

Dual Nationality in Germany, Changing European Norms and International Relations

Rey Koslowski

Political Science Department
University of Pennsylvania
(215) 898-6624
koslowsk@sas.upenn.edu

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Abstract:

A contradiction exists between dual nationality as a practical solution to domestic political problems and international norms against dual nationality as practical solutions to international problems. A political movement has grown in Germany which advocates allowing dual nationality so as to facilitate the naturalization and political incorporation of Germany's migrant population. The proliferation of dual nationality, however, raises the potential for conflict of nationality laws among states that had been (at least partially) resolved through the acceptance of a set of international legal norms against dual nationality. This paper examines this conflict through a review of the politics of dual nationality in Germany, assesses the potential for dual nationality becoming a new European norm, and explores the broader theoretical implications of such a new norm for international relations.

Introduction

Recent advocacy of allowing dual nationality in European states, particularly the political movement for dual nationality in Germany, opens old debates among states that had been (at least partially) resolved through the acceptance of a set of international legal norms against dual nationality. The Council of Europe's "Convention on the Reduction of Cases of Multiple Nationality" (Council of Europe 1963) is part of the body of international law whose purpose is to minimize conflicts of laws among states arising from differing nationality laws. In consideration of increasing numbers of permanent resident aliens and increasing numbers of mixed marriages, a new protocol has been adopted that gives parties to the convention the option to permit dual nationality in certain cases (Council of Europe 1993). Nevertheless, the prerogative to take advantage of these changes remains with the signatory states. Several European states have recently ended their prohibition of dual nationality for those who naturalize. Of the parties to the Council of Europe convention, Germany has perhaps most strenuously resisted relaxing the prohibition against dual nationality yet it hosts Western

Europe's largest population of resident aliens. Hence, if the recent movement for permitting dual nationality in Germany succeeds, new international norms will be realized in European practice which, in turn, have broader theoretical implications for international relations.

A contradiction exists between dual nationality as a practical solution to domestic political problems and international norms against dual nationality as practical solutions to international problems. Dual nationality is more than a convenient solution to low naturalization rates or simply an interesting problem in the conflict of laws. Rather, increasing numbers of cases of dual nationality and a relaxation of the international norms against it is indicative of a transformation of the European state system into a new polity somewhat reminiscent of the European polity that preceded nation-state formation.

I make my argument in the following three steps. In the first section, I examine the international norms against dual nationality as well as liberal advocacy of dual nationality to facilitate the naturalization and political incorporation of resident aliens. In the second section, I examine the conflict between the norms of the state system and liberal principles in domestic politics by reviewing the contemporary political controversy in Germany over proposals to change German citizenship laws to permit dual nationality and, in the process, assess the potential for dual nationality becoming a new European norm. In the third section, I explore general theoretical implications of such a new norm, particularly with respect to the conceptualization of international politics.

International Norms Against Dual Nationality vs. Migrant Political Incorporation

The growing political salience of migration has rapidly become evident in the English-language political science literature, particularly with cross-national comparisons of migration policies (e.g. Heisler and Schmitter-Heisler 1985; Layton-Henry 1990; Hollifield 1992; Thraenhardt 1992; Castles and Miller 1993), but also some studies of migration and international relations (Mitchell 1989; Hollifield 1992a; Weiner 1992; Heisler 1992; Miller 1992; Waever, Buzan, Kelstrup and Lemaitre 1993; Zolberg 1992), as well as studies that focus on migration and citizenship more specifically (Brubaker 1989; Hammar 1990; Brubaker 1992; Habermas 1992; Schmitter-Heisler 1992; Klusmeyer 1993; Soysal 1994; Bauboeck 1994). Although Soysal and, more so, Bauboeck examine dual nationality, the topic has yet to figure prominently in recent discussions of citizenship by political scientists and sociologists, except for the work of Tomas Hammar, who wrote a report on dual citizenship for a Council of Europe Steering Committee on Intra-European Migration (Hammar 1985). Hammar has become a leading authority on dual nationality and a proponent of its use in increasing naturalization and ameliorating political conflicts raised by resident aliens (Hammar 1990). In contrast, dual nationality has been a topic of long-standing interest among international lawyers (see e.g. Scott and Maurtua 1930; Rode 1959; Van Panhuys 1959; Bar Yaacov 1961; Griffin 1966) who have often pointed out the conflicts of law it raises among states regarding taxation, marriage, divorce and child custody, inheritance, voting and military obligations (Russell 1970; Weis 1979, pp.161-181; Starchild 1993, pp. 10-11). Although the practical impact of such conflicts of law on the overall relations between states may be considered as relatively small, and therefore not merit extensive examination by political scientists who specialize in international relations, conflicts of law incumbent with dual nationality have led to serious international disputes and even military conflict.

A few examples: When in 1812 Great Britain considered naturalized American sailors born in Great Britain to be subjects of the British crown and impressed them into military service it triggered a war between the United States and Great Britain. Eventually, the United States and Great Britain signed a treaty in 1870 regulating the citizenship of British subjects who had emigrated to the United States (Plender 1988, p. 9). Similarly, during the nineteenth century, many German states did not consider the fact of emigration sufficient for loss of citizenship, nor, for that matter, was the happenstance of birth abroad. The basing of citizenship on the principle of ancestral lineage in this manner became somewhat problematic when emigrants naturalized and became United States citizens. These new Americans found themselves possessing two citizenships, which meant two sets of rights, but also obligations, including military obligations. Eventually in 1868, the Grand Duchy of Baden, Bavaria, the Kingdom of Wurtemberg, the Grand Duchy of Hesse and the North German Union all concluded bilateral treaties with the United States, in which United States naturalization was recognized.¹ During

World War I, Italy and Switzerland drafted naturalized American citizens who were born in Italy and Switzerland and returned to their country of origin. Switzerland even extended its nationality to descendants of Swiss nationals who were native-born nationals of other states and then drafted them (Starchild 1993, p. 10).²

As bilateral treaties regarding nationality proliferated during the latter half of the 19th century, norms developed in customary international law that everyone should belong to a state and preferably to only one state. The project of codifying customary international rules began in 1925 when the League of Nations began to prepare for an International Codification Conference and the regulation of nationality became the first of three areas under consideration. The conference produced the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws (League of Nations 1930) as well as three protocols: one dealing with "Military Obligations in Certain Cases of Double Nationality" (League of Nations 1930a); one regulating "Statelessness" (League of Nations 1930b); and one dealing with a "Certain Case of Statelessness" (League of Nations 1930c).

Conflicts of laws among states regarding nationality are rooted in differing principles governing nationality. As modern nationality laws developed throughout the 19th and early 20th centuries, states adopted either the *jus sanguinis* (ancestral lineage) or the *jus soli* (birthplace) principle of nationality, delineating which inhabitants of the state were citizens. In preparation for the 1930 Hague conference, a study by Harvard Law Research determined that seventeen states based nationality solely on *jus sanguinis* (fifteen of which were European), 25 primarily on *jus sanguinis* (fifteen of which were European, including Turkey), two on an equal mixture of the two principles and 26 primarily on *jus soli* (three of which were European).³

In that the Hague convention recognized both *jus sanguinis* and *jus soli* as legitimate principles for the ascription of nationality, it meant that cases of dual nationality would be unavoidable (e.g. when the child of a national from a *jus sanguinis* state has a child in a *jus soli* state). In order to minimize the conflicts that might occur over dual nationals who involuntarily obtained two nationalities, the Convention extended a right of expatriation whereby states were to accept the renunciation of their nationality by individuals residing abroad. The protocol on military obligations released individuals with two nationalities from obligations of the state in which he does not reside and has few ties (Plender 1988, 46).

As states attempted to grapple with the problem of refugees during and after World War II, there was a marked decline in multilateral treaties on nationality. Nevertheless, regional, rather than universal, efforts eventually continued, particularly in Europe. According to the Council of Europe's "Convention on the Reduction of Cases of Multiple Nationality" (Council of Europe 1963) a national of one participating state who gains the nationality of another should lose his or her previous nationality and an individual with nationalities of two participating states should be able to renounce one state's nationality with that state's permission. A 1977 protocol stipulates that states should not deny such permission to individuals who reside abroad (Council of Europe 1977). The Convention and Protocol have additional provisions aimed at minimizing multiple military obligations. France, Austria, Denmark, Germany, Italy, Norway, Luxembourg, Sweden and the Netherlands ratified the Convention while the United Kingdom, Ireland and Spain agreed only to the provisions dealing with military obligations.

In contrast to the stereotypical depiction of international law as part and parcel of a world government which is common among neorealist IR theorists, international law is constitutive of the state system that is the object of international relations analysis (Coplin 1963) and the international rules governing nationality are part and parcel of these constitutive rules. ⁴ Laws differentiating the membership of one nation from that of other nations became institutionalized with the innovation of national citizenship in France, giving national citizenship an external as well as an internal dimension. That is, national citizenship not only became constitutive of the nation-state but it also became constitutive of the international system, which, in their totality, nation-states formed. During the 19th century, the inhabitants of participants of the European state system received a "nationality" when states bounded their membership according to the developing norms of *Staatsangehoerigkeit*, or state membership (Grawert 1973; Hammar 1990, pp. 41-49).

International norms against statelessness and dual nationality helped establish the international system by delineating its parts in terms of population. Just as states conclude border treaties which delineate their jurisdiction geographically and multilateral boundary conventions which provide international rules for this practice, states also delineate their jurisdiction demographically. States have entered into

multilateral conventions on statelessness and dual nationality in order to both legitimate their competencies over defined jurisdictions and to minimize conflicts inherent in the process of unilateral ascription of nationality given differing principles of nationality combined with the fact of international migration. These multilateral efforts reduced the number of cases of statelessness and dual nationality and instituted a regime for the resolution of conflicts over the remaining cases. As long as the number of remaining cases that persist stays relatively small, conflicts of nationality law can be marginalized in relations among states given that the consequences of statelessness and dual nationality are ultimately borne by individuals, whose interests can all too easily be disregarded should they conflict with the interests of the states concerned. Increased international migration places pressure on this critical boundary maintaining regime of the states system by increasing the number of people who find themselves caught between two states and suffering adverse consequences because of it.

As migration increases the number of permanent resident aliens, growing proportions of a state's inhabitants are excluded from the polity and thereby undermine its democratic inclusiveness (Koslowski 1994a). While liberal principles augur for inclusion of permanent resident aliens into the polity, international norms against permitting dual nationality often dissuade individual migrants from naturalizing in their host state. Whereas norms against dual nationality minimize conflict between states over their demographical boundaries, in the context of increasing migration these norms can become a point of conflict within democratic polities between liberals who are unwilling to compromise on the inclusiveness of their democracy and conservatives who place a higher value on maintaining a citizenry with undivided loyalties to the polity and view dual nationality a threat to this value.

For example, migration has increased Europe's population of permanent resident aliens over the past decades as large numbers of guestworkers who came to the northwestern industrialized core of Europe from the southeastern periphery then stayed in their host countries after labor recruitment stopped during the mid-seventies recession. Not only did these guestworkers stay but due to liberal principles governing family reunifications, they brought their spouses and children to host states. Within a decade it became clear that the remaining guestworkers had become permanent resident aliens with families including children born in the host states.

Due to the prevalence of *jus sanguinis* as the principle governing ascription of nationality on the European continent, most of these children born to Western Europe's permanent resident alien population were not born into citizenship. This was most notably the case in Germany and Switzerland which adhered most closely to the *jus sanguinis* principle. *Jus sanguinis* is a manifestation of an ethnically-based national identity. As Brubaker put it, "*Jus soli* creates and recreates a territorial community, *jus sanguinis* a community of descent" (1990, 168). Anyone can "become" an American or Canadian, because citizenship is the manifestation of political identity toward a territorial community and it is realized through taking on new political loyalties. In contrast, not everyone can "become" a German, Italian, Japanese, or Greek, in the same way because identity in these countries is ethnically delineated.

The role of *jus sanguinis* in constructing ethno-national identity can make simultaneously maintaining *jus sanguinis* and encouraging naturalization somewhat contradictory in both host and home countries. If foreigners are routinely naturalized as citizens of the host country and their children and grandchildren become citizens by virtue of lineage, the practical distinction between *jus sanguinis* and *jus soli* dissipates and citizenship is eventually separated from ethnicity. Difficulty of naturalization marks the degree to which *jus sanguinis* has an implicit ethnic content. Strictly speaking *jus soli* and *jus sanguinis* refer only to ascription of citizenship, whereas *jus domicili* refers to the acquisition of citizenship through naturalization after residence. In practice, however, naturalization is also informed by the distinction between *jus soli* and *jus sanguinis* in that naturalization of an alien may depend on ancestral lineage, cultural considerations and language skills in addition to residence.

Although the governments of some countries that base citizenship on *jus sanguinis* have come to accept the reality of immigration and encourage naturalization, like Sweden and the Netherlands, others, like that of Germany and Switzerland, have maintained that they are not "immigration countries" and have therefore avoided institutionalizing an immigration policy as well as discouraged naturalization.⁵ Whether or not a state permits dual nationality is a major factor influencing how many of those eligible for naturalization avail themselves of the option (Hammar 1990, pp. 84-105). Hence,

the question of dual nationality has become a key issue in the movement to liberalize citizenship laws in states that adhere to the jus sanguinis principle.

Increased migration and growing numbers of permanent resident aliens since the conclusion of the 1963 Council of Europe Convention have led European states to evade fulfilling the Convention's objectives. The United Kingdom does not require those who naturalize to renounce their previous citizenship, France uses loopholes in the Council of Europe convention against dual nationality to enable more than one million of its naturalized citizens to keep their previous citizenship and the Netherlands took over 20 years to ratify the convention (Hammar 1990, 109-114). In light of increasing numbers of permanent resident aliens, including those who do not have the citizenship of their country of birth, the Council of Europe began to reconsider its position in the late 1980s (Plate, 1989).

In 1993 the Council of Europe amended the 1963 Convention with provisions that permit dual nationality in certain cases "to facilitate the acquisition by one spouse of the nationality of the other spouse and the acquisition by their children of the nationality of both parents, in order to encourage the unity of nationality within the same family" (Council of Europe 1993, p. 2). The number of such cases in Europe is potentially quite large and grows as the number of resident aliens increases through migration, as foreigners give birth in jus sanguinis countries and as more of Europe's current population of resident aliens meet residency and other naturalization eligibility requirements. As of January 24, 1995 only France, Italy and the Netherlands have signed the 1993 Protocol (Council of Europe 1995, p.172). Furthermore, the Council of Europe is in the early stages of considering a further departure from the 1963 convention in the form of a new "Draft European Convention on Nationality and Military Obligations in Cases of Multiple Nationality which states in Articles 14b and 15 that "A State Party may allow...nationals of other States acquiring its nationality to retain the nationality they already possess....A State Party shall not require persons to renounce their nationality of origin in order to acquire its nationality where such renunciation is not possible or cannot reasonably be required" (Council of Europe 1995a, p. 8).

In a sense, the 1993 Protocol is evidence for changing European norms on multiple nationality. Should the above provisions of the Draft Convention be accepted by Committee of Ministers of the Council of Europe and the new convention then be signed by the member states that change would then be codified. Still, the central norm against multiple nationality remains in place as long as most parties to the treaty have not signed onto the 1993 Protocol and, more importantly, as long as European states retain prohibitions against dual nationality in their nationality laws.

The norm against multiple nationality is being increasingly undermined, however, by state practice in Europe. For example, in 1990, Switzerland, one of the strictest jus sanguinis countries, dropped its requirement that aliens undergoing naturalization renounce their citizenship (OECD 1992, 36). Although Switzerland is not a party of the Council of Europe's convention, the Netherlands, which is a signatory state, is also changing its nationality laws so as to permit those who naturalize to retain their previous nationalities (Reuters 1995a). If Germany were to follow suit, whatever is left of the norm against multiple nationality would become somewhat of a moot point as a majority of Europe's population of resident aliens would be able to become dual nationals.

Dual Nationality in Germany

Based on the citizenship law of 1913 (Reichs-Gesetzblatt 1913), German nationality adheres to the principle of jus sanguinis. Children of foreigners born in Germany are not born as German citizens. Naturalization in Germany has been difficult and expensive. Moreover, naturalization requires renunciation of one's previous nationality and rights that may go with it. These circumstances have led to a very low naturalization rate. The coalition government of the Christian Democratic Union (CDU), its Bavarian sister party the Christian Social Union (CSU) and the liberal Free Democratic Party (FDP) which has governed Germany since 1982 under the leadership of Helmut Kohl has resisted changing Germany's citizenship law and instituting anything that approached an immigration policy. Political leaders from several parties from both the opposition and within the coalition have proposed that Germany allow dual nationality so as to increase the naturalization and assimilation of resident aliens. The movement in favor of dual nationality has developed much momentum, but dual nationality has

become a charged political issue generating heated debate. This debate pits liberal principles of inclusion and the pragmatic recognition of dual nationality's utility in incorporating resident aliens against the conservative values of undivided loyalties to the polity, adherence to the logic of the nation-state and deference to the international norms of the state system.

Until the new German Foreigners Act went into effect on January 1, 1991, naturalization required at least ten years of residence, knowledge of the German language and society, good behavior, sufficient means of support and a naturalization fee of 75% of one's monthly salary. Moreover, naturalization was not considered a right but rather a matter of administrative discretion governed by the interests of the Federal Republic (Brubaker 1992, 77-79). The Foreigners Act makes naturalization easier for foreigners aged 16-23 who have lived continuously in Germany for eight years (OECD 1992, 36) and naturalization cannot be arbitrarily refused to those raised and educated in Germany or maintaining permanent residence for at least fifteen years. Although the Foreigners Act loosens regulations on the naturalization of children born to migrants, Liselotte Funcke, the former *Auslaenderbeauftragte* (federal official responsible for making policy recommendation dealing with immigration) did not expect significant increases in naturalization because the law does not provide for dual nationality (Brubaker 1992, p. 194).

Dual nationality would facilitate naturalization because, even though the Foreigner's Act made naturalization easier, the practices of the migrants' home countries governed by the *jus sanguinis* principle inhibit naturalization. For instance, Italian resident aliens who came as guest workers have been discouraged from becoming German citizens by Italy's own laws that encourage emigrants to keep their Italian citizenship. In addition to basing citizenship on *jus sanguinis*, some states prohibit renunciation of citizenship by emigrants attempting to naturalize in another state until they pay for the education they received and/or complete required military service. Similar to the claims made by Great Britain, Italy and Switzerland on naturalized Americans in the 19th century, male children of Greek, Turkish, or Iranian parents born in West European countries may be subject to conscription in their parents' home countries if they ever return to visit, even if they have served in the military of the country in which they were born and eventually naturalized. They are then left with the choice of naturalizing to their country of birth and not returning to their parents' home country, naturalizing and serving in the military of both countries, or not naturalizing (Hammar 1990, 116-117).

In accordance with Germany's accession to the "Convention on the Reduction of Cases of Multiple Nationality," Germany's CDU/CSU/FDP coalition government has maintained a long-standing opposition to dual nationality (Miller 1989). A 1989 conference convened by the Aliens Commissioner of the West Berlin Senate, Barbara John, and attended by high ranking administrators from federal and state governments, marked the beginning of an official reassessment of Germany's dual nationality policy (Senatsverwaltung fuer Gesundheit und Soziales 1989). By May of 1992 this reassessment produced legislative proposals as members of the Bundesrat, which is dominated by the Social Democratic Party (SPD), advocated permitting dual nationality, with 9 out of 16 states voting in favor (Reuters 1992). At the end of 1992, the current *Auslaenderbeauftragte*, Cornelia Schmalz-Jacobsen (FDP), suggested that children of foreigners be permitted to have dual nationality (Agence France Presse 1992).

Proponents of dual nationality in Germany have argued that allowing those who naturalize in Germany to keep their old passports would remove barriers to those who are eligible to naturalize but opt not to, particularly members of Germany's large Turkish population. For example, Turks who renounce their Turkish citizenship cannot own or inherit land in Turkey. Many Turkish migrants do not renounce their citizenship because they have strong emotional bonds to their homeland, plan to retire there and/or are subject to social approbation when they return to visit. The children of Turkish nationals born abroad may be released from military obligations but only after paying a 10,000DM fee and attending a citizenship course. In her advocacy of dual nationality, Schmalz-Jacobsen argued that it would foster a sense of security and stronger Germany identity, warning that young Turks who were alienated from their host country due to its exclusionary citizenship laws would be susceptible to "the charms exerted by extremist radical groups" (quoted in Agence France Presse 1992).

The movement for dual nationality accelerated during June 1993 in response to a ground swell of public outrage after a skinhead attack in Solingen left five Turks dead (Sommer 1993). At a memorial service for the victims, German President, Richard von Weizaecker hinted that he supported dual nationality and Count Otto Lambsdorff, the outgoing FDP leader at the time, said "we should have had it a long time ago" (Quoted in Frankfurter Allgemeine June 6, 1993). At the funeral in Turkey,

German Foreign Minister Klaus Kinkel was met by interim Prime Minister Erdal Inonu who called for reforming Germany's citizenship laws to permit dual nationality (Agence France Presse 1993). Shortly after returning, Kinkel assumed the FDP party chairmanship and said in his first policy speech at the FDP's conference in Muenster, "We want easier naturalization and dual citizenship -- 'You are welcome here,' but you must be willing to integrate" (quoted in Liffey 1993; SZ 6/11/93). Fractures in the CDU/CSU/FDP coalition on the issue of dual nationality quickly became apparent with members of the CSU adamantly opposed, members of the FDP increasingly in favor and members of the senior coalition partner CDU realizing that the issue of permitting dual nationality could no longer be avoided. The Kohl government floated the idea of permitting temporary dual nationality for those migrants who naturalize, but also requiring dual nationals to make a decision opting for one nationality or the other within five years (Agence France Presse 1993a). Interior Minister Rudolf Seiters said that the government would introduce a citizenship law reform bill before the end of 1994 that would enumerate special circumstances in which dual nationality would be permitted. He said, "For instance multiple nationality might be acceptable if the renunciation of one's existing nationality would mean losing substantial rights, for example inheritance rights" (quoted in Liffey, 1993). Such special circumstances could theoretically include all Turks. Kohl and Seiters backed away from this position in a subsequent formal statement of government policy to the Bundestag, but Kohl promised that in the drafting of the reforms, a joint commission of the government and the Laender would examine "whether multiple nationality can be possible in exceptional cases, beyond those which already exist" (quoted in Peel 1993, p. 2).

Continuing attacks against Turks in Germany, little in the way of increased naturalization and a lack of political rights for resident aliens in Germany prompted leaders of the Turkish community and Turkish Prime Minister Ciller of Turkey to call for dual nationality during her September 1993 state visit to Germany (SZ 9/21/93). Ciller's call was echoed not only by Foreign Minister Kinkel but also by Rita Suessmuth, President of the Bundestag and CDU member (Christie 1993). Kohl rebuffed Ciller's request and just reiterated his promise to study the idea of granting dual nationality in special circumstances (Inter Press Service 9/22/93).

As the 1994 election year approached, demands that dual nationality be included in citizenship reform were increasingly voiced by the opposition as well as the population at large. Members of the SPD continued to criticize the Kohl government on its refusal to permit dual nationality (Scharping 1993; Der Spiegel 1993) and the FDP's support for dual nationality grew (FAZ 8/5/93). A petition drive headed by the Alternative List/Green coalition collected the signatures of over one million German citizens in favor of dual nationality (SZ 10/21/93) and a public opinion poll indicated that 63% of the German population was in favor of dual nationality in the Fall of 1993 (Agence France Press 10/20/93). Buoyed by this popular support, the SPD introduced legislation that would permit dual nationality. Kohl maintained discipline within the coalition, despite the support for dual nationality among the FDP and members of his own party. Subsequently, the ruling coalition announced that citizenship reform would have to wait until after the October 16 Bundestag elections (Reuters 1994).

Although the differences over dual nationality among the coalition partners were temporarily put to rest, the prospect of a close election and the Kohl government's promise to enact reforms insured that dual nationality would become an important electoral issue. Fearing that the right-wing Republicans would siphon away voters, the CSU leadership maintained a hard line on liberalizing Germany's citizenship laws. As the elections approached, the FDP leadership promised to push its coalition partners to accept dual nationality and more liberal naturalization rules. The FDP chose to take a stand on the issue of dual nationality because the FDP's share of the electorate declined markedly since the retirement of Han Dietrich Genscher and with it the FDP's viability as an independent force in German politics declined as well. The party leadership felt compelled to reaffirm its liberal credentials and prove to the electorate that it is not just an appendage of the CDU.

After the votes were tallied, the CDU/CSU won 294 seats and FDP won 47: together the coalition controlled 341 out of 672 seats in the Bundestag, a 10 seat margin of victory. After the election, the FDP's Schmalz-Jacobsen issued a statement calling on the Kohl government to live up to its promise to reform Germany's citizenship laws, specifically calling for a relaxation on the prohibition on dual nationality (Deutsche Presse-Agentur 1994). Having just been promoted within the party to its presidium, Schmalz-Jacobsen indicated that she would not return to her post as Auslaenderbeauftragte unless reforms were enacted (TWIG 11/4/94). Soon thereafter the Kohl government announced that

the citizenship law would be reformed and the bargaining over dual nationality between the FDP, the CDU and the CSU began as the parties negotiated the make-up and policy of their new government. Despite the pre-election promise to remove the prohibition on dual nationality, the FDP leadership eventually gave up their central demand in the coalition negotiations. Instead they settled for a compromise measure tabled by the CDU which introduced *Kinderstaatszugehoerigkeit* (child state membership) for certain children of resident aliens. The proposed revision of German citizenship law would give temporary German citizenship to children born in Germany to resident aliens if their parents have lived in Germany for at least 10 years and one parent was born there. When reaching the age of 18, these third generation resident aliens would have to either accept German citizenship and give up the passport of their ancestral homeland or keep their parents' citizenship and not naturalize (UPI 1994). The compromise plan introduces the principle of *jus soli* ascription of nationality as well as *de facto* dual nationality for third generation resident alien minors, but it avoids extending dual nationality to adults. Kinkel said the reform "will ease the integration of third generation foreign children" and coalition partner CSU leader, Theo Waigel referred to it as a "brave step" (quoted in UPI 1994). In contrast, the citizenship reform plan was roundly criticized as being inadequate by Turkish immigrant groups and the SPD opposition, whose leader, Rudolf Scharping called it "a political and legal nothing" (quoted in Christie 1994).

In January of 1995, the SPD proposed legislation that would permit dual nationality and automatically give citizenship to third generation resident aliens (Liffey 1995). Given that the proposed legislation came close to that advocated by the FDP's Schmalz-Jacobsen, it put members of the FDP in an uncomfortable position: either vote for their liberal principles or stick to the deal ironed out in November and maintain coalition cohesion. As Schmalz-Jacobsen put it, "I have already said I will not vote against my wishes....But it is not good manners to vote against the coalition. One could abstain, but that hurts a lot" (quoted in Reuters 1995).

Despite the temptation for members of the FDP to defect from the coalition position, the SPD could not garner sufficient FDP support for its bill.

FDP members were strongly influenced by the upcoming Hesse elections which were considered crucial to the future of the party, as well as Kinkel's position as its leader. The party itself is increasingly divided between a more liberal progressive wing and a more nationalist conservative wing. Members from the progressive wing advocate strengthening the FDP's liberal identity and regaining those voters who have left for the SPD, Greens and even the CDU because voting for the FDP is increasingly viewed as little different than voting for the CDU. More conservative members caution against antagonizing their coalition partners lest they lose their current cabinet seats as well as votes from CDU voters' split tickets and argue that the FDP should try to expand its electoral base by appealing to moderate voters who have traditionally voted for the CDU.

As Rainer Erkens, head of the party's political department puts it, "You can see why Hesse matters....We have to start reversing our fortunes....The voters do not know what we stand for any more. We do not defend our principles enough." Schmalz-Jacobsen and Otto Solm, the FDP's parliamentary leader, have been even more direct. Schmalz-Jacobsen argues, "The party is too timid. It lacks courage. It lacks leadership. It lacks ideas." Solm said, "Kinkel not only lacks imagination,...He never wants to rock the boat in the coalition. We might as well be cleaning the shoes of the CDU"(quotes from Dempsey 1995). While many party leaders from the liberal wing are willing to challenge the CDU to lower taxes and reduce subsidies for industry, some, like Solms, refrain from staking out a position on dual nationality that goes beyond the November compromise, arguing that dual nationality, "is not a matter of conscience, rather it is a question of the coalition" (my translation, quoted in Borchers 1995). In response to Solm's position, Schmalz-Jacobsen said "I get very angry....Either we have principles or we don't" (quoted in Dempsey 1995).

Nevertheless a fact of political life for the FDP is that it has become rather dependent on CDU voters. Last October, at the request of the CDU leadership, CDU voters cast their party list votes for the FDP so that the party could meet the 5% threshold for representation in the Bundestag. Having been unable to cross the 5% barrier in a string of regional elections, FDP members have been very reluctant to antagonize their coalition partners in the face of another possible defeat. The FDP did manage to secure 8 seats in the Hessian Parliament with 7.4% of the vote (TWIG 2/24/95). It is important to note, however, that Hesse uses the double ballot system. The FDP received 7.4% of voters' party list votes but more than 50% of these voters' second votes went to CDU candidates (EIU 1995) which indicates that FDP success in crossing the 5% threshold depended on vote splitting as in the Bundestag elections.

The FDP faces more challenges in the six upcoming regional election during 1995-1996 and it has been put on notice by its coalition partners. CSU leader, Theo Waigel warned the FDP not to overreach itself within the coalition, or it may trigger talks of a grand coalition between the CDU/CSU and the SPD. Not only would this scenario freeze the FDP out of government, Waigel argued that it would be inimical to FDP objectives in that it would strengthen the right-wing Republicans (Reuters 1995a). In light of the political situation confronting the FDP in the next year or so, it is unlikely that the FDP leadership will risk losing neither government positions nor the votes of CDU ticket splitters they depend on by supporting any legislative initiatives that transcend the compromise reforms of citizenship agreed to in November.

Although the FDP is not in the position to force its coalition partners to relax the prohibition against dual nationality, the movement is far from dead. Any significant progress in the immediate future would require a change of position within the CDU, but this may not be as farfetched as it may initially seem. The CDU platform states, "Dual citizenship causes a conflict of duties and rights between different states and constitutional orders" and dual citizenship might "endanger the inner security of our country" (Quoted in Eschweiler 1994). Nevertheless, members of the CDU leadership have voiced dissenting opinions. Commenting after the announcement of the compromise reforms, German Parliament President Rita Suessmuth reiterated her support for dual nationality (Christie 1994a). Similarly, German President, Roman Herzog insists that he has long favored dual nationality, contrary to public perceptions based on an isolated statement made before his election (Prantl 1995). Klaus Fischer, leader of the CDU youth organization has stated that the CDU needs to back away from the principle of ancestral lineage and that dual nationality should be permitted for the children of foreigners of the second generation at the latest (Sueddeutsche Zeitung 1995).

Such dissension reflects the fact that the CDU platform's position on dual nationality is increasingly viewed as outdated by commentators in the press as well as the German public at large, as indicated in the above-mentioned poll (Agence France Press 10/20/93). Moreover, the logic of the CDU position is being questioned, which in turn is bound to raise further doubts about the CDU's opposition to dual nationality among its members. For example, Schmalz-Jacobsen notes that the CDU's resistance to permitting dual nationality flies in the face of the fact that there are already over 2 million German citizens with dual nationality (TWIG 4/21/95). These are mostly Auspendler (ethnic Germans from Eastern Europe, Russia and Kazakhstan) who are considered German nationals according to Article 116 of the German Basic Law. According to German law, since these individuals are not naturalizing, but rather simply claiming their existing German nationality, they are not required to renounce their previous nationality (Starchild 1993, p. 34). Nevertheless, dual nationality leads to conflicts of duties and rights between different states and constitutional orders regardless of the circumstances that bring it about. The Kohl government is in principle against dual nationality based on its adherence to international norms, but it is doubtful that the CDU would follow the logic of this principle and amend the constitution so as to prohibit dual nationality for Auspendler because in doing so the CDU could alienate a major constituency.

Indeed, the idea of permitting dual nationality is also appealing to a long-standing CSU constituency, Sudeten Germans. Approximately 2.5 million Germans were expelled from Czechoslovakia after World War II and a large proportion of them settled in Bavaria. Now after the collapse of communism many would like to reclaim their property and some would like to return to live where they were born. Franz Neubauer, leader of the Sudetendeutsche Landsmannschaft, says that his 100,000 member organization wants the Czech government to consider restitution of property as well as to permit returning Sudeten Germans to maintain dual Czech and German nationality. At a May 1994 meeting of Sudeten Germans, CSU leader Theo Waigel connected Czech concessions to the Sudeten Germans with German support for Czech accession to the European Union and Interior Minister Manfred Kanther (CDU) advocated that the Czech government should come to terms with the Sudeten Germans (Miller 1994). Waigel pursued the issue of dual nationality for Sudeten Germans in a March 1995 meeting with Czech Prime Minister Vaclav Klaus after which Klaus said, "it is absolutely clear that no dual citizenship is acceptable for us. Thus the idea that some should retain their German citizenship and still have Czech citizenship is not on" (BBC 1995). For Waigel to raise the issue of dual nationality for German citizens who were born in Czechoslovakia, yet at the same time deny the same request of Turkish president Ciller that Germany permit dual nationality for Turkish citizens who were born in Germany smacks of a hypocrisy that could be utilized by the opposition. Gestures toward permitting Sudeten Germans to maintain dual nationality may play well in Bavaria and help the CSU

win a larger share of the electorate, however, such actions could easily be used to undermine the CDU argument against dual nationality that it causes a conflict of duties and rights.

This argument against permitting dual nationality is also undermined by the Germany's long-standing commitment to European integration. In a debate about dual nationality among members of the Bundestag, Interior Minister Manfred Kanther (CDU) said that all parties are in agreement that they were in favor of integrating foreigners, but he drew the line at permitting dual citizenship. Kanther argued that one must have undivided loyalty of the citizen to his/her state and that with two loyalties comes the threat of undreamed of conflicts. Herta Daeubler Gmelin (SPD) rebutted Kanther by arguing that the loyalty of people to two cultures could be used as a bridge to a common Europe in the future (debate reported in *Sueddeutsche Zeitung* 1995a). Kanther's insistence on undivided loyalties to the state is somewhat ironic given that the Kohl government has been a proponent of the Maastricht Treaty and its provisions for a European citizenship. Given that European citizenship entitles nationals of Germany's fellow EU member states to nearly all the civil and social rights of German nationals and even extends the right to vote and stand for office in local elections, a type of multiple membership short of dual nationality already exists for Germany's 1.6 million resident alien EU nationals (Koslowski 1994; population figures from Eurostat 1993). What of the conflicts of duties and rights between different states and constitutional orders that this form of multiple membership raises? Although the logic of the CDU/CSU position may come under increasing criticism, politics often involves marshaling votes for bills that are logically inconsistent and the electorate often votes for party platforms that are internally contradictory. The question of leadership is paramount in such undertakings and the future of the CDU leadership is far from clear as Helmut Kohl enters the last stage of his political career after spending earlier stages demolishing anyone who may have challenged him and leaving few figures of great political stature in the party. Given that there is no clear consensus within the CDU on the question of dual nationality, as the jostling begins within the leadership as it develops a post-Kohl agenda, the potential for the CDU to accept greater relaxation of the prohibition of dual nationality increases.

Significant change of German policy on dual nationality from within the coalition is currently unlikely; the long term may prove more promising. The CDU/CSU/FDP coalition remains shaky and the SPD and Greens will continue to try and split the CDU/CSU/FDP coalition on the issue of dual nationality. Given the decline of the FDP's electoral fortunes as well as its internal dissension over the party's future, the question of party discipline vs. individual conscience regarding citizenship will continue to strain the party and jeopardize the coalition. Whether the FDP membership follows the progressive or conservative wing of the party will depend largely on the outcome of the remaining regional elections and the future of the current coalition will largely depend on this internal FDP debate.

Change of policy may also come with a change of government. The possibility of a grand coalition, raised by Waigel, would place the SPD in the FDP's current position of championing the cause of dual nationality within the ruling coalition. Whether the SPD would be more successful than the FDP in this role is hard to say. It would depend on how high dual nationality would rank on the list of priorities of both the SPD and the CDU/CSU and how much political capital the leadership of each party would be willing to expend.

Finally, reconsideration of the current compromise on citizenship reform may have to wait until the next scheduled Bundestag elections in 1998. Many thought that the current coalition government would not secure enough votes to return to office in 1994. With Helmut Kohl leaving the scene, it is doubtful that the coalition's prospects for 1998 can be better. Given its history on the issue, should an SPD-led government come to power, the prohibition against dual nationality would in all likelihood be lifted.

In sum, the movement for permitting dual nationality in Germany has come a long way from its early consideration in 1989, but it is far from certain that a major relaxation in the prohibition will occur in the near future. Due to a combination of factors the long-term prospects for changing current policy are growing. The amendment of the Council of Europe convention against dual nationality and each relaxation of prohibitions in other European states increases the public perception that Germany's current law is out of date and gives advocates of dual nationality more ammunition for their arguments. Changing public opinion, in turn, buttresses the support for dual nationality in the SPD and Greens, encourages the progressive camp within the FDP and provokes self-doubt and dissension within the ranks of the CDU.

The Implications of Changing European Norms for International Relations

European states face a choice: On the one hand, they can adhere to international norms against dual nationality which have developed as practical solutions to international problems and by doing so give up a practical solution to domestic political problems raised by permanent resident aliens for democratic inclusiveness. On the other hand, they can increase the legitimacy of their democracy through facilitating political incorporation of resident aliens by permitting dual nationality and then accept the international consequences. These international consequences can conceivably be of two sorts: Dual nationality provokes increasing conflicts within the state system or the state system changes as an outcome of changing state practice in the international arena emerging from domestic political change. Having reviewed the first type of consequences in the beginning of this paper, in this section I investigate the latter variety.

Although international lawyers have generally limited their efforts to examining the practical legal problems dual nationality raises for taxation, marriage, inheritance, and military obligations, the dilemmas of multiple loyalties incumbent in dual nationality led international relations theorist Raymond Aron to consider multiple citizenship a "contradiction in terms" (Aron 1974, p. 638) that is incommensurate with the logic of the states system. That is, given the institutions of the nation-state and a system of states, multiple citizenship should not exist and when it does exist, it is unsustainable. But what if the phenomenon of dual nationality does not only persist, but cases of dual nationality increase dramatically? What does this say about the state and the state system?

With respect to the possibilities of multiple citizenship emerging from European integration, Aron went on to argue that EC member states might have been willing to extend economic rights to non-nationals, but political rights were another matter.

(N)either in theory nor in fact do any properly political rights -- the vote, freedom of speech, freedom to hold office, etc. -- now extend beyond the borders of the old states. Perhaps, on the day that a European Assembly is elected by universal suffrage, a Frenchman will be able to be nominated for office in West Germany or a German in France. Yet how many people would avail themselves of such a right? (Aron 1974, p. 647).

Five years after Aron's article was published, the European Parliament was directly elected and twenty years later Germans living in France voted for MEPs from the French delegation and, something Aron did not foresee, Germans living in France will be able to vote in local French elections.

Aron dismissed multiple citizenship by arguing that, historically, the nation-state informed the development of citizenship and that it was unlikely that the practice of citizenship, including both the exercise of political rights as well as the fulfillment of duties such as military service, could ever take place outside of the singular relationship between the individual and the state he or she was a member of. Aron argued that European institutions of democracy, military service, the principle of equality were all organized around the nation-state. Citizenship is the connection between individual and state, whereby with popular sovereignty, citizenship defined the state and, as a fundamental aspect of sovereignty, the state determined who its citizens were and obliged them to fulfill the duties incumbent in their exercise of rights. Along such lines of thinking multiple citizenship is theoretically inconsistent.

The theoretical contradiction, however, only rings true given the history of a set of actors' practices that have settled into institutions. For their reproduction these settled practices depend on constitutive and regulative norms (Kratochwil 1989). For example, the differentiation of the world politics into an international system of states is made possible by constitutive norms like "everyone belongs to a state and only one state" and the reproduction of system unit differentiation is facilitated by regulative norms such as "minimize cases of dual nationality through requiring renunciation of previous nationality and permit renunciation of nationality by those who naturalize in other states." If the international system is understood in terms of settled practices that are constituted and regulated by norms, then changes in practices can lead to changes in constitutive norms, which in turn reconstitute the system itself. Moreover, since reproduction of the practice of international actors (i.e. states) depends on the reproduction of the practices of domestic actors (i.e. individuals and groups), then changes in domestic politics can transform international systems (Koslowski and Kratochwil 1994).

Dual nationality is an “abnormality” within the classical state system because it contradicts the system’s constitutive norms. If the incidence of dual nationality increases because domestic politics forces state practice in the international arena to depart from the constitutive and regulative norms of the existing international system, these new state practices can either be dismissed as being anomalous and ephemeral or they can be viewed as precedents in the establishment of a new set of international norms and indicative of the transformation of the international system. Aron viewed EC member state practices of extending of civil and economic rights to non-nationals as anomalous and unlikely to expand into the political realm. One can similarly dismiss the increasing practice of permitting dual nationality among European states as anomalous and bound to be reversed. In contrast, one could view the combination of the relaxation of the Council of Europe convention and the lifting of prohibitions against dual nationality by European states as part and parcel of the development of a new set of constitutive norms incumbent with the replacement of the classical European state system with the emergence of a new European polity. What kind of polity could a new norm of permitting dual nationality be indicative of?

When considering the potential alternative to the contemporary states system, Hedley Bull described a "new medievalism" or "a system of overlapping authority and multiple loyalty" (Bull 1977, 254). By blurring the boundaries of authority of states over their subjects and increasing the potential for multiple loyalties, increasing dual nationality may be indicative of one dimension of a transformation of the international system in Europe toward such a new medievalism. Gidon Gottlieb (1993) furthers this reconceptualization of international society by advocating that the existing territorially delineated international system be adjusted for overlapping authority and dual loyalties through international recognition of non-territorial political associations. Gottlieb distinguishes citizenship that is tied to the state from nationality that is tied to the nation and advocates the idea of a "national home" distinct from the state, to which nationals could belong regardless of their residence. Given that a state's acceptance of dual nationality legitimates migrants' residual political identification with another state, the acceptance of dual nationality on the international level, would be a first step to international recognition of national homes and an international system of what Gottlieb calls "states plus nations." This formulation of “states plus nations” conjures the image of a matrix of homeland nationality superimposed onto territorially organized citizenship of the classical European state system. Within this matrix of nationalities and citizenships, individuals would have dual nationalities in which the rights and duties of homeland citizenship would become recessive upon naturalization in a new state, whose citizenship would be active. Should those who naturalize return to their “national homes” the process would reverse. Although overlapping authorities and multiple loyalties would proliferate, the breakdown of undivided loyalties, assumed to exist with singular nationality in sharply delineated nation-states, need not result in divided loyalties that are uniformly divided between two states. That is, much as in medieval Europe, authorities and loyalties could easily become functionally differentiated (Guetzkow 1955). Sets of rights extended by the home state and duties owed it may be quite different than rights and duties of the state of naturalization which, in turn, may be quite different from the rights and duties incumbent with European citizenship.

Such disaggregation of unitary nationality and citizenship that the plurality of nationalities incurs is indicative of a parallel disaggregation of unitary authority into a set of overlapping authorities. In this sense, the movement towards a norm permitting dual nationality can be considered part of what Ole Wæver calls “a collective redefinition of sovereignty.” As Wæver points out, at one time sovereignty “meant the ability to decide the religion of one subjects. Although this is no longer included in sovereignty, states have not become less sovereign. Religion and the state have both changed” (Wæver 1995, pp. 417-418). Likewise, sovereignty once meant the ability to unilaterally determine who one’s subjects were and then extend rights to and impose duties upon them. In the context of migration, the development of popular sovereignty, the growing international acceptance of human rights, the definition of sovereignty in the determination of nationality and the content of citizenship rights and obligations is being redefined. If European norms governing nationality are changing so as to exclude certain unilateral prerogatives, it is not necessarily the case that states are becoming “less sovereign.” Rather nationality and the state are both changing as the classical European state system transforms into a new European polity.

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FAZ: Frankfurter Allgemeine Zeitung

FR: Frankfurter Rundschau

SZ: Sueddeutsche Zeitung

TWIG: This Week in Germany

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