

Reconsidering Citizenship and Nationhood in France and Germany: The Integration of the 21st-Century *Gastarbeiter*

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To Western observers, burning cars have become the symbol of the European failure to integrate what tends to be a predominantly Muslim immigrant population. Recently, a *New York Times* article reported that even in the bastion of welfare-state liberalism, Sweden, car-burning is not an unheard-of pastime for immigrant children in poor areas.¹ To European states in the process of revisiting their immigration laws, cars may not be the priority, but what they symbolize – the ghettoization of immigrant and racial minorities, the failure of welfare state programs, the lack of integration of this new wave of immigrants – has recently become a renewed priority.

It was T.H. Marshall² who first showed that the programs of the welfare state can serve to promote (or deter) integration or assimilation by foreigners. First, as Gallya Lahav notes, “the literature on migration and the welfare state suggests that, historically and presently, threats to the welfare state focus on its central features – national identity, homogeneity, or solidarity. ... The principles of the welfare state presuppose the existence of non-members.³ More relevant here, however – and particularly in Western Europe, where access to social services is no longer governed by citizenship – is the notion that the involvement of immigrants in the welfare state, in programs including, but not limited to, educational ones, can help to define them as willing participants in their host country’s society, only a step away from the social meaning of citizenship.⁴ I employ the term integration in this paper to refer to any policy that aims to lower the we/they barrier in the

¹ Christopher Caldwell, “Islam on the Outskirts of the Welfare State,” *New York Times*, 02.05.2006.

² T.H. Marshall, *Citizenship and Social Class* (London: Pluto Press, 1987).

³ Gallya Lahav, *Immigration and Politics in the New Europe* (Cambridge: Cambridge University Press, 2004), 164.

⁴ See the work of North, de Wenden and Taylor, quoted in Yasemin Soysal, *Limits of Citizenship* (Chicago: University of Chicago Press, 1994), 124. The most relevant factors for gaining access to the welfare state are legal status and physical presence in the country of residence.

hopes of creating greater social harmony and, for the immigrants themselves, prosperity and well-being. Or, as Adrian Favell has it, “integration is said to hinge on formalizing the idea of associative membership within the political space of the nation which, by defining boundaries and the lines of in/out between citizens and foreigners, establishes the shape and unity of a modern nation-state.”⁵

I will demonstrate that both France and Germany are pursuing what appear to be on first glance incoherent immigration policies, drawing specifically on the German 2003 Immigration Act, and the most recent *avant-projet de loi* of French Interior Minister Nicolas Sarkozy, a law whose fate will be decided in the coming months. Though both countries are continuing to develop programs that draw on the resources of the welfare state to integrate past immigrants, they are simultaneously pursuing new policies of extremely limited immigration, or “immigration by choice.”⁶ This new direction is specifically apparent in the veiled but apparent return of “economic” immigration, until recently banned in Western Europe, and, with it, the potential return of the *Gastarbeiter* (guestworker). The combination of these two realities suggests that while Germany and France are both increasingly ready to use welfare state programs to promote integration, they are simultaneously hoping that the control of immigration is possible, even within the open-borders Schengen zone. I will also show that these policies are consistent with the ideological legacies of citizenship in the two countries.

Theoretical framework:

The notion of “citizenship” has been continuously defined and redefined in the literature. Here, I will base my evaluation of what I call “citizenship policy” on the work of

⁵ Adrian Favell, *Philosophies of Integration*, second edition (Basingstoke, Hampshire: Palgrave, 2001), 45.

⁶ “*Immigration par choix*,” a Sarkozy expression.

T.H. Marshall. In *Citizenship and Social Class*, Marshall defines citizenship as membership in a community that confers full and equal rights and duties. He defines three types of citizenship: civil, political and social. For Marshall, civil rights began to be conferred in the 18th century, political rights in the 19th century. It was during the rise of the welfare state in the 20th century, however, that a citizen's claim to social rights became the norm. Although naturalization and acquisition of "citizenship" in the modern democratic state involves acquisition of all three types of Marshallian citizenship, it is specifically social citizenship that is of interest here.

Secondly, in any evaluation of the "citizenship policy" of France and Germany, the reference of choice remains the framework proposed by Rogers Brubaker in his seminal *Citizenship and Nationhood in France and Germany*. Recent developments in both France and Germany, however, suggest that the *Jus soli/Jus sanguinis*⁷ distinction that was crystallized throughout the 19th century is no longer so clearly enshrined in the countries' immigration law, leading some scholars to suggest that the distinction is no longer relevant. Certainly, the standard theoretical frameworks for evaluating citizenship and integration in these two countries must be reconsidered in the context of new national laws, as well as in light of the increasing influence of European Union policy. But I will show as part of this study that the legacies of citizenship law are apparent in the integration and naturalization policies of the two countries.

⁷ See Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge: Harvard University Press, 1992). Brubaker shows that, historically, German citizenship has been consistently defined by *Jus sanguinis*, in which the right to German citizenship is transmitted, literally, by blood. In "republican" France, by contrast, the right to citizenship is governed by the principles of *Jus soli*, in which birth and residence within the French state determines the right of citizenship.

The politics of integration and the role of the (welfare) state:

As noted earlier, lack of citizenship in Western Europe is not technically a barrier to access to the welfare state. Heisler and Schmitter Heisler demonstrate that the relatively easy access to social rights can be attributed to a status of “denizenship,” which tends to confer most civil and social rights on all those living legally within a country.⁸ However, as Hein notes, the structure of the welfare state shapes “the employment of migrants in resettlement programs, the formation of immigrant associations, and immigrants’ rights to civic participation and social citizenship.”⁹ One must also distinguish between access to the welfare state as such and provisions directed specifically at immigrants. Lahav refers to the former as “direct” provisions of the welfare state, equal distribution of a general allocation of benefits. Still at stake are “indirect” welfare state programs and access, a rubric under which Lahav includes special measures on behalf of immigrants, affirmative action and the removal of legal discrimination.¹⁰ Moreover, it has been shown historically that access to the welfare state – which confers a certain level of well-being and, notably, civic education (for school-aged children particularly) – can be one of the key factors in promoting successful integration.¹¹ The crucial nature of the welfare state is evident in its use by governments in shaping response to immigration policies: for instance, because Germany has long been seen by immigrants as a grail of sorts for social welfare, the Asylum Seekers’ Benefits Act of

⁸ Martin Heisler and Barbara Schmitter Heisler, “Citizenship – Old, New and Changing,” in *Dominant National Cultures and Ethnic Identities*, Jürgen Fijalkowski, Hans Merken and Folker Schmitt, eds. (Berlin : Freie Universität, 1990).

⁹ Jeremy Hein, “Immigrants, Natives and the French Welfare State,” *International Migration Review* (25: 3, 1991), 592-593.

¹⁰ Ladav 35.

¹¹ The school has since the “dawn of nationalism” been the dominant locus for the creation of citizens, as Eugen Weber shows in *Peasants into Frenchmen* (Stanford: Stanford University Press, 1976). It is no wonder that foreigners who have been schooled for five years in French public schools can petition to have the subsequent residency requirement for naturalization waived.

1993 cut transfers to asylum seekers whose applications had not yet been accepted to 20-30 percent below welfare levels.¹²

It is relevant here, then, to consider the type of state structure, and notably welfare state structure, in France and Germany. Germany's membership model is a classic example of the corporatist state – and welfare state¹³ -- in which various trade unions, churches, and semi-public organizations play an important role in policy development. France, by contrast, though characterized as a corporatist welfare state by Esping-Andersen, notably combines statist and social democratic policies. The state plays a significant – almost exclusive – role in determining policy, with only trade unions having any particular clout. For immigrants, this means that integration can be only the domain of the state; in Germany, by contrast, other organizations are involved in immigrant politics. Indeed, it is because interest groups are so closely linked to the state that they play such key roles in policy formation.

Germany inaugurated on January 1, 2005 its first new legislation governing immigration.¹⁴ The new law calls for a coordination of integration measures with help from churches, trade and labor unions, employers' associations, voluntary welfare organizations, and other social advocacy programs. In Germany, for instance, the Ministry of the Interior specifically supports “the integration of immigrants in local neighborhoods.”¹⁵ Both of these stipulations are evidence of the corporatist nature of German integration policy. This is in direct contrast with French integration ideology, which holds that the integration of neighborhoods as discrete entities tends to reinforce a sense of belonging to a previous nation

¹² Ralph Rotte, “Immigration Control Policies in United Germany,” *International Migration Review* (35:2, 2000), 380.

¹³ See Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton: Princeton University Press, 1990).

¹⁴ Until 2005, immigration, the rights of immigrants, and questions of citizenship were covered by the *Grundgesetz* and subsequent amendments and legal rulings.

¹⁵ Report of the Bundesministerium des Innern, available online http://www.zuwanderung.de/english/1_anwerbung.html.

or ethnic group (since immigrants tend to cluster in specific geographic areas).¹⁶ This is echoed in the lack of accommodation of specific religious practices by French authorities, as compared to the German government, which has gone to some lengths to fund, amongst other things, Turkish schools and mosque construction.¹⁷ “ By contrast, the “republican model” in France has always favored assimilation, both by immigrants and the French, who are themselves very guarded about, for instance, public religious displays. It is no surprise that, while access to citizenship has historically been quasi-impossible, the corporatist nature of the welfare state allows immigrant participation in many welfare state programs.

Jennings identifies four characteristics of French thought on the subject of immigrant integration: 1) integration of immigrants must be in accord with the secularism of the state; 2) it is individuals rather than groups that integrate 3) integration presupposes rights and duties 4) immigrants and the French must be treated equally.¹⁸ Perhaps the most important of these is the notion that individuals may integrate, but not groups: in a republican democracy, groups are not to be differentiated as such, and indeed the targeting of nationals of a particular country is only likely to bring about dreaded *communautarisme*. In Germany, bilateral treaties have been established with certain nations, establishing, amongst other things, preferential treatment for Turks, for whom unemployment or receiving welfare does not affect resident status in Germany.¹⁹

The issue of integration is perhaps more delicate when specific groups cannot constitutionally be targeted by welfare state programs. And, as Favell notes, the French welfare state has seen better days: “one of the striking consequences has been the appearance

¹⁶ Indeed, Jeannette Money argues that spatial concentration is the source of tension between immigrants and citizens of the host country. See Jeannette Money, “No Vancancy: The Political Geography of Immigration Control in Advanced Industrialized Countries,” *International Organization* (51: 4, 1997), pp. 685-720.

¹⁷ See Joel Fetzer and J. Christopher Soper, *Muslims and the State in Britain, France and Germany* (Cambridge: Cambridge University Press, 2005).

¹⁸ Jeremy Jennings, “Citizenship, Republicanism and Multiculturalism in Contemporary France,” *British Journal of Political Science* (30:4, 2000) 583.

¹⁹ Soysal, 124.

of ghettos and racialised poverty of almost exactly the kind French politicians and intellectuals claim ‘couldn’t happen here’: a world not at all reflected in the positive republican policy statements about integration and individualist social success for immigrants.”²⁰ Though certain policies, including those of *Zone d’urbanisation prioritaire* and *Zone d’éducation prioritaire* are, *de facto*, more consistently applied in places where the immigrant population is large, the *de jure* explanation is that these are poor and violent areas, not immigrant ones.

The new Immigration Act calls for the promotion of the integration of foreigners, which is to be largely accomplished through the means of a state-sponsored integration course, which “covers measures to acquaint foreigners with the language, legal system and culture in Germany and Germany’s history.”²¹ The stated goal of the course, however, is to “enable them to act independently in all aspects of daily life, without the assistance or mediation of third parties.” Immigrants allowed to attend an integration course are 1) those receiving a residence permit for the first time; 2) those requiring the course for employment; 3) those preparing for the subsequent immigration by dependents; immigrants in Germany on humanitarian grounds. An integration course is required for 1) those entitled to attend who cannot communicate in German on a basic level; 2) those immigrants whose local immigration offers recommends that they do so. Finally, for foreigners required to attend but who do not do so, “the body approving the foreigner’s benefits may reduce the benefits by ten per cent for the period of non-attendance.”²²

Since 2003, France has been experimenting with the “Contrat individuel d’accueil et d’intégration” (CAI), which also consists largely of civic and language courses. Because it is in the form of a contract, however, the CAI also emphasizes, for instance, respect of the laws

²⁰ Favell, 186.

²¹ “Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners, *Federal Law Gazette Volume 2004*, Part I, no. 41, 08.05.2004.

²² “Residence Act 2004,” *Federal Law Gazette Volume 2004* (Germany), Part I, no. 41, 08.05.2004.

of *parité*, or male-female equality.²³ Until April 2003, only those benefiting from reunification with their families in France, families of refugees and foreign members of French families were eligible for a CAI. The law now allows for CAIs to be granted to all refugees, those holding the *carte vie privée vie familiale* and immigrants who have been granted the right to work for at least one year. The French government estimates that this will extend the privileges of the CAI from 100,000 to 114,000 people per year.²⁴ The stated goal of the document is specifically to make “the welcome of those foreigners authorized to live in France for family reasons, one of the priorities of the politics of integration.” The Office des Migrations Internationales is responsible for the bulk of the programs, including the presentation of the CAI; testing for French language ability; scheduling for civic, linguistic and “Vivre en France” workshops and classes; and help with contacting social services. Under the new law, the CAI would become obligatory. Though in itself, the CAI can be described as a housewarming gift, the bureaucratic nature of a “contract” could prove a deterrent, especially to illiterate or non-skilled immigrants.

	France	Germany
Language courses	200-500 hours	Basic and intermediate, totaling 600 hours.
Civic courses	System of government	System of government
	Rights and duties of the citizen	Values of equal rights, tolerance, religious freedom
	Principles and values of the Republic	“Significance of a free and democratic order”
Social work	Interview with possible reference to a social worker	None

Table 1: Characteristics of French and German integration programs
Source: *Immigration Act 2003 (Germany)*; *ANAEM Web site (France)*

²³ Immediately targeted by critics as a thinly veiled threat to Muslims wishing to import polygamous or abusive relationships to France.

²⁴ Protocole d'accord DPM/OMI/FASILD relatif à la mise en oeuvre de l'expérimentation du Contrat d'accueil et d'intégration signé le 24 juin 2003.

The early results from the trial run of the CAI in France, and the first results of the new *Integrationspolitik* show that voluntary integration schemes have not yet found a major audience among citizens at whom they theoretically most need to be targeted. In 2004, women formed the majority of those enrolled in the programs in both countries, although the difference was more overwhelming in Germany (65,7%) than in France (52.2%).²⁵ Germany reported an enrollment of 90,289 people; the French program, which at the time was in a trial run and directed mainly at those benefiting from the policy of *regroupement familial*, enrolled 37,613 people (out of 41,616 who were offered a contract). The populations most likely to respond to the offer in the two countries say something about the work that is needed to integrate other segments of the immigrant population: in Germany, 80.7 percent of those enrolled were either unemployed or employed in the home; in France 60.4 percent of those enrolled were members of French families.

The return of the Gastarbeiter and the retrenchment of the policy of regroupement familial:

In its recent response to the *avant-projet de loi* on immigration in France, Jean-Marie le Pen's Front national noted condescendingly the degree to which the law incorporates or anticipates relevant EU law. The EU certainly has accumulated a considerable number of laws and directives related to immigration. It is already the case that it is Brussels, not Berlin or Paris, that establishes which foreign nationals are required to obtain visas prior to long-term residence in the member states. Sarkozy's law specifically echoes a number of priorities of EU immigration law, particularly in the targeting of illegal immigration (a growing concern for the EU as a whole) and in the partial harmonization of French law with current EU law. Just three months ago, the Commission presented a so-called *feuille de*

²⁵ See "Integration," communiqué of the Bundesamt für Migration und Flüchtlinge, 08.19.2005 (available online on the BMF Web site); and "Contrat d'Accueil et d'Intégration: Bilan de l'année 2004," SSEC (available on the Web site of the Agence Nationale de l'Accueil des Etrangers et des Migrations, ANAEM).

route (“roadmap”) for legal immigration, which includes specifically targets the development of “admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market.” The Policy Plan focuses specifically on economic migration and consists most importantly of laws aimed at regulating the conditions of entry and residence of immigrants and policies aimed at improving the integration of economic migrants and their dependents.²⁶ The focus on so-called “economic” migration is especially important because it constitutes a complete reversal of policy: “economic” migration was banned in all Western European countries after the oil crisis of 1973.

Germany was the first state to sign a bilateral agreement on labor recruitment, in 1955, with Italy. Many other European states followed, and continued to import labor until November 1973, when labor importation was abruptly ended (throughout Europe). Germany ended this period of “economic” migration with 2.6 million foreign workers. It should be noted, however, that these workers were not seen as immigrants, particularly not in Germany,²⁷ but as workers, who would “help enhance Germany’s economic growth but would return to their country of origin when the nation’s labor needs had been met.”²⁸ It was only when *Gastarbeiter* began claiming moral and legal rights to be reunited with their dependents that European countries began to accept family immigration: as Christian Joppke notes, “European states did not actively solicit the belated arrival of the spouses and children, not to mention the extended family, of its labor migrants. ... In this sense, European family immigration is unwanted immigration.”²⁹ Family immigration has been historically the most difficult to control (among legal forms of immigration), because the reunification of families

²⁶ “Economic migration in the EU – Commission presents a roadmap on Legal Migration,” IP/05/1664, 12.21.2005. Available online at <http://europa.eu.int>.

²⁷ Because of immigration from former colonies and Algeria, France did witness a fair amount of non-economic migration during this time period.

²⁸ Fetzer and Soper, *Muslims and the State in Britain, France and Germany* (Cambridge: Cambridge University Press, 2005), 100.

²⁹ Christian Joppke, “Why Liberal States Accept Unwanted Immigration,” *World Politics* (50: 2, 1998) 281-282.

hinges on principles of fundamental rights. Moreover, family immigration and the suspension of the *Gastarbeiter* program were related, because it was as workers began to settle in Germany that they sought reunification with their families. It was not until then that immigrant policy began to truly include the programs of the welfare state, which were required to provide housing, education and health care to the families of what were previously thought to be *Gastarbeiter*.³⁰

The new German neo-*Gastarbeiter* policy promotes the immigration of self-employed persons who can create a minimum of 10 jobs and invest one million Euros in the German market; further, while the ban on the general recruitment of unqualified labor remains, exceptions are now made for individual occupation categories. The French law, should it be enacted, would create lists (though not quotas, which would be unconstitutional) of certain understaffed jobs that would specifically permit employers to hire foreign workers.³¹ The other major provision of the law targets illegal immigration by effectively ending so-called “regularization” of illegal immigrants residing in France for ten years, which had previously been automatic but will now be subject to case-by-case review by local prefectures. Both of these policies would have the effect of emphasizing the need for immigrants to return to their home countries. The policy was made clear when Sarkozy told *Le Monde* that he expected students recruited via new economic migration laws to return to their home countries after the end of their studies, noting that he wanted to avoid the “brain drain” that leaves some countries with many Bac-4 and others with many Bac+10.³² In both the German and French cases, we are witnessing a new era in which labor-related immigration is purposely sought. For immigrants, the upshot could well be a return to the

³⁰ James Hollifield, “Immigration Policy in France and Germany: Outputs versus Outcomes,” *Annals of the American Academy of Political and Social Science* (485: May 1986) 120.

³¹ Currently, the list would include mechanics, industrial maintenance workers, hospitality workers (food and hotel industries) and nurses.

³² “Nicolas Sarkozy précise son avant-projet de loi relatif à l’immigration et à l’intégration,” *Le Monde*, 02.05.2006.

policies of the *Gastarbeiter* 1950s and 1960s, in which foreigners were not considered immigrants.

A clear shift in the focus of immigration law is evidenced by Sarkozy's rhetoric of "immigration by choice," as opposed to what he has called an "endured immigration" (*subie*). Although France has long had a clause waiving residency requirements for naturalization for those who "contribute to the radiance of the French nation," the new law aims to be even more explicit about the desire to attract foreign talent. The specifics of the proposal include a requirement that the government quantify the number of visas and *cartes de séjour* available based on resources in all sectors, from work to housing to education. Amongst other things, the instauration of a Canadian-style points-based system (a system that Germany, incidentally, reneged in the Immigration Act). Perhaps most importantly, however, the *projet de loi* aims to limit the possibility for immigrants to bring families to France under the auspices of the politics of *regroupement familial*. Specifically, the law will extend the waiting period from one to two years, and will make the acquisition of French citizenship by foreign spouses more difficult. Although the government claims that the intent of the law is not to retreat from France's consistently pro-family immigration policy, Sarkozy still aims to develop firmer restrictions about marriage, requiring three years of cohabitation and adherence to the CAI before being granted residence. It is of interest to note that the stated goals of the German Immigration Act mimic those of the EU "roadmap": they are 1) access to the labor market for highly qualified individuals; and 2) the development of an active integration policy. Regulations for subsequent immigration of family members, however, have not changed significantly from previous law, though family immigration has always been subject to fairly strict rules in Germany. Most notably, the immigrant must be in possession of a settlement or residence permit, as well as adequate living space. German law

also limits immigration of children above the age of 16, who can be granted a residence title only in the cases of hardship or “on the basis of a positive integration prognosis.”³³

The legacy of Jus soli and Jus sanguinis: Myth or reality?

That France would be a “country of immigration” is certainly consistent with the contention that citizenship in France is governed by the laws of *Jus soli*, which are fundamentally more flexible than those of *Jus sanguinis*. The republican ideology of *Jus soli* theoretically grants to any foreigner residing (legally) within the country’s borders for the required waiting period – or for anyone born in France – the right to citizenship. It is then no wonder that France is, according to many scholars, the *only* country in Western Europe that has a true legacy as a “country of immigration.” And yet, since the 1990s, Germany’s naturalization laws – a good indicator given that immigration as such is not particularly well tolerated in either country – come closer to the ideals of *Jus soli* than French law. Currently, children born in Germany to foreign parents, at least one of whom has been a resident of Germany for eight years with an unlimited right to residence, are eligible for German citizenship at birth.³⁴ By contrast, although children born in France to foreign parents have “full right” to French citizenship, they can acquire it only at the age of 18, and this only with proof of consistent residence in France.³⁵ As Kastoryano notes, “Germany stands today as one of the most liberal states in Europe with regard to citizenship.”³⁶ In fact, since the early

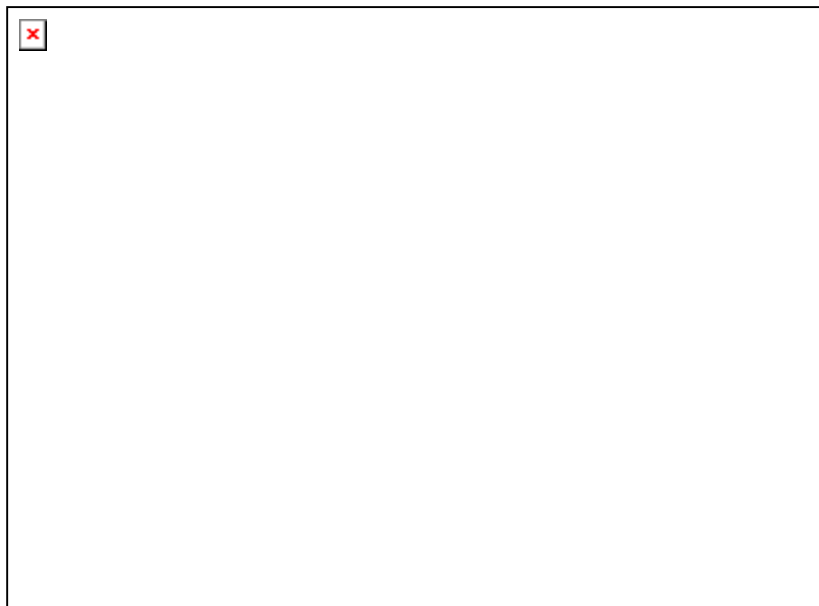
³³ Web site of the Auswärtiges Amt.

³⁴ Any children who become naturalized in Germany under this law but retain the citizenship of their parents’ country must choose between foreign or German nationality at the age of 18.

³⁵ Specifically, the child must have lived in France continuously since birth, or for at least five consecutive years since the age of 11. Parents can request French nationality for their French-born children at the age of 13 – with the child’s consent – if the child has lived in France since the age of eight. A child aged 16 or older can request French nationality himself. However, in both of these latter cases the granting of citizenship is subject to declaration, and is not given by “right.”

³⁶ Riva Kastoryano, *Negotiating Identities: States and Immigrants in France and Germany* (Princeton: Princeton University Press, 2002) 61.

1980s, the German population has included a higher percentage of foreigners than France (see Graphic 1).



Graphic 1: Foreigners as percentage of population
Source: *INSEE and Statistisches Bundesamt Deutschland*

One cannot conclude summarily, however, that changes in law – brought on not only by the constraints of the European Union but also the stress of the foreign-born population on the state – are accompanied by immediate reformulation of a country’s conception of the citizen. Kastoryano pessimistically argues that “Germany hesitates between an ethnic conception of the nation and the requirements of a democratic society and hence pays lip service to the idea of a multicultural society.”³⁷ And though there has been a considerable *rapprochement* of the two countries’ policies, it is the differences that betray a certain continuity. For instance, one notes in the case of the French law that there is a certain legacy of *Jus soli*: it is not enough for a child to simply be born in France, especially in this era of immigration and globalization; to be a citizen of a “republican” state, the child must also have spent at least five of his formative years in France. In fact, as recently as 1998, a new

³⁷ Kastoryano, 4.

law – whose main purpose was to reinstate the automatic acquisition of French citizenship for children born in France – specifically reaffirmed France’s commitment to *Jus solis*. German law also betrays a legacy of *Jus sanguinis*, for instance, in the clear refusal to grant German nationality in conjunction with any other, both for immigrants and for German citizens who seek to acquire the citizenship of a second country. Immigration law as pertains to so-called *Aussiedler* (“repatriates”) also reflects the historically-based nature of the German definition of “citizen”: after witnessing a steady increase of “repatriates” whose spouses and children were not of German origin, a new law as of January 2005 required that those accompanying “repatriates” demonstrate sufficient knowledge of the German language. Perhaps most importantly, German identity, which is legally defined by the *Grundgesetz* (Article 116) continues to differentiate between *Staatsangehörigkeit*, or citizenship (to which all citizens, of foreign or German origin, belong) and *Volkszugehörigkeit*, or those who are considered by law to have a right to claim German citizenship. This category continues to refer to all those of ethnic German origin, whether German citizens or not, while excluding those of all other ancestries, whether or not individuals have German citizenship. German citizenship law dates from the 1913 *Grundgesetz*, in which *Nationalstaatsprinzip* affirms that there is a material tie between a citizen and his or her nation.”³⁸ As Herbert Dittgen notes, citizenship law is consistently “connected with national identity, collective memories, and public expectations about diversity, unity and liberties.”³⁹

In Germany, the integration of foreigners continues to be, despite recent legal changes, especially difficult in terms of official integration (naturalization). In 1993, despite changes in the early 1990s meant to ease naturalization requirements, almost two-thirds of foreigners in Germany had lived their for ten years; perhaps more strikingly, 80 percent of

³⁸ Jeffrey Checkel, “Norms, Institutions, and National Identity in Contemporary Europe,” *International Studies Quarterly* (43:1, 1999), 97.

³⁹ See Hermann Kurthen, “Immigration and the welfare state in comparison: differences in the incorporation of minorities in Germany and the United States,” *International Migration Review* (31, 4: 1997), p. 721-733.

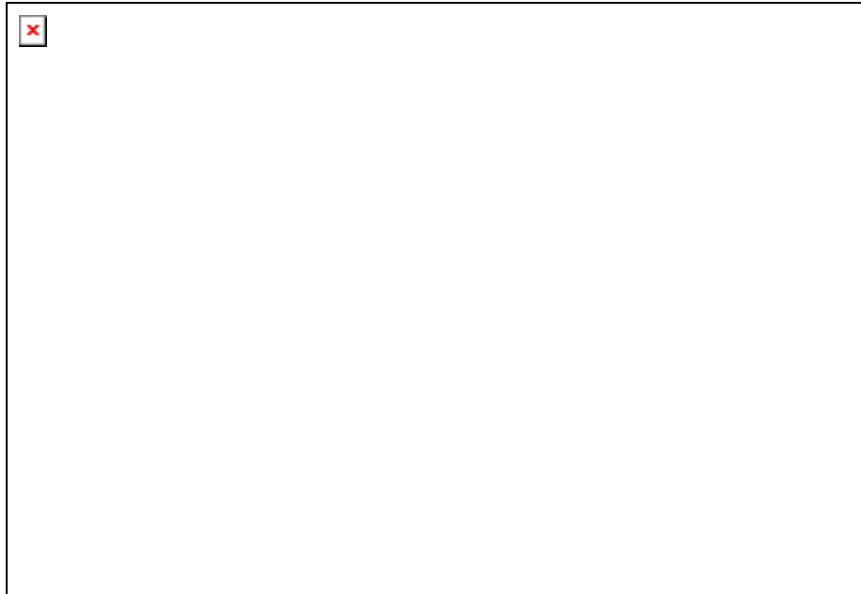
foreigners under 18 were born in Germany.⁴⁰ In 2004, there were still 1,342,000 children in Germany who were considered “foreigners.”⁴¹ Graphic 2 shows that, France has consistently approved a rate of naturalization nearly as high as Germany’s (in total naturalizations), despite the fact that France has a smaller population of foreigners. Moreover, Graphic 3, which shows naturalizations of *Aussiedler*, or ethnic Germans (*Anspruchseinbürgerungen*), as a proportion of total naturalizations: it is not uncommon for these naturalizations to constitute nearly half of all naturalizations in a given year. (Foreigners who are not ethnic Germans are thus naturalized at much lower rates than *Aussiedler*, and at much lower rates than foreigners in France, for example.) Some scholars have posited that this is in part because of the draconian laws against dual citizenship. Moreover, though the wait period for naturalization was reduced from fifteen to eight years by recent amendments, naturalizations are only granted to foreigners demonstrating knowledge of the German language who are committed to the tenets of the *Grundgesetz*.



Graphic 2: Naturalizations by Year in France and Germany
 Source: *INSEE and Statistisches Bundesamt Deutschland*

⁴⁰ Philip Martin, “Comparative Migration Policies,” *International Migration Review* (28: 1, 1994) 167.

⁴¹ Statistisches Bundesamt Deutschland.



Graphic 3: *Anspruchseinbürgerungen* (Naturalizations of ethnic Germans) by Year
Source: *Statistisches Bundesamt Deutschland*

Recent developments in German and French immigration policy show an inclination toward return to the *Gastarbeiter* policies of the mid-twentieth century, where immigrants were invited into the country only on the basis of labor needs and where attempts at integration are based on the need for job skills and, when necessary, the integration of family members. Moreover, the new laws seem to betray a tendency to believe that the past wave of relatively uncontrollable immigration – that has brought much conflict to two societies with strong national characters – will have been the last. Given the recent (veiled) resurgence of the policy of “economic” migration, it seems possible that integration, in fact, is not designed in order to favor immigrants (constitutionally impossible in France in any case), but “for the benefit of all and their collective cohesion.”⁴² Meanwhile, because of EU restrictions, German and French immigration and citizenship policies are coming to resemble each other even more. And yet, there is evidence that the legacies of *Jus soli* and *Jus sanguinis* remain. Indeed, although one commentator pointed to the 1990 German immigration law as evidence

⁴² Jennings, 583.

of a tendency towards *Jus soli* principles, given its lack of reference to ethnic and cultural assimilation, the new Immigration Act is particularly firm on the need for integration. In Germany, some activists continue to argue for immigration policy targeted at specific groups, with the hopes that the subsidization of ethnic organizations could help to facilitate integration into mainstream society.⁴³ Ironically, it is German critics of immigration policy, not French, who have historically argued that the extension of rights and opportunities to immigrants could serve to reduce the need for strong group identity, thereby preventing the development of an ethnic underclass. The French, meanwhile, continue to oppose any differentiation among ethnic groups, a move some contend has contributed to the civil unrest of the past few years. In both cases, one must certainly consider whether the patterns of assimilation of certain Polish immigrants in Germany, the Irish and Italians in America, and other groups throughout the Western world, were a time-specific occurrence. Indeed, whether the new *Gastarbeiter* and his family can successfully integrate European society remains to be seen.

⁴³ Martin, 167.