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Education
Temple Political & Civil Rights Law Review

Spring, 2007

16 Temp. Pol. & Civ. Rts. L. Rev. 457

LENGTH: 7943 words

Article: CONSTITUTIONAL PATRIOTISM, CITIZENSHIP AND BELONGING IN AMERICA AND GERMANY

NAME: by David Abraham*

BIO: * David Abraham is Professor of Law at the University of Miami, School of Law. He has a B.A. and Ph.D from the University of Chicago and a J.D. from the University of Pennsylvania. He works and has published in the areas of comparative citizenship, labor relations, political economy, legal history, and social theory.

LEXISNEXIS SUMMARY:

... It may be argued that the very notion of collective identity based on, and reinforcing solidarity, is itself a fraud, the fruit of successful power and governance claims by self-interested but hegemonic power blocs. ... But as Renan also observed, today's nation "is the culmination of a long past of endeavors, sacrifice, and devotion" that go beyond any shared political principles or constitutional patriotism to create an inherited cultural identity. ... Human rights and state sovereignty claims may conflict with each other, but it is important to remember that the latter may also be a vehicle for such rights. ... Here, Arendt's experience as a refugee, someone made stateless on account of her ethnicity, led her not to turn against states and toward human rights internationalism but rather to insist that states be civic polities with citizenship based on legal criteria. ... Until very recently, Germany's entry regime, in turn, was marked by strong border and internal administrative apparatuses, little likelihood of adjustment between and among categories of visa permissions, an exceedingly low naturalization rate, no jus soli birthright citizenship, highly regulated labor markets, a strong system of available social welfare benefits, and a high salience to citizenship. ... Germany: From Rights to Citizenship Jus sanguinis, citizenship by blood descent, has sat at the center of German nationality (staatsangehorigkeit) and citizenship (burgerschaft). ... Constitutional or civic patriotism makes of national belonging a form of rational attachment that is compatible with liberal commitments to individual rights as well as with social commitments to equality. ... As to civil and political rights, the picture resembles that of the United States: on non-immigration issues, foreigners enjoy the same civil liberties as Germans; with rare exceptions, non-EU foreigners may not vote or occupy upper-level civil service or political offices.

TEXT:

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In these pages, I address the utility and shortcomings of "constitutional patriotism" n1 as a basis for politics of solidarity and redistribution in immigrant societies. In particular, I want to figure out if an historical-cultural principle

may be added to the abstract and formal-legal demands of constitutionalism. Of course, the Left has more than once sought to speak for "the nation" as a concrete historical entity while at the same time holding fast to a universalist, constitutionalist principle. n2

If "constitutional patriotism" is to mean something more than or different from "civic nationalism," and if verfassungspatriotismus n3 is to signify more than the specific legal-political life of the liberal-socialist phase of the German Bonn Republic, it must offer something more than just resonance with different specific nation-state histories. n4 It must somehow both accommodate and integrate national histories with a set of capacious liberal and democratic principles.

To begin with, one cannot dismiss the matter of solidarity and collective identity. Even the hippest pre-9/11 post-nationalists, like Arjun Appadurai, had to [*458] claim that countries were "one node in a post-national network of diasporas." n5 In this posited transnational world, belonging is multiple and variously institutionalized. Riva Kastoryano claims, for example, that "the country of origin becomes a source of identity, the country of residence a source of rights, and the emerging transnational space, a space of political action combining the two or more countries." n6 If these claims are even partly true, we have to ask what or which solidarity it is that might dare claim legitimately to demand the sacrifice of some individual and most competing collective identities. Christendom, the Volk, subjects of His Majesty, the proletariat, the polis, France, people of color, le peuple, the Constitution, the West are not all equally appealing organizing principles today, though each of them has been successful in the past.

It may be argued that the very notion of collective identity based on, and reinforcing solidarity, is itself a fraud, the fruit of successful power and governance claims by self-interested but hegemonic power blocs. "We, The People," a cultural community exercising self-government through popular sovereignty, simply may not exist. Though associated with parts of the Right, the claim that there is no such thing as society, only individuals (or classes) who (sometimes) choose to subject themselves to a nexus of contracts that regulate but do not frame their lives, has also come from parts of the Left. n7 Not much fellow-feeling, solidarity, or sacrifice can be expected from mere cohabitation for individual instrumental purposes, even if that cohabitation takes place under shared legal rules.

Transnational ties, for example, cut across the vertical solidarity of the nation state and weaken state-society relations. The ascription or conquest of rights and the assumption of duties require some measure of fraternite, belonging, or fellow-feeling. Rights are related to belonging. Certainly each ascending step in the staircase of rights laid out in T.H. Marshall's classic formulation n8 - civil rights to political rights to social rights - assumes a greater measure of solidarity than the step below. Civil rights may be granted by even an undemocratic and unrepresentative sovereign to citizens and subjects alike, political rights mostly presume some measure of self-governance as well as membership, and social [*459] rights, in addition, presuppose a willingness to be the keeper of others as a matter of shared minimum expectation.

Some sense of historical community and shared destiny of citizenship is a prerequisite for social rights. n9 Those who value social justice must have a place. This sentiment can be designated in the Mazzinian tradition as "patriotism" (Viroli) or as being a "cosmopolitan patriot" (Appiah) or, in an older vocabulary, even an "internationalist." n10 Perhaps this is all merely "imagined community" talk, a collective imaginary fit for the era of print capitalism (Anderson). n11 But perhaps it is not. The imaginary national identification may actually be a continually constructed, contested and negotiated, historically contingent, path-dependent project.

"Popular Front" strategies have attempted to capture shared national community sentiment on behalf of an agenda of social justice, class, and national interests. Paul Robeson, for example, captured a good bit of this in his immensely successful popular-front ballad, "The House I Live In," a song that defined commonality and shaped it around both abstract principles and concrete experiences:

What is America to me?

A name, a map, a flag I see

A certain word, "Democracy."

The words of old Abe Lincoln,

of Jefferson and Paine

of Washington and Douglass

and the tasks that still remain.

...

The house I live in,

My neighbors white and black,

The people who just came here

and from generations back

...

A house that we call "freedom"

the home of liberty,

But especially the people

[*460] That's America to me. n12

Viroli and Appiah may be construed as saying much the same thing, a position that has also recently been restated by Alexander Aleinikoff:

The idea of belonging is, in important ways, intergenerational. One is a citizen of an ongoing historical project that looks back to the settlement of the continent, the creation of the nation, and seminal events in the past. No matter when their ancestors arrived in the United States, Americans can claim the Founding Fathers as their own without a sense of irony. n13

Robeson's words point clearly to a regime of universal (but necessarily revisable) principles specified through democratic procedures by a particular political community, one that has a history, which newcomers can and should join and shape. Newcomers join a work-in-progress, but not one that is arbitrarily or indeterminately contestable. When Robeson beckons listeners to join at "Gettysburg and Concord, where Freedom's fight began," n14 he echoes the principle that newcomers "too were at Mt. Sinai." n15 The particular culture and tradition that makes "our" constitution ours must be constructed on a foundation of equal liberal rights for all (liberty), democracy, and a capacious sense of identity. Together these make "the people," a contingent community of memory and experience united also by shared attachment to a body of principles. n16 In this view, national identity becomes a changeable product of collective self-identification.

A nation, as Ernest Renan observed more than a century ago, is a "daily plebiscite" in which values and consent, "the desire to live together," are repeatedly adopted or rejected. n17 But as Renan also observed, today's nation "is the culmination of a long past of endeavors, sacrifice, and devotion" that go beyond any shared political principles or constitutional patriotism to create an inherited cultural identity. n18 This inherited cultural identity of "endeavors, sacrifice, and [*461] devotion" n19 is also, for Renan at least, the history of struggles for sovereignty and for popular self-determination.

We might usefully view the nation and its citizen members as a product of four centuries and the concerns that characterized each: the construction of order and security within a territory, the search for a viable contract of consent among those present within a territory, the assertion of popular sovereignty and self-rule in politics and economics by those within the territory, and, most recently, the struggle between the imperatives of liberty and those of governance. It is as a product of the particular forms of these experiences that the citizen emerges. Who is the citizen, the resident of "the house I live in," of the commonality made up of plurality transcending particularity, as Robeson could have put it? n20 The collective, legally-recognized identity of "citizen" is and always has been unstable and contested. n21 Still, as Max Weber noted already in 1921, citizenship is a constructed status position that interacts with and mitigates other positions, such as class and power. n22 This is why elites with much power generally attempt to weaken this status position, and subversive forces interested in organizing and acting on the basis of class often consider citizenship a false-consciousness, bourgeois-nationalist patriotism turned against class interest. n23

Citizenship, active social membership, and solidarity generate rights, and these rights often provide the basis for an assortment of claims. Not so long ago it seemed uncontroversial that the demand for equal citizenship would turn into a demand for a different kind of society altogether. n24 Such claims are raised in a common public realm and profess to be for the collective good. For citizenship to work, sub-identities or community identities must remain peripheral, or at least amenable, to overarching ideologies that can encompass all of the citizenry. n25 The [*462] recent weakness of egalitarian ideologies and parties owes at least something to the rejection of common and equal citizenship. n26

Democracy as a form of life based on active consent and participation has receded, while citizenship is distributed on the basis of passive criteria of belonging, territorially or ethnically. n27 For the most part, this decline in the civic republican has been accompanied by a decline in the ethno-national. n28 The civic fades into the civil while the citizen/alien distinction fades in a way redolent of the decline of estate, rank, and order. Instead, everyone has rights, and individuals and groups compete on the basis of them. n29 The outcome of the American liberal legal transformation of and since the civil-rights era has been, above all, the creation of a rights culture, which is overwhelmingly universalist and individualist. n30 This marks [*463] a substantial departure from the jurisprudence of the Depression, New Deal, and war years, which was, for the most part, more collectivist and national. n31 A similar, though delayed, story may also be told for Germany and other countries.

Human rights and state sovereignty claims may conflict with each other, but it is important to remember that the latter may also be a vehicle for such rights. This relationship has been a problem since the revolutionary "Declaration of the Rights of Man and Citizen" of 1789. n32 Why would the universal rights of man require the particularism of citizenship? As Hannah Arendt explained it, "abstract" human beings existed "nowhere." Hence, "The whole question of human rights ... was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them." n33

A cosmopolitan world society of rational individuals cannot exist in anything like a democratic world of mass participation. National communities seem required to support those very rights and freedoms promised to all in the Declaration and similar documents. Most nation-states today, in fact, justify their legitimacy on the basis of universalist human rights principles mediated through their particular history and institutions. As Benhabib has observed, "The tension between the universalistic scope of the principles that legitimize the social contract of the modern nation, and the claim of this nation to define itself as a closed community, plays itself out in the history of the reforms and

revolutions of the last two centuries." n34

[*464] One risk, of course, is that nation-states may equate the citizen with the member of the historic-ethnic nation, thereby collapsing a worthy political and legal category into an inegalitarian schema of first-class and second-class, more-and-less citizens by nationality or ethnicity. Here, Arendt's experience as a refugee, someone made stateless on account of her ethnicity, led her not to turn against states and toward human rights internationalism but rather to insist that states be civic polities with citizenship based on legal criteria. n35 All those born into a territorial state had the human right to citizenship in it. n36

Universalism and constitutionalism would thus temper the demos. This position found its way into the Universal Declaration of Human Rights, Article 15 of which proclaims that everyone has a right to a nationality, something not to be taken for granted. n37 The development of an international human rights regime has been pushed forward and earned praise from many quarters, but ordinary citizens, who might have some voice in a democratic nation-state, are here unrepresented. n38

How closed are these "closed communities" Benhabib refers to, and how do potentially abstract principles like "civic nationalism" or "constitutional patriotism" facilitate entry and coherence? In the view of many, the United States is characterized by a "thin," equal protection model of mostly negative rights citizenship. n39 Civil rights and physical and social mobility are almost all that autonomous individuals need. Legal equality is about due process and equal protection for persons. The anti-discrimination model of equal protection is hegemonic and makes group rights problematic while also impeding the elaboration of social rights to education, housing, et cetera. The American immigration regime, in turn, "pays little attention to the thin fabric of social and political rights that US citizenship entails" and, instead, tries to "create many jobs and keep them relatively open to international labour." n40 Thus, the American [*465] "system" is about large numbers of immigrants, large numbers of available jobs, easy adjustment between types of visa permissions and statuses, easy transition to citizenship through naturalization and immediate jus soli birthright citizenship, poor border control, overburdened administrative apparatuses, negligible deportation rates, paltry social benefits, and minimal benefit from obtaining citizenship. n41

By contrast, German citizenship, like (Jewish) Israeli, is perceived as "thick," with sharper exclusions and greater, more explicit social rights and duties. Until very recently, Germany's entry regime, in turn, was marked by strong border and internal administrative apparatuses, little likelihood of adjustment between and among categories of visa permissions, an exceedingly low naturalization rate, no jus soli birthright citizenship, highly regulated labor markets, a strong system of available social welfare benefits, and a high salience to citizenship. n42 Where U.S. citizenship is putatively constitutional and consensual, Germany, like Israel, has privileged ethno-cultural identity and national belonging within formal democracy. n43 Indeed, in the Israeli case, Jewish nationality was historically essential for legal entry into the country and service in its military the chief method for entrance into its welfare system. In contrast, American citizenship is a lesser marker, easy to obtain; German and Israeli a greater, more difficult marker to acquire.

Eroded in numerous ways, from above and from below, the salience of citizenship seems to be declining, even in Germany, where the process of becoming a citizen is now much easier. Citizenship is giving way, in the worried view of many nationalists, to the free market, on the one hand, and group recognition and calls for ethnic and religious group rights and parochialism, on the other. n44 McWorld confronts Jihad as material global integration confronts ethnic and [*466] cultural fragmentation. n45 We have been reminded that there are many things for which people will die or kill, the nation-state being only one, and hardly the worst. n46 The continued growth in human migration under conditions of a weak state, or states that choose to act as if they are weak, will accelerate or exacerbate these tendencies, both benign and ghastly. n47 We might therefore worry less about the construction of the nation and more about citizens' democratic control over the state, a control that itself requires a measure of solidarity to achieve.

Germany: From Rights to Citizenship

Jus sanguinis, citizenship by blood descent, has sat at the center of German nationality (staatsangehörigkeit) and citizenship (burgerschaft). But it would be mistaken to conclude that only ethno-nationalism drives German membership. Through the middle of the nineteenth century, German identities were state-centered. Indeed, since most German areas were overpopulated, rulers were content to shed emigrants. On the other hand, the Prussian Emancipation Edict of 1812 granted Jews citizenship without regard to ethnicity and, earlier still, Prussia had welcomed French Huguenots and Salzburg Protestants. n48 As Hegel's 1821 Philosophy of Right n49 made clear, the State was the culmination of "ethical life;" nation or folk was not up to such a task, forget the demos, and the 1842 Prussian untertanengesetz (law on subjects of the state) n50 reflected this view.

It was in 1848, at the Paulskirche n51 in Frankfurt, that this changed. Into the middle of that year, the goal of a united and/or liberal Germany included multinational Austria. The kleindeutsch solution - ethnic and spatial homogeneity - only triumphed among the democrats and small German radicals in response to their abandonment and defeat. n52 The North German Confederation and then, after [*467] 1870, the German Empire, adopted the territory-based rule of citizenship. n53 It was only after the rightward turn of German Conservatives trying to catch up with right-wing populism after 1895 that "blood" became a key concept in German citizenship. n54 In this atmosphere, the 1913 Reichs und Staatsangehörigkeitsgesetz finally went ethnic.

Nationality as a "national bond" between the German Empire and Germans living abroad was confirmed and no longer dissolved even when the period of residence abroad was long-term. To ensure state control at all times over the naturalisation of immigrant workers, the principle of descent was reasserted against territorialism with the law confirming a basic ethnic-cultural notion of citizenship as a national community of descent... . n55

The loss of German territories and populations after 1919 and 1945 made revision of the 1913 principles difficult because revision would have meant renouncing rather large territorial claims and accepting large population losses. n56 Efforts by Social Democrats and others during the Weimar Republic to reintroduce jus soli principles into citizenship law failed, in part because efforts to democratize the country generally were stymied by reaction. n57 Friedrich Meinecke's widely [*468] propagated post-war view of Germans as tied together by culture was as partial and distorted as his pre-war view that Germans were made by blood and tribe. n58

After 1945, with the country both divided and flooded with refugees from territories no longer under its control, the 1913 principles were reinstalled with only the Nazi exclusion and racial ejection principles stripped away. n59 In addition, of course, the Basic Law of 1949 required Bonn to look after the interests of both halves of the country - the "two German states" view emerging only very late in the going. n60

As a result, and despite the rapid growth of the foreigner population, until 2000, a child acquired German citizenship by descent from a German parent (Art 4). Naturalization was contemplated in the law, but as a rarity. With ten years of problem-free residence in the country, a foreigner could apply for a discretionary (that is, not of right) grant of naturalization. Renunciation of other loyalties was essential, but more importantly, applicants had to show a "turn to Germanness" (hinwendung zum deutschum), including language proficiency and declared constitutional loyalty. n61 A mutual lack of interest led to an average of only 15,000 naturalizations annually between 1974 and 1989. With the removal of "discretion" in 1984 the number climbed to 35,000 in 1985 and, by 1997, had reached 80,000, so that, by 2000, over one million people had naturalized as German in the bundesrepublik.

While German citizenship law evolved only slowly from its ethnic premises, there developed alongside it, or juxtaposed to it, the theory of abstract, universalist popular sovereignty that came to be "constitutional patriotism." Especially after the post-1968 reforms (and not withstanding moments of regression such as verfassungsfeindlichkeit, berufsverbot and the like), the integument of West German society came to be something civic, voluntary, non-biological, and a matter of communicative reciprocity. n62 Constitutional or civic patriotism makes of national belonging a form of rational attachment that is compatible with liberal commitments to individual rights as well as with

social commitments to equality. n63 [*469] The Constitution is, in Germany after all, a liberal democratic and social democratic commitment. n64

Verfassungspatriotismus reached its apogee in the Germany of the pre-and early-post-unification years. n65 Sometime in the '90s, however, it came to appear ahistorical, procedural, formalistic, and cold. n66 The civic is necessary but not sufficient. Even constitutionalism can become more substantive, embedded, thicker, and exclusionary. n67 And even civic national identities are culturally inherited artifacts, developing as they pass from generation to generation. They belong to some people but must be learned by others, even if only through a process of "naturalization" or "einbürgerung" (the effectiveness of which we might be able to test). n68

For Germany, but not only for Germany, national belonging is more than rational attachment; it encompasses "the contingent inheritance of distinctive experiences and cultural memories that is an inseparable part" of every national identity. n69 As admirable as constitutional patriotism is as a theory for organizing a polity, national belonging needs - and assumes - more. It assumes some measure of shared prepolitical community arching over any agreement on legal-procedural rules and making a nation more than a political community organized around voluntary association.

The shortcomings of constitutional patriotism as a social integument were papered over by the strength of the German welfare state economy and its treatment of denizens and have since been laid bare in the course of immigration reform. n70 [*470] Millions came from abroad to work in the Germany of the Economic Miracle. n71 By the time recruitment was stopped in 1973, there were four million foreigners in West Germany. n72 Family unification and formation could be made difficult, but not stopped, so the numbers continued to grow, n73 and life without citizenship was not life without rights or without solidarities. In 2000, there were approximately 7.5 million foreigners living in Germany, or nearly ten percent of the population - of these, nearly 1.5 million, or 20 percent, was born in Germany. n74 In fact, a third of all foreigners have been in Germany for over twenty years; forty percent for over fifteen years, and half for over ten years. n75 About thirty percent of foreigners are Turkish, fifteen percent Yugoslav, and twenty-four percent EU, with a third of that being Italian. n76

Long-term foreign residents, denizens, have enjoyed the same labor market preferences as Germans and the same social benefits as well. n77 Given much higher union density than in the United States and a more centralized bargaining regime, as well as tougher government enforcement of labor standards, the disparities between domestic and foreign workers are less than in the United States, though real. n78 Indirect wages are high by American standards, just as they are for native workers: child benefits, health insurance, school and job education allotments, long vacations, pensions, et cetera. n79 Shopkeepers and other petit bourgeois and business people are eligible for and protected by the same programs as the famously security-obsessed Kleinbürgertum. n80 As to civil and political rights, the [*471] picture resembles that of the United States: on non-immigration issues, foreigners enjoy the same civil liberties as Germans; with rare exceptions, non-EU foreigners may not vote or occupy upper-level civil service or political offices. n81

With security of residence, moderate family unification rights, social rights, civil liberties, and a high standard of living, why take the extra step of becoming German? Why risk losing benefits and rights in your country of origin - as is often the case - in order to become part of a people who seem ambivalent about having you? For one thing, Germany is now home to many, and the new Nationality Act finally recognizes that:

Children born in Germany to foreigners living here permanently are to be given the chance to grow up in Germany as German nationals from the outset... The acquisition of nationality marks the beginning of social integration. If children born in Germany go to nursery school here and receive all their schooling and vocational training in a German environment and already grow up in the awareness of being Germans with all the rights and obligations this entails, they will develop important bonds and feelings of identification with Germany and the German way of life. n82

An amended, Foreigners Act (§ 85) also now allows for naturalization after eight years subject only to a sufficient command of the German language and acknowledgment of the Basic Law. n83 The new Immigration Laws (Zuwanderungsgesetz) of 2003 and 2004 are not at all clear on this matter. n84

What has been striking, particularly in the last several years, is the emphasis on foreigners "integrating," something "both sides" must "want." n85 Less clear is whether foreigners are being invited to join an ongoing German project as it currently exists or to join Germans in charting a future course for themselves as "equal partners" in something new - the difference is important. Nevertheless, an emerging consensus situates "nationhood in distinctively non[-]ethnic terms [*472] revolving around social norms" so that non-ethnic criteria at least complement descent. n86 The German Basic Law, the fount of constitutional patriotism, anticipates and facilitates a strong welfare state. Social minima and social consumption require social consensus and solidarity. n87 The distributive logic is one of closure, not of market-style openness. n88 Citizens and resident foreigners must be inside the same closed system. n89 The welfare state "seeks to take care of its own;" it is "a kind of safe house in which to shelter its members from the outside world" so that they may be immune from competitive disadvantages and capital flight. n90 The segmentation of labor markets must be avoided.

In the face of an eroding welfare state, it becomes more important to integrate "foreigners" fully into solidaristic social life. Failure to integrate at this point is an invitation to reaction n91 among both natives and foreigners. It is unclear whether constitutional patriotism is up to that task. A much more individualized, neo-liberal, "thinner" society may be in a better position to pursue integration around civic-constitutional and cultural principles than the thicker social vision that was also a part of constitutional patriotism in its heyday. This understanding has recently, and very interestingly, led the German Left away from multiculturalism and toward "mainstreaming." n92 A House to live in.

Legal Topics:

For related research and practice materials, see the following legal topics:

Immigration Law
Citizenship
Citizenship by Birth
Immigration Law
Citizenship
Citizenship by Descent
International Law
Sovereign States & Individuals
Human Rights
General Overview

FOOTNOTES:

n1. Jurgen Habermas, Struggles for Recognition in Constitutional States, 1 Eur. J. Phil. 128, 132 (1993) ("Constitutional patriotism" refers to the notion that citizenship should rely on a shared sense of values rather than a common ethnic origin.).

n2. On the Left and the nation, there is a long history. See, e.g., Jules Michelet & John P. McKay, *The People* (1973); Lynn Hunt, *Inventing Human Rights: A History* (2007); Jeffrey N. Hunt et al., *Human Rights and Revolutions* (2000); Eric J. Hobsbawm, *The Age of Extremes: A History of the World, 1914-1991* (1996); Eric J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (1992); Eric J. Hobsbawm, *The Age of Revolution 1789-1848* (1964); Eric J. Hobsbawm, *Age of Empire: 1875-1924* (1989).

n3. Verfassungspatriotismus is a term for constitutional patriotism coined by Dolf Sternberger in the late 1970s and made popular by Jurgen Habermas in the late 1980s. Dietmar Schirmer, Closing the Nation: Nationalism and Statism in Nineteenth-and Twentieth-Century Germany, in *The Shifting Foundations of*

Modern Nation-States 35, 52 (Sima Godfrey & Frank Unger eds., Univ. of Toronto Press 2004).

n4. Jan-Werner Muller, On the Origins of Constitutional Patriotism, 5 Contemp. Pol. Theory 278, 285-87 (2006) (Muller concludes that the fact of a specific genealogy cannot discredit the broader application and availability of *Verfassungspatriotismus*. This is certainly true. It seems to me, however, that this conclusion is itself severely undercut by the masterfully sensitive understanding of the Bonn Republic laid out in the essay.).

n5. Arjun Appadurai, The Heart of Whiteness, 16.4 Callaloo 796, 798, 803 (1993) (emphasis added). Self-described repentant nationalist, avers that, "where soil and place were once the key to the linkage of territorial affiliation ... key identities and affiliations now only partially revolve around the realities and images of place." Now "diaspora runs with, and not against, the grain of identity, movement and reproduction." "Diaspora" seems to be construed now not as an exile from which one will eventually return but rather as a kind of post-national hybridity, one is tempted to say a cosmopolitanism for Everyman. The world may look more like this when seen from the platinum elite frequent-flyer lounge than when seen from the polyglot streets.

n6. Riva Kastoryano, Settlement, Transnational Communities and Citizenship, 52 Int'l Soc. Sci. J. 307, 311 (2000) (describing transnational activity in several forms, including a focus on the "home" country, Europe, and even Islam).

n7. See John Rawls, A Theory of Justice 524 (Belknap Press 1971) (claiming that the modern version of the classical view that human social interdependency and solidarity, facilitated by a state, were prerequisites for self-fulfillment, or *entfaltung*, was laid out by Wilhelm von Humboldt in *Versuch die Grenzen der Wirksamkeit des Staates zu bestimmen* (1792)).

n8. T.H. Marshall & Tom Bottomore, *Citizenship and Social Class* 42 (Pluto Press 1987). Although endlessly criticized from nearly every possible perspective, Marshall's paradigm remains at the center of the discussion.

n9. See Maurizio Viroli, *For Love of Country: An Essay on Patriotism and Nationalism* (Oxford University Press 1995) (discussing the role of community as an integral role in social rights); see also Kwame Anthony Appiah, *Cosmopolitan Patriots*, in *Cosmopolitics: Thinking and Feeling Beyond the Nation* 91, 93 (Pheng Cheah & Bruce Robbins eds., 1998) (seeking to connect species-wide community to the actual politics and restraints found on the ground locally). But "think globally, act locally" is also what Robeson was saying. It was also the message of the socialist Second International: *Workers of the World: Unite: Go Home and Organize.* James Joll, *The Second International* (Harper & Row 1966).

n10. Id.

n11. Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (2006).

n12. Paul Robeson, *The House I Live In, on Songs of Free Men* (Sony 1997) (1947). Robeson also sings of battles Lexington, Concord, Gettysburg, and Bataan, as well as of farmers, workers, and neighbors.

n13. T. Alexander Aleinikoff, *Semblances of Sovereignty: The Constitution, the State and American Citizenship* 178 (Harvard Univ. Press 2002) (Aleinikoff observes that such pride and achievements may produce what John Rawls termed "proper patriotism" and what John Stuart Mill labeled "common sympathies," presumably real or imagined into reality.) "Proper patriotism" + "common sympathies" + Founding Fathers = Constitutional Patriotism is a possibility.

n14. Robeson, *supra* note 12.

n15. Id.

n16. Id.

n17. Ernest Renan, *What is a Nation?*, in *Nation and Narration* 19 (Homi Bhabha ed., London 1990). Bernard Yack underscores Renan's argument, stating that, alongside the ethnic nation myth of inherited cultural identity, there is a civic nation myth suggesting that "national identity is nothing but your choice: you are the political principles you share with other like-minded individuals." Bernard Yack, *The Myth of the Civic Nation*, 10 *Critical Review* 198, 203 (1996).

n18. Id.

n19. Renan, *supra* note 17, at 19.

n20. Robeson, *supra* note 12.

n21. See Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (Yale Univ. Press 1997) (discussing various notions and definitions of citizenship); James H. Kettner, *The Development of American Citizenship, 1608-1870* (Univ. of N.C. Press 1978); Michael Lind, *The Next American Nation* 3-5 (Free Press 1995) (advocating a new universal nationalist citizenship); Iris Marion Young, *Polity and Group Difference: A Critique of the Ideal of Universal Citizenship*, 99 *Ethics* 250, 256 (1989) (rejecting a new universal nationalist citizenship). Ayelet Shachar, *Citizenship and Membership in the Israeli Policy*, in *From Migrants to Citizens: Membership in a Changing World* 386-483 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., Brookings Institution Press 2000) (offering an overview of the concept of citizenship in Israel); see also Rogers Brubaker, *Citizenship and Nationhood in France and Germany* 21-50 (Harvard Univ. Press 1992) (discussing the institution of citizenship); *Festschrift für E.W. Bockenforde* (R. Grawert & Bernard Schlink eds., Berlin 1995); Kai Hailbronner & Gunther Renner, *Staatsangehörigkeitsrecht* (München 1999).

n22. Max Weber, *Max Weber on Law in Economy and Society* 221 (Max Rheinstein ed., Edward Shils & Max Rheinstein trans., Harvard Univ. Press 1954) (1921).

n23. In Europe and America, this sentiment peaked around World War I, and conflicts over what to do split and destroyed international socialism. The union sacree, the Burgfrieden, and their flag-waving repressive analogue in the U.S. "worked" in this way.

n24. Reinhard Bendix, *Nation-Building and Citizenship: Studies of our Changing Social Order* 86-126 (Univ. of Cal. Press 1977) (1964).

n25. See Rachel Baskin, Note, *Citizenship Theories, Immigration and Nationality Act Section 309 & Nguyen v. INS: How the Supreme Court Got it Wrong*, 3 *Cardozo Pub. L. Pol'y & Ethics J.* 869, 899 (2006) (stating that, although people may view themselves as part of a specific community, "citizens recognize the political community as instrumental in helping their local communities create a meaningful collective identity").

n26. See Cristina M. Rodriguez, *Accommodating Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States*, 36 *Harv. C.R.-C.L. L. Rev.* 133, 136 (2001) (stating that the concept of common citizenship is inapplicable in a nation in which "communities of linguistic minorities are constantly replenished").

n27. See Pedro A. Malavet, *Outsider Citizenships and Multidimensional Borders: The Power and Danger of Not Belonging*, 52 *Clev. St. L. Rev.* 321, 324 (2005) (analyzing differences between legal and political citizenship and cultural and social citizenship).

n28. See Murat Somer, *Cascades of Ethnic Polarization: Lessons from Yugoslavia*, 573 *Annals Am. Acad. Pol. & Soc. Sci.* 127, 135 (2001) (stating that following Tito's death, Yugoslav leaders used ethnonationalism to attain and consolidate power, which led to the country's destruction).

n29. The individualistic and individualizing, apolitical side of rights and of the "rights revolution" in the United States has been the subject of analysis by conservatives and radicals alike. See, e.g., Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* 47-75 (Free Press 1991) (discussing the image of the lone American possessor of rights); Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* 59 (2d ed. Univ. of Mich. Press 2004) (1974) (stating that "the myth of rights is rooted in a moral vision of a political society dedicated to maximizing individual freedom"); David Abraham, *Are Rights the Right Thing?*, 25 *Conn. L. Rev.* 947, 952-65 (1993) (reviewing Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (1991)); Anthony Chase, *The Left on Rights: An Introduction*, 62 *Tex. L. Rev.* 1541, 1553-61 (1984) (discussing three categories of Left positions on rights); Morton J. Horwitz, *Rights*, 23 *Harv. C.R.-C.L. L. Rev.* 393, 399-400 (1988) (stating that "natural rights conceptions were conceived in radical individualism and continue to express an individualistic perspective on social relations."); Mark Tushnet, *An Essay on Rights*, 62 *Tex. L. Rev.* 1363, 1363-94 (1984) (critiquing rights discussed in contemporary American legal circles). The situation in Germany is still quite different, notwithstanding the enlargement of individual rights there over the past thirty years. This will be addressed below. The individualizing force of right-consciousness has been very visible and important in Israel over the past decade. See Ran Hirschl, *The Great Economic-Juridical Shift: The Legal Arena and the Transformation of Israel's Economic Order*, in *The New Israel: Peacemaking and Liberalization* 189, 193 (Gershon Shafir & Yoav Peled eds., Westview Press 2000) (discussing the "Americanization," characterized by a "culture of rights," that Israel's legal culture has experienced); Martin Edelman, *The Judicialization of Politics in Israel*, 15 *Int'l Pol. Sci. Rev.* 177, 182 (1994) (stating that by 1974, it had become clear that the "Israeli courts' concern for the rule of law was being extended to protect human rights"); Menachem Hofnung, *The Unintended Consequences of Unplanned Constitutional Reform: Constitutional Politics in Israel*, 44 *Am. J. Comp. L.* 585, 592-94 (1996) (discussing the development of certain individual and human rights in Israel).

n30. See David Cole, *Are You Now or Have You Ever Been a Member of the ACLU?*, 90 *Mich. L. Rev.* 1404, 1410-11 (1992) (discussing how the American Civil Liberties Union changed American society and how the organization's individualist focus has a universalist force).

n31. This claim is substantial but, on balance, correct. In addition to the Lichtenstein op.cit. and the sources cited, supra note 21, see Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (Knopf 1995) (discussing the struggle for rights during the New Deal period); Lawrence M. Friedman, *A History of American Law* 665 (2d ed. Simon & Schuster 1985) (1973) (discussing the struggle for rights during the New Deal period); Kermit L. Hall, *The Magic Mirror: Law in American History* 247-332 (Oxford Univ. Press 1989) (discussing the evolution of American law through the Great Depression and the New Deal periods). The German and Israeli law systems may well be following the same trajectory but are much behind. Weimar law and early Israeli law were certainly more like American collectivism at its peak. See Gunther Frankenberg and Ulrich Rodel, *Von der Volkssouveranitat zum Minderheitenschutz* (Frankfurt 1981); Menachem Hofnung, *Democracy, Law and National Security in Israel* 76 (Dartmouth Publishing Co. 1996) (describing the system of civil and political rights in early Israel as one composed of two concentric circles, with the outer circle consisting of "rights tied to the identity of Israel as a Jewish state"); Pnina Lahav, *Judgment in Jerusalem: Chief Justice Simon Agranat and the Zionist Century* 91 (Univ. of Cali. Press 1997) ("Collectivism, the subordination of the individual to the public need and the public will, was the predominant ideology within which self-sacrifice was justified and encouraged.").

n32. Declaration of the Rights of Man and of the Citizens (1789), reprinted in *The French Declaration of the Rights of Man and of the Citizen and the American Bill of Rights*, S. Doc. No. 101-9, at 1-3 (1989) (emphasis added).

n33. Hannah Arendt, *The Origins of Totalitarianism* 291 (Harcourt, Brace & World, Inc. 1966) (1951). On how this citizenship activates and is activated, see William Sewell, *Le Citoyen/La Citoyenne: Activity, Passivity, and the Revolutionary Concept of Citizenship*, in *The French Revolution and the Creation of Modern Political Culture* 105, 105-13 (Colin Lucas ed., Pergamon Press 1988).

n34. Seyla Benhabib, *Citizens, Residents and Aliens in a Changing World: Political Membership in the Global Era*, 66 *Soc. Res.* 709, 735 (1999).

n35. Arendt, supra note 33, at 290-302 (discussing the loss of rights of stateless people).

n36. Id.

n37. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc.

A/810, at 74 (1948); Thomas Kleven, Why International Law Favors Emigration over Immigration, 33 *U. Miami Inter-Am. L. Rev.* 69, 82 (2002). In September 2002, in the midst of heavy Palestinian-Israeli violence, the Israeli Interior Minister, claiming to base himself on Clause 11/B of the Citizenship Law, moved successfully to strip several native-born Arab Israelis of their citizenship, arguing that they had left the country to work with its enemies. The Association for Civil Rights in Israel sued, claiming that it "violated the basic human right to hold citizenship," as well as the Universal Declaration. See Ha'aretz, Sept. 10, 2002.

n38. Compare Peter J. Spiro, The Citizenship Dilemma, 51 *Stan. L. Rev.* 597, 597-600 (1999), (championing these organizations as platforms), with Ruti G. Teitel, *Transitional Justice* (Oxford University Press 2000) (claiming that most polities cannot internally generate norms as effective and progressive as those imposed through international claims).

n39. See Richard E. Levy, Escaping Lochner's Shadow: Toward a Coherent Jurisprudence of Economic Rights, 73 *N.C. L. Rev.* 329, 390 (1995) (stating that the conception of rights in the United States is predominantly negative and that government action is viewed as suspect if it burdens rights).

n40. Thomas Heller, Change and Convergence: Is American Immigration Still Exceptional?, in *Citizenship in a Global World* 196, 197 (Atshushi Kondo ed., Routledge Press 2000). Heller's emphasis on "exit" and mobility in the U.S. regime - as opposed to "voice" and engagement in the European regime - is redolent of Sombart's focus on immigration as one reason there was no socialism in the United States. See also Robert H. Wiebe, *Self-Rule: A Cultural History of American Democracy* 128 (Univ. of Chicago Press 1995) (discussing the migration of Europeans to the United States simply to take jobs).

n41. See Elizabeth M. Dunne, Comment, The Embarrassing Secret of Immigration Policy: Understanding Why Congress Should Enact an Enforcement Statute for Undocumented Workers, 49 *Emory L.J.* 623, 630 (2000) ("The perception of immigrants as a labor source rather than as future members of our society creates a marginalized subclass of the general population.").

n42. Heller, *supra* note 40, at 196-97, argues that membership came to mean more in Europe because: population was denser, effective bureaucracies already existed, external threats required a standing military, states had to compete for loyalty from populations whose identities had been fluid or local for a long time, mercantilist and imperial traditions had established interventionist government, and political rights were slow in developing.

n43. See Shachar, *supra* note 21, at 386 (offering interpretations of "ethnic democracy" in Israel); Yoav

Peled, *Ethnic Democracy and the Legal Construction of Citizenship*, 86 *Am. Pol. Sci. Rev.* 432, 432 (1992) (describing Israeli political culture as comprised of three principles - republicanism, liberalism and ethnicity); Sammy Smooha, *Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel*, 13 *Ethnic and Racial Stud.* 389, 391 (1990).

n44. See Peter H. Schuck, *Citizenship in Federal Systems*, 48 *Am. J. Comp. L.* 195, 208 (2000) (stating that millions of German residents were born, raised, and are permanently settled there without having gained German citizenship); David Abraham, *After Ethnicity and "Constitutional Patriotism": Searching for a Capacious German Membership*, in *Towards the Completion of Europe: Analysis & Perspectives of the New European Union Enlargement* 88-100 (Joaquin Roy ed., 2006).

n45. See Benjamin R. Barber, *Jihad versus McWorld* 4-20 (Corgi Books 2003) (1995) (describing the clash between Jihad and McWorld); Benjamin R. Barber, *Strong Democracy: Participatory Politics For A New Age* 215-238 (Univ. of Cal. Press 1984).

n46. Albert Hirschman, *The Passions and the Interests* (1997); Montesquieu, *Persian Letters* (1964).

n47. See Magaly Sanchez R., *Insecurity and Violence as a New Power Relation in Latin America*, 606 *Annals Am. Acad. Pol. & Soc. Sci.* 178, 191-92 (2006) (exploring how violence can cause migration, which, in turn, can cause more violence).

n48. See Gerhard Robbers, *The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Germany*, 19 *Emory Int'l L. Rev.* 841, 869-71 (2005) (discussing the range of religious freedom in Germany).

n49. Georg Hegel, *Hegel's Philosophy of Right* (S.W. Dyde trans., George Bell & Sons 1896).

n50. See Klaus J. Bade, *Immigration, Naturalization, and Ethno-National Traditions in Germany*, in *Crossing Boundaries: The Exclusion and Inclusion of Minorities in Germany and America* 29, 32 (Larry Eugene Jones ed., Berghahn Books 2001) ("The corresponding regulations of the Prussian Subjects' Law became part of the regulations for the whole Reich in 1871 and formed the basis of the Reich Citizenship Law of 1913.").

n51. The Paulskirche (Saint Paul's Church) in Frankfurt is where Germany's National Assembly met in 1848 to draft a new constitution. Bernd J. Hartmann, *How American Ideas Traveled: Comparative Constitutional Law at Germany's National Assembly in 1848-1849*, 17 *Tul. Eur. & Civ. L.F.* 23, 24 (2002).

n52. For classic discussions of these developments, see Theodore S. Hamerow, *Restoration, Revolution, Reaction: Economics and Politics in Germany 1815-1871*, at 95-196 (Princeton Univ. Press 1958); Hans Kohn, *Prelude to Nation-States: The French and German Experience, 1789-1815*, at 119-79 (D. Van Nostrand Company 1967); Leonard Krieger, *The German Idea of Freedom: History of a Political Tradition 273-397* (Univ. of Chicago Press 1972) (1957). For a discussion of the recent baseline see Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Harvard Univ. Press 1992).

n53. See Dieter Gosewinkel, *Citizenship and Naturalization Politics in Germany in the Nineteenth and Twentieth Centuries*, in *Challenging Ethnic Citizenship* 59, 61-62 (Daniel Levy & Yfaat Weiss eds., Berghahn Books 2002) (discussing citizenship in the developing German nation-state).

n54. See P.G.J. Pulzer, *The Rise of Political Anti-Semitism in Germany and Austria* 118-26, 226 (Norman F. Cantor ed., John Wiley & Sons, Inc. 1964) (discussing the changing political position of the Conservative Party at the end of the nineteenth century); Jack Wertheimer, *Unwelcome Strangers: East European Jews in Imperial Germany* 54-60 (Jehuda Reinharz ed., Oxford Univ. Press 1987) (discussing the increasingly strict naturalization policies in the late nineteenth century).

n55. Dieter Gosewinkel, "Citizenship and Naturalization in Modern German and Austrian History," ms. July 2001, p. 3. Elsewhere Gosewinkel stresses that the ethno-nationalist victory of 1913 was a narrow one and hardly irreversible. Gosewinkel, *supra* note 53, at 59; see also Dieter Gosewinkel, *Einbürgern und Ausschließbetaen: Die Nationalisierung der Staatsangehörigkeit* 278-368 (Vandenhoeck & Ruprecht 2001).

n56. See Jochen Oltmer, *Migration and Public Policy in Germany, 1918-1939*, in *Crossing Boundaries: The Exclusion and Inclusion of Minorities in Germany and America* 50, 51-52 (Larry Eugene Jones ed., Berghahn Books 2001) (discussing the increase in German emigration after World War I).

n57. On immigration reform efforts in the Weimar years, see Klaus J. Bade, *Immigration, Naturalization, and Ethno-National Traditions in Germany*, in *Crossing Boundaries: The Exclusion and Inclusion of Minorities in Germany and America* 29 (Larry Eugene Jones ed., Berghahn Books 2001); Jochen Oltmer, *Migration and Public Policy in Germany, 1918-1939*, in *Crossing Boundaries: The Exclusion and Inclusion of Minorities in Germany and America* 50 (Larry Eugene Jones ed., Berghahn Books 2001).

n58. See Friedrich Meinecke, *Cosmopolitanism and the National State* 9 (Princeton Univ. Press trans., 1970) (1963) (offering a 1928 pre-war view); see also Friedrich Meinecke, *The German Catastrophe* (Sidney B. Fay trans., Beacon Press 1966) (for a 1955 post-war view); see also Ralf Dahrendorf, *Society and Democracy in Germany* 5, 21 (Doubleday & Company 1967) (1965) (discussing the German Question); Harold James, *A German Identity: 1770-1990*, at 3 (Routledge, Chapman, and Hall, Inc. 1989) (discussing the interaction of culture and economy).

n59. Gosewinkel, *supra* note 53, at 59, 70-73 (discussing the Citizenship Law of 1913 and the German Basic Law of 1949).

n60. Axel Tschentscher, *The Basic Law (Grundgesetz): The Constitution of the Federal Republic of Germany* (May 23, 1949) (Jurisprudencia Verlag 2002), available at <http://www.jurisprudencia.de/jurisprudencia.html>.

n61. Most of the data here is drawn from the bundesinnenministerium, *Policy and Law Concerning Foreigners*, (Berlin 2000) and Rainer Munz, *Ethnos or Demos? Migration and Citizenship in Germany*, in *Challenging Ethnic Citizenship* 15, 19, 25 (Daniel Levy & Yfaat Weiss eds., Berghahn Books 2002).

n62. See Dietmar Schirmer, *Closing the Nation: Nationalism and Statism in Nineteenth-and Twentieth-Century Germany*, in *The Shifting Foundations of Modern Nation-States* 35, 52 (Sima Godfrey & Frank Unger eds., Univ. of Toronto Press 2004) (discussing constitutional patriotism).

n63. *Id.*

n64. Axel Tschentscher, *The Basic Law (Grundgesetz): The Constitution of the Federal Republic of Germany* (May 23, 1949) (Jurisprudencia Verlag 2002), available at <http://www.jurisprudencia.de/jurisprudencia.html>.

n65. Schirmer, *supra* note 62, at 35, 52 (discussing constitutional patriotism).

n66. Id.

n67. Habermas developed the concept of constitutional patriotism over a number of years. See Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* 491-515, 566-67 (William Rehg trans., Mass. Inst. of Tech. Press 1996) (1992) (offering a full statement regarding constitutional patriotism). By the end of the '90s, Habermas became aware that even constitutional procedural principles required some historical, cultural embeddedness. This is a difficult adjustment to make since historically embedded cultures belong to some yet must be learned by others; they are not as contractual as constitutional and procedural agreements. See Jurgen Habermas, *The Inclusion of the Other* 105-54 (Ciaran Cronin & Pablo De Greiff eds., Mass. Inst. of Tech. Press 1998) (1996) (discussing the European Nation-State and the relation between the nation, law, and democracy).

n68. It is, as they used to say, "not an accident" that in both Germany and the U.S. today there is a great deal of concern over testing the competence or fidelity of those going through a naturalization or *Einbürgerung*. These tests are about both the Constitution and cultural *Landschaft*.

n69. Bernard Yack, *The Myth of the Civic Nation*, 10 *Critical Review* 193, 197 (Spring 1996). Cf. Michael Ignatieff, *Blood and Belonging: Journeys into the New Nationalism* (New York 1993). As Yack notes, it is hard to understand German reunification, as opposed to the democratization of East Germany, along Habermas's lines. Popular sovereignty is, Yack insists, more than "consensus achieved in the course of argument ... from an identically applied procedure recognized by all." Id. at 201 (quoting Habermas, *Citizenship and National Identity*, in *Theorizing Citizenship* 259 (Ronald Beiner, ed. 1995)).

n70. Muller, 5 *Contemporary Political Theory*, supra note 4. In his fine essay, Muller describes *verfassungspatriotismus* as the foundation of West Germany's legitimacy. One might argue that, until the 1980's at least, the Economic Miracle, front-line anti-communism, and philo-Americanism were the pillars on which West Germany rested.

n71. German Federal Ministry of the Interior, Labor Recruitment, <http://www.zuwanderung.de/english/1anwerbung.html> (last visited Feb. 26, 2007) (stating that the domestic labor supply was insufficient and that, therefore, West Germany signed recruitment agreements with Italy, Spain, Greece, Turkey, Morocco, Portugal, Tunisia, and Yugoslavia).

n72. German Federal Ministry of the Interior, Immigration Statistics, <http://www.zuwanderung.de/english/1statistik.html> (last visited Feb. 26, 2007) (stating that the number of foreigners living in West Germany by 1973

had risen to around 4 million).

n73. Id. (stating that, from 1973 to 1985, most immigration to Germany was due to family members joining foreigners already located in Germany and that, by 1985, the number of foreigners in the country had increased to 4.4 million).

n74. German Embassy, London, <http://www.german-embassy.org.uk/foreign.html> (last visited Feb. 26, 2007) (indicating that 7,296,817 foreigners were located in Germany as of December 2000).

n75. German Federal Ministry of the Interior, Immigration to Germany, [http://www.zuwanderung.de/english/migration to germany.html](http://www.zuwanderung.de/english/migration%20to%20germany.html) (last visited Feb. 26, 2007).

n76. Id.

n77. Thomas Faist, *Social Citizenship for Whom?: Young Turks in Germany and Mexican Americans in the United States* 37 (Ashgate Publishing Co. 1995).

n78. See Rudolph Buschman, *Workers Participation and Collective Bargaining in Germany*, 15 *Comp. Lab. L.J.* 26, 26-27 (1993) (discussing how trade unions in Germany are constituted freely and how the Federal Labor Court has stated that collective bargaining without the right to strike is "nothing more than collective begging").

n79. See Marc Linder & Ingrid Nygaard, *Rest in the Rest of the World*, 20 *Comp. Lab. L. & Pol'y J.* 105, 120 (1998) (stating that German workers have gained a shorter workweek and much longer vacations than workers in the United States).

n80. Holger Hoffmann, *The Reform of the Law on Citizenship in Germany: Political Aims, Legal Concepts & Provisional Results*, 6 *Eur. J. of Migration & L.* 195 (2004); Eli Nathans, *The Politics of Citizenship in Germany: Ethnicity, Utility & Nationalism* (2004).

n81. See Kay Hailbronner, Fifty Years of the Basic Law - Migration, Citizenship, and Asylum, 53 *SMU L. Rev.* 519, 527 (2000) (discussing the Constitutional Court's decision striking down as unconstitutional a law that granted foreigners in Hamburg the right to vote).

n82. Now, furthermore, "all those wishing to identify with ... Germany as a democratic and constitutional state are welcome as citizens with equal rights." Bundesministerium op cit., p. 54. Section 4, P 3 of the new Nationality Law stipulates that children born in Germany to a parent who has had an unlimited residence permit (Aufenthaltserlaubnis) for at least three years or residence right (Berechtigung) for eight years will acquire German citizenship at birth. If they also acquire another nationality, they will need to choose between the two upon reaching majority.

n83. See Helen Elizabeth Hartnell, Belonging: Citizenship and Migration in the European Union and in Germany, 24 *Berkeley J. Int'l L.* 330, 377-78 (2006) (stating that citizenship is available through naturalization if the applicant has lawfully resided in Germany for eight years and satisfies other statutory criteria).

n84. German Federal Ministry of the Interior, The Immigration Act, <http://www.zuwanderung.de/english/2-zuwanderungsgesetz.html> (last visited Feb. 26, 2007).

n85. See Anne Marie Seibel, Deutschland ist doch ein Einwanderungsland geworden: Proposals to Address Germany's Status as a "Land of Immigration", 30 *Vand. J. Transnat'l L.* 905, 932 (1997) (suggesting proposals to address the need to integrate the foreign resident population).

n86. Daniel Levy, The Transformation of Germany's Ethno-Cultural Idiom, in *Challenging Ethnic Citizenship* 221, 230 (Daniel Levy & Yfaat Weiss eds., Berghahn Books 2002) (documenting both elite and popular sentiment).

n87. David Abraham, Citizenship Solidarity and Rights Individualism: On the Decline of National Citizenship in the U.S., Germany, and Israel 32 (The Center for Comparative Immigration Studies, Working Paper 53, May 2002), available at <http://www.ccis-ucsd.org/publications/wrkg53.PDF> (stating that "social minima and social consumption require social consensus and solidarity.").

n88. Donald Kommers, German Constitutionalism: A Prolegomenon, 40 *Emory L.J.* 837 (1991); David Currie, Positive and Negative Constitutional Rights, 53 *U. Chi. L. Rev.* 864 (1986).

n89. Gary B. Freeman, Migration and the Political Economy of the Welfare State, 485 *Annals Am. Acad. Pol. & Soc. Sci.* 51, 54 (May 1986) (exploring the consequences of transnational flows of labor both for the status of migrants who move to welfare states and for the viability of welfare states themselves).

n90. Id.

n91. Id. (stating that "widespread immigration has reduced the power of organized labor by dividing the working class into national and immigrant camps, by easing tight labor markets ... and by provoking a resurgence of right-wing and nativist political movements... . By making racially diverse societies ... migration has complicated social and political cleavages ... [and] helped shift the ideological center of European politics to the right.").

n92. See *Migration und Bevolkerung* 7 (Sept. 2002), p. 6; Daniel Cohn-Bendit and Thomas Schmid, *Heimat Babylon: Das Wagnis der multikulturellen Demokratie* (1992) (praising multiculturalism); Claus Leggewie, *MultiKulti: Sprachregeln fur die Vielvolkerrepublik* (1992) (praising multiculturalism).