as a kaleidoscope where various colors and shapes create boundless levels of membership in a political community. Such level of membership is influenced by the four elements of citizenship identified by Bosniak, namely formal legal status, enjoyment of rights, political engagement and feeling of belonging. Citizenship can take place in various dimensions, including the political, the social and the cultural. People that lack the legal status of citizenship have been dubbed ‘denizens’, ‘quasi-citizens’, ‘status noncitizens’ and ‘metics’.

This thesis focuses on the extent to which people in the German *Ausbildungsduldung* experience citizenship. The point of interest is thus which elements of citizenship described above can be manifested within the *Ausbildungsduldung*. What is assumed in this thesis is that legal status is not the only factor constituting citizenship, but that also access to rights, forms of engagement and a sense of belonging can contribute to this.

The theoretical framework in which to research this issue has now been outlined. Next, we must look at how the described elements of citizenship present themselves in the *Ausbildungsduldung*. The next chapter looks at the legal specifics of the *Ausbildungsduldung* and thus seeks to provide clarity on the first element of citizenship, legal status, and on the second element, enjoyment of rights.

3. The *Ausbildungsduldung*: legal status and enjoyment of rights

3.1 Introduction

In order to look at the extent to which citizenship can be manifested for people holding the German *Ausbildungsduldung* and what this tells us about this legal construct as a form of regularization, the last chapter proposed a theoretical framework of the concept of citizenship in which to operate throughout this thesis. Two of the four aspects of citizenship identified were formal legal status and access to rights. This chapter focuses on analyzing the *Ausbildungsduldung* as a formal legal status, analyzing its ‘hybrid structure’ existing somewhere between an illegal status and a residence permit. This chapter also outlines the civil, political and social rights those in the *Ausbildungsduldung* formally are entitled to. Introducing the *Ausbildungsduldung* as a concept thus coincides with a partial analysis of the manifestation of citizenship for people holding this document.

The *Ausbildungsduldung* is a specific form of the German *Duldung*, and this chapter therefore starts out by presenting the *Duldung* construct. To explain its purpose and use, the history of the *Duldung* is briefly outlined and the relevant legal provisions around when it is to be issued are mentioned. This is followed by a brief survey of the legal consequences, namely the given civil, political and social rights, for people in the *Duldung*. Next, the chapter introduces the origins and legal provisions of the *Ausbildungsduldung*. The formal rights of those in the *Ausbildungsduldung* are compared to those in the *Duldung* and to people holding a residence permit. From there, a first sub-conclusion is drawn around the extent to which citizenship can be manifested for people holding the *Ausbildungsduldung*.

3.2 The German *Duldung*: purpose and legal grounds

When it comes to regulating migration, the focus of harmonization within the European Union remains on limiting the inflow of irregular migration through an ever-augmenting European border control system and on the handling and distribution of asylum requests.¹¹¹ People residing on the territory of a state without a legal residence permit, often individuals whose asylum claims have been rejected or, in other cases, individuals who have overstayed a tourist or student visa, remain subject to the national laws of Member States.¹¹²

A German *Duldung* translates as ‘toleration’ and is a document that certifies the suspension of the holder’s deportation.¹¹³ The *Duldung* is issued to people who are legally obliged to leave Germany, yet for whom the regional immigration authorities¹¹⁴ have established that at this point in time a deportation cannot or should not be carried out. It is therefore not a legal

¹¹¹ The Common European Asylum System (CEAS) was created as early as 1999, offering a framework with rules for the qualification, reception and distribution of asylum seekers. This harmonization has only increased. Reformed in 2012, it comprises of four Directives: the Procedures Directive, the Qualification Directive, the Reception Directive and the Temporary Protection Directive.

¹¹² Crepeau F, ‘Protecting Migrants’ Rights: Undocumented Migrants as Local Citizens’ in Crépeau F and Sheppard C (eds), *Human Rights and Diverse Societies: Challenges and Possibilities* (Cambridge Scholars Publishing, 2014), 204.

¹¹³ § 60a AufenthG titled “Temporary suspension of deportation (*Duldung*)”.

¹¹⁴ That the regional immigration authorities are competent to determine this is codified in § 71(1) AufenthG.

residence permit, but rather a way to document a person's lack of legal residence in Germany while simultaneously acknowledging their factual residence on German territory.

As Stijn Smet points out in an extensive analysis of the subject, legal toleration “generates conceptual problems”.¹¹⁵ It has thus far not been clarified in literature whether the German *Duldung* is a lawful or unlawful status, and whether its holders are legally or illegally present. However, in order to draw conclusions about the *Ausbildungsduldung* as a tool for regularization, I consider it valuable to categorize the *Duldung* in the above terms.

To determine the first question, I rely on Lieneke Slingenbergs analysis of the term ‘lawfully’, conducted in the context of the 1951 Refugee Convention. She points out that the 1951 Convention makes a distinction between ‘lawfully in’ and ‘lawfully staying in’ the territory. Slingenberg concludes that the meaning of ‘lawfully’ “should mean authorized by a positive rule of law, and not merely not forbidden by the law.”¹¹⁶ In contrast to other forms of legal toleration by states such as prostitution and marijuana consumption, the toleration of suspension of deportation has been explicitly encoded in German law, thereby fulfilling Slingenbergs criteria of a positive rule of law. I therefore conclude that people with a *Duldung* are lawfully in Germany. However, as James Hathaway writes, ‘lawfully staying’ is characterized by “officially sanctioned, *ongoing* presence” on a state's territory.¹¹⁷ Due to the temporary nature of the *Duldung*, I consider that people with a *Duldung* are not lawfully staying in Germany.

The second question of whether the presence of those with a *Duldung* is legal or illegal is of a criminal law nature.¹¹⁸ It therefore relates not to the *Duldung* as a status but to the legality of the actions of its holders. Although those with a *Duldung* are still legally required to leave Germany (their deportation is merely suspended), their sojourning on German territory is no longer illegal.¹¹⁹ They can thus not get criminally sanctioned – that is, fined or detained – for being in the country. From this I conclude that the presence of those with a *Duldung* is not illegal.

The *Duldung* dates back to 1965, when it first appeared as § 17 in the no longer existing *Ausländergesetz* (Aliens Act).¹²⁰ This legal provision remained in place until 1990, when

¹¹⁵ Smet S, ‘Toleration and the Law’ in Sardoč M (eds), *The Palgrave Handbook of Toleration* (Springer, 2019) 7. He writes that legal toleration “may well be an oxymoron”.

¹¹⁶ Slingenberg L, *The reception of asylum seekers under international law: between sovereignty and equality* (2014, Hart Publishing) 114.

¹¹⁷ Hathaway J, *The Rights of Refugees under International Law* (Cambridge University Press, 2005) 189. Emphasis mine. According to Hathaway, refugees undergoing status verification procedures are not lawfully staying in a host state.

¹¹⁸ Drawing once more on the parallel with the 1951 UN Convention Relating to the Status of Refugees: this is reflected in Article 31 of the Convention, which holds that “[t]he Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees”.

¹¹⁹ § 95 AufenthaltG.

¹²⁰ *Ausländergesetz* 1965, § 17. The formulation of this first law was simple: “A deportation of an alien can be temporarily suspended (*Duldung*). The suspension is to be revoked when the grounds opposing a deportation disappear.” See *Bundesgesetzblatt-Archiv* (1965) Z 1997 A, Nr. 19, 356.

Germany began an intensive reform of its migration law. The current legal basis for the issuing of a *Duldung* can be found in § 60a of the German *Aufenthaltsgesetz* (Residence Act, from hereon: ‘AufenthG’) and has been elaborated significantly. Paragraph 1 empowers regional immigration authorities to order the German state to suspend the deportation of aliens from specific countries or other specific groups of aliens *on humanitarian grounds*. Kluth and Breidenbach refer to it as “a political decision” at the discretion of public servants “without taking into account the existence of an individual threat.”¹²¹

The more common suspension grounds are found in paragraph 2, which stipulates that the deportation of a foreigner is to be suspended as long as deportation is impossible *on factual or legal grounds*. Such factual or legal grounds are always related to the alien’s situation within Germany. The *Duldung* therefore does not relate to the international law concept of *non-refoulement*,¹²² which prohibits returns to a country where the alien has reason to fear persecution or serious harm and does not relate to the conditions within the country that the alien is currently residing in.¹²³ Factual grounds to suspend a deportation include lack of identity documents,¹²⁴ lack of transport to enforce the deportation, closure of borders and health issues (such as an immediate suicide risk).¹²⁵ Legal grounds include the unjustified infringement on the right to family life enshrined in Article 8 of the European Convention on Human Rights; concretely this means the separation of the alien from direct family members legally residing in Germany.¹²⁶ Paragraph 2 furthermore holds that a *Duldung* is issued when the alien is a witness in an ongoing criminal investigation.

Beyond this, the regional immigration authorities enjoy the discretion to issue a *Duldung* on any other “pressing humanitarian or personal grounds.”¹²⁷ Such grounds may include carrying out a planned medical operation or treatment, care duties towards a legally residing family member, completion of a school degree or an imminent marriage to a person lawfully staying in Germany.¹²⁸

<https://www.bgbl.de/xaver/bgbl/start.xav?start=//*/%5B@attr_id=%27bgbl165s0353.pdf%27%5D#__bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl165s0353.pdf%27%5D__1675432116842> accessed 2 February 2023.

¹²¹ Kluth and Breidenbach ‘Kommentar zu AufenthG § 60a Vorübergehende Aussetzung der Abschiebung (*Duldung*)’ in Beck O *Ausländerrecht* (BeckOK, 35th edn, 2022), par. 3.

¹²² Enshrined in Article 33 of the 1951 UN Convention Relating to the Status of Refugees.

¹²³ It is the Federal Office of Migration and Refugees (BAMF), not the regional immigration authorities, that scrutinizes the risks in an alien’s country of origin. If such a risk is established, the alien will be issued a residence permit.

¹²⁴ The lack of identity documents should not be due to fault of the alien. If the authorities determine this to be the case, an alien is issued what is dubbed a ‘*Duldung light*’, § 60b AufenthG. This comes with a substantial restriction of rights. Aliens are banned from working and cannot freely choose their place of residence. (§ 60b par. 5 AufenthG)

¹²⁵ Kluth and Breidenbach (2022), par. 9-11.

¹²⁶ Kluth and Breidenbach (2022), par. 12.

¹²⁷ § 60a par. 2 AufenthG.

¹²⁸ Kluth and Breidenbach (2022), par. 23-25.

According to the latest figures of the German Ministry of the Interior there were 241.824 people with a *Duldung* residing in Germany on 31.03.2021.¹²⁹ Frings and Domke hold that the reasons for people to hold a German *Duldung* are as diverse as those for (irregular) migration itself.¹³⁰ The largest portion of those with a *Duldung* consists of people with a rejected asylum claim. A smaller group holding a *Duldung* once had a residence permit in Germany and subsequently lost it due to, amongst other reasons, the loss of a job, graduation from university or separation from a lawfully staying partner. Only a limited number of *Duldung* holders have never been in possession of any other document.

A *Duldung* is usually granted for three months at a time, yet the phenomenon of the so-called *Kettenduldung* ('Chain-*Duldung*') – where the document is constantly renewed, oftentimes over years – has remained prevalent since its inception.¹³¹ In this regard, legal commentators Kluth and Breidenbach reflect on the existence of the *Duldung* as “misuse” of the law, holding it was created “to enable humanitarian-motivated and politically desirable long-term stays to be relegated to a ‘second class’ right of residence.”¹³² This is reflected concretely in the rights and obligations for people in the *Duldung*. These are limited as compared to those for people with a residence permit, yet stronger than as compared to those for people without a *Duldung*. This will be explored in more detail in the next section.

3.3 Legal consequences of holding a *Duldung*

A tolerated person is in principle not allowed to work, neither as an employee nor in self-employment. A work allowance is a discretionary decision of the regional immigration authorities issuing the *Duldung*, taken only after the Federal Labor Agency has established that there are no suitable EU citizen candidates for the position.¹³³ No work allowance is given when the grounds suspending a deportation are (established to be) due to the migrant's own fault.¹³⁴ This is the case when a migrant does not abide by the so-called *Mitwirkungspflichten* (obligations to cooperate), obliging all *Duldung* holders to take all possible steps to procure identity documents.¹³⁵ Also people originating from safe countries of origin are excluded from the right to work.¹³⁶

People with a *Duldung* are significantly restricted in their freedom of movement. The *Wohnsitzauflage* (domicile obligation) obliges holders of a *Duldung* to live in the city or town determined by their regional immigration authorities.¹³⁷ This domicile obligation falls away

¹²⁹ Bundesministerium des Innern, für Bau und Heimat, Correspondence to the Parliament (26th April 2021), 4. <https://www.frn.rw.de/fileadmin/frn.rw/media/Alpha_OWL/Hintergrundinfos/Antwort_StT_Nachfrage_KA_19_26863_Duldungen_60bcd_an.pdf> accessed 2 February 2023.

¹³⁰ Frings D and Domke M, *Asylarbeit: Der Rechtsratgeber für die Soziale Praxis* (Fachhochschulverlag, 2017), 375-390.

¹³¹ Frings and Domke (2017), 391.

¹³² Kluth and Breidenbach (2022), par. 5

¹³³ § 32 Beschäftigungsverordnung (BeschV).

¹³⁴ § 60a(6)(2) AufenthG.

¹³⁵ In these cases a person receives a so-called ‘*Duldung light*’, see § 60b AufenthG. Paragraph 5 stipulates a work ban.

¹³⁶ § 60a(6)(3) AufenthG.

¹³⁷ § 61(1d) AufenthG.

when a person can secure their own livelihood – that is, when they are not dependent on the state for any financial or material support. The *Residenzpflicht* (residence obligation) limits the right to move for holders of a *Duldung* to their federal state.¹³⁸ At the discretion of the regional immigration authorities, the right to move can be further restricted, for example to a district. The immigration authorities can also expand the area if this is necessary for a migrant’s job or to maintain the family unit.¹³⁹ Travel abroad is not permitted.

A tolerated person is not entitled to the regular financial support schemes, such as unemployment benefits or social benefits, regulated in the *Sozialgesetzbuch* (Social Security Law Book, from hereon: ‘SGB’). Instead, they fall under the *Asylbewerberleistungsgesetz* (Asylum Seeker Benefits Act, from hereon: ‘AsylbLG’).¹⁴⁰ According to § 3 AsylbLG, the necessary needs for food, (communal) accommodation, heating, clothing, health and personal hygiene and household goods and consumables are, as far as possible, covered by benefits in kind. If it cannot be provided in kind, migrants are given vouchers or other comparable non-cash settlements. Cash payments or transfers are a rarer phenomenon. Medical treatment is limited to serious and acute issues.¹⁴¹

People in the *Duldung* can obtain a temporary residence permit and thus regularize their status via the so-called *Bleiberecht* (‘right to stay’) schemes.¹⁴² Its conditions include a significant amount of time spent in the *Duldung* (12 months for <27, 4 years for families and 6 years for adults) as well as independent income and housing, and intermediate German knowledge. Since the regular *Duldung* is issued for only a few months, it only offers the (indirect) prospect of such regularization, namely via the *Bleiberecht* scheme.

In order for somebody to obtain a residence permit or nationality in Germany, a certain amount of years¹⁴³ of lawful stay in Germany is stipulated as a legal prerequisite. As I have analyzed in section 3.2, the *Duldung* is a legal suspension of deportation and not a legal residence permit, meaning that its holders are lawfully in Germany but not lawfully staying in Germany. The years spent in a *Duldung* therefore do not ‘count’ as prerequisites for a permanent residence permit or German nationality. Family reunification is also not possible.

Holders of a *Duldung* are in principle allowed to attend higher education¹⁴⁴ or take on a vocational training, an *Ausbildung*. For this last category the *Ausbildungsduldung* has been created. Although in principle the same legal construct, this variation of the *Duldung* brings with it slightly different rights and obligations. The background of the *Ausbildungsduldung*

¹³⁸ § 61(1) AufenthG.

¹³⁹ § 61(1) AufenthG.

¹⁴⁰ § 1(1)(4) AsylbLG.

¹⁴¹ § 4 AsylbLG.

¹⁴² § 25a AufenthG (for people aged under 27) and § 25b AufenthG (for people older than 27 and families).

¹⁴³ For permanent residence permit see: §9(2)(1) AufenthG; for German nationality see: § 10(1).

¹⁴⁴ Until 2015 it was, of all places, the state Baden-Württemberg that legally barred people in the *Duldung* (as well as those in an ongoing asylum procedure) from enrolling at university. See: Gewerkschaft Erziehung und Wissenschaft Baden-Württemberg (21 May 2015) ‘Öffnung des Hochschulzuganges für Flüchtlinge in Baden-Württemberg’ <<https://www.gew-bw.de/aktuelles/detailseite/oeffnung-des-hochschulzuganges-fuer-fluechtlinge-in-baden-wuerttemberg>> accessed 2 May 2023.

and the ways in which it distinguishes itself from the regular *Duldung* will be discussed in the following section.

3.4 A particular form: the *Ausbildungsduldung*

The idea that following a vocational training might be a ground to suspend a deportation first found its way into German law in 2015, when it was explicitly included as a possible ‘pressing personal ground’ in § 60a par. 2 AufenthG (see section 3.2). The following year, in July 2016, the German government passed the *Integrationsgesetz* (Integration Act), a large package changing various existing laws. It included a new, independent legal provision changing the vocational training *Duldung* from a discretionary possibility to a compulsory measure: the *Ausbildungsduldung* codified in § 60c AufenthG.

This decision has its roots in two strong political motives. The first is that Germany has since the early 2000s faced a lack of skilled workers.¹⁴⁵ This problem has only increased: in January 2023, the *Tagesschau* reported of two million vacancies in skilled work sectors such as logistics, electrical engineering and elderly nursing.¹⁴⁶ The German government has responded to this in various ways, one of which has been the design of a *Fachkräfteeinwanderungsgesetz* (Skilled Workers Immigration Act). This Act, eventually passed in 2020, enables more visas and subsequent residence permits to be issued to third country nationals with relevant vocational degrees. The first draft also included the possibility of granting such residence permits to people unlawfully in Germany wanting to start a vocational training. This was due not in the least to the skilled craft sector itself, which spent over a decade lobbying for legal change to regularize rejected asylum seekers on the basis of vocational training.¹⁴⁷

The above-mentioned draft provision never made it into the Skilled Workers Immigration Act, however. Using such ‘domestic potential’ namely clashes with a second political motive, which is to curb irregular migration and, indirectly, regulate membership to the ‘bounded world’. German political discourse emphasizes in this context the need to counter a so-called *Spurwechsel* (‘lane-change’):¹⁴⁸ a person whose asylum claim has been rejected is, as long as

¹⁴⁵ Thomas Ketzmerick, ‘Der Mangel an Fachkräfte’ (Bundeszentrale für politische Bildung, 20 August 2020) <<https://www.bpb.de/themen/deutsche-einheit/lange-wege-der-deutschen-einheit/47394/der-mangel-an-fachkraeften/>> accessed 2nd February 2023. The *Zeit* wrote: “[Christian Democratic] Union and SPD have stipulated in the coalition agreement that Germany needs an immigration law to overcome the shortage of skilled workers.” See: Naomi Bader, ‘Was soll der Spurwechsel?’ (Zeit Online, 1 October 2018) <https://www.zeit.de/politik/deutschland/2018-08/einwanderungsgesetz-spurwechsel-daniel-guenther-faq?utm_referrer=https%3A%2F%2Fwww.google.com%2F> accessed 3 May 2023.

¹⁴⁶ Tagesschau, Fachkräftemangel: Zwei Millionen Stellen unbesetzt, (12 January 2023). <<https://www.tagesschau.de/wirtschaft/unternehmen/fachkraeftemangel-arbeitsplaetze-offene-stellen-101.html>> accessed 5 February 2023.

¹⁴⁷ A clear example is the following statement by the Federal Association of German Employers: Bundesvereinigung der Deutschen Arbeitgeberverbände, ‘Fachkräftemangel Bekämpfen – Wettbewerbsfähigkeit Sichern’ (Juli 2015), 65-66. <https://www.grc-ub.de/fileadmin/user_upload/Fachinfos/45-435_Fachkraeftemangel-bekaempfen-Wettbewerbsfaehigkeit-sichern.pdf> accessed 2 February 2023.

¹⁴⁸ The *Spurwechsel* is a dominant and controversial theme in Germany. Tagesschau writes of a “very long heatedly debated” topic. See: Sandra Stalinski, “Spurwechsel” - aber nur halbherzig’ (Tagesschau, 21 November 2018) <<https://www.tagesschau.de/inland/fachkraefteeinwanderungsgesetz-101.html>> accessed 3 May 2023.

they remain in the country, in principle barred from receiving a residence permit.¹⁴⁹ The underlying goal is to prevent ‘strategic’ asylum claims or tourist visa requests and, ultimately, to maintain control over who has (potential) access to German citizenship.¹⁵⁰ This situation is a concrete example of what Shachar identifies as the ‘stalemate’ between the visions of a ‘nation of laws’ and a ‘nation of immigrants’, discussed in the previous chapter.

The result has been a political compromise – arguably a creative one. To cater to both the lack of skilled workers and the desire to prevent an immediate lane-change, and thus accommodate to both visions mentioned above, the *Ausbildungsduldung* was created. The relevant legal provision, namely § 60c AufenthG, stipulates that a *Duldung* on pressing personal grounds is to be issued when an alien is in possession of a regular *Duldung* and takes up either a qualified vocational training in a state-recognized or comparable regulated occupation or an assistant training leading up to such a qualified vocational training.¹⁵¹ For the duration of a vocational training, which lasts on average three years, an alien’s deportation is thus suspended. When the alien successfully finishes the training and lands an employment contract in their field of qualification, they will receive a residence permit for two years.¹⁵²

According to the Ministry of the Interior, on 31.03.2021 there were 5.712 people in possession of an *Ausbildungsduldung*.¹⁵³ Considering the fact that it provides a relatively stable protection from deportation as well as the perspective of a two-year residence permit, this number seems at first sight curiously low. The reason for this is that the hurdles for obtaining the *Ausbildungsduldung* are high. To receive an *Ausbildungsduldung*, a migrant needs to have a signed contract with an employer willing to train them in a state-recognized or comparable occupation, for which they usually need to prove at least B1 German proficiency. They also need to have cleared their identity with their regional immigration authorities; in other words, they need to have handed over a valid identity document.¹⁵⁴ Since 2020, a

¹⁴⁹ See §10(1) AufenthG. There are a few exceptions to this rule, but in all these cases explicit consent of the migration authorities is required. Also when an alien has a right to stay in Germany based on the right to respect for family life according to Article 8 ECHR a *Duldung* will be issued. Such a situation cannot form the basis for a residence permit. In such cases, a person must leave Germany and lodge a formal application at a German consulate.

¹⁵⁰ In 2018 Annegret Kramp-Karrenbauer, then CDU General Secretary, said to the editorial network Germany: “The possibility of a *Spurwechsel* contradicts a regulated immigration policy.” AfD Party Leader Alice Weidel said the possibility of a *Spurwechsel* would result in a “premium for illegal immigrants abusing the right to asylum in order to get an entry ticket to Germany.” See: Naomi Bader, ‘Was soll der Spurwechsel?’ (Zeit Online, 1 October 2018) <https://www.zeit.de/politik/deutschland/2018-08/einwanderungsgesetz-spurwechsel-daniel-guenther-faq?utm_referrer=https%3A%2F%2Fwww.google.com%2F>

¹⁵¹ § 60c par. 1(1) AufenthG.

¹⁵² § 19d(1a) AufenthG. The entire trajectory is therefore informally referred to as the ‘3+2 regulation’: a three-year *Ausbildungsduldung* for vocational training followed by a two-year residence permit for work in that vocation.

¹⁵³ Bundesministerium des Innern, für Bau und Heimat, Correspondence to the Parliament (26 April 2021), 4. <https://www.frnw.de/fileadmin/frnw/media/Alpha_OWL/Hintergrundinfos/Antwort_SfT_Nachfrage_KA_19_26863_Duldungen_60bcd__an.pdf> accessed 2 February 2023.

¹⁵⁴ § 60c(2)(3) AufenthG. Many people in the *Duldung* do not own a passport, and obtaining a valid identity document at the consulate of their country of origin can be a long and strenuous process.

waiting time of three months in a regular *Duldung* has furthermore been introduced as a condition for obtaining the *Ausbildungsduldung*.¹⁵⁵

As is the case with most statuses other than the *Duldung*, a person is excluded from obtaining the *Ausbildungsduldung* when they have committed (relatively severe) crimes.¹⁵⁶ Also people coming from so-called safe third countries¹⁵⁷ are excluded after they have received a negative asylum decision.¹⁵⁸

3.5 Legal consequences of holding an *Ausbildungsduldung*

The *Ausbildungsduldung* is thus a document that suspends the holder's deportation for the duration of a vocational training, usually a period of three years. It has the same legal basis as the regular *Duldung*, yet the particular rights and obligations attached to this document are slightly different. These will be explored below.

As we have seen, a person with a regular *Duldung* is in principle not allowed to work. This also counts for the *Ausbildungsduldung*. Of course its holders are permitted (even obliged) to work for the company with which they are doing their training, yet only within the context of their education. Instead of a regular salary they receive 'compensation', the amount of which lies around 500 EUR per month.¹⁵⁹ People with an *Ausbildungsduldung* are not allowed to take up any other form of employment to supplement their income.

The freedom to follow education remains intact in the *Ausbildungsduldung*. However, the fact that following a vocational training is its core condition, people holding this document in practice do not have the opportunity to follow any other forms of education. A vocational training is a full-time occupation and practically does not leave room for extra studies.

The restrictions on the freedom of movement that is part and parcel of the *Duldung* undergo some relaxation in the *Ausbildungsduldung*. There is no *Residenzpflicht* (residence obligation), meaning that the right to move for holders of the *Ausbildungsduldung* is not limited to their federal state but to German territory. People are nonetheless often still subject to a *Wohnsitzauflage* (domicile obligation). This obligation only falls away when someone in the *Duldung* can secure their own livelihood. As mentioned, people in the *Ausbildungsduldung* are not able to supplement their low vocational training compensation,

¹⁵⁵ § 60c(2)(2) AufenthG. As we have seen, this regular *Duldung* is often issued due to a lack of identity documents. At the same time, the *Ausbildungsduldung* can only be granted as long as no concrete measures to end the suspension of the migrant's deportation have been taken; measures that include the making of a consular appointment for procuring documents. People with a regular *Duldung* are at risk of getting a work ban when they do not cooperate with acquiring and handing over a passport to the authorities. Irregular migrants striving for an *Ausbildungsduldung* are thus required to go through a three-month period during which on the one hand, cooperative actions are necessary to prevent a work ban and thus secure an *Ausbildungsduldung*, and on the other hand, this same cooperation could be interpreted as concrete measures to end their stay, preventing them from getting an *Ausbildungsduldung*.

¹⁵⁶ § 60c(2)(4) AufenthG.

¹⁵⁷ Albania, Bosnia-Herzegovina, Ghana, Kosovo, Macedonia, Montenegro, Senegal and Serbia.

¹⁵⁸ §60c(1)(2) AufenthG.

¹⁵⁹ As reported by all of my seven interview participants.

meaning they effectively stay dependent on some form of state financial assistance. Travel abroad is, as in the regular *Duldung*, not permitted.

Like those in the *Duldung*, people in the *Ausbildungsduldung* also fall under the *Asylbewerberleistungsgesetz* (Asylum Seeker Benefits Act).¹⁶⁰ This comes with the same disadvantages as already described in section 3.3. People in the *Ausbildungsduldung* can, however, apply for so-called *Berufsausbildungsbeihilfe* (Vocational Training Support, from hereon: ‘BAB’) after they have resided in Germany for 15 months.¹⁶¹

The *Ausbildungsduldung* distinguishes itself most by offering its holders the prospect of obtaining a regular status after their vocational training is over. When they manage to find employment in the field of their training (and fulfill additional criteria such as having intermediate German knowledge and adequate housing), people holding an *Ausbildungsduldung* will be issued a two-year legal residence permit.¹⁶² Yet as is the case for people in the regular *Duldung*, the years spent in the *Ausbildungsduldung* do not ‘count’ for the prerequisite period of lawful stay in Germany when applying for a permanent residence permit or German nationality. Family reunification is also not possible with an *Ausbildungsduldung*.

3.6 Discussion

Thus far this chapter has outlined the purpose and legal basis of the *Duldung* and its particular form, the *Ausbildungsduldung*, as well as described the rights and obligations that come with both documents. We can now turn to the question of what these findings mean for the extent to which citizenship can be manifested under the *Ausbildungsduldung* and, subsequently, the meaning it has for this status as a form of regularization.

The theoretical framework of chapter 2 made clear that citizenship is not a binary concept but rather a kaleidoscope, with different colors and shapes interacting to create boundless images of what citizenship can look like. The first two concrete aspects of citizenship identified are formal legal status and access to rights. These have been thoroughly laid out in this chapter and will now be discussed in light of the theoretical framework outlined in chapter 2. The table on the next page provides a concise overview of the status and rights for people in the *Ausbildungsduldung* as compared to other statuses (figure 3.1).

¹⁶⁰ § 1(1)(4) AsylbLG.

¹⁶¹ § 56 SGB III. This is a form of financial support that anyone following a vocational training in Germany is eligible for. Depending on an individual’s cost of rent, the amount lies between 620 and 781 EUR per month.

¹⁶² § 19d AufenthG.

Figure 3.1: Comparison of status and rights for people that are undocumented, have a *Duldung*, an *Ausbildungsduldung* and a residence permit

	Undocumented	<i>Duldung</i>	<i>Ausbildungsduldung</i>	Residence permit¹⁶³
Formal legal status	Unlawfully in Germany and illegal presence	Lawfully in Germany; unlawfully staying in Germany; legal presence; deportation suspended (duration: 3-6 months)	Lawfully in Germany; unlawfully staying in Germany; legal presence; deportation suspended (duration: 3 years)	Lawfully staying in Germany
Prospect of legal stay	None	Indirectly via the <i>Bleiberecht</i> schemes; ¹⁶⁴ time in this status does not count towards a permanent residence permit/German nationality	Yes; although time in this status does not count towards a permanent residence permit/German nationality	Time in this status counts towards a permanent residence permit/German nationality
Right to work	Not allowed	In principle not allowed; exceptions at the discretion of regional migration authorities	In principle not allowed; only insofar as part of the vocational training	No restrictions
Right to education	Not allowed	No restrictions	In principle no restrictions; in practice limited to vocational training	No restrictions
Freedom of movement	None	<i>Residenzpflicht</i> (residence obligation); <i>Wohnsitzauflage</i> (domicile obligation) when own livelihood not secured; travel abroad not permitted	<i>Wohnsitzauflage</i> (domicile obligation) when own livelihood not secured; travel abroad not permitted	No restrictions
Financial support	None	According to AsylbLG, which includes housing, food, acute health care, small allowance	According to AsylbLG; eligible for BAB	According to SGB; in practice no restrictions
Family reunification	Not allowed	Not allowed	Not allowed	Depends on residence permit
Voting	Not allowed	Not allowed	Not allowed	Not allowed

¹⁶³ When referring to ‘residence permit’ throughout this thesis, a short-term residence permit (*‘befristete Aufenthaltserlaubnis’*) is meant. Not meant are temporary residence permits as issued to for example au pairs, students and seasonal workers. There are, of course, many different short-term residence permits issued by the German state, with distinct conditions and durations. However, the basic rights and freedoms as detailed in this table are congruent over all such permits.

¹⁶⁴ Since the regular *Duldung* is issued for only a few months, the previously mentioned *Bleiberecht* schemes are considered an indirect and not a direct prospect for tolerated persons.

Regarding formal legal status, it can be concluded that the *Ausbildungsduldung*, like the regular *Duldung*, is not a residence permit but a suspension of deportation. People do not have a legal residence permit, but neither are they undocumented. They are lawfully in Germany but not lawfully staying in Germany. What distinguishes the *Ausbildungsduldung* from a regular *Duldung* is the fact that the suspension of deportation lasts throughout the entire vocational training of the holder – usually three years. This is a relatively long suspension period as compared to the regular *Duldung* and creates security in the form of a fixed period of time. Sojourn on German territory is not illegal for people in the *Ausbildungsduldung*. In contrast to people that are undocumented, they can thus not get penalized for their physical presence in the country.

Another important element to consider regarding the legal status of the *Ausbildungsduldung* is the fact that it offers a direct prospect of a short-term residence permit. This means that the *Ausbildungsduldung* is a form of regularization. A regular *Duldung* offers only the prospect of regularization; an undocumented status offers neither. The obtained short-term residence permit can, in turn, can lead to a permanent residence permit (*unbefristete Aufenthaltserlaubnis*) and eventually to German nationality. In other words, the *Ausbildungsduldung* offers people the promise of ever-augmenting membership in Germany's political community; it promises the possibility of increasing levels of citizenship. I argue that this prospect contributes highly to the manifestation of citizenship for people in the *Ausbildungsduldung* despite it being a status of unlawful stay.¹⁶⁵

When looking at figure 3.1, a few crucial elements concerning rights and freedoms across various statuses become clear and need to be highlighted. First of all, the overview makes transparent that not a single mentioned status comes with the right to vote – in fact, this right is granted only to people with German nationality.¹⁶⁶ Yet as I established in the previous chapter, citizenship is not only shaped by the right to vote or even only by political rights, but by all rights and entitlements, including civil and social ones.

With this in mind another important element regarding citizenship becomes obvious. We see that although the *Duldung* is not a legal residence permit, it does come with a substantial amount of civil and social rights as compared to an undocumented status. People with a *Duldung* receive – as far as they cannot provide for it themselves – housing, food, acute health care and a small allowance. Although they are in principle not allowed to work, the regional migration authorities make exceptions at their own discretion. People with a *Duldung* can go to school, take up a vocational training and enroll at university. All this holds equally true for people with an *Ausbildungsduldung*. Only the freedom of movement for people in

¹⁶⁵ This reality might in turn be limited by the fact that the time spent in the *Ausbildungsduldung* does not 'count' towards permanent residence or German nationality. For these two formal legal statuses, a time period of respectively five and eight years with a legal residence permit is required.¹⁶⁵ Time in the *Duldung*, including time in the *Ausbildungsduldung*, does not tally towards this. It thus, to a certain extent, decelerates the 'promise' of citizenship and has the potential to lead to lower levels of citizenship. Yet the fact that a permanent residence permit is a tangible prospect for those in the *Ausbildungsduldung* has much more importance and weighs more heavily in deliberations on future levels of citizenship.

¹⁶⁶ In national and state elections.

these two statuses is restricted as compared to a residence permit – slightly less so for those with an *Ausbildungsduldung*.

People holding an *Ausbildungsduldung* are lawfully in Germany yet are not lawfully staying in Germany. They do not own a residence permit. In the kaleidoscope of citizenship, we thus see a weak form of status combined with many bright colors of rights. This unique picture has prompted the legal commentator Breidenbach to refer to the *Ausbildungsduldung* as a “residence permit in *Duldung* robe”¹⁶⁷ as well as a “hybrid structure” existing “between the ‘normal’ *Duldung* and the [...] residence permits.”¹⁶⁸ The *Ausbildungsduldung* is two things at once; it is not a residence permit yet embodies all qualities of a residence permit. I argue that when analyzed in the light of citizenship theory, this hybrid nature captures the tension between the legal order and the rights of the individual and unites both poles into one legal figure.

Citizenship, as we have seen in the previous chapter, is membership in a political community. Members within a political community decide on the criteria of membership and guard the process of inclusion and, by default, exclusion. The fact that many people enter states without prior permission goes against this principle and creates, as Ayelet Shachar has held, a stalemate between the competing camps of ‘a nation of laws’ and that of ‘a nation of immigrants.’ States carry out their migration policies ‘in retrospect’ and assign people on their territory various statuses. The territorially-based approach argues for offering people rights on the basis of their presence on a territory.

In the *Ausbildungsduldung*, people are excluded from the community via their formal status yet also included in the community via a substantial amount of rights. If we see the regular *Duldung* as a kind of truce between the two camps of ‘a nation of laws’ and ‘a nation of immigrants’, suspending the conflict, the *Ausbildungsduldung* is a compromise to dissolve the conflict. The ‘original sin’ of entering Germany without prior permission is not forgotten and also not (yet) forgiven. As it is merely a toleration and not a residence permit, people are excluded ‘in retrospect’ – in this sense, the *Ausbildungsduldung* follows a status-based approach. Yet at the same time, recognition is given to the fact that people are present on German territory and that their identity is, as Rogers Smith puts it, ‘coercively enforced’ by the German state. The holders of an *Ausbildungsduldung* are, in Walzer’s words, ‘put on the road to citizenship’ through access to most rights. This reveals a territorially-based approach. It can thus be argued that the *Ausbildungsduldung* allows someone’s ‘original sin’ to be forgiven in exchange for three years of their human time.

¹⁶⁷ Breidenbach W, ‘Ausbildungsduldung und Spurwechsel, rechtliche und sprachbildende Aspekte’ presented at the conference ‘Deutsche und europäische Migrationspolitik – Bewährungsprobe für die Menschenrechte’ (Stuttgart-Hohenheim, 25-27 January 2019), 27. <https://www.akademie-rs.de/fileadmin/user_upload/download_archive/migration/20190126_breidenbach_spurwechsel.pdf> accessed 13 April 2023.

¹⁶⁸ Breidenbach W, ‘Kommentar zu AufenthG § 60c Ausbildungsduldung’ in Beck O *Ausländerrecht* (BeckOK, 35th edn, 2021), par. 4.

Linda Bosniak argues that the granting of rights to status noncitizens, which she dubs ‘ethical territoriality’, cannot lead to true membership in the political community. She holds that a territorially-based approach assumes a ‘hard-on-outside and soft-on-the-inside’ conception of membership that does not account for the internalization of the border through detention and deportation measures. However, it appears that with the *Ausbildungsduldung*, this objection has been overcome. Since their deportation is suspended and they thus cannot be removed from German territory, people in the *Ausbildungsduldung* are not at risk of removal or detention and have their rights effectively safeguarded. They can be said to be archetypical ‘denizens’, ‘quasi-citizens’ or ‘metics’.

Regularizations are a way for those that entered a state without permission to be included in the political community. It goes against the logic of irregular entry being an ‘original sin’ that cannot be redeemed. As has been outlined in this chapter, this emphasis on the legal order and thus the logic of ‘a nation of laws’ led to the creation of the *Ausbildungsduldung* as ‘hybrid structure’. On the one hand, politicians underscored that a *Spurwechsel* (‘lane-change’) would undermine the legal migration order. On the other hand, they were eager to let people present on German territory join sectors that lacked skilled workers. This fits the cited studies of PICUM and Albert Kraler, who identify a strong focus on employability as opposed to humanitarian motives driving European regularization programs.

Instead of an immediate transformation of the unlawful into the lawful, the *Ausbildungsduldung* constitutes an in-between space where this process happens. If we picture the unlawful and the lawful as two sides of a water lock, the *Ausbildungsduldung* is the chamber in which the water level is slowly varied to allow a smooth transition. During their three years in this legal construct people are therefore undergoing regularization; they are being regularized. In other words, the *Ausbildungsduldung* captures what Linda Bosniak refers to as the ‘legal alchemy’ of regularization.

This perspective calls into question Anne Drangland’s conclusion that the *Ausbildungsduldung* is merely a technique that compels people to ‘wait well’ in order to delay citizenship. She echoes Anne McNevin, who argues that the narrative of progressive linearity around citizenship only rationalizes differential access to it in the present moment. My analysis offers an alternative view: that the *Ausbildungsduldung* is a technique that actually makes citizenship possible. It does not present an empty ‘horizon’ of false hope but rather concretely overcomes the stalemate that irregular presence creates by uniting exclusion and inclusion in one legal construct as transition into a residence permit.

As we have seen in the previous chapter, other elements of the kaleidoscope of citizenship include participation and a sense of belonging. The above analysis is not complete without measuring and incorporating these into the equation. The next chapter measures these two subjective elements using seven interviews with people who have or have had an *Ausbildungsduldung*, analyses how these results influence the extent to which citizenship can be manifested in the *Ausbildungsduldung* and draws a conclusion as to what this means for the *Ausbildungsduldung* as a form of regularization.

4. The *Ausbildungsduldung*: participation and sense of belonging

4.1 Introduction

In order to look at the extent to which citizenship can be manifested for people holding the German *Ausbildungsduldung* and what this means for this legal figure as a regularization form, I have so far outlined a theoretical framework of citizenship in chapter 2 and analyzed the *Ausbildungsduldung* in terms of formal status and rights in chapter 3. This chapter will focus on the more subjective aspects of citizenship: participation and sense of belonging. The analysis is based on seven interviews with people currently having an *Ausbildungsduldung* (Ebrima, Kasem, Miriam, Omar, and Shaieb) and people currently having a residence permit after having had an *Ausbildungsduldung* (Badu and Daniel).¹⁶⁹ To highlight the experiences of my participants as best as possible, I have included a substantial amount of direct quotes.

The chapter is structured as follows. First, I outline the way my participants reflected on the *Ausbildungsduldung* as a legal status and on their (access to) rights. I conclude that many of the formal aspects identified in the previous chapter coincide with the reflections of my participants. Next, I analyze the extent to which my participants experience their level of participation in Germany, differentiating between political and social, as well as national and local participation. Then I turn to the extent to which my participants experience a sense of belonging in Germany, identifying various elements that either enhance or decrease this experience. I also consider the significant role that legal status and rights play for both participation and sense of belonging. Lastly, I look at the role that waiting and having a ‘horizon’ play for my participants and analyze what this means for the *Ausbildungsduldung* and the manifestation of citizenship. The chapter ends with a discussion.

4.2 Subjective experiences of the *Ausbildungsduldung* as legal status and rights

In the previous chapter I concluded that when attempting to grasp the *Ausbildungsduldung* as a formal legal status, it becomes clear that it lies somewhere in between a *Duldung* and a residence permit and could thus be considered a ‘hybrid structure’. On the one hand, it is simply a suspension of deportation and does not lead to lawful stay; yet on the other hand, it factually allows its holder to stay in Germany for three years and offers the prospect of a residence permit. I also concluded that the rights of people in the *Ausbildungsduldung* are stronger than those for people with a regular *Duldung*, and are much more like those of people with a residence permit.

My participants reflected these findings. All of them were ambiguous about the *Ausbildungsduldung* as a legal status. They confirmed that they saw the *Ausbildungsduldung* as a way to be protected against deportation for a three-year period. Yet at the same time, they did not consider the *Ausbildungsduldung* as conferring on them a right to be in Germany. Omar formulated this ambiguity as follows:

¹⁶⁹ To protect the identities of my interviewees, I have used fictional names.

“I see it like to stay in Germany permanently, but somehow I also don’t see it like that.”

Miriam held the same view as Shaieb when explaining, *“I say, Ausbildungsduhlung or Duldung, it’s all the same.”* Yet earlier on in the interview she had stated that the *Ausbildungsduhlung* is for her *“a way to have my peace”* while she goes through her vocational training since there was no threat of deportation.

Kasem indicated that with an *Ausbildungsduhlung* *“you can live and work with a free mind”* but emphasized, *“the Ausbildungsduhlung is not a document.”* Badu also reflected on the benefit of having a deportation suspended for a long period of time:

“The Ausbildungsduhlung is very good because if you have it, then you can study in a stable mind, you know, you can do your Ausbildung without worry that somebody might knock on your door, or try to deport you or something.”

He now has a residence permit and compares this to the *Ausbildungsduhlung* as follows:

“That one [residence permit], you know, you’re just like a butterfly, you can think inside, be inside.”

With this he aptly captures the difference between an *Ausbildungsduhlung* and a residence permit as legal statuses. Although both enable its holder the security of staying on German territory, only the latter formally includes them into the community (*“be inside”*).

Next to protection against deportation, all my participants mentioned the perspective of regularization, which has been extensively outlined in the previous chapter, as the main reason for them to follow a vocational training and apply for the *Ausbildungsduhlung*. Kasem told me, *“If you want to be strong, you have to take Ausbildungsduhlung,”* since with this document *“you are making something to have in the future.”* Ebrima, too, referred to the *Ausbildungsduhlung* as a way to *“make a future”* for himself and Omar said this document means, *“I get a better future.”* Shaieb also referred to the possibility of receiving a residence permit in the future: *“When I finish my Ausbildung, they will decide, OK, they will allow me to stay in Germany.”*

My participants emphasized waiting and patience to be integral aspects of this regularization path towards citizenship. Omar stated that full membership in Germany is possible *“if you just follow the rules long enough.”* Miriam said:

“If you want to be here you have to wait. In Germany nothing goes fast. No. Here, you cannot come today and then today, you laugh. No. Slowly, slowly. Everything is slowly, slowly. Step by step.”

Miriam claimed that waiting would eventually lead to *“finally feeling completely at rest.”* A similar position was taken by Daniel, who told me, *“you stand no chance when you want to go fast. One needs to take time for everything.”* By taking the time for everything, he assured me, one could become a full member of German society. Also Shaieb said, *“you need to have patience.”*

When asked about their rights, my participants in the *Ausbildungsduhlung* tended to focus on the rights that were restricted for them as opposed to for people with a legal residence permit. The most significant restriction, mentioned by all of my participants, was that to the right to

freedom of movement. The *Ausbildungsduldung* as a formal legal status and the rights that come with it influence the level of participation and in particular a sense of belonging. The exact outcome of this will be discussed in the next two sections.

4.3 Participation in the *Ausbildungsduldung*

Since my participants had all been residing in Germany for three to eight years, it comes as no surprise that they reported of various ways of participation in German society. All of them are doing a full-time vocational training or were working full-time in the field of their prior training. Kasem, Badu and Shaieb play football for their local clubs at a high level. Daniel is in the local voluntary fire brigade. Miriam is a voluntary member of her residence building's management board. Shaieb engages himself in the organization of various events at his children's school and reported of a high level of participation in his city:

"I go, I cut grass, I clean this, the streets, I go to the old people, I clean their house. I clean many things. So here I like to associate myself in the society, in the city. So I can be useful."

However, when asked about their political participation, the responses of my participants made it clear that this played little to no role in their lives. Ebrima formulated that politics is something *"so high, I cannot think about it"*. Only Badu had ever joined a demonstration and political group; the others indicated that politics was very absent in their thoughts and actions. Reasons stated included a lack of time and too much stress, both due to long hours of their vocational training.

My participants also claimed that even if they would have had more time and space in their personal lives, they could not participate politically in Germany. Kasem related this impossibility back to not being allowed to vote: *"I cannot choose the laws. I have no right to say I agree or disagree."* Daniel also emphasized not being allowed to participate in formal politics:

"You cannot do anything. [...] The problem is simply that I cannot say when something in the society isn't right. Everyone has their opinion. I can say I have something in Germany, I see something I don't find good, so maybe they can make it better or something. But it doesn't count."

Shaieb linked his lack of political participation to the possibility of a deportation, yet immediately added that this would be no different with a residence permit – this, too, could be revoked in the case of serious crimes. He also linked his lack of political participation to a lack of a sense of belonging:

"This is their land, I can't make decisions for them. [...] They do what they want. They make decisions where they want."

Badu, who has a residence permit, made clear that his level of political participation has not changed since being out of the *Ausbildungsduldung*. He said:

"It's not about having the residence permit that you go and demonstrate. Even if you have a Duldung, you are able, even if you are deported, you still have the possibility to go out and demonstrate."

Daniel also has a residence permit but finds it unfair that he cannot participate in formal German politics, despite the fact that he has been working and living in Germany for eight years.

“That is not a democracy. [...] I put in the effort, I give everything! I show everything. Still they don’t accept me.”

The statements of my participants clearly show that a lack of political participation is tied up with legal status, but is not particular to the *Ausbildungsduldung*. The obstacles mentioned by them, such as not being allowed to vote and living with the possibility of expulsion, remain a reality with a residence permit. Shaieb, Badu and Daniel’s statements also show that a lack of political participation and a low sense of belonging are closely tied together. The *Ausbildungsduldung* and a sense of belonging will be discussed more in depth in the following section.

4.4 Sense of belonging in the *Ausbildungsduldung*

When asked whether they felt accepted, at home or like they belonged in Germany, my participants showed the complexity of this question in their reflections. My interviews showed that having a sense of belonging is multi-faceted, and can be high in certain areas of life while low in others. However, when analyzed as a whole, my participants tended towards a low sense of belonging. Five specific themes that influenced this sense of belonging can be identified: legal status, the physical document, freedom of movement, work, and racism.

4.4.1 Legal status

The *Ausbildungsduldung* as legal status was mentioned by several of my participants as something that hurt their sense of belonging in Germany. Daniel regards it as the primary factor influencing this. He says: *“Since they’ve given me a residence permit, it means they have accepted me.”* Omar was clear in his conviction that he could not belong in Germany as long as he had an *Ausbildungsduldung*.

“If you get the residence permit, you belong to here. But if you don’t get that, you don’t belong to that place. I want to belong to here. But it’s not my choice, I cannot choose it. I can want but I cannot give it to myself. That is the problem.”

However, Omar does acknowledge that his confidence around one day feeling like he belongs has grown since getting an *Ausbildungsduldung*. *“From this year, I think it’s changed. Because of the *Ausbildungsduldung*. This changed.”* He sees this document as *“a recognition from the government”* that he is allowed to be in Germany in the future. His membership has been quasi ‘pre-approved’. This fits the analysis, presented in the last chapter, that the *Ausbildungsduldung* is a transition room where the ‘legal alchemy’ of regularization takes place.

4.4.2 The physical document

The *Ausbildungsduldung* influences its holders’ sense of belonging not only as a legal status, but also as a physical object. This is reflected in several anecdotes concerning shame around showing the document to others. Miriam recounted the following:

“Maybe you go somewhere, someone asks you for your ID, and you take that thing out, and the people there, they look at you, and just their faces, they go: hmhmhm. You know, this feeling, I don’t know how I can explain it. You are ashamed. Shame.”

Others were slightly less direct about their feelings of shame, yet managed to convey it in words nonetheless. Ebrima, for instance, reports of his struggle to enter a nightclub with his *Ausbildungsduldung*. He explains how he does not follow his friends with regular status inside. His narrative hints at the shame of having to show strangers his *Ausbildungsduldung*:

“When I want to go inside a club, and they ask me for my document, I cannot take out my Duldung, you know. Of course I could show it and then I could go inside the club. But you know, I can’t.”

Speaking with my participants, I began to understand that their feelings of shame were very much influenced by the hybrid structure of the *Ausbildungsduldung*. Miriam’s above account of shame came directly after describing discrimination from her teachers after discovering she has an *Ausbildungsduldung*.

“There is a big difference between those who have a residence permit and those who have a Duldung, it’s always a big difference in how the teachers treat us.”

Miriam mentions several occasions on which her teachers told her that they believe she only follows her vocational training to be able to stay in Germany. Shaieb and Omar reported of similar incidents. With such statements, these teachers suggest that my participants somehow misuse the schooling system and thereby construe of them as outsiders. Yet they are only construed as outsiders once it has become apparent that they hold an *Ausbildungsduldung*. They have equal rights and participate as their fellow students do; only their physical document can ‘give them away’ as potential outsiders.

4.4.3 Freedom of movement

Restrictions on freedom of movement were for all of my participants a huge factor contributing to not feeling like they could belong in Germany. Ebrima goes as far as saying that the *Ausbildungsduldung* “is like a prison.” Shaieb reflects on his inability to choose his domicile as follows: “I’m just like a table, anywhere they position you, you stay.”

Daniel says that with his residence permit he can now move “where he wants” and finally visit his family abroad. This is important for his sense of belonging.

“When I wouldn’t be able to do that, I could say, I don’t feel like I belong. But as long as I can do that, without problems, why would I not say like I belong in Germany.”

Kasem shows how restrictions to the freedom of movement can concretely lead to a sense of exclusion. He does his confectionary training close to the border with Switzerland. There have been several occasions on which his classmates spent a week in Switzerland to learn about the Swiss art of making chocolate. Since he has an *Ausbildungsduldung* and is not allowed to leave Germany, Kasem has not been able to join these visits. This makes him feel

excluded and as though his contribution as a baker is not appreciated by German society. He also mentions how it was hard for him to find a company that would take him on in the first place, due to the intensive exchange with Switzerland in the confectionary profession. He concludes:

“Ausbildungsduldung is only 50%, residence permit is 100%.”

Again, the hybrid nature of the *Ausbildungsduldung* is creatively captured. Kasem’s account also reflects the *Ausbildungsduldung* as a compromise between the two visions of ‘a nation of laws’ and ‘a nation of immigrants’. The latter maintains that migration is part of the fabric of German society and wants those who are here without a legal residence permit to join the workforce. The first vision holds that the legal order needs to be maintained. A compromise has been to allow Kasem to follow a vocational training, but to restrict his right to free movement in so far as it does not completely compromise him finishing that training. The fact that Kasem cannot join excursions abroad does not critically harm either of the two visions. All it does is tarnish Kasem’s sense of belonging, and thereby weaken one of the colors in the kaleidoscope of citizenship.

4.4.4 Work

Work, although a strong form of social participation, actually seemed to weaken a sense of belonging. People in the *Ausbildungsduldung* expressed feelings of dissatisfaction and even bitterness around seeing their fellow students and coworkers have more rights than them. Exactly because they considered these fellow students and coworkers their theoretical equals, my participants felt separation from them and, in extension, from German society at large. Ebrima elaborated on this as follows:

“You start doing this work. And then you have coworkers, and your coworkers, they have more rights, they have more entitlements, they have – they are free to move. And then you are there, at some point, you don’t feel human anymore. Believe me. That’s why I say it’s like a prison for me.”

He also sees the restrictions of his right to free movement as an insufficient recognition of the work he does.

“We are working for the parents of the people that gave us this Duldung. We are there, we do care work, they should treat us right. That would be human. But there is no acceptance.”

Daniel and Badu, who both have residence permits, express that their full-time jobs make them feel like they belong in Germany. Badu also identifies the tax that he pays over his income – now much higher than when he had an *Ausbildungsduldung* – as contributing to this feeling.

“Taxes help the country and develop that country regarding building schools and making roads and trains and everything. So when you pay a lot of taxes, and then you also enjoy the privilege of driving a car and entering a train, or when you send your kids to school, you know, this is my money, this is mine.”

He feels like he belongs because he (indirectly) contributes to the country and thus surmises that he helps shape it. By paying taxes he feels like he is “*engaging in a way with the political system in Germany.*” Only with a residence permit does he have the possibility to work full-

time, and thus pay taxes and feel like he belongs. For this reason, he experienced a lower sense of belonging in the *Ausbildungsduldung*.

4.4.5 Racism

Some of my participants related their sense of belonging directly to the presence or absence of racism towards them. When asked whether he feels like he belongs in Germany, Shaieb says that it's all about "*the way that you feel like you are among them.*" He feels this way in the small city where he lives – and this due to a lack of racist encounters.

"I love the city. I love this city so much, because they are not racist, they are very good, they take you like you are one of them. They take me like – they see me like a white man. In this city already, they make me feel like I'm German. Because they don't push me aside, you are black, we don't want you, go, no, they don't do it. In this city they treat me not like I'm a black man, they treat me like I'm white."

Badu told me that to his great regret, he does not believe that he will ever feel like he is "*one of them [Germans].*" He too relates this to racism.

"In Germany, there is a lot of discrimination against black persons. As a black person in Germany, every day you are reminded that you are a foreigner. [...] Me, I never know what is racism the time that I was in Africa. I just see it in the TV. After me coming to Europe, that's how I know what is racism."

Omar recounted of occasions on which he was refused from nightlife establishments "*because I have Duldung, you know, because I am a black man.*" Ebrima, too, interchangeably uses "*people with Duldung*" and "*black people*" throughout the interview. Omar and Ebrima link their experience of racism and being racialized to their legal status and force us to reflect on the inherent racism of our legal (migration) system. The accounts of Shaieb and Daniel, however, point out that racism remains a problematic reality even beyond legal status. It is in this sense not the *Ausbildungsduldung* that harms a sense of belonging, but the much larger phenomenon of systematic racism.

4.5 Discussion

Thus far this chapter has presented the extent to which my participants participate and experience a sense of belonging in German society while holding an *Ausbildungsduldung*, as well as identified common elements that influence this. We can now turn to the question of what these findings mean for the extent to which citizenship can be manifested under the hybrid structure of the *Ausbildungsduldung* and, subsequently, the meaning it has for this status as a form of regularization.

The first two concrete aspects of citizenship I identified in chapter 2 are formal legal status and access to rights. These were analyzed from a formal, objective perspective in the previous chapter. The remaining two aspects are participation and sense of belonging. This chapter focused on the subjective experience of all these elements of citizenship in the *Ausbildungsduldung*.

Regarding participation, all my participants reported high levels of engagement in sport clubs, societies, schools and boards. I conclude that such a high level of social participation can be considered an inherent aspect of the *Ausbildungsduldung*. Firstly, it automatically comes with a full-time vocational training, which is by default a way to participate in society. Secondly, one only applies for an *Ausbildungsduldung* when issued a regular *Duldung*, which in turn happens mostly after an unsuccessful, yet often protracted asylum procedure. By the time people come into the *Ausbildungsduldung*, they have spent a significant amount of time in Germany, and due to the restrictions on movement and domicile, they have often not left their region much. Thirdly, the *Ausbildungsduldung* gives its holders the security of being able to stay in Germany throughout their training and afterwards. My participants confirmed that this made them more eager to join clubs and societies that require a certain reliability and continuity. All of these factors combined lead to the creation of networks, activities and thus participation.

Although social participation was high, political participation was low for all my participants. The analysis of my interviews clearly shows that a lack of political participation is tied up with legal status, but not in particular with the *Ausbildungsduldung*. The obstacles mentioned by my participants, such as not being allowed to vote and living with the possibility of expulsion, remain a reality also with a residence permit. Nonetheless we can conclude that the lack of access to participation in formal politics negatively influences the manifestation of citizenship for people in the *Ausbildungsduldung*.

My interviews showed that having a sense of belonging is multi-faceted, and can be high in certain areas of life while low in others. However, when analyzed as a whole, my participants tended towards a low sense of belonging. I have identified five specific themes that influenced this sense of belonging: legal status, the physical document, freedom of movement, work, and racism. Curiously, it is precisely the hybrid nature of the *Ausbildungsduldung* that contributes to this low sense of belonging. In the previous chapter, I concluded that as a hybrid structure, the *Ausbildungsduldung* unites the tension between the visions of ‘a nation of laws’ and ‘a nation of immigrants’ in one legal figure. When we accept the reality of these two competing visions, the *Ausbildungsduldung* can be regarded as a satisfying compromise out of this stalemate. But somebody with the *Ausbildungsduldung* belongs to the camp of ‘a nation of immigrants’ and is naturally not content with this compromise. People’s high level of participation conflicts with restrictions on their rights, which, no matter how minimal, they reasonably compare to those of others that participate in similar ways. Noticing this discrepancy, the sense of belonging for those in the *Ausbildungsduldung* is harmed.

In order to draw meaningful conclusions around the *Ausbildungsduldung* as a regularization form, I wanted to find out whether the *Ausbildungsduldung* serves as an effective regularization tool to help people reach a higher level of citizenship, or whether it is, as McNevin and Drangland argued, a tool to have people ‘wait well’ and keep them from protesting against their access to citizenship being blocked. In the theoretical framework in chapter 2, I highlighted that most theories around citizenship work with a model of

progressive temporality, where the future is an improvement of the past. Anne McNevin relies on Ghassan Hage's concept of 'stuckedness' to argue that this progressive model does not hold true. According to her, migration regimes are purposefully designed to keep people waiting in order to weaken dissatisfaction with 'stuckedness'. Citizenship is presented as a 'horizon' in order to obliterate consciousness of the fact that the majority of people without a residence permit will never (fully) attain it. Anne Drangsdal has concluded that the *Ausbildungsduldung* is a tool to conserve exactly this empty promise of citizenship. Next to inquiring into levels of participation and feelings of belonging, which point towards current experiences of citizenship, I therefore asked my participants about how they imagined future manifestations of citizenship.

My interviews showed that waiting is experienced as an integral part of the path towards full inclusion as citizens in Germany. Yet although my participants expressed a certain frustration with the content of the *Ausbildungsduldung*, principally the limitations to freedom of movement and the stress of long working hours in their vocational training, they did not appear to be frustrated by having to wait. They did not, in other words, communicate a sense of 'stuckedness'. All of them saw the *Ausbildungsduldung* as a springboard to more inclusion and higher levels of citizenship. In contrast to being in the regular *Duldung*, they now felt sure that they had been set 'on the road to' citizenship.

As I have concluded in the previous chapter, the *Ausbildungsduldung* does indeed offer a direct prospect of a legal residence permit and therefore constitutes the in-between space capturing the 'legal alchemy' of regularizing the irregular. The low sense of belonging of people in the *Ausbildungsduldung* reflects their dissatisfaction with the camp of 'a nation of laws' that requires such 'legal alchemy' in the first place. But these people can be confident that for them, the camp of 'a nation of immigrants' will triumph. I therefore submit that we must separate low feelings of belonging from feelings of 'stuckedness'. The first is a reflection of current manifestations of citizenship; the second is a reflection of trust in future manifestations of citizenship. In the *Ausbildungsduldung*, temporality is employed as a means to delay citizenship, not to deny it. People are thus not waiting, they are expecting; they are not hoping, they are pursuing. In this case, the linear progressive narrative of citizenship holds true.¹⁷⁰

¹⁷⁰ Whether this holds true for *all* people in the *Duldung* is a question that cannot be answered in this thesis. I suggest it requires a combined quantitative/qualitative analysis of the legal and practical obstacles people face when attempting to regularize their status. See in this regard section 5.2

5. Conclusion

5.1 Summary

To what extent can citizenship be manifested under the German *Ausbildungsduldung*, and what does that mean for this legal figure as a form of regularization? This is the question I started my research with. Throughout my thesis I have presented citizenship as a kaleidoscope of various colors and shapes – legal status, rights, participation and sense of belonging – which can create a boundless amount of images. When we look through this kaleidoscope at the German *Ausbildungsduldung*, we see a hybrid structure existing in between unlawful presence and lawful stay. It is a toleration, not a residence permit, with hardly any restrictions to formal rights and whose holders participate fully in society but do not feel like they belong there.

Citizenship is membership in a political community. These communities are, as Michael Walzer has argued, ‘bounded worlds’ that decide on whom to include as members. The fact that people enter states irregularly conflicts with this fundamental principle. With the legal figure of the *Ausbildungsduldung*, the German state has created a compromise to overcome what Ayelet Shachar has referred to as the ‘stalemate’ between the two visions of ‘a nation of laws’ and ‘a nation of immigrants’. It combines a status-based approach with a territorially-based approach to create a form of regularization, thereby recognizing moral claims to such programs made by, inter alia, Joseph Carens and Martijn Stronks.

In the *Ausbildungsduldung*, people are what scholars have notably referred to as ‘denizens’, ‘quasi-citizens’ or ‘status noncitizens’. They have no legal residence permit, yet bear many of the benefits and obligations of membership. However, contrary to the analyses of Anne McNevin and Anne Drangsdland, people in the *Ausbildungsduldung* are not kept in their subordinate legal status to exclude them from citizenship.¹⁷¹ The *Ausbildungsduldung*, I argue, is a technique that actually makes citizenship possible. It uses temporality to overcome the ‘original sin’ of joining the German political community without prior authorization. An in-between space is created to allow for a smooth transition from the unlawful into the lawful. I thus submit that the *Ausbildungsduldung* captures what Linda Bosniak has referred to as ‘legal alchemy’.

5.2 Recommendations for future research

Throughout my research, I constantly stumbled upon new angles and concepts to analyze the *Ausbildungsduldung* with, revealing the complexity of this legal construct. I would like to highlight three of these that I identify as particularly worthwhile for future research.

Firstly, the *Ausbildungsduldung* raises questions around the role that labor and discipline play in regularizing irregular migrants. Nicholas de Genova has famously argued that through

¹⁷¹ Whether this confirms or questions McNevin’s theory of citizenship being a ‘horizon’ of false hope is not answered by this conclusion. To do so, I suggest a combined quantitative/qualitative analysis of the legal and practical obstacles people face when attempting to regularize their status. See in this regard section 5.2.

“branding” people as illegal, states discipline people into entering “an exquisitely flexible ‘reserve army’ of labor”.¹⁷² As I have presented in chapter 3, the *Ausbildungsduldung* was indeed created to cater to a labor shortage on the German market. Yet the German state has opted for a legal form that does not make people’s presence illegal and does not subject people, as De Genova puts it, to “deportability”.¹⁷³ In the current German context, it is regularization, not illegalization, that appears as a disciplining measure to accommodate the pace of capital. Next to the visions of ‘a nation of laws’ and ‘a nation of immigrants’, it might thus prove necessary to enlarge Shachar’s theory with the vision of ‘a nation of capital’.

A second theme that requires closer attention is the obstacles to obtaining an *Ausbildungsduldung* and, more generally speaking, access to German regularization programs in general. I have argued that McNevin’s analysis of citizenship being a hollow ‘horizon’ does not apply to people with an *Ausbildungsduldung*. However, her analysis might hold true for people that are undocumented or in the *Duldung*. Future research needs to establish how and according to what criteria the German state regularizes people; in other words, the extent to which people without a residence permit are indeed excluded from citizenship through waiting. It requires a socio-legal analysis of the history and purpose of regularization programs, a quantitative analysis of the amount of people that have been regularized out of an undocumented or *Duldung* status, as well as a combined legal/qualitative analysis of the legal and practical obstacles people face when attempting to regularize their status.

Lastly, my interviews with people in the *Ausbildungsduldung* revealed to me the complexity of negotiating and deliberating one’s way out of unlawful stay. In this thesis, I analyzed the *Ausbildungsduldung* as a means of regularization. What remains open, however, is the question of how people ended up there. In order to obtain an *Ausbildungsduldung*, they have had to navigate the various legal and administrative disciplining measures put on them by the German state in order to ‘cooperate’ with their own deportation while simultaneously preventing a work ban. Future research could focus on a comparison of how unlawfully staying migrants in different European states approach, use, negotiate, and reflect on both disciplinary measures as well as regularization schemes according to (informal) information flows, legal ‘loopholes’, practical barriers, personal aspirations, and cultural values. This would support a better understanding of the current state of the order/migrant ‘stalemate’ and lead to regularization programs that work better for all parties.

¹⁷² De Genova N, ‘Migration and the Mobility of Labor’ in Vidal M, Smith T, Rotta T, Prew P, *The Oxford Handbook of Karl Marx* (Oxford University Press, 2018) 437.

¹⁷³ De Genova N, ‘Migrant “Illegality” and Deportability in Everyday Life’ (2002) *Annual Review of Anthropology* 31, 419-447.

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