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Proposals to Address Germany's Status as a "Land of Immigration"

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Deutschland ist doch ein Einwanderungsland geworden: Proposals to Address Germany's Status as a "Land of Immigration"

ABSTRACT

International law permits each individual State to determine who under its laws are citizens of the nation. Germany's decision at the beginning of this century to adhere to the jus sanguinis model of citizenship continues to shape the country's immigration and citizenship laws. This model predicates citizenship on one's parents rather than one's place of birth. Accordingly, "ethnic Germans" who have returned to Germany since the end of the Cold War era are considered to possess a right to German citizenship. In contrast, naturalization procedures are rigorous for foreign residents, including guestworkers and asylum seekers, many of whom are long-time residents of Germany. Although this difference in naturalization rates is to be expected as part of the jus sanguinis model, the author argues that strict adherence to the model is no longer appropriate in Germany because it has become a country of immigration—ein Einwanderungsland.

The Note first describes the role of guestworkers, asylum seekers, and ethnic Germans in Germany after World War II, followed by a description of Germany's current citizenship and naturalization policies. The Note then reviews opinions about the current system and proposals for alteration of the laws. Finally, the Note suggests proposals to address the need to integrate the foreign resident population through revisions of either the country's citizenship laws or its laws regarding the rights of the foreign population.

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I. INTRODUCTION

Historically, Germany has been a country in search of an identity. Unlike many other nations, Germany has not had a citizen's revolution to define itself as a nation.¹ Its geographical location in the center of Europe has contributed to its repeated search for definite boundaries and a definite role in Europe. Adolf Hitler's attempt to establish Germany and the Aryan Race as the dominant force in Europe resulted in an incomprehensible humanitarian tragedy. After World War II, Germany was a divided nation in economic ruin. It was without sovereignty, and once again, without a national identity.

Germany continued down a path of contradictions: attempting to regain a role as a sovereign nation, but unable to regain the trust of the world; seeking a national identity, but afraid to raise the ghosts of National Socialism in the process; working toward reunification, but forced by world powers to remain divided; calling on foreigners to replenish the West German work force, but unwilling to view these individuals as immigrants; opening its doors to victims of political persecution, but unable to accommodate them in the legal, political, and social structure.

West Germany's rebirth after World War II came in the form of the West German *Wirtschaftswunder* (economic miracle)² in the late 1950s and 1960s. West Germany began fashioning its role as an economic machine in the emerging European Common Market. To power this machine, West Germany invited guestworkers from its poorer Southern European neighbors to fill temporary positions in the industrial force. They were not intended to be immigrants, but rather visitors who would simply help Germany grow before they returned to their respective countries of origin.

1. Unlike countries such as France and the United States, whose national revolutions strongly influenced each nation's concept of identity, Germany did not experience a movement originating from the population itself. Rather, fragmentation marked Germany's history during the eighteenth and nineteenth centuries. Until Germany's reunification in 1990, the country existed as a unified nation only between 1871 and 1945. See Kay Hailbronner, *Citizenship and Nationhood in Germany*, in *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* 67, 74 (William R. Brubaker ed., 1989). Because of this extended period of fragmentation, German citizens did not consider their nation to be a political unit, but a region with cultural, linguistic, and ethnic commonalities. *Id.*

2. Following the devastation of World War II, Germany's economy was rebuilt at a surprising rate throughout the next two decades. During the 1950s, economic growth averaged eight percent per year and inflation averaged two percent. See DAVID P. CONRADT, *THE GERMAN POLITY* 53-54 (6th ed. 1996). The 1960s brought continued growth, and unemployment dropped to less than one percent, necessitating the importation of guestworkers. *Id.*

These "guestworkers," however, stayed and even brought their families. Yet, West Germany refused to identify itself as a land with an increasing immigrant population.³

A further influx of foreigners entered the country in the late 1980s as the Iron Curtain began to fall in Eastern Europe.⁴ These asylum seekers fled to Germany with knowledge of its remarkably liberal asylum policy. Under its post-war constitution, the *Grundgesetz*⁵ (hereinafter Basic Law), West Germany welcomed asylum seekers in unlimited numbers as repayment to the world for its willingness to accept asylum seekers fleeing Hitler's regime.⁶ After the reunification of Germany in 1990,⁷ the pressure to reduce the number of asylum seekers and foreigners manifested itself in violent attacks on foreigners. Eventually, domestic and foreign pressure led the German legislature to amend the Basic Law, restricting the number of asylum seekers.

Additionally, "ethnic Germans" returned to Germany in large numbers. Many of these ethnic Germans' ancestors had emigrated from Germany hundreds of years ago. After the Berlin Wall fell, the ethnic Germans, who had lived in German settlements in Eastern Europe and the Soviet Union, returned in large numbers. In contrast to the former "guestworkers" and

3. See *infra* Part II.A.

4. See *infra* Part II.B.

5. The German Basic Law was passed in May 1949 following World War II and serves as the German Constitution. It was originally conceived as a temporary document that would exist only until the Occupation period ended and the country was under one democratic constitution. However, the division of the country was more protracted than anticipated, and the Basic Law remained as the highest federal law beyond the Occupation. When the country was reunified over forty years later in 1990, the Basic Law became the governing constitutional document for the country. See STAATSBÜRGERTASCHENBUCH 78-79 (Gerhard Zierl ed., 28th ed. 1995); see also NIGEL G. FOSTER, GERMAN LEGAL SYSTEM & LAWS 3, 140-43 (2d ed. 1996) (discussing the evolution of the constitution and its content).

6. GRUNDGESETZ [CONSTITUTION] [GG] art. 16(2) (F.R.G.). The original version read as follows: "No German may be extradited to a foreign country. Persons persecuted on political grounds shall enjoy the right to asylum." *Id.* Until the 1993 revision of this article, Germany's asylum policy was the most liberal in Europe. See *infra* notes 40-42 and accompanying text.

7. In October 1949, five months after the West German territories approved the Basic Law, the German Democratic Republic was established in East Berlin. See CONRADT, *supra* note 2, at 16. This finalized the division of the occupied German territory into East and West Germany. *Id.* The countries remained divided until changes in Eastern Europe paved the way for the East German states to enter the West German Federal Republic pursuant to Article 23 of the West German Basic Law. Unification occurred on October 3, 1990. See *generally id.* at 24-33 (discussing the collapse of communism and the unification process). Accordingly, this Note examines the policies of "West Germany" until October 1990, and "Germany" thereafter.

asylum seekers, the law did not consider this population to be foreign at all. In fact, ethnic Germans still enjoy the right to German citizenship, a right denied to the majority of other foreign residents because of restrictive citizenship and naturalization policies.⁸

Today, Germany is still searching for the proper balance between its native and foreign populations. The questions of who is a German citizen and who *should* be a German citizen are politically volatile ones. Germany's residents and politicians have been unable to resolve the contradictions that Germany's current citizenship laws create.

This Note analyzes the current legal framework for German citizenship and alternative proposals for change. Part II discusses the post-war role of foreigners in Germany. Part III describes the current citizenship and naturalization policies in Germany. Part IV highlights the criticisms of the current system and identifies the proposals for change. Part V suggests proposals for German lawmakers to adopt.

II. GUESTWORKERS, ASYLUM SEEKERS, AND ETHNIC GERMANS

Understanding the composition of the foreign resident population and its members' arrival in Germany is integral to the debate about the population's legal rights. Pure numerical terms provide the first indication of the foreign residents' significance in Germany. Foreigners currently represent more than eight percent of Germany's population.⁹ Almost fifty percent of the foreign residents have lived in Germany for more than ten years and twenty-five percent have been foreign residents for twenty-five years.¹⁰ Foreigners' presence is especially pronounced in Germany's major cities, where between fifteen and twenty-five

8. See *infra* Part II.C.

9. See *Foreigners' Advocates Agree on Need to Integrate Foreigners Into German Society, Disagree on the Methods*, WEEK IN GERMANY, Dec. 1, 1995, available in LEXIS, German Library, WKGGERM File [hereinafter *Foreigners' Advocates*]. In 1995, the total number of resident aliens was 6,991,000. *Id.*

Census figures from the United States provide a point of comparison. In 1994, 9.5% of the total population in the United States was foreign-born. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 52 (116th ed. 1996) [hereinafter U.S. CENSUS]. This figure includes some undocumented immigrants, refugees, temporary residents, as well as legally admitted immigrants. *Id.* Therefore, the U.S. figures, unlike those provided for Germany, include foreign-born naturalized citizens.

10. See *Foreigners' Advocates*, *supra* note 9. Of the 22,568,000 foreign-born residents in the United States in 1994, 22% arrived before 1970. U.S. CENSUS, *supra* note 9, at 52.

percent of the population consists of foreigners.¹¹ Moreover, seventy-five percent of the foreigners in Germany live in four German states.¹² Berlin, the capital of reunited Germany, is home to the third largest metropolitan Turkish population in the world.¹³ Foreigners from Turkey also compose more than twenty-eight percent of Germany's foreign population.¹⁴ Germany's prominent foreign populations also include former Yugoslavians, Italians, and Greeks.¹⁵ Of Germany's foreign population, twenty-five percent are nationals of other European Union (hereinafter EU) member states.¹⁶ This numerous and diverse population of foreigners represents a significant influence in German society.

The foreign resident population may be divided into three general categories: (1) non-ethnic Germans, many of whom entered Germany in connection with guestworker recruitment; (2) asylum seekers; and (3) ethnic Germans.¹⁷ Because the law treats each group differently, an overview of the characteristics of each group is necessary.

A. *Guestworkers: Man hat Arbeitskräfte gerufen, und es kommen Menschen*¹⁸

An overwhelming majority of the foreign resident population came to Germany as participants in the labor market. The original guestworkers entered West Germany in the 1950s when Germany experienced a shortage of labor as a result of World War II.¹⁹ West Germany, like other Western industrialized nations, actively recruited workers, primarily from Mediterranean

11. See *Foreigners' Advocates*, *supra* note 9. For example, in Hamburg, every seventh resident is not a German citizen, and that percentage is expected to rise to every fourth resident by the year 2010. *Id.* Other cities and the approximate number of foreigners include the following: Munich, 21%; Cologne, 17%; Frankfurt am Main, 23%; Stuttgart, 20%. KLAUS J. BADE, AUSLÄNDER, AUSSIEDLER, ASYL IN DER BUNDESREPUBLIK DEUTSCHLAND, BUNDESZENTRALE FÜR POLITISCHE BILDUNG 19 (1994) (figures from 1990).

12. See *Foreigners' Advocates*, *supra* note 9. The four states are Baden-Württemberg, Bavaria, Hesse, and North Rhine-Westphalia. *Id.*

13. See Daniel Kanstroom, *Wer Sind Wir Wieder? Laws of Asylum, Immigration and Citizenship in the Struggle for the Soul of the New Germany*, 18 YALE J. INT'L L. 155, 161 (1993).

14. BADE, *supra* note 11, at 18.

15. See *id.* Yugoslavia, 14.1%; Italy, 8.6%; Greece, 5.3%. *Id.*

16. See *Foreigners' Advocates*, *supra* note 9.

17. See Kanstroom, *supra* note 13, at 161-67.

18. "They called for a work force, and people are coming." MAX FRISCH, *Überfremdung I*, in SCHWEIZ ALS HEIMAT? 219, 219 (1990) (remarking in an essay about the arrival of guestworkers in Switzerland).

19. See YASEMIN N. SOYSAL, LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE 19 (1994). Austria, Belgium, France, Luxembourg, the Netherlands, Sweden, and Switzerland all opened their labor markets to foreign workers between 1950 and the early 1970s. *Id.*

countries.²⁰ In 1955, West Germany signed an agreement with Italy to recruit Italian workers. Bilateral agreements with other countries soon followed.²¹ The original workers were men between the ages of twenty and forty. They were willing to work long hours and sent money home to their families.²² The West German government recruited the guestworkers, assuming they would remain in West Germany only as long as the economic situation required.²³ They functioned as an integral part of West Germany's rebirth as an industrialized nation. Contrary to the initial intentions of West German officials, however, guestworkers eventually brought their families to West Germany, rather than simply sending funds back to their countries of origin. As a result of recruitment and reuniting families, West Germany's foreign population grew from 680,000 in 1960 to 3,000,000 in 1970.²⁴

West Germany ended its official recruitment of guestworkers in 1973 when the international oil crisis and economic recession eliminated the need for supplemental workers.²⁵ Until the end of the 1970s, West Germany officially encouraged many of the remaining guestworkers to return to their lands of origin.²⁶ Despite this effort, the number of foreigners in West Germany increased during the years following the termination of the recruitment program. This growth resulted partly from the arrival of more family members from abroad.²⁷ Moreover, the birth of

20. See *id.* The lands of origin for the guestworkers were primarily Turkey, Yugoslavia, Italy, Greece, and Spain. See also Hallbrunner, *supra* note 1, at 71.

21. BADE, *supra* note 11, at 18. Germany signed agreements with Spain and Greece in 1960, Turkey in 1961, Portugal in 1964, Tunisia and Morocco in 1965, and Yugoslavia in 1968. *Id.*

22. See *id.* at 16. The workers were generally willing to take jobs that German workers would not accept. *Id.*

23. See SOYSAL, *supra* note 19, at 21. Studies of guestworker programs throughout Europe and other parts of the world have shown that a common assumption of all labor migration programs is that "foreign workers can be sent back at the time of unemployment." *Id.* The workers were considered only a temporary labor supply. *Id.*

24. See Hallbrunner, *supra* note 1, at 71.

25. See BADE, *supra* note 11, at 18-19. Other European countries also ended their recruitment of guest workers at this time. Between 1955 and 1973 approximately fourteen million foreigners had come to West Germany. *Id.* Of those, approximately eleven million (80%) returned to their lands of origin. *Id.*

26. See *id.* at 19. The three central concepts of West German policy during this time were (1) to limit immigration; (2) to encourage foreigners to return to their homelands; and (3) to integrate the remaining foreigners into German society. *Id.*

27. *Id.* at 17. During the original guestworker recruitment phase, the workers were permitted to rotate between Germany and their lands of origin. The termination of the recruitment program ended this freedom of movement. Therefore, some guestworkers chose to bring their families to West Germany rather than to return to their lands of origin and face the risk of not being permitted to return to Germany. The demographics of the foreign population in

children to guestworker families increased.²⁸ These developments created a second generation of foreign residents in Germany, many of whom had never visited their families' lands of origin.²⁹ Within twenty-five years, the original guestworkers and their families had become a permanent foreign resident population in West Germany. By the late 1980s, only a small percentage of this population had concrete plans to return to their native countries.³⁰

Today, foreign workers constitute between fifteen and twenty percent of the work force in Germany's large cities.³¹ The majority of the workers are in common labor positions that the general German work force shuns.³² They have language difficulties and poor vocational training, relative to the German labor pool. Thus they are constrained to the lowest paying jobs in the work force.³³ These difficulties are often compounded for second generation foreign workers, who have experienced difficulty finding work in Germany's tightened employment market.³⁴ Dim prospects for work have decreased the influx of foreign workers, but have not stemmed increasing birth rates or the arrival of family members from abroad. Foreign dependents numbered more than five million in 1993, more than three times the number of foreign dependents in 1973.³⁵ It is estimated that in Frankfurt nearly fifty percent of all births are to families of

Germany reflected this development. Although the percentage of foreigners in the West German population increased, the percentage of foreign workers among the West German work force declined. *Id.*

28. *Id.* at 16.

29. *See id.* at 16. The second generation found that they were accepted neither in Germany nor in their family's land of origin. *See, e.g., id.* (describing the experiences of second generation guestworkers).

30. *See id.* at 17. One poll estimated that only 11% of these foreign workers intended to return home. *Id.*

31. *See* CONRADT, *supra* note 2, at 98. Conradt estimates that the foreign workers comprise 30% to 40% of the manual work force in the large cities, such as Frankfurt, Munich, Stuttgart, and Hamburg. *Id.*

32. Of Frankfurt and Munich's sanitation workers, 50% and 80% are foreign laborers, respectively. *Id.*

33. *See id.*

34. *See id.* Some foreign workers have encouraged their children to seek work before completing their education, to supplement the family's income. *Id.* at 98-99. Because it is very difficult for this group of foreign youth to find employment, an unemployed adolescent population has emerged. *Id.*

As of February 1997, the unemployment rate in Germany was 10.5%. John Dornberg, *Poverty in Germany—A Widening Gap as Unemployment Rises to Record High*, GERMAN LIFE, Mar. 31, 1997, at 26, 30, available in 1997 WL 11624260. The figures for the former East German states range from 14% to more than 17%. *Id.*

35. *See* CONRADT, *supra* note 2, at 99. In 1973, 1.4 million foreign dependents lived in West Germany. *Id.*

foreign workers.³⁶ As these figures indicate, Germany's citizenship and naturalization laws not only affect recent immigrants, but also a growing population of long-time residents and their families.

Indications exist that foreign workers want to break through the economic and social class barriers. For example, within the Turkish population, a small upper class that emphasizes education for its children has developed.³⁷ Despite these efforts, societal barriers remain, hindering significant strides for even the most ambitious of the foreign worker population. The German legislature's first representative of Turkish origin was once rejected as a tenant because of his ethnic background.³⁸ Even lifetime foreign residents in Germany hear comments about their surprising ability to speak German—"Sie sprechen aber gut Deutsch."³⁹ Accordingly, many challenges still exist related to defining the future role of foreign residents in Germany.

B. *Asylum Seekers*

A second group of foreigners who have shaped Germany's current immigration policy is the asylum seekers. Although numerically a less significant population than the guestworkers, the asylum seekers have played a fundamental role in Germany's violent immigration debate. Until July 1, 1993, Germany's Basic Law contained an extremely liberal asylum provision: "Politically persecuted persons enjoy the right to asylum."⁴⁰ Neither public international law nor the constitutions of other countries recognize such an unrestricted right to asylum;⁴¹ however, the drafters of the Basic Law in 1949 deliberately included the liberal provision in response to other nations' acceptance of politically

36. See *id.*

37. See BADE, *supra* note 11, at 18. This is considered one way in which the Turkish population is distinguishing itself from some of the other foreign populations. *Id.*

38. The first representative of Turkish origin, Cem Oezdemir, explained that as a student in Tübingen he would be mistaken during phone conversations with landlords for a native German because of his local Swabian accent. When he told the potential landlords his name, he would typically hear, "Oh, you're Turkish. I don't have anything against Turks but the flat is already taken." Katerina Syrimi, *German Parliament Gets First Deputy of Turkish Origin*, Reuter Textline, Nov. 10, 1994, available in LEXIS, World Library, TXTLINE File.

39. Loosely translated to "But, you speak German well." *Weder Heimat noch Freunde*, DER SPIEGEL, June 7, 1993, at 16, 19.

40. GG art. 16(2) ("Politisch Verfolgte geniessen Asylrecht").

41. See BADE, *supra* note 11, at 30. Public international law provides only that a sovereign state has the right to grant asylum. *Id.*

persecuted Germans during the Nazi regime.⁴² The historical and emotional dimension of this provision heightened the tension surrounding debates to change the law in 1993.

The dramatic increase in the number of asylum seekers, which led to the alteration of Article 16, began during the revolutionary changes in Eastern Europe during the late 1980s. In 1989, 121,318 asylum seekers entered West Germany.⁴³ By 1992, the annual figure had risen to 438,191.⁴⁴ New economic and social pressures resulting from the reunification of Germany in 1990 coincided with the increase in asylum seekers.⁴⁵ The unsettled political and social climate allowed for a rise in the activity of political fringe organizations.⁴⁶ Radical right-wing philosophies such as "Germany for the Germans" found particular appeal among the dissatisfied East German youth, especially among those with low levels of education.⁴⁷ Increasingly, right-wing fringe groups began to gain attention by vocally and violently criticizing the government's support of asylum seekers despite the reunited nation's economic problems. These groups heightened

42. See *id.* The Basic Law's drafting conferences included consideration of the possible economic and political consequences of a very liberal asylum law. A majority of the drafters chose to accept the risks to provide unrestricted asylum rights in Article 16. *Id.*

43. *Id.* at 30. In comparison, the United States accepted 97,364 refugees and asylees in 1990. U.S. CENSUS, *supra* note 9, at 10.

44. See BADE, *supra* note 11, at 30. The increase was completely beyond the scope of the numbers for previous years. For example, in 1978, 33,136 people sought asylum. *Id.* Once the increase in asylum seekers began in 1989, there were 193,063 asylum seekers in 1990 and 256,112 in 1991. *Id.*

45. See *id.* at 31. An economic downturn, housing shortage, and a national identity crisis coincided with the increase in asylum seekers. *Id.* For an overview of the challenges of "putting Germany back together," see generally CONRADT, *supra* note 2, at 35-44 (discussing the economic and psychological aftermath of unification).

46. Ultra-right-wing parties such as the *Republikaner* (Republicans) gained enough support in some state parliaments to win seats. See Petra Kaminsky, *Millions of Foreigners Have No Vote in Forthcoming German Elections*, Deutsche Presse-Agentur, Oct. 13, 1994, available in LEXIS, German Library, DPA File [hereinafter *Millions of Foreigners*]. When the government restricted its asylum policy in 1993, the right-wing groups lost much of their political support. *Id.*

In 1989 the Republicans received a seat in the European Parliament with 7.1% of the vote. Peter Kaminsky, *Decline of Right-Wing Republicans Continues in Bavaria*, Deutsche Presse-Agentur, Sept. 25, 1994, available in LEXIS, German Library, DPA File. Support for the Republicans was at its highest level in 1992, when the group received 10.9% of the votes in the state of Baden-Württemberg. *Id.* Nationally in 1994, support for right-wing political groups was between two and four percent. See *id.*

47. See CONRADT, *supra* note 2, at 43. Some scholars attribute this rise in right-wing thought and violence to the fact that the East German population's social and economic needs were not being met in the immediate aftermath of unification. See *id.*

tensions in Germany by attacking foreigners and often targeting the temporary residences of asylum seekers.⁴⁸ By 1992, the crisis had reached dangerous proportions. Domestic and international alarm rose because of the government's inability to stop the flow of asylum seekers and to reduce the violent attacks on foreigners.⁴⁹ Finally, domestic and international pressures led the German legislature to seek a compromise on the asylum issue.⁵⁰

After a volatile and highly publicized debate during the spring of 1993, a more restrictive asylum provision took effect on July 1, 1993.⁵¹ Essentially, the provisions of the new asylum law provide no right of asylum to those asylum seekers who reach Germany by way of a "safe third country." Because all of the countries bordering Germany are considered to be safe alternatives for the asylum seekers, those asylum seekers entering Germany via a land route are no longer entitled to asylum.⁵² Although the change was dramatic for German law, the new regulation conformed to the policies of neighboring Western European countries. Moreover, the amendment of Article 16 enabled Germany to comply with the Schengen Agreement, which regulates asylum policy among many European Union countries.⁵³

48. See BADE, *supra* note 11, at 25-26 for figures concerning the number and type of attacks. The general German public responded to the attacks with demonstrations and candlelight vigils. *Id.* at 36. Although strong signs of outrage existed among the German population against the violent attacks, the general population did show a decreased willingness to accept foreigners. *Id.* at 50. Between November 1989 and April 1990, an opinion poll revealed that the general population's willingness to accept political refugees dropped from 48% to 23%. *Id.*

49. See *id.* at 25-26.

50. See *id.* at 35-37.

51. For a full description of the debate and provisions of the 1993 asylum law, see *id.* at 37-39 and Joachim Henkel, *Das Neue Asylrecht* [The New Asylum Law], 42 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 2705 (1993).

52. See Arthur C. Helton & Pamela Birchenough, *Forced Migration in Europe*, 20 FLETCHER F. WORLD AFF. 89, 92 (1996). For those asylum seekers who enter by air transportation, a proceeding takes place at the airport before the asylum seeker enters German territory. See BADE, *supra* note 11, at 38-39.

53. Among the sample provisions of the Schengen Agreement are the return of asylum seekers to "safe third countries," a narrow interpretation of refugee standards, a denial of appeals of asylum decisions, and sanctions for airlines that accept passengers with improper documentation. See Helton & Birchenough, *supra* note 52, at 92. The parties to the agreement, which took effect in March 1995, are Belgium, Great Britain, France, Germany, Netherlands, Portugal, Austria, Denmark, and Italy. *Id.*

Additionally, through agreements with its eastern neighbors, Germany provided economic aid to help those neighbors who absorb and process the asylum seekers Germany turned away. See BADE, *supra* note 11, at 39.

As the German government had hoped, the new provision successfully reduced the number of asylum seekers to 127,210 in 1994.⁵⁴ In 1996, 116,367 new asylum seekers entered Germany,⁵⁵ one-third fewer asylum applicants than in 1993.⁵⁶ Of the asylum applications reviewed in 1996, 7.4% resulted in a grant of asylum.⁵⁷ These figures demonstrate that the 1993 modification of asylum policy reduced the significance of asylum seekers as a percentage of the foreign resident population. Moreover, the decline permits German officials to shift their attention to other aspects of the foreign population. For example, Federal Minister of the Interior Manfred Kanther stated that the main goal of German policy on foreigners in 1997 will be to facilitate the return of refugees from Bosnia and other Yugoslav successor states.⁵⁸

C. Ethnic Germans: Foreigners with German Passports⁵⁹

A third group of potential immigrants, ethnic Germans, holds a significant place in debates about German citizenship and naturalization laws. Statutes are the primary source of German citizenship law. However, Article 116 of the Basic Law defines Germans as both citizens and individuals who have "been admitted to the territory of the German Reich within the frontiers of December 31, 1937 as a refugee or expellee of German ethnic origin (*Volkszugehörigkeit*) or as the spouse or descendant of such a person."⁶⁰ A later statute passed in 1953 further defines this group as "whoever in their homeland has acknowledged German nationality and can confirm it through characteristics like

54. Helton & Birchenough, *supra* note 52, at 92.

55. *Fewer Asylum Applications Filed in 1996*, WEEK IN GERMANY, Jan. 10, 1997, available in LEXIS, German Library, WKGERM File [hereinafter *Fewer Asylum Applications*].

56. *Id.* The largest numbers of asylum seekers came from Turkey and the former Yugoslavia. *Id.*

57. *Id.* Federal Minister of the Interior Manfred Kanther explained that the 7.4% approval rate indicates that many of the applicants are attempting to abuse the asylum laws through illegal entry into Germany. *See id.*

58. *See id.*

59. For this description of ethnic Germans see BADE, *supra* note 11, at 51. In contrast, Bade described long-time foreign residents as natives with foreign passports. *Id.*

60. GG art. 116(1), translated in CONRADT, *supra* note 2, at 313. The literal translation of *Volkszugehörige* is "one who belongs to the people." Additionally, Art. 116(2) provides that "[f]ormer German citizens who, between 30 January 1933 and 8 May 1945, were deprived of their citizenship on political, racial or religious grounds, and their descendants, shall be regranted German citizenship on application." GG art. 116(2), translated in CONRADT, *supra* note 2, at 313.

parentage, language, upbringing or culture.”⁶¹ This law defined expellees as only those who lived in areas of persecution until the end of World War II.⁶² In 1993, lawmakers expanded the definition of expellees to include a category of *Spätaussiedler* (“late transferees”).⁶³ These expellees may have been born after 1945, but they still possessed the desire to be recognized as Germans and had been targets of discrimination in foreign countries.⁶⁴ These definitions create a significant legal distinction between the ethnic Germans and other potential immigrants. As discussed below,⁶⁵ the ethnic Germans have a *right* to become naturalized citizens and are not subject to the rigorous standards applicable to the other immigrant populations.⁶⁶

Because ethnic Germans often have attenuated ties to Germany, the population has a controversial role in the citizenship debate. The ethnic German population consists of *Vertriebene* (“expellees”) and *Aussiedler* (“transferees”), who resided primarily in German settlements in Eastern Europe and the former Soviet Union.⁶⁷ Immigration to these areas occurred as early as the thirteenth century.⁶⁸ Following World War II, the governments of the East European countries containing German settlements expelled or resettled approximately 12.5 million ethnic Germans.⁶⁹ Therefore, the basis for Article 116 was to

61. Kanstroem, *supra* note 13, at 165 (quoting Gesetz über die Angelegenheiten der Vertriebene und Flüchtlinge [Law on the Matters of Expellees and Refugees], v. 19.5.1953 (BGB1. I S.201) [hereinafter BVFG]); *see also* Birgitta Gaa-Unterpaul, *Das Kriegsfolgenbereinigungsgesetz und die Änderungen für das Vertriebenenrecht* [The War Consequences Settlement Law and the Changes for the Expellee Laws], 33 *NEUE JURISTISCHE WOCHENSCHRIFT* [NJW] 2080 (1993) [hereinafter *Änderungen für das Vertriebenenrecht*].

62. *See Änderungen für das Vertriebenenrecht, supra* note 61, at 2080.

63. *Id.*

64. *See id.* This law was passed in acknowledgment of the ethnic Germans who had lived in Eastern Europe and the Soviet Union and who had had no previous opportunity to enter Germany. *Id.* By 1988, over 80% of the expellees were born after 1945. *Id.* To legally justify the acceptance of this population, the law was changed. *Id.*

65. *See infra* notes 111-20 and accompanying text.

66. *See Kanstroem, supra* note 13, at 167, 186; *see also* notes 114-20 and accompanying text.

67. *See Kanstroem, supra* note 13, at 164.

68. For example, emigration of ethnic Germans to the region that is currently Romania can be traced back more than 800 years to the Kingdom of Hungary. Groups of Germans in the eighteenth century also emigrated to Romania and, at the invitation of Catherine II, to Russia. Additionally, groups settled or were forcibly moved to Poland. *See BADE, supra* note 11, at 44-45; *see also Kanstroem, supra* note 13, at 164.

69. *See Kanstroem, supra* note 13, at 164-65. By 1949, eight million expellees had entered West Germany and four million had entered East Germany. Approximately 3.5 million ethnic Germans still remained in regions of Eastern Europe and the Soviet Union. *Id.* at 165 & n.69.

provide a humanitarian gesture to those ethnic Germans who were punished for what the Nazi government had done during the war.⁷⁰

The governments of Eastern Europe and the Soviet Union often forced these ethnic Germans to cease their traditions and the use of the German language. Therefore, when the ethnic Germans began arriving in increased numbers during the late 1980s,⁷¹ they often bore little resemblance to the modern German population.⁷² Many ethnic Germans do not speak German and have developed entirely different customs. In contrast to the approximately ten thousand non-ethnic Germans naturalized each year,⁷³ the German government annually approves approximately 225,000 applications for immigration and eventual citizenship from ethnic Germans.⁷⁴ Additionally, the German government provides the ethnic Germans living expenses, language training, and pensions.⁷⁵ These and other benefits⁷⁶ cost the German government approximately two billion dollars per year.⁷⁷

70. See *id.* at 165. Kanstroom also notes the inherently "völkisch" aspects of the Aussiedler provisions. *Id.* Since World War II, references to the German "Volk" lead to negative connotations related to the ideals of the Nazi regime. Kanstroom notes that to avoid such connotations modern German officials publicly downplay ethnicity as the fundamental characteristic of this special group of immigrants. *Id.*

71. The number of asylum seekers and the number of ethnic Germans seeking to enter Germany increased simultaneously. Between 1951 and 1988, approximately 1.6 million ethnic Germans had entered West Germany. BADE, *supra* note 11, at 43-44. In 1989, 377,055 ethnic Germans entered, in addition to 343,854 residents from East Germany. *Id.* In 1990, 397,000 ethnic Germans were admitted to Germany. See Kanstroom, *supra* note 13, at 167. In 1991, the number dropped slightly to 222,000; however, a backlog of 700,000 more applications remained. *Id.*

72. Heinrich Lummer, a conservative politician, was quoted in 1989 as saying that "ethnic Germans' had so little to do with Germany that their closest link was that they perhaps once owned a German Shepherd dog." Kanstroom, *supra* note 13, at 166 (quoting AMITY SHALES, *GERMANY—THE EMPIRE WITHIN* 34 (1990)). See BADE, *supra* note 11, at 45; see also Rick Atkinson, *Bad Blood on the Rise as Blood Ties Reconnect*, SEATTLE TIMES, Apr. 14, 1996, at A21, available in 1996 WL3658172 [hereinafter *Bad Blood on the Rise*].

73. *Bad Blood on the Rise*, *supra* note 72.

74. Ruth Walker, *Feeling Squeezed, Germany Opens Tough Debate on Who Belongs*, CHRISTIAN SCI. MONITOR, Apr. 3, 1996, at 7.

75. See *id.*

76. The German government provides the ethnic Germans with free air transportation to Germany, weekly allowances above the basic welfare programs, and pensions equivalent to what they would have earned had they worked in Germany during their adult lives. See *id.* Additional benefits are available to those who suffered in Soviet prison camps because of their German ancestry. See *id.*

77. *Bad Blood on the Rise*, *supra* note 72.

Just as reunification affected Germany's view of asylum seekers, it raised questions about the immigration of ethnic Germans. Some argued that because facilitating the return of ethnic Germans was linked to the goal of reuniting the country, reunification eliminated the policy's justification.⁷⁸ Moreover, burdened with the increased number of asylum seekers and the economic obligations of reunification, Germans became more reluctant to expend resources on returning ethnic Germans. According to one poll, support for accepting the ethnic German population fell from thirty-eight percent in November 1989 to twelve percent in April 1990.⁷⁹

Responding to national sentiment, the government in 1990 enacted a statute⁸⁰ making the immigration process more difficult for ethnic Germans. The most important change was the decision to accept applications only from ethnic Germans still living outside of Germany.⁸¹ Additionally, in 1993, the government imposed a quota on the acceptance of ethnic Germans.⁸² The law also requires applicants to make a more complete showing of both discrimination and the desire to be a German.⁸³ Following these new regulations, the number of resettlers entering Germany dropped, a change that was in part due to the more stringent adherence to requirements for entrance into Germany.⁸⁴ Nevertheless, the 1993 law and current German policy continue Germany's commitment to accepting those persons who truly had been victims of discrimination because of their German heritage.⁸⁵ Therefore, ethnic Germans will continue to play a fundamental role in the citizenship debate.

78. See Kanstroom, *supra* note 13, at 166-67.

79. See BADE, *supra* note 11, at 50 (citations omitted).

80. See *Änderungen für das Vertriebenenrecht*, *supra* note 61, at 2080 (discussing the 1990 Aussiedleraufnahmegesetz, BGBl. I S.1247).

81. See Kanstroom, *supra* note 13, at 166-67.

82. See *Änderungen für das Vertriebenenrecht*, *supra* note 61, at 2080-81 (discussing the Kriegsfolgenbereinigungsgesetz, BGBl. I S.2094).

83. For example, the applicants must meet different burdens of proof depending on the region in which they formerly lived. See *id.* Applicants from the former Soviet Union (including the Baltic states) are presumed to have received discriminatory treatment, whereas applicants from other countries must prove discrimination. See *id.* Additionally, applicants are only eligible for "Spätaussiedler" status if they took up residence in Germany within six months of leaving their former home. See *id.*; see also *supra* note 63 and accompanying text (describing Spätaussiedler).

84. See *Number of Resettlers Continues to Decline*, WEEK IN GERMANY, Apr. 4, 1997, at 2, available in LEXIS, German Library, WKGERM File [hereinafter *Number of Resettlers*]. In April 1997, Parliamentary State Secretary Horst Waffenschmidt estimated that the number of resettlers entering Germany in 1997 would be 20% less than in 1995 and 1996. See *id.*

85. See *Änderungen für das Vertriebenenrecht*, *supra* note 61, at 2080. The *Kriegsfolgenbereinigungsgesetz* provided for the granting of

III. CITIZENSHIP LAW

International law provides only general guidelines for proper treatment of foreign residents. The 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws states:

It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.⁸⁶

Individual countries are, therefore, free to determine their own citizenship policies.⁸⁷ A fundamental determinant of a country's citizenship policies is how it treats the role of foreign residents in its society.⁸⁸ Accordingly, Germany's citizenship and naturalization laws reflect the country's view of immigrants in its society.

A. Germany's View of Citizenship

German political leaders have long maintained that Germany is "*kein Einwanderungsland*"—not a land of immigration.⁸⁹ In response to the realities of the immigration situation, however, the leading Christian Democratic Union (hereinafter CDU) altered its official statement to acknowledge that foreign residents are a reality in Germany.⁹⁰ At the same time, however, the party

Spätaussiedlerstatus ("late expellee status"), but only if the applicant met more stringent standards. See *id.* at 2080-81. In 1997, the German government provided increased funding for German language programs for ethnic Germans abroad and for those who already had arrived in Germany. *Number of Resettlers*, *supra* note 84.

86. Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, Apr. 12, 1930, art. 1, 179 L.N.T.S. 91, 99 [hereinafter *Conflict of Nationality Laws*]. Accordingly, the international community will recognize a state's chosen nationality law unless the law is inconsistent with basic standards in international law. See RUTH DONNER, *THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW* 28-29 (2d ed. 1994).

87. See Hailbronner, *supra* note 1, at 76. The only international legal requirement related to a nation's citizenship policy is that each state respect the right of all other countries to determine its own citizenship guidelines. See also Helmut Rittstiegl, *Doppelte Staatsangehörigkeit im Völkerrecht*, 22 *NEUE JURISTISCHE WOCHENSCHRIFT* [NJW] 1401, 1402 (1990) [hereinafter *Dual Citizenship in International Law*].

88. See DONNER, *supra* note 86, at 31-34.

89. See Kanstroom, *supra* note 13, at 202. This phrase has been consistently used by the governing Christian Democratic Union to distinguish Germany from "classical" immigration countries such as Canada and Australia. *Id.*

90. See BADE, *supra* note 11, at 11. The CDU's official comment changed to the following: "Germany is a land open to the world. We know that in the future, not less, but rather more foreigners will come to Germany and more Germans will

rejected any statements that would have included the word "immigration."⁹¹ The discussion of phraseology obscures the true issue Germany faces. As one scholar stated, the issue is not "whether Germany is an 'immigration country'—it both is and economically needs to be—but how political and legal practice should respond to that fact."⁹²

Two general legal bases for state citizenship exist: *jus sanguinis* and *jus soli*.⁹³ Germany adheres to the former.⁹⁴ Accordingly, German state citizenship depends on the citizenship of one's parents rather than on the place of one's birth.⁹⁵ The basis for Germany's citizenship policies is its historical self-perception that it is not a land of classical immigration.⁹⁶ This citizenship model distinguishes Germany from "traditional" countries of immigration, such as the United States and Canada, which base citizenship on the *jus soli* principle. In Europe, Switzerland and Sweden are the only other countries to determine citizenship rights solely according to the *jus sanguinis* model.⁹⁷

travel to foreign countries. Above all, in a Europe that is growing together economically and politically, but also in light of an international interconnection, people will become more mobile. This development must be shaped in accordance with the interests and needs of our land." *Id.* (author's translation).

91. See *id.* The rejected phrases were "land of immigration," "immigration law," and "immigration politics." *Id.*

92. Kanstroom, *supra* note 13, at 204.

93. *Jus sanguinis* is the law of the place of one's parentage as opposed to *jus soli*, the law of the place of one's birth. BLACK'S LAW DICTIONARY 863 (6th ed. 1990). For a further description of the differences between the two standards, see Sarah V. Wayland, *Citizenship and Incorporation: How Nation-States Respond to the Challenges of Migration*, 20 FLETCHER F. WORLD AFF. 35, 42-43 (1996).

94. See BADE, *supra* note 11, at 12.

95. See *id.* Most "classic" immigration countries, including the United States, determine citizenship both by the parents' nationalities and by place of birth. For example, if a child with parents from a *jus sanguinis* country is born in a *jus soli* country, the child may adopt the citizenship of his or her parents, as well as that of the country where the child was born. *Id.*

96. A classic immigration country, like the United States, views its society as formed through immigration, and its laws and politics reflect this idea. A modern and formal immigration country recognizes and understands the existence of immigration, and its legal and political structure reflects this. See *id.* Germany falls into the category of an informal modern immigration country. It sees itself as accepting foreigners for limited purposes, such as work, and tolerates a range of residencies. See *id.*

97. See Wayland, *supra* note 93, at 43.

B. *Who is a German?*

As in the legal systems of most countries, statutes, rather than the Basic Law, define who is a German.⁹⁸ The particularly restrictive German citizenship law stems from a statute that is more than eighty years old, the *Reichs- und Staatsangehörigkeitsgesetz*.⁹⁹ This law was the product of debates about the choice between *jus soli* and *jus sanguinis* at a time when the German government was already sending foreign workers home to prevent their acquisition of German citizenship.¹⁰⁰ According to this statute, a person may obtain German citizenship in three ways: (1) by birth to at least one parent of German citizenship; (2) through adoption by a parent with German citizenship; or (3) through naturalization.¹⁰¹ The National Socialists amended the law in 1934 to serve their own political agenda, but after World War II, lawmakers restored the 1913 statute to its original form.¹⁰² Scholars present two theories about why post-war Germany chose to maintain the *jus sanguinis* structure of the 1913 law. First, institutionalizing the concept of German citizens united by blood ties furthered the post-war West German goal of reunification with East Germany.¹⁰³ Second, the German people are imbued with an ethno-cultural historical conception of German nationhood.¹⁰⁴

In addition to the restrictive *jus sanguinis* principle, German citizenship law also considers naturalization to be proper only in

98. See Kanstroom, *supra* note 13, at 172. Article 116 of the Basic Law, which defines ethnic Germans as citizens, is an important exception to the general use of statutes to define citizenship. See *id.*

99. See STAATSBÜRGERTASCHENBUCH, *supra* note 5, at 4-5 (quoting the Reichs- und Staatsangehörigkeitsgesetz, v. 22.7.1913 (RGBl. 583)).

100. See Kanstroom, *supra* note 13, at 173, 175. The rhetoric surrounding the passage of the 1913 citizenship law includes references to the privilege of becoming a German citizen. This language reflects a conscious decision to define Germany legally as a community with its basis in ties of blood rather than as a political community. Some critics, urging a re-evaluation of the law, have reminded current politicians that it was this type of rhetoric that led to the catastrophic events under Adolf Hitler. See, e.g., Heribert Prantl, *Wer ist ein Deutscher?*, SÜDDEUTSCHE ZEITUNG, Feb. 4, 1993, reprinted in BADE, *supra* note 11, at 93.

101. See STAATSBÜRGERTASCHENBUCH, *supra* note 5, at 4-5.

102. See Kanstroom, *supra* note 13, at 176-77. A series of National Socialist amendments provided that only those people with "Aryan" blood could be German Reich citizens, and only Reich citizens would enjoy full rights. *Id.*

103. See *id.* at 177. Scholars such as Kay Hailbronner contend that the eliminating the *jus sanguinis* basis for citizenship would have rejected a central justification behind reunification arguments. See *id.* However, since the goal of reunification has been realized, this is no longer a valid support for maintaining this policy.

104. See *id.*

exceptional cases.¹⁰⁵ Again, this contrasts with traditional immigration countries where governments encourage naturalization.¹⁰⁶ A 1986 study reported that Germany's naturalization rates were significantly lower than those of most other European countries. Even Sweden, which also adheres to the *jus sanguinis* model of citizenship, had a naturalization rate of 5.1%, while Germany's naturalization rate was only 0.3%.¹⁰⁷ Germany's naturalization rate is one-fourth that of France, one-tenth that of the United States, one-fifteenth that of Sweden, and one-twentieth that of Canada.¹⁰⁸

Within Germany's foreign resident population, a discrepancy exists among the groups of foreign residents who are naturalizing. In 1989, between fourteen and fifteen thousand discretionary naturalizations occurred, accounting for 0.3% of the foreign population. Although seventy percent of the foreign population originated in former guestworker source countries, the naturalization rate for this population was only 0.2%.¹⁰⁹ In contrast, between 1973 and 1984, fifty percent of the total naturalizations were of ethnic Germans.¹¹⁰

This discrepancy highlights how Germany's legal policy toward ethnic Germans fundamentally contrasts with the country's policy toward other foreign resident groups. Unlike other immigrant groups, *Aussiedler* are considered "German" within Article 116 of the Basic Law's definition.¹¹¹ Ethnic Germans still must apply to become naturalized citizens, but they have a *right* to legal citizenship if they fulfill basic criteria.¹¹² Judicial interpretation and administrative application of the statutes governing naturalization of ethnic Germans have established that the threshold for proving oneself to be an ethnic German is very low.¹¹³ Moreover, even in the absence of

105. See Hailbronner, *supra* note 1, at 67.

106. William R. Brubaker, *Citizenship and Naturalization*, in *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* 99, 99 (William R. Brubaker ed., 1989) [hereinafter *Citizenship and Naturalization*]. Nonetheless, Sweden, a traditional country of emigration like Germany, has developed a fairly easy naturalization process. See *id.*

107. Kanstroom, *supra* note 13, at 182. For further comparisons with European nations, see *id.* at 182-83.

108. WILLIAM R. BRUBAKER, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* 33-34 (1992) [hereinafter *CITIZENSHIP IN FRANCE AND GERMANY*].

109. *Citizenship and Naturalization*, *supra* note 106, at 120.

110. See Hailbronner, *supra* note 1, at 67-68.

111. See Kanstroom, *supra* note 13, at 188. Ethnic Germans are referred to as *status-Deutsche* ("status Germans"), rather than as foreigners. See *id.*

112. This contrasts with the discretionary naturalization process for other immigrants. See *infra* notes 121-30 and accompanying text.

113. For example, the West German government was so determined to aid ethnic Germans that it permitted errors on applications, such as citing an

naturalization, ethnic Germans enjoy most of the rights of German citizens: ethnic Germans are not subject to Alien Law regulations; they do not need residence permits; they enjoy freedom to work and travel; and they have the right to housing and social assistance.¹¹⁴ Additionally, ethnic Germans receive a German passport and have the right to vote.¹¹⁵ The legal protections granted to ethnic Germans even extend to international legal protection against third countries, such as the right to full German diplomatic protection.¹¹⁶

This policy leads to a great contradiction: ethnic Germans with attenuated ties to Germany automatically receive the economic and legal benefits of German citizenship, while foreign residents who may have been born in Germany and who speak German fluently are prevented from fully participating in the legal and political communities where they live.¹¹⁷ Primarily in response to national dissatisfaction with the economic burdens of this ethnic German policy, but also to reduce the harshness of this contradiction, the German legislature passed new laws in 1990 and 1992 to govern the acceptance of ethnic Germans more strictly. The 1990 law required ethnic Germans to apply from abroad; it limited financial aid to twelve months and language training to ten months.¹¹⁸ The 1992 law restricted the number of

applicant's nationality as Polish instead of German. See Kanstroom, *supra* note 13, at 166. Moreover, in 1981, the highest Federal Administrative Court held that even an applicant who did not consider himself or herself to be a *Volkszugehöriger* could fall within the definition of the BVFG. See *supra* note 61 and accompanying text for description of BVFG. This ruling could encompass former Jewish citizens, but only if they were able to demonstrate that they were viewed in their land of settlement first as a German and second as a Jew. See Kanstroom, *supra* note 13, at 187.

114. See Kanstroom, *supra* note 13, at 187. Some of these benefits are now limited pursuant to 1990 and 1992 laws. See *infra* notes 118-19 and accompanying text.

115. See Kanstroom, *supra* note 13, at 187. One protection denied to ethnic Germans is the protection *de jure* German citizens have against denial of citizenship. *Id.* at 187 n.244.

116. Additionally, ethnic Germans are protected against extradition by the Basic Law. See *id.* at 187-88.

Among the other protected legal rights of citizens are the ability to hold civil service positions, the protection of the Basic Law's rights in relation to the German State, and the right to bring constitutional complaints. See STAATSBÜRGERTASCHENBUCH, *supra* note 5, at 44 (citing provisions of the Basic Law).

The obligations of German citizenship include mandatory military service for males and contributions to public obligations. See *id.* at 44-45.

117. See Walker, *supra* note 74, at 7 (comparing experiences of ethnic Germans with those of foreign residents in Germany).

118. See Kanstroom, *supra* note 13, at 188; BADE, *supra* note 11, at 48 (discussing the *Aussiedleraufnahmegesetz/AAG*).

ethnic Germans that could be accepted each year to 220,000.¹¹⁹ Nevertheless, these restrictions did not eliminate the controversy over the rights of ethnic Germans as opposed to other foreign groups.¹²⁰

C. Reasons for the Low Naturalization Rate of Foreign Citizens

There are several explanations for the low naturalization level in the remaining foreign resident population. First, Germany adheres to a discretionary system of naturalization. Accordingly, the State¹²¹ may grant or withhold citizenship as it deems proper.¹²² Federal regulations supplement the Citizenship Law of 1913.¹²³ These regulations articulate the position that naturalization is a matter not of individual right but of societal interest. A foreign resident other than an ethnic German has no *right* to naturalize even if he or she fulfills the written requirements.¹²⁴ Accordingly, only if a government official determines that the decision is in the public interest may the official grant German citizenship.¹²⁵

Among the basic requirements for naturalization are employment, absence of a criminal record,¹²⁶ and "a free-willed

119. See *id.* at 48. The figure 220,000 was chosen because it was the average number of ethnic Germans accepted in the years 1991 and 1992. *Id.*; see also *Änderungen für das Vertriebenenrecht*, *supra* note 61, at 2080-81 (discussing change through the *Kriegsfolgenbereinigungsgesetz* that went into effect on January 1, 1993).

120. See *infra* Part IV.C.

121. In Germany's federal system of government, individual *Länder* ("states") implement naturalization proceedings under federal supervision. See Kanstroom, *supra* note 13, at 178.

122. See *Citizenship and Naturalization*, *supra* note 106, at 108. Brubaker describes two general systems for granting citizenship: first, the discretionary system, as found in Germany; second, an "as-of-right system," in which the State must grant citizenship to individuals who meet set criteria. See *id.*

German officials must exercise discretion in accordance with the principles of the Basic Law. For example, naturalization officers must consider naturalization decisions within the framework of the special protections granted to marriage and family in Article 6 of the Basic Law. See Hailbronner, *supra* note 1, at 70; GG art. 6.

123. See Kanstroom, *supra* note 13, at 179. Similar to naturalization laws in other countries, the requirements in Germany include "amorphous, value-based standards." *Id.*

124. See *id.* at 178.

125. See *id.* at 180. The naturalization guidelines state that "Germany is not a country of immigration; she does not aspire intentionally to increase the number of Germany citizens through naturalization." *Id.* at 179-80.

126. See Christopher Springate, *Letter from Berlin; German Nationalization Policies*, NEW STATESMAN & SOC'Y, June 4, 1993, at 11, available in LEXIS, News Library, NSS File [hereinafter *German Nationalization Policies*].

and lasting commitment to Germany."¹²⁷ Other requirements such as a "good reputation," an understanding of German culture, and an interest in the country are more subjective considerations in the 1913 law.¹²⁸ Practical obstacles, such as fees up to 5000 DM,¹²⁹ also may prevent higher numbers from acquiring citizenship.¹³⁰

On their face, these statutory requirements are similar to U.S. naturalization laws in that they require an applicant to be of good moral character and to maintain an attachment to constitutional principles.¹³¹ As discussed above, however, a fundamental difference exists between the countries' naturalization procedures. In Germany, if an applicant fulfills the statutory criteria, he or she is still subject to a discretionary denial if the naturalization is against the interest of the State. In the United States, no final discretionary judgment exists.¹³²

D. Revisions to Germany's Naturalization Laws

In 1990, Germany revised its Alien Laws in an attempt to reduce the restraints on naturalization.¹³³ The revised Alien Laws

127. Kanstroom, *supra* note 13, at 180 (quoting German naturalization guidelines) (citations omitted).

A German federal administrative court held in 1983 that a naturalization official may deny naturalization if doubt exists about the applicant's commitment to Germany's free democratic constitution. *See id.* at 181. Political activities in emigrant organizations usually are evidence against attachment to Germany. *See* Hailbronner, *supra* note 1, at 69. An applicant's participation in extremist or radical organizations would show that he or she is not committed to Germany's democratic order. *See id.*

128. *See German Nationalization Policies, supra* note 126. These subjective criteria leave the final decision on the citizenship application to German civil servants. Springate offers an example of a Turkish woman who eventually gave up her bid for citizenship after having received no explanation for more than two years about the delays in a ruling on her application. *See id.*; *see also* STAATSBÜRGERTASCHENBUCH, *supra* note 5, at 5.

129. Deutsche Mark (hereinafter DM) is the German unit of currency. CONRADT, *supra* note 2, at 57.

130. *See German Nationalization Policies, supra* note 126, at 11.

131. *See* Kanstroom, *supra* note 13, at 182 (citing 8 U.S.C. § 1427(a)(3) (1988)).

132. *See* Kanstroom, *supra* note 13, at 182.

133. *See id.* at 183. The statement of legislative intent of the Bill for the Revision of the Aliens Law stated that the Federal Government "deem[ed] it necessary to appeal to those aliens who have been resident . . . for many years and who wish to stay . . . permanently to apply for German citizenship." *Id.* (quoting Statement of Legislative Intent Accompanying the Bill for the Revision of the Aliens Law, June 1990, at 21). The bill is titled: Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Ausländergesetz) [Foreigner Law], v. 9.7.1990 (BGBl. I S.1354) [Law on the Entry and Residence of Foreigners in the Federal Territory] [hereinafter 1990 AuslG].

reduced the amount of discretion granted to naturalization officials but fell short of providing a *right* to citizenship for applicants fulfilling the new standards.¹³⁴ According to the 1990 revisions, a foreign resident¹³⁵ should be naturalized if he or she (1) has lived in Germany for eight years; (2) is between the ages of sixteen and twenty-three; (3) has attended school in Germany for six years (four of which must be in a general education program); (4) has no serious criminal record; and (5) relinquishes his or her former citizenship.¹³⁶ Additionally, aliens who have lived in Germany for more than fifteen years and who applied before December 31, 1995 may be naturalized if they (1) have no serious criminal record; (2) can support themselves and their families; (3) relinquish their former citizenship; and (4) pay the temporarily reduced fee of 100 DM.¹³⁷ These changes enable second generation foreign residents to attain naturalization more easily.¹³⁸ Nevertheless, the fundamental barriers to foreign residents' attaining German citizenship remain: ascriptive citizenship is still determined by *jus sanguinis*; naturalization decisions still involve bureaucratic discretion; and dual citizenship is generally prohibited.¹³⁹

Both before and after the changes to the Aliens Law in 1990, the primary obstacle for many who consider becoming German citizens has been the requirement that an applicant relinquish his or her former citizenship.¹⁴⁰ Apart from the familial and

134. See Kanstroom, *supra* note 13, at 184. The new regulations state that, if an applicant meets the requirements, naturalization should be granted "as a rule." Therefore, Kanstroom describes the new standard as "somewhere between the unfettered discretion of the pre-1990 naturalization practice and the ethnic Germans' right to citizenship." *Id.* at 184.

135. The Aliens Laws define *Ausländer* ("aliens"/"foreigners") as "whoever is not a German within the meaning of Article 116(1) of the Basic Law." Kanstroom, *supra* note 13, at 188 (quoting 1990 AuslG § 1(2)). Therefore, the Aliens Laws have no effect on the naturalization procedures for "status-Germans." *Id.* at 188.

136. See Kanstroom, *supra* note 13, at 183 (citing 1990 AuslG); see also SOYSAL, *supra* note 19, at 26.

137. See Kanstroom, *supra* note 13, at 184 (citing 1990 AuslG); see also BADE, *supra* note 11, at 23.

138. See Kanstroom, *supra* note 13, at 184; SOYSAL, *supra* note 19, at 26.

139. See Kanstroom, *supra* note 13, at 184.

140. See BEAUFTRAGEN DER BUNDESREGIERUNG FÜR DIE BELANGE DER AUSLÄNDER, DAS EINBÜRGERUNGS- UND STAATSANGEHÖRIGKEITSRECHT DER BUNDESREPUBLIK DEUTSCHLAND 13-17 (1993) (citing an article by Cornelia Schmalz-Jacobsen, the Federal Commissioner for the Concerns of Foreigners), *reprinted in* BADE, *supra* note 11, at 92 [hereinafter Schmalz-Jacobsen].

Opponents to dual citizenship insist that the requirement that foreign residents give up the citizenship of their land of origin is no barrier for those foreign residents who *truly* want the rights that accompany German citizenship. *Doppelte Staatsangehörigkeit für Ausländer? [Dual Citizenship for Foreigners?]*, AUSLÄNDER IN DEUTSCHLAND, Aug. 1992, at 12-14, *reprinted in* BADE, *supra* note

emotional ties that may make an applicant hesitant to relinquish citizenship of his or her land of origin, legal considerations also exist. For example, individuals from Poland and Turkey must abandon inheritance rights in their former countries if they give up citizenship in those countries.¹⁴¹ The 1990 revisions to the Aliens Laws generally continued the requirement that applicants for naturalization relinquish their previous citizenship. The 1990 law provided two exceptions, however. First, dual citizenship is allowed if the country of origin will not allow renunciation. Second, renunciation is not required if doing so would subject the applicant to particular hardship or persecution.¹⁴²

Foreign population sentiment reflects that the prohibition on dual citizenship is a fundamental reason for not seeking German citizenship. According to a 1993 survey in the German state of North Rhine-Westphalia, fifty percent of the foreigners questioned said they would seek German citizenship if they were permitted to have dual citizenship.¹⁴³ Moreover, polls have also indicated support for dual citizenship among the general German population. For example, in a 1993 nationwide poll, sixty-one percent of the Germans questioned said dual citizenship should be given to foreigners who had lived in Germany for more than

11, at 95 [hereinafter *Doppelte Staatsangehörigkeit*] (citing comments in opposition to dual citizenship by Department of the Interior Minister Neuser).

Germany and Luxembourg are the only two European nations that forbid dual nationality. See *German Nationalization Policies*, *supra* note 126, at 11.

141. See *German Nationalization Policies*, *supra* note 126, at 11. As of December 1995, the largest group of the 6,991,000 foreign residents in Germany came from Turkey. *Foreigners' Advocates*, *supra* note 9.

142. See Kanstroom, *supra* note 13, at 184 (citing 1990 AuslG). A few exceptions also existed prior to the 1990 revisions. For example, an exception exists if the following are true: (1) the applicant has completed the majority of his schooling in Germany; (2) the applicant has reached the age of conscription; and (3) the applicant's country of origin will not permit him to denounce his citizenship without completing military service. See *Citizenship and Naturalization*, *supra* note 106, at 116. These exceptions led to dual citizenship in approximately one-third of the naturalizations. See *id.*

143. The Social Service Ministry of North Rhine-Westphalia conducted the poll. See SOYSAL, *supra* note 19, at 26-27. Other polls reflect similar views. A 1988 poll of 16 to 25-year-old foreigners in West Berlin found that 60% of the Turkish youth and 70% of the Yugoslav youth wanted to become German citizens. See BADE, *supra* note 11, at 18. Both groups also wanted to be able to maintain their present citizenship. *Id.*

A 1991 poll reflects the effect of German reunification and the outbreak of violence against foreigners in the early 1990s. *Id.* These events did not cause foreign youth in Berlin to lose interest in becoming German citizens, but did increase their desire to hold dual citizenship. See *id.*

five years.¹⁴⁴ The political and legal arguments for and against dual citizenship are described below.¹⁴⁵

E. *Alternative View of Low Naturalization Figures*

Some commentators have suggested that foreign residents in Germany have so little to gain by naturalizing that they have no real incentive to seek naturalization.¹⁴⁶ According to this alternative explanation for Germany's low naturalization rates, foreigners in Germany may exclude themselves from citizenship just as Germany's laws and political situation prevent foreigners from becoming citizens.¹⁴⁷ Foreign residents in Germany enjoy many of the rights of the German citizenry. For example, foreign residents possess legal protections, including due process, the right to appeal, and the promise of equality before the law.¹⁴⁸ Additionally, foreign residents enjoy political rights, including the right to express political opinions and the rights of assembly and demonstration.¹⁴⁹

Foreign residents in Germany also receive a wide range of social benefits. These benefits reach foreign residents through employers, trade unions, and social service organizations.¹⁵⁰ Foreign workers, like German workers, receive benefits from programs to which they and their employers contribute. Among these contributory benefits are sickness, accident,

144. The German publication *Die Woche* conducted this poll. See BADE, *supra* note 11, at 27.

145. See *infra* Part IV.B.

146. See, e.g., Hailbronner, *supra* note 1, at 76; Kanstroom, *supra* note 13, at 184 & n.224.

147. See Hailbronner, *supra* note 1, at 76.

148. See SOYSAL, *supra* note 19, at 129. However, the Federal Constitutional Court has differentiated between two Basic Law anti-discrimination principles. Article (3)(1) of the Basic Law states that "[a]ll persons shall be equal before the law." The Federal Constitutional Court has held that this applies to foreign residents. See Kanstroom, *supra* note 13, at 192 (citing Judgment of Mar. 20, 1979, 51 BVerfGE 1, 30). In contrast, Article (3)(3), which states that "[n]o one may be disadvantaged or favored because of . . . his language, homeland and origin," does not apply to foreigners. *Id.*

149. See Hailbronner, *supra* note 1, at 76. Kanstroom notes that the Basic Law itself provides less protection to foreign residents than Federal Constitutional Court decisions have concluded exist. Kanstroom, *supra* note 13, at 171 n.125. For example, the Federal Constitutional Court held in 1978 that an "an alien acquires a constitutionally protected reliance interest to remain in Germany as a result of prior routine renewals of his residence permit and his integration into German society." *Id.* at 171 (discussing Judgment of Sept. 26, 1978, 49 BVerfGE 168).

150. See SOYSAL, *supra* note 19, at 62. The social service organizations are closely related to the state and divide care for foreign residents according to their nationalities and religious affiliations. See *id.*

unemployment, and retirement benefits.¹⁵¹ Among the “non-contributory” benefits provided to foreign residents are housing and child allowances and a limited amount of assistance for the needy.¹⁵² These benefits are not available to those foreigners who entered Germany with the intention of receiving benefits.¹⁵³ Moreover, deportation or denial of a residence permit may result from reliance on “social help” funds for more than three months.¹⁵⁴ There is an important caveat to this last restriction: for the largest group of foreign residents, Turkish citizens, an agreement between Germany and Turkey establishes that unemployment or receipt of welfare does not jeopardize their resident status.¹⁵⁵ Accordingly, even without full citizenship rights, foreign residents are legally entitled to many benefits through residence in Germany. Therefore, many foreign residents may be satisfied to reside in a prosperous western country despite lacking all the rights of citizenship.

Scholars have noted similar trends in other welfare states where permanent residents possess many rights without citizenship.¹⁵⁶ If these rights are satisfactory to the foreign residents, they may choose not to naturalize.¹⁵⁷ Nevertheless, because sufficient rights are still reserved only for German citizens, naturalization is a desirable, if unattainable, goal for many foreign residents. The Basic Law grants certain fundamental rights solely to the German population. Among

151. See William R. Brubaker, *Membership Without Citizenship: The Economic and Social Rights of Noncitizens*, in *IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA* 145, 156 (William R. Brubaker ed., 1989) [hereinafter *Membership without Citizenship*]. Vocational training and retraining is also available to foreign workers. *Id.*

Pension benefits accrue over time, as they do for German workers. *Id.* Germany may reconsider these benefits as more foreigners reach the age of retirement. The number of retirement-age foreigners rose from 64,000 in 1961 to 529,000 in 1991. BADE, *supra* note 11, at 18. By 2010, the number of foreign retirees is projected to be 1,000,000. *Id.*

152. See *Membership Without Citizenship*, *supra* note 151, at 156-57.

153. See *id.* at 157. For a summary of the holding see *Sozialhilfe für Ausländer* [Social Help for Foreigners], 28 *NEUE JURISTISCHE WOCHENSCHRIFT* [NJW] 1811 (1993).

154. See *Membership Without Citizenship*, *supra* note 151, at 157. “Social help” is similar to welfare.

155. This is the result of a bilateral preferential treatment agreement. See *SOYSAL*, *supra* note 19, at 124.

156. Some scholars of migrant patterns refer to foreign citizens who have acquired permanent resident status as “denizens.” See Wayland, *supra* note 93, at 39.

157. Kay Hailbronner proposes this theory. See *supra* note 146 and accompanying text. This may be a legitimate factor influencing the low number of naturalizations in Germany. However, the restrictive naturalization procedures are a more substantial hurdle.

those rights reserved for German citizens are the right to vote, freedom of assembly and association, freedom of movement, choice of occupation, and protection against extradition.¹⁵⁸ A similar division exists between the duties of a foreign resident. He or she must pay taxes, act lawfully, and respect others' rights, but is excused from military duty.¹⁵⁹

Germany's membership in the European Union (hereinafter EU)¹⁶⁰ adds value to German citizenship. The EU entitles foreign residents of a member state to the same rights as nationals of any other member state in which they are residing.¹⁶¹ These rights do not extend to foreign residents of non-member states, however.¹⁶² This results in a division of rights among foreign residents in Germany. For example, a Greek citizen who was originally a guestworker may now vote or stand for election in communal elections if he or she meets certain residence requirements.¹⁶³ In contrast, a Turkish national who has resided in Germany for an equal length of time may not participate in the election.¹⁶⁴ These EU rights create a class distinction between groups of foreign residents in Germany. This discrepancy increases the necessity for re-evaluation of the rights of foreign residents in Germany.

158. See FOSTER, *supra* note 5, at 156; Wayland, *supra* note 93, at 38-39; Kanstroom, *supra* note 13, at 171; GG arts. 8, 9, 10, 11, 12, 16. For an English language description of these rights see FOSTER, *supra* note 5, at 158-67. Germany's role as a member of the EU has altered some of these rights with respect to citizens of other EU member states.

Although the broad grant of rights may deter some foreign residents from seeking citizenship, removal of the rights will not necessarily increase the naturalization rate. More fundamental disincentives, including the lack of true integration and denial of dual citizenship, also deter foreign residents from seeking naturalization. As long as these and other barriers to naturalization exist, foreign residents must continue to receive legal and social protections.

159. See SOYSAL, *supra* note 19, at 130.

160. The 15 current member states are Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden. PRESSE-UND INFORMATIONSAMT DER BUNDESREGIERUNG, EUROPA IN 100 STICHWORTEN 8-9 (1994).

161. See SOYSAL, *supra* note 19, at 147-48.

162. This division of rights is particularly important because non-EU foreign nationals constitute the majority of the foreign population in Europe. See *id.* at 148-49. Throughout Europe, approximately 15 million people live as foreigners in their chosen country of residence. *Id.* at 22. Of those, approximately five million are from states of the EU.

163. Article 28 of the Basic Law reflects the change made to German voting rights in order to accord with the requirements of the Maastricht Treaty. The article reads in pertinent part: "In country and municipal elections persons who are nationals of member states of the European Community, too, may vote and shall be eligible for election in accordance with European Community Law." GG art. 28(1), *reprinted in* FOSTER, *supra* note 5, at 386; see BADE, *supra* note 11, at 27.

164. See BADE, *supra* note 11, at 27.

Foreign residents from outside the EU represent the majority of foreign residents in Germany, but live without some of the fundamental rights of a democratic society. Either a liberalization of the citizenship requirements or further integration through the provision of expanded rights to foreign residents is necessary to address the needs of the foreign population in Germany.

IV. PROPOSALS FOR CHANGE IN GERMANY'S CITIZENSHIP LAWS

Before assessing the alternative means of addressing the role of foreign residents in Germany, a consideration of current predictions of trends within the foreign resident population is instructive. First, ethnic Germans will continue to seek residence in Germany.¹⁶⁵ Second, increasing numbers of citizens of member states in the EU will take advantage of the freedom of movement and work provisions by residing as foreigners in member states.¹⁶⁶ Third, continued migration is expected from Eastern Europe and third world regions.¹⁶⁷ Although the asylum laws are stricter than before 1993, asylum seekers will continue to be a factor in the foreign resident population. Another political and economic factor is the asylum seekers who have no domestic legal right to asylum, but who are accepted because of humanitarian concerns in compliance with the Geneva Convention on Refugees.¹⁶⁸ Moreover, the tightening of the asylum law increased Germany's concern with illegal immigrants who enter Germany in violation of the more restrictive asylum laws.¹⁶⁹ Fourth, and perhaps most important, is the continued existence of the original guestworkers and their descendants, who are now generations distanced from their lands of origin.¹⁷⁰

165. *See id.* at 57.

166. *See id.*

167. *See id.* Studies of migration have predicted that further crises in Eastern Europe will cause migration to Germany. *Id.* Moreover, the United Nations has predicted that world migration will become the most significant human crisis. *See id.* (citations omitted).

168. *See id.* at 51.

169. *See id.*

170. The author does not wish to suggest that, simply by inviting workers to aid German industrial growth temporarily, the German government created an obligation to offer these workers German citizenship. Originally, the guestworker program provided mutual benefits to Germany and the foreign worker population: willing laborers supplemented Germany's depleted post-war workforce, and workers could send money home to support their families. *See supra* Part II.A. Once the German government permitted the guestworkers to bring their families to Germany, however, the relationship between the German government and the guestworkers changed; as a more permanent relationship developed, Germany acquired a moral, rather than a legal, obligation to accept these workers as

Without a coherent plan for integrating this segment of the foreign population, Germany will not sufficiently address its foreign population.

No consensus exists on how to address contradictions of the current role of foreign residents in Germany. The options include changing to a *jus soli* basis for citizenship, liberalizing naturalization laws to permit dual citizenship, and giving foreign residents greater rights of participation in the German political and legal systems without liberalizing the citizenship laws.¹⁷¹ A proper approach will necessarily include aspects of legal, political, and social integration.

A. Legislative Proposals

The political debate over the role of citizenship vis-à-vis foreign residents in Germany is fiercely divided. Although politicians of the more liberal parties have repeatedly discussed the possibility of easing naturalization requirements, they have taken no significant action.¹⁷² Since 1982, the ruling coalition has consisted of the conservative Christian Democratic Union and the Christian Social Union.¹⁷³ Under the leadership of Chancellor Helmut Kohl, the coalition has conceded little from its position that Germany is not a land of immigration.¹⁷⁴ The coalition would support *Kinderstaatszugehörigkeit* ("a children's citizenship"), which would provide some foreign children temporary citizenship until the age of eighteen.¹⁷⁵ A child could receive this temporary citizenship only if one parent was born in

immigrants or to further their integration through alternative means. See *infra* Part IV.D.

171. Because such change will depend primarily on the elected representatives of the existing German population, change will not occur until German voters provide a mandate. The German population appears willing to alter the current state of the law. For example, a majority believe that long-time foreign residents should be able to apply for dual citizenship. See *supra* note 144 and accompanying text. As an alternative to full citizenship rights, government officials in the state of Hesse would be willing to extend voting rights to all foreign residents if it were legally permissible. See *German Federal State to Let EU Foreigners Vote*, Reuter Textline, April 26, 1995, available in LEXIS, World Library, TXLINE File.

172. See Prantl, *supra* note 100, at 93.

173. See CONRADT, *supra* note 2, at 122-23. The third party in the coalition is the small Federal Democratic Party (hereinafter FDP). The FDP urged the coalition to provide German citizenship from birth and reduced restrictions on dual citizenship. See Michael Jach, *Staatsangehörigkeit; Adoption mit Hinterlist*, FOCUS MAGAZIN, Dec. 23, 1994, at 18-21, available in LEXIS, German Library, FOCUSD File.

174. See *German Nationalization Policies*, *supra* note 126, at 11.

175. See Jach, *supra* note 173, at 18-21.

Germany and if both parents had resided in Germany for more than ten years and possessed unlimited residence rights.¹⁷⁶ When a child reached the age of eighteen, he could choose to retain German citizenship by renouncing his foreign citizenship.¹⁷⁷ *Ausländerbeauftragte* ("Federal Commissioner for Foreigners' Affairs") Cornelia Schmalz-Jacobsen criticized this proposal because of the small number of children who could take advantage of its provisions.¹⁷⁸

The more liberal Social Democratic Party (hereinafter SPD) and the Greens political party have proposed several more extensive changes in citizenship laws.¹⁷⁹ For example, in January 1995, the SPD proposed that children born in Germany to foreign parents should be granted German citizenship if at least one parent was born and lived in Germany.¹⁸⁰ Third generation foreign residents would automatically be eligible for citizenship.¹⁸¹ The proposal also included the right to dual citizenship and the right of foreign residents to apply for naturalization after eight years of residence.¹⁸² The Greens have fought consistently for foreign residents' right to naturalize without renouncing their former citizenship after residence of as few as five years.¹⁸³ These more liberal proposals, however, have never received enough support to overcome the ruling coalition's hesitancy about expanding citizenship rights.

176. See *id.* (discussing coalition compromise talks).

177. See *id.*; Christopher Springate, *Letter from Berlin: Germany's Outdated Citizenship Law*, NEW STATESMAN & SOC'Y, Feb. 2, 1996, at 10, available in LEXIS, News Library, NSS File [hereinafter, *Germany's Outdated Citizenship Law*].

178. Schmalz-Jacobsen said that the chances of meeting the criteria for temporary citizenship were as slight as for winning the lottery. See Jach, *supra* note 173, at 18-21.

179. See Ingo von Münch, *Darf es ein bißchen mehr sein? - Gedanken zur Mehrstaatigkeit* [May it be a little more? - Thoughts on multiple citizenship], 18 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 1199, 1199 (1994) (citing examples of proposals). The lower house of the German federal legislature, the Bundesrat, has also proposed changes to the citizenship law. *Id.*

180. See *Bonn Government Faces Test Over Nationality Issue*, Reuter Textline, Jan. 24, 1995, available in LEXIS, World Library, TXLINE File.

181. See *id.*

182. See *id.*

183. See Rittstieg, *supra* note 87, at 1401. The Green party has continued to support the naturalized immigrant population. For example, in 1994, a son of Turkish guestworkers became the first person of Turkish origin to win a seat in the German parliament. See Syrimi, *supra* note 38.

B. Dual Citizenship

When the Bundesrat¹⁸⁴ proposed its own liberalization of Germany's naturalization policies, it argued that the greatest obstacle to naturalization was the forced relinquishment of the applicant's former citizenship.¹⁸⁵ Polls of the foreign population and foreign resident population studies support this assertion.¹⁸⁶ Proponents of dual citizenship argue that liberalizing this naturalization requirement is essential to increasing the number of naturalized German citizens and, correspondingly, the rights of the immigrant population.¹⁸⁷ In 1993, the SPD stated that granting dual citizenship would send a signal to foreign residents in Germany that the country "fully recognize[s] them as human beings."¹⁸⁸

Opponents of dual citizenship focus particularly on five potential legal conflicts that dual citizenship would create: (1) a conflict between dual citizenship and the norms of international law; (2) the conflict between dual duties to nations, such as mandatory military service; (3) the uncertainty of governing law, particularly in family law and inheritance; (4) the potential of reduced diplomatic protection offered by consulates and embassies in the countries of citizenship;¹⁸⁹ and (5) the possibility of conflicting loyalties to states.¹⁹⁰ Although each of these may appear to be a valid legal barrier to dual citizenship, the barriers are not insurmountable.

1. Dual Citizenship and International Law

A fundamental concern of dual citizenship opponents is the claim that international law forbids citizenship of more than one nation.¹⁹¹ This argument gained particular strength in Germany

184. The functional purpose of the Bundesrat is to represent the *Länder* (states) in passing national legislation. See CONRADT, *supra* note 2, at 190-91. The delegate from each state must cast the state's votes as instructed by the state government. *Id.* Since April 1991, the Social Democrats have possessed a majority in the Bundesrat. *Id.* at 194.

185. See von Münch, *supra* note 179, at 1199. The Bundesrat proposed this change on September 16, 1993. *Id.* Its goal was to make the acceptance of multiple citizenship the rule of Germany's naturalization policies, rather than the exception. *Id.*

186. See *supra* note 143 and accompanying text.

187. See *Doppelte Staatsangehörigkeit*, *supra* note 140, at 95.

188. SOYSAL, *supra* note 19, at 153.

189. *Doppelte Staatsangehörigkeit*, *supra* note 140, at 95

190. See von Münch, *supra* note 179, at 1199.

191. Because Article 25 of the Basic Law incorporates the rules of international law into German domestic law, the position of international law in relation to citizenship is relevant. See Rittstiegl, *supra* note 87, at 1402. Article

as a result of one expert's testimony before the Federal Constitutional Court in 1974.¹⁹² The expert witness stated that multiple international citizenship is viewed as an "evil" that should be avoided in the interests of states and their citizens.¹⁹³ Opponents of dual citizenship have used this quotation as an argument against granting multiple citizenship. Proponents of dual citizenship argue, however, that the statement is false to the extent that it attempts to represent an international practice or set of international principles.¹⁹⁴ International law certainly recognizes dual citizenship when a child is born in a *jus soli* country and also receives the citizenship of his or her parents.¹⁹⁵ Moreover, traditional countries of immigration have not made relinquishment of prior citizenship a prohibitive factor in determining whether an individual may become a citizen through naturalization.¹⁹⁶

While opponents of dual citizenship argue that the 1963 Council of Europe's Treaty on the Reduction of Multiple Citizenship¹⁹⁷ prohibits Germany from granting dual citizenship,¹⁹⁸ proponents of dual citizenship respond that the limited scope of the treaty does not prevent Germany from liberalizing its citizenship laws. First, the treaty only binds the member states, including Germany, in their relations with other parties to the treaty.¹⁹⁹ Accordingly, the treaty does not regulate

25 states: "The general rules of public international law shall be an integral part of federal law. They shall take override laws and directly establish rights and obligations for the inhabitants of the federal territory." GG art. 25, *reprinted in* FOSTER, *supra* note 5, at 386.

192. See Rittstieg, *supra* note 87, at 1403 (discussing a holding of the Federal Constitutional Court from May 21, 1974, *reprinted in* 36 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 1609 (1974)).

193. See *id.* The expert's name was Zweigert-Neuhaus, and his statement has gained the name *Übeldoktrin* ("evil doctrine"). The case involved the issue of whether citizenship could be passed to a child from the mother as well as the father. See *id.*

194. See *id.* at 1403. Rittstieg argues that the statement should be eliminated from the arsenal of arguments against dual citizenship. See *id.* As support for this argument, Rittstieg notes that the Federal Constitutional Court recognized in its May 21, 1974 opinion that international law does not forbid dual citizenship. See *id.*

195. See *id.* at 1402-03.

196. See *id.* at 1403. For example, in France, Belgium, and Great Britain, retaining prior citizenship does not prevent naturalization. See *id.* at 1403 n.19.

197. Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, May 6, 1963, 221 U.N.T.S. 1968 [hereinafter Convention].

198. See Schmalz-Jacobsen, *supra* note 140, at 92.

199. The parties to the treaty are Germany, Belgium, Denmark, France, Italy, Luxembourg, Netherlands, Norway, Austria, and Sweden. Great Britain, Ireland, and Spain are only parties to Chapter II, which regulates military service

Germany's naturalization policies in relation to Turkey, Greece, or the former Yugoslavia, the countries from which the majority of foreign residents stem.²⁰⁰ Furthermore, since the treaty was ratified, some of the parties to the treaty have altered their naturalization laws to permit dual citizenship.²⁰¹ Moreover, the language of the treaty does not forbid a party to allow a naturalized citizen to retain his or her former citizenship. The treaty requires states to make it possible for a person who chooses to emigrate to lose his or her prior citizenship.²⁰² Therefore, the Convention does not prevent Germany from liberalizing its naturalization laws, but only limits Germany's ability to control a German citizen's right to emigrate and give up German citizenship.²⁰³

2. Multiple Legal Obligations of Citizenship

Opponents of dual citizenship express the concern that individuals of multiple nationalities may owe obligations, such as military service, to more than one country.²⁰⁴ In response, supporters of dual citizenship offer the fact that treaties or laws are already in place to determine in which country of citizenship military service must be completed.²⁰⁵ For example, the Council of Europe already has in place a treaty regulating military service in cases of multiple nationality.²⁰⁶ According to this treaty, an individual with multiple citizenship must fulfill the military

for people with multiple nationalities. See Convention, *supra* note 197; see also Rittstiegl, *supra* note 87, at 1403.

200. See Rittstiegl, *supra* note 87, at 1403; see also Schmalz-Jacobsen, *supra* note 140, at 92.

201. See *Doppelte Staatsangehörigkeit*, *supra* note 140, at 95. Currently, parties to the treaty allow dual citizenship for individuals born and raised in the country, for spouses of citizens, and for children of mixed marriages. See *id.* The number of West European states permitting dual citizenship has grown despite the treaty. See *id.*

202. See Rittstiegl, *supra* note 87, at 1404-05; see also Convention, *supra* note 197, arts. 1.1 & 1.4. The German government's accompanying memorandum to the treaty also supports this interpretation. It states that § 25 of RuStAG (the 1913 citizenship law) fulfills article one of the Convention, because § 25 of the RuStAG governs the loss of German citizenship when a citizen freely seeks the citizenship of another party state. See Rittstiegl, *supra* note 87, at 1404-05.

203. See Rittstiegl, *supra* note 87, at 1405. Moreover, if Germany considered the convention a restraint on its domestic citizenship issues, it could withdraw from the treaty. See Schmalz-Jacobsen, *supra* note 140, at 92.

204. See von Münch, *supra* note 179, at 1200.

205. See Schmalz-Jacobsen, *supra* note 140, at 92.

206. "Persons possessing the nationality of two or more Contracting Parties shall be required to fulfill their military obligations in relation to one of those Parties only." Convention, *supra* note 197, art. 5.1.

service requirements of the treaty nation within whose sovereign territory the individual resides.²⁰⁷ Although Turkey is not a party to this treaty, a law exists to regulate military service between the two countries. The 1992 law establishes that if a Turkish-German citizen completes military service in Germany, Turkey will recognize that citizen's Turkish military obligation as fulfilled.²⁰⁸

Supporters of dual citizenship also emphasize that conflicting military service duties affect only a limited group of foreign residents. The possible conflict exists only if the resident holds dual citizenship in countries that have mandatory military service.²⁰⁹ Additionally, the conflict will only arise for men in a restricted age group.²¹⁰ Because of the limited nature of the conflicts, supporters argue that agreements between countries can successfully address conflicting duties of a dual citizen.²¹¹

3. Potential Conflicts in Domestic Laws between Countries of Citizenship

Although the potential exists for conflicts of laws to occur in individual cases of family law and in settling estates, proponents of dual citizenship point to Germany's private international law to resolve conflicts.²¹² If a dual citizen has German citizenship, German law applies in a German court.²¹³ If an individual possesses citizenship in more than two countries, courts employ international private law to determine which is the country of "effective citizenship."²¹⁴

207. See *id.*, art. 6.1. Additionally, until the age of 19, a person may choose to volunteer for military service in any country where he is a national. *Id.*; see also Schmalz-Jacobsen, *supra* note 140, at 92; von Münch, *supra* note 179, at 1200.

208. See Schmalz-Jacobsen, *supra* note 140, at 92.

209. A conflict would not exist if an individual had both U.S. and German citizenship, because the United States does not have mandatory military service. Therefore, in the absence of treaties, the potential for conflict is greatest with a country such as Turkey, which also requires its male citizens to fulfill a mandatory service requirement. See von Münch, *supra* note 179, at 1200.

210. See *id.* Israel is the only nation that requires military service for women. *Id.*

211. See Schmalz-Jacobsen, *supra* note 140, at 92.

212. See, e.g., von Münch, *supra* note 179, at 1200 (arguing that laws exist to eliminate conflicts of dual nationality).

213. See Schmalz-Jacobsen, *supra* note 140, at 92.

214. See *id.* The 1930 Hague Convention on Certain Questions Relating to Conflict of Nationality Laws provides guidelines to be applied to the determination of the country of "effective citizenship." Among the considerations are where the individual spends the most time as a resident and the relevant ties that the individual has to each nation. See *id.* (citing Conflict of Nationality Laws, *supra* note 86, art. 5). Schmalz-Jacobsen remarks that this regulation of private law

Domestic rights that accompany citizenship may also conflict in multiple citizenship cases. The most important of these rights is the right to vote. If a person were permitted to vote in more than one country, he or she would have rights distinguishable from other citizens. This would be an impermissible distinction in a representative democracy.²¹⁵ A possible solution to this conflict is a requirement that an individual vote only in his or her country of residence.²¹⁶ To address potential conflicts in light of its communal voting provisions, the EU provides in its voting laws that the right to vote may be exercised only once and only personally.²¹⁷ Similar provisions in German law would allay fears that a dual citizen could unfairly participate in the nation's representative democracy.

4. The Effect of Dual Citizenship on the Laws of Diplomatic Asylum

Article 4 of the Hague Convention Relating to the Conflict of Nationality Laws states that a nation may not grant one of its citizens diplomatic protection against a country whose citizenship the individual also possesses.²¹⁸ This potentially limits the places in which a person with multiple citizenship could receive diplomatic protection.²¹⁹ This limitation, however, would only be relevant to the small number of individuals who are ever in need of diplomatic protection.²²⁰ Moreover, in the rare cases in which a dual citizen would want to seek diplomatic protection against his or her second country of citizenship, the citizen would not truly be at a disadvantage. Instead of receiving diplomatic

conflicts would be favorable to the Turkish population in Germany. *See id.* Many Turks are unwilling to give up their Turkish citizenship because they would be disadvantaged as foreigners under Turkish estate law. Dual citizenship would eliminate this concern. *See id.*

215. *See* von Münch, *supra* note 179, at 1200. A representative democracy relies upon the fair and equal voice of the represented in selecting leaders. If one person had the right to participate in more than one country's elections, questions of fairness would arise. *Id.*

216. *See id.* Professor von Münch also advocates that only voting in person be permitted. *Id.* This suggestion may be an unnecessary restriction. As long as a person casts a vote only in the election of his or her country of residence, it seems unnecessary to condition the right on physical presence at the poll when absentee voting is feasible.

217. *Id.* (citing § 6 III 1 of the European Voting Law).

218. *See* Schmalz-Jacobsen, *supra* note 140, at 92 (citing Conflict of Nationality Laws, *supra* note 86, art. 4).

219. *See* *Doppelte Staatsangehörigkeit*, *supra* note 140, at 95.

220. *See* von Münch, *supra* note 179, at 1200. For this reason, a possible conflict of diplomatic protection is primarily a legal theory consideration, rather than a practical one. *Id.*

protection from the second country, he or she would possess the rights of a domestic citizen—rights that are generally broader than diplomatic protection.²²¹

Agreements also address the way a third nation should treat a dual citizen who seeks diplomatic protection. The Hague Convention tries to resolve this potential conflict by stating that, while in a third country, a dual citizen is to be considered to possess only the citizenship of the country of which he or she is an “effective citizen.”²²² Germany’s Federal Commissioner for Foreigners’ Affairs, Schmalz-Jacobsen, suggests that this rule of effective citizenship should be extended to the two nations to which an individual claims to be a citizen.²²³ If this suggestion were implemented, a dual citizen would have no less diplomatic protection than a person possessing only single citizenship.

5. Multiple Loyalties

Legal agreements cannot quell concerns about dual loyalties as easily as they resolve conflicts about diplomatic protection and military obligations. Feelings of loyalty to one’s state of citizenship will vary and be personal in nature. Conservative politicians have expressed the concern that dual citizenship will give rise to divided loyalties.²²⁴ In fact, while considering the possibility of dual citizenship, it is important to remember that citizenship does not provide a legal guarantee of loyalty to a nation.²²⁵ Although a German citizen may feel a moral, political, or social obligation to his or her country, Germany does not impose upon its citizens a legally sanctioned requirement of

221. See *id.* at 1200.

222. Schmalz-Jacobsen, *supra* note 140, at 92. Professor von Münch also suggests that a dual citizen could simply choose the right to whichever diplomatic protection was in his or her best interest. von Münch, *supra* note 179, at 1200.

223. See Schmalz-Jacobsen, *supra* note 140, at 92.

224. For example, Heinrich Lummer, a member of the Christian Democratic Union, stated in 1993, “Turks are very proud of being Turks. It’s not a good thing to give German citizenship to people proud of being Turks. It’s not good to have a country in which all ethnic groups have the same rights.” *German Nationalization Policies*, *supra* note 126, at 11.

In reality, pride in being of foreign origin has not prevented many foreign residents from also feeling strong ties to their adopted home. For example, one Turkish resident explained, “I don’t feel like a foreigner. When I go on holiday, I get bouts of homesickness. And I still have pictures of me hammering away at the Berlin Wall. When the Wall finally came down, we celebrated, just like any German born here.” *Id.* See also note 140 (providing foreign residents’ stated interest in becoming citizens if they could have dual citizenship).

225. See von Münch, *supra* note 179, at 1200. Professor von Münch suggests that the inability to provide legal guarantees of loyalty should serve as a basis for considering the arguments that dual loyalties will result from dual citizenship. *Id.*

loyalty to the country.²²⁶ International law reflects the belief that citizenship is not a means of guaranteeing loyalty and obedience to one state.²²⁷ Therefore, permitting multiple citizenship does not necessarily result in incompatible multiple loyalties. If it were the case that citizenship unavoidably led to exclusive connections to a state, neither Germany nor other states could consider granting multiple citizenship.²²⁸ Because this exclusive relationship does not exist, the mere possibility of dual loyalties should not prevent the consideration of dual citizenship.

C. *Balancing Needs of Foreign Residents and Ethnic Germans*

One manner in which to better address the integration and citizenship needs of foreign residents would be to reconsider the policies related to ethnic Germans. In addition to affecting Germany's internal balance between immigrant populations, this issue has international implications. In 1995, the Polish foreign minister said that the "unlimited inheritability" of German citizenship was a threat to German-Polish relations.²²⁹ Domestic concerns also reflect the marked difference in the treatment of ethnic Germans and other immigrant populations.²³⁰ Chairman of the opposition SPD, Oskar Lafontaine, suggests that tenuous ties of recent ethnic Germans to Germany do not justify special treatment.²³¹ The 1993 changes to the laws governing ethnic Germans addressed some of these concerns through more restrictive acceptance policies. One suggestion that did not find adequate support in those debates was that ethnic Germans receive only temporary residency permits.²³² Another solution to the discrepancy would be to subject ethnic Germans to the same discretionary naturalization procedures that exist for other

226. See *id.*

227. See Rittstieg, *supra* note 87, at 1402. For example, international law guarantees the right of a citizen to leave his or her state. See *id.*

228. See von Münch, *supra* note 179, at 1200.

229. See *Germany's Outdated Citizenship Law*, *supra* note 177, at 10. The German minister said that if the German policy towards ethnic Germans remained the same, Poland would "soon have 30 million Germans in Poland." *Id.*

230. See *supra* note 117 and accompanying text.

231. See *Bad Blood on the Rise*, *supra* note 72. His party, however, lost elections in three German states after arguing during the campaign that limiting ethnic German immigration would help reduce the 11% unemployment rate. Some critics said that attempting to use this issue to win votes was inappropriate. See *Kohl's Coalition Gets Big Boost in German Election*, Deutsche Presse-Agentur, Mar. 24, 1996, available in LEXIS, German Library, DPA File; see also Walker, *supra* note 74.

232. See *Änderungen für das Vertriebenenrecht*, *supra* note 61, at 2081. A majority in the Bundesrat supported this proposal. *Id.*

immigrant groups.²³³ Chancellor Kohl and his coalition argue that Germany still has a special responsibility to the persecuted ethnic Germans, and that the special treatment of this group should continue,²³⁴ though this proposition is debatable.

D. *Integration without Citizenship*

Some opponents of multiple citizenship argue that changing an individual's legal status to reflect German citizenship will not affect the real problem: unsuccessful integration of foreigners into German society.²³⁵ It is true that, with or without German citizenship, the foreign population in Germany will not be part of the *German* population until integration is made legally, politically, and socially feasible. Therefore, it is instructive to examine the current status of integration policy, as well as some of the proposals for further integration. If opponents of dual citizenship prevail, foreigners' rights advocates must seek these alternative means of providing foreign residents legal and political rights.

1. Governmental Integration Efforts

During the last two decades, the German government has asserted that it supports the integration of long-term foreign residents into German society.²³⁶ Germany's Office of the Federal Commissioner of Foreigners' Affairs is mainly an advisory body.²³⁷ Its stated function is to develop guidelines for integration policy; however, it lacks its own budget for integration.²³⁸ The federal budget does allocate funds for the purpose of providing support

233. See *supra* Part III.C.

234. See *Bad Blood on the Rise*, *supra* note 72. The coalition finds further support in the willingness of young and ambitious ethnic Germans to accept low-paying jobs, *id.*, though the same could be said of other foreign populations.

235. See *Doppelte Staatsangehörigkeit*, *supra* note 140, at 95.

236. See Kanstroom, *supra* note 13, at 205. Integration includes the need for foreign residents to accustom themselves to German society's value and norms. *Id.*

Scholar Kay Hailbronner agrees that some degree of cultural assimilation of foreign residents is necessary to establish a minimal degree of cultural and political homogeneity. Hailbronner, *supra* note 1, at 72. She believes that the "melting pot" model of the United States is inappropriate in the smaller and more densely populated European nations. *Id.*

237. See SOYSAL, *supra* note 19, at 78.

238. See *id.* at 78. Compared to agencies in other European countries, Germany's Federal Commissioner for Foreigners' Affairs has a weaker position vis-à-vis both the federal states and migrant groups. *Id.*

programs for foreign residents.²³⁹ Most of this funding goes to centralized, semi-public institutions responsible for providing social and educational services to foreign residents.²⁴⁰ A committee within the Federal Ministry of Labor and Social Affairs coordinates the activities of the semi-public institutions. The committee's purview, however, does not include migrant groups.²⁴¹ Germany's federal system results in varying programs among the states and between the federal and state level.²⁴² As a result, at the local level more administrative resources exist that are allocated specifically to the foreign population.²⁴³ For example, Berlin, with its large foreign population, has established programs promoting equality of foreigners in legal, administrative, and social areas.²⁴⁴

An important method of representing foreign residents' interests is the *Ausländerbeiräte* (foreigners' councils).²⁴⁵ Industrial strikes involving foreign workers provided an incentive to local governments to grant some form of political representation to the foreign populations that were vital to the regions' economic success.²⁴⁶ The groups generally have consultative status and consist of representatives of the foreign population.²⁴⁷ Some state constitutions dictate the existence of foreigner councils to represent the interests of foreign residents.²⁴⁸ In some regions, foreign residents directly elect

239. See *id.* at 62. These programs included language training, vocational education, publicity, and providing information for foreign residents. *Id.* The 1968 federal budget for foreigners was 3.2 million DM (\$1.8 million). *Id.* at 63. By 1990, the figure had risen to 90 million DM (\$52.6 million). *Id.*

240. See *id.* at 62-63. Two of the most influential programs are education for migrant children and vocational training for adults. *Id.* The Catholic and Protestant Churches and the SPD participate as part of the semi-public institutions that provide for the migrant population. *Id.* at 77.

241. See *id.*

242. See *id.* at 62.

243. See *id.* at 78.

244. See *id.* at 64.

245. See *Turks Dominate in North Rhine-Westphalia Foreigners' Councils*, WEEK IN GERMANY, April 21, 1995, available in LEXIS, German Library, WKGERM File [hereinafter *Foreigners' Councils*]; see also Mark J. Miller, *Political Participation and Representation of Noncitizens*, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA 129, 137 (William R. Brubaker ed., 1989).

246. See Miller, *supra* note 245, at 137. Because of the strong economic incentive to recognize the foreign work force, one of the first elected councils was in the town of Troisdorf in the heavily industrialized Ruhr region of Germany. *Id.*

247. See SOYSAL, *supra* note 19, at 81-82.

248. For example, North Rhine-Westphalia's state constitution requires that all towns with more than 5,000 foreign residents have a foreigner council. *Foreigners' Councils*, *supra* note 245. The state constitution also provides that a town with at least 2,000 foreign residents must establish a foreigner council if 200 residents call for a vote. *Id.*

representatives in some elections, while in other regions councils consist of appointed foreign and German members.²⁴⁹ Despite the presence of *Ausländerbeiräte* throughout Germany, their role as advisors limits their influence on the political process and the role of foreign residents in that process.

2. Voting Rights for Foreign Residents

A much more controversial suggestion for integration is providing to foreign residents voting rights in communal elections.²⁵⁰ According to the proponents of voting rights for foreign residents, the democratic foundation of the modern German State demands that these individuals be permitted to influence the political decisions that affect their lives.²⁵¹ This is true because foreign residents make up more than eight percent of Germany's population and between fifteen to twenty-five percent of the residents of large cities.²⁵² If a quarter of the populations in the large cities is left disenfranchised, the foreign resident population is unlikely to experience a sense of integration.

Moreover, under the Maastricht Treaty, foreign residents from member states of the EU may stand for election and vote in communal elections in Germany.²⁵³ Some German states have proposed to resolve the discrepancy among foreign residents by extending voting rights to non-EU foreign residents.²⁵⁴ In 1990, the Federal Constitutional Court responded to statutes in three German states by ruling that extending local voting rights to foreigners is unconstitutional.²⁵⁵ Therefore, unless the

249. See Miller, *supra* note 245, at 137. In the April 1995 elections in North Rhine-Westphalia, less than 20% of the eligible foreign residents voted in the election for the foreigner councils. *Foreigners' Councils*, *supra* note 245.

250. The full breadth of this controversial issue is beyond the scope of this Note. The author addresses voting rights simply as one way to integrate the foreign population without providing full citizenship rights.

251. See *Doppelte Staatsangehörigkeit*, *supra* note 140, at 94 (citing comments in favor of dual citizenship by Professor Kay Hallbrunner of Konstanz University).

252. *Foreigners' Advocates*, *supra* note 9. For example, in Hamburg, approximately every seventh resident is not a German citizen, and this percentage is projected to rise to every fourth resident by the year 2010. *Id.*

253. See *supra* note 163 and accompanying text.

254. Hesse's Interior Minister Gerhard Boekel would support local voting rights for all foreign residents. *German Federal State to Let EU Foreigners Vote*, *supra* note 171. Berlin, Hamburg and Schleswig-Holstein adopted bills that would have allowed residents of five years or more to vote in local elections if the Federal Constitutional Court had not invalidated the laws. SOYSAL, *supra* note 19, at 128.

255. BVerfGE, E 83, 37, II, Oct. 31, 1990 (holding that foreign residents may not vote in local elections); see also BADE, *supra* note 11, at 23.

understanding of legal rights of foreigners changes fundamentally, a discrepancy will exist between the rights of EU foreign residents and those from other nations.²⁵⁶ Moreover, voting rights law re-emphasizes the division between ethnic Germans and other foreign residents, because ethnic Germans possess the right to vote.²⁵⁷

3. Integration of Foreign Residents into Law Enforcement and Legal Proceedings

The inclusion of foreign residents in legal enforcement and the justice system is an additional means of integrating the foreign resident population into the society in which they live. Although civil servants must generally be German citizens, some states have chosen to include foreign residents in their police forces.²⁵⁸ Officials hope that integration among police will lead to fewer confrontational interactions between police and foreign residents.²⁵⁹ Another role traditionally reserved for German citizens is that of *Schöffen* (lay judges) in certain criminal and civil trials.²⁶⁰ Proponents of extending participation to foreign residents argue that the administration of justice should reflect the entire population of Germany and not just the population of German citizens.²⁶¹ Like supporters of voting rights for foreign residents, proponents of lay judicial participation argue that the exclusion of as much as twenty-five percent of some cities' populations from this judicial activity is undemocratic.²⁶² Opponents argue that because criminal judgments are announced

256. See *supra* notes 156-59 and accompanying text.

257. See *supra* note 115 and accompanying text.

258. Norbert Robers, *Den Banden ein Bein stellen*, FOCUS MAGAZIN, Dec. 19, 1994, at 44, available in LEXIS, German Library, FOCUSD File. If the head of a civil service division finds that an "urgent need for service" is present, foreigners may hold civil service positions. *Id.*

259. *Id.* Nationwide, approximately 140 foreigners are members of the police force. *Id.* German officials hope that the foreign members of the police force will be able to lower the crime rate among the foreign population, especially in relation to the growth of international gangs. *Id.*

260. Lay participants in criminal courts are named *Schöffen*. General criminal cases include two lay judges and one professional judge. The lay judges are chosen by a committee to serve in office for four years. They are considered equal to their professional counterparts. For a more detailed description of lay participation in the German justice system, see FOSTER, *supra* note 5, at 106-107.

261. The lead proponent of foreign resident participation is the state of Hesse's Justice Minister Rupert von Plottnitz. He argues that foreign residents who have lived in Germany for ten years, speak German fluently, and have shown that their lives focus on Germany should be permitted to participate as *Schöffen*. *Dürfen Ausländer als Schöffen Urteilen?*, FOCUS MAGAZIN, Feb. 26, 1996, at 56, available in LEXIS, German Library, FOCUSD File.

262. *Id.* (arguments by Rupert von Plottnitz).

in the name of "the people," only German citizens may constitutionally participate in reaching judicial decisions.²⁶³ According to this interpretation of the Basic Law, the supreme judicial power comes from the German people and not the population that happens to reside within German territory.²⁶⁴ Strong opposition to foreign resident participation as *Schöffen* is based also on the belief that those people who want to become German citizens are able to do so. Therefore, opponents argue that participation as *Schöffen* will not improve integration, because those people who truly want to be part of the German population will simply become German citizens.²⁶⁵ Clear legal and administrative barriers prevent this, however. It is precisely because these barriers still exist that proponents put forth these alternative means of integration.²⁶⁶

V. PROPOSALS FOR GERMAN LAWMAKERS

German lawmakers must be willing to recognize that the foreign resident population is a permanent component of German society. Since the late 1980s, Germany has taken in more immigrants than the traditional immigration countries of Canada and Australia combined.²⁶⁷ Moreover, descendants of the original guestworkers continue to exist as a semi-integrated segment of the population. Whether these populations are fully recognized as citizens, they are part of German society.

Such phrases as "Germany for Germans" are unacceptable in modern German society and culture.²⁶⁸ Therefore, the policy of maintaining a naturalization right for ethnic Germans but stricter standards for other foreign populations contrasts with the general norms of German society.²⁶⁹ In reflecting the realities of German society, German naturalization law should recognize that becoming a German has less in common with bloodlines than with a deliberate choice about where to live and work.

263. See *id.*

264. See Rudolf Wasserman, *Multiethnische Gerichte?* [Multi-ethnic Courts?], 19 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 1253 (1996). The argument then follows that the only means of including foreign residents as lay participants would be to amend the Basic Law to change the constitutional status of foreigners. *Id.* at 1254.

265. See *Dürfen Ausländer als Schöffen Urteilen?*, *supra* note 261, at 56.

266. See generally *id.* (discussing reasons for alternative means of integration).

267. BADE, *supra* note 11, at 11.

268. See Kanstroom, *supra* note 13, at 208.

269. See *id.* (arguing that *völkisch* nationalism is very different from the cultural, constitutional, legal, and ideological make-up of Germany today).

Accordingly, German lawmakers must close the gap between the treatment of ethnic Germans and other foreign residents. In fairness to the long-time foreign residents in Germany, more careful scrutiny of the ethnic Germans' persecution claims must be a prerequisite to a right to German citizenship. It is inconsistent to accept ethnic Germans who were not truly under persecution as German citizens, while denying asylum to genuinely persecuted individuals who entered through land routes.²⁷⁰ Granting citizenship to newly arrived ethnic Germans is equally inconsistent with denying naturalization to other long-time foreign resident populations. Evaluating ethnic Germans' naturalization requests and those of other foreign residents by the same discretionary standards would equalize treatment of the groups. Preferably, there would be no discretionary denial of citizenship for any group of foreign residents who had met the naturalization requirements.²⁷¹

Moreover, no significant reason exists to deny third generation foreign residents automatic German citizenship.²⁷² It is difficult to imagine how a child brought up in a family that has lived for many years in Germany is less "German" than a child who has just arrived with his or her parents from an enclave in Russia. This contradiction indicates a need to adopt some degree of *jus soli* citizenship to reflect the realities of the immigrant situation. The *Kinderstaatszugehörigkeit* is an encouraging departure from the pure *jus sanguinis* model, though it still maintains the requirement that children choose one citizenship on reaching the age of majority.²⁷³ Because relinquishing prior citizenship impairs inheritance rights of certain ethnic groups, however, it continues to prevent increased rates of naturalization.

Although dual citizenship may not be a preferred status in international law, it is not forbidden. Treaties can address most potential conflicts of dual citizenship, preventing the collision of multiple rights and duties. If, as it appears, relinquishing former

270. See *supra* notes 51-53 and accompanying text for a discussion of Germany's current asylum law.

271. Once a foreign resident has made the decision to apply for German citizenship and has met the criteria for naturalization, there should be no discretion to deny citizenship. The standards for citizenship are stringent enough to prevent individuals from applying for citizenship if they are uncertain about their commitment to Germany.

272. This proposal satisfies conflicting concerns in the citizenship debate. Citizenship for third generation residents avoids the fear of granting German citizenship to children of asylum seekers waiting for review of their petitions, of illegal immigrants, or of happenstance births on German soil. Yet it addresses the legitimate concern that long-time residents in Germany should receive legal recognition.

273. See *supra* notes 175-78 and accompanying text.

citizenship is the primary hurdle to increasing the naturalization rate, this requirement should be lifted. In fact, Germany's chances to successfully integrate its immigrant population will increase most if immigrants are legally integrated. Although citizenship guarantees neither loyalty nor integration, without citizenship, integration is nearly impossible. Currently, long-time foreign residents are denied franchise, while foreign residents of other EU countries and ethnic Germans may vote. If naturalization laws were liberalized, a greater percentage of the immigrant population would possess the full legal protections and rights of the Basic Law.

VI. CONCLUSION

Although the inconsistencies among Germany's foreign resident population are great, viable solutions exist. How Germany chooses to address the inconsistencies in its legal treatment of its foreign population will depend not only on which solution is fairest to the foreign population, but also on which solution is the most politically palatable. For years, liberal parties and foreigners' advocates have urged commitment to integrating the foreign population and altering the naturalization laws. It is time for a broader spectrum of lawmakers and citizens to support these proposals. German lawmakers should take the initiative in recognizing that Germany has become an *Einwanderungsland*—for the guestworker population, legitimate asylum seekers, ethnic Germans, and citizens of other European Union states. Only then will Germany be able to create a legal framework in which its immigrant and native populations can live and participate in harmony.

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