

European Forum

The Transformation of Immigration Policies.
Immigration Control
and Nationality Laws in Europe:
A Comparative Approach

PATRICK WEIL

EUR No. 98/5

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This Working Paper has been written in the context of the 1997-98 European Forum programme on 'International Migrations: Geography, Politics and Culture in Europe and Beyond', directed by Professors Christian Joppke and René Leboutte.

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

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**The Transformation of Immigration Policies.
Immigration Control and Nationality Laws in Europe:
A Comparative Approach**

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Printed in Italy in September 1998
European University Institute
Badia Fiesolana
I – 50016 San Domenico (FI)
Italy**

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APPENDIXES

I. THE TRANSFORMATION OF IMMIGRATION POLICIES

Are immigration control policies still possible, and if so, do they matter? At the beginning of the 1970s, it was still relatively easy to characterize the European Union countries with regard to immigration: Greece, Italy, Portugal, Spain or Ireland were seen as traditional nations of emigration; France had a tradition of large-scale immigration since the end of the nineteenth century; Great Britain, Belgium, the Federal Republic of Germany or the Netherlands only became nations of immigration after the Second World War. In 1997, however, all these countries, except Ireland, are host of the permanent settlement of immigrants, regardless of their different histories. Furthermore, received wisdom is that all of these countries face the same general risk with regard to immigration: a massive, uncontrollable 'invasion' of the North by the poverty stricken from the South, and additionally a potential movement from the East to the West.

A. The Double Failure of Stateless Theories

It is true that having originated primarily in developing countries, immigrant populations tend to choose developed countries as their destination: figures from the United Nations show that in 1990, 45% of 120 million migrants in the world were concentrated in these areas: the United States (16%), Europe (22%), Japan, Canada, Australia, and New Zealand.¹ While the South-North migration represents approximately half of international migration, the northern host countries represent only 17.4% of the world's total population. Except for a small proportion of the immigrants into Germany, immigrant arrivals tend to settle in regions of the host country where immigrant populations are already concentrated. In the United States, 70% of new immigrants are concentrated in six States: California, New York, Texas, Florida, Illinois, and New Jersey.² In France, Michelle Guillon has demonstrated that while the percentage of foreigners in metropolitan France declined slightly from 6.8% to 6.4% between 1982 and 1990, the percentage of the foreign population in and around the Paris area increased from 36.3% in 1982 to 38% in 1990, while polarization between neighbourhoods with high and low immigrant populations also dramatically increased.³ This visibly increased concentration of immigrants in certain areas of host nations, coinciding with periods of economic crisis experienced by these nations, has led in recent years to a public perception that national identity or the economic livelihood of the indigenous residents of such countries is being threatened by immigration.

¹ Data provided by Zlotnik, Hania, Population Division, United Nations.

² US commission on Immigration Reform, *Legal Immigration: Setting priorities* (1995) 15.

³ M. Guillon, *Etrangers et immigrés en Ile-de-France* (1996).

Such a concentration of immigrants often leads political representatives of these areas to identify the localized influx of immigrants as a problem, and to describe the phenomenon by employing a vocabulary of 'invasion', thereby placing the question on the national political agenda.

It is this perception of an ever-increasing migratory pressure which explicitly or implicitly underlies most explanations of the similarity of the situations in the northern industrialized nations. With projections of population growth in the Third World serving as an ever-present warning, the common perspective on the future of North-South relations is often dominated by visions of a massive and unavoidable movement of Africans towards Europe, of Latin Americans or Asians towards the United States, and of East- and Southeast Asians to Japan.

1. Theories of the Decline of the State

The fears arising through this 'crystal-ball gazing' are reinforced by studies which, through their 'scientific' logic, appear entirely coherent. In fact, demographers and economists traditionally dominate the study of international migration and its causal explanations. Thus some scholars still interpret past and present migration patterns as a function of imbalanced labour markets and differing rates of population growth.

Within this paradigm, demographic differentials and the economic logic of the labour market or some part thereof should explain migratory flows and render State intervention difficult, if not impossible. The most conventional economic theory regarding immigration assumes that migration is driven by the income differential between highly developed and under-developed countries or regions of the world. In making the decision of whether or not to leave behind their native country, immigrants are assumed to include income differentials in their calculations and balance them against the costs of transportation, job search, housing, etc. The movement of 'surplus' immigrant labour from under-developed regions to industrialized nations will lower the wages in the developed countries by increasing the supply of labour and at the same time cause a rise in wages in immigrants' countries of origin.

Differential population growth comes into play because such growth drives down wages in nations of rapid demographic expansion, and thereby increases the attraction of industrialized nations with little or negative population growth. Through migration, wages would decline in the North and increase in the South, and, if one follows this argument to its logical conclusion, will one day create a

self-regulating labour market on a global scale.⁴ Other macroeconomic approaches, such as dual-labour market theory or world-systems theories logically assume a hypothesis of massive population flux.⁵ Similarly, Alfred Sauvy, a noted French demographer, wrote in *Richesse et Population*⁶ that 'the general Laws of migration perfectly explain migratory movements in the last few years'. Migration is a phenomenon which functions like 'communicating vessels'.⁷ In this perspective, the State either completely disappears or is considered as an ever weakening impediment to the self-regulation of world labour, wage, and population 'vessels'.

More recently, new analytical frameworks developed by sociologists and political scientists have sought to 'bring the State back in', if only to 'execute' it by other means. Despite alternative approaches, these studies have reached a similar conclusion: States are incapable of controlling immigration. This research trend, which follows the rise of unemployment in Europe, documents the attempts by the European industrial States to restrain or to completely halt immigration following the rise of unemployment in Europe, concluding that the development of free markets and human rights has prevented, or at least complicated, governmental policies. In linking the European examples of Germany and France to the United States, Jim Hollifield⁸ argues that a mixture of political and economic liberalism explains recent trends in the immigration phenomena: the strength of the market explains why States are unable to control entries, while political liberalism explains the rise of civil rights granted to illegal immigrants and the extreme difficulty involved in deportation even when stronger laws allow such procedures. The hypothesis of the ineffectiveness of State action in controlling immigration levels has been illustrated through the example of the July 1974 French ban on immigration of foreign workers into France. According to Hollifield this decision only had a limited effect on immigration, since the decrease in immigration of full-time workers was compensated for by an increase in immigration by families, refugees, seasonal workers, and illegal immigrants.

In a recent book Yasemine Soysal argues that as a result of the extension of international and national rights granted to immigrants (whether they be civil or

⁴ These theories are developed in G. Tapinos, *Theorie des Migrations Internationales* (1974), and are criticized by M. Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (1979).

⁵ Massey et al., 'Theories of International Migration: A Review and Appraisal', 19 *Population and Development Review* (1993) 431-66.

⁶ A. Sauvy, *Richesse et Population* (1943) 173.

⁷ Hervé le Bras provides an excellent refutation of this approach in 'Migrations Internationales: de la colonisation à l'invasion ou la rhétorique des vases communicants', XVI *The Tocqueville Review* (1995-1).

⁸ J. Hollifield, *Immigrants Markets and States. The Political Economy of Postwar Europe* (1992).

social, imposed on nation-states or not) traditional barriers between citizens and foreigners are becoming less distinct. The nation-state has to deal with a multiplicity of citizenships within its borders, and despite successive attempts to keep foreigners out through the passage of new immigration legislation, no governments have succeeded in controlling the influx of foreigners.⁹

The combination of these two schools of thought (economic/demographic and socio-political) seems all the more attractive, since it reinforces the current intellectual trend of documenting the decline of the nation-state. As such, it directly contributes to reorganization of the 'market of fears,' in disarray since the fall of the Berlin Wall and the consequent reduction of the risk of a Third World War against a Communist 'Bogeyman'. In the current state of affairs, the fear of immigration, the 'Islamic menace', and environmental issues (more or less linked) have become common threats that serve as useful replacements to fulfill the role previously occupied by the Soviet empire.

These questions aside, when these different analytical currents are set against the realities of the ebbs and flows of migratory movements, it becomes evident that they do not stand up to scrutiny based on empirical data.

2. *The Failure of Stateless Theories*

(a) Alarmist Forecasts

With respect to the demographic/economic approaches described above, one need only compare the immigration 'forecasts' immediately before and after the collapse of the USSR with the relatively limited number of ex-soviet immigrants that actually did leave the country. In 1991, many Western observers were deeply concerned about the potential destabilizing effects of a flood of immigrants brought about by economic recession and ethnic conflicts in the countries of the former Soviet empire. François Heisbourg, director of the International Institute for Strategic Studies in London predicted in 1990 that 'Economic and even environmental prospects in Eastern Europe will play a key role in provoking population movements to the prosperous West' and that 'finally, breakdown of governance in parts of Eastern Europe and the USSR would also create massive displacement of minorities within the affected areas'.¹⁰ Jean-Claude Chesnais forecasted in 1991 that the most probable scenario after the break-up of the Soviet Union would be the following: 'If one considers the worsening of the economic crisis and the increase in political tensions, one can expect in the future more or less uncontrolled waves of

⁹ Y. Soysal, *Limits of Citizenship, Migrants and Postnational Membership in Europe* (1994) 140-1.

¹⁰ Heisbourg, 'Population Movements in Post-Cold War Europe', *XXIII Survival* (1991) 31-43.

departures'. These predictions were essentially based on two principal factors: migration of ethnic minorities of the German, Jewish and Armenian diasporas; and migration driven by political instability, ethnic strife and civil wars 'similar to the migration patterns from the South to the North'.¹¹ In addition, Chesnais stated that the necessary precondition for these different migratory scenarios to take place was the opening of Western borders to Eastern immigration, which, in retrospect, never happened.

In response to another fundamental question, classical economic theories of migration patterns are also of little help in explaining why, within the European Union, Germany (which refuses to acknowledge that it is 'a country of immigration') has received between 1990 and 1994 eight to ten times more new foreign registered immigrants¹² than France, which is seen as the traditional country of immigration in Western Europe. Over this period, Germany accepted 1.240.000 asylum seekers while France only received 190 000.¹³ Germany accepted 438,000 asylum seekers in 1992 and about 300,000 in 1993, while France, traditionally known as a 'land of political refuge' receives only about 30,000 per year.

(b) The Difficult Decision to Emigrate

If the theorists of the 'communicating vessels' were right, both the Chinese and the Indians would long ago have distributed themselves harmoniously on the surface of the globe.

Those who emphasize the strength of attraction of the labour market give little consideration to the psychological component of the decision to immigrate. Taken together, the 120 million legal immigrants, refugees, asylum seekers, temporary workers and unauthorized workers living outside their country of origin would constitute the world's tenth largest nation. Despite this fact, the most interesting question is not how many, but rather how few, migrants decide to move to industrial countries.¹⁴

¹¹ Chesnais, 'Les migrations d'Europe de l'Est vers l'Europe de l'Ouest: de l'histoire à la perspective (1990-2000)', *Report for Council of Europe*, Vienna 24 January 1991, page 21. For the opposite scenarios, see SOPEMI-OCDE Report 1990.

¹² Even though illegal immigration is common in the same economic sectors (agriculture, construction, confection, and services) of different countries, were accurate data on illegal immigration available, it would probably demonstrate huge differences from one country to another.

¹³ Source: SOPEMI Report Tables A.2 and A.3.

¹⁴ Martin, 'Immigration and Integration: Challenge for the 1990s', text presented to the American German West Coast Conference, The Baltimore Hotel, Los Angeles, 4 December 1993.

The decision to migrate is subject to a certain level of inertia.¹⁵ To argue otherwise is to ignore the emotional and cultural cost of emigrating: leaving one's family, one's village, and one's country is never easy. Paradoxically, the new vogue of economic theories of immigration which emphasize a microeconomic viewpoint (network and institutional theory) fail to account for the fact that the vast majority of the world's population does not even consider migration as a possibility.¹⁶ A study by Robert Brym and Andrei Degtyarev¹⁷ in October 1992 based on a telephone poll conducted among 988 residents of Moscow showed that 6.7% declared their intention to temporarily or permanently emigrate in the near future to one of the developed countries in the West. In a previous study in February 1991, Robert Brym evaluated the emigration potential of Russia at between 4.75 and 8.90 million, but he prudently added that 'whether or not this potential is realized depends in part on Western States' willingness to accept immigrants'.¹⁸

The cost of emigration is further increased when countries of destination develop restrictions concerning the entry of immigrants and put legal or repressive barriers in place, thereby considerably increasing the risk of any attempt to migrate. Again, this perception of changing conditions in the country of entry causes a decline in the potential flow of immigrants. Taking the example of the United States, Julian L. Simon has emphasized that immigration is not an inexorable phenomenon, as it depends more on the objective conditions in the receiving country and the subjective perception of these conditions by the potential immigrants than on the political and economic environment of the countries of origin.¹⁹

Without denying the role of some economic factors (salary levels, free market orientation, and easier means of communication and transport), the effects of these need to be relativized – for example, infinitely more Africans live in conditions of extreme poverty than try to migrate to the North.

¹⁵ For example, since 1968, the freedom to migrate within the European Community has not led to a significant change in migration patterns. In opposition to this approach see the interesting article by Kubat and Hoffmann-Novotny, 'Migrations: vers un nouveau paradigme', *XXXIII Revue Internationale des Sciences sociales* (1981) 336-59.

¹⁶ Massey *et al.*, *supra* note 6.

¹⁷ Brym and Degtyarev, 'Who Wants to Leave Moscow for the West? Results of an October 1992 Survey', 13 *Refuge*, (1993) 24-5. See also Helmstadter, 'The Russian Brain Drain in Perspective', *Radio Free Europe/Radio Liberty Special Report* (18 August 1992).

¹⁸ Brym, 'The Emigration Potential of Czechoslovakia, Hungary, Lithuania, Poland and Russia: Recent Survey Results', 7 *International Sociology* (1992) 387-95.

¹⁹ Simon, 'Basic Data concerning Immigration into the United States', *Annals, AAPSS*, 487 (September 1986) 13-4.

It is therefore important to note that during the twentieth century in Europe, only major civil or international wars have provoked anything approaching an 'invasion' (defined as a massive and sudden movement of population across borders). In France, the end of the Spanish Civil War provoked the arrival, over a few weeks in 1939, of 500,000 refugees. Since 1989, only the civil war in the former Yugoslavia has been a source of a important migratory movements; hundreds of thousands of refugees have left the Balkans, mainly for Germany and the other countries of northern Europe. In the future, an escalation of the civil war in Algeria or in Eastern Europe could lead to such a situation in the developed countries of Western Europe. It is only the fear for one's life, and the resulting hope in the possibility of finding a safe haven, that could lead to such massive exodus in the future.

With the exception of these rare cases, this century has witnessed nothing resembling such an 'invasion'. The immigration phenomenon is characterized rather by a continuous but limited arrival of immigrants. This does not mean that the hypothesis of sudden, massive population shifts should be neglected, as massive migration could still occur in several highly volatile regions. However, the patterns of immigration over the last few decades demonstrate that when taken as a proportion of the population of the developing world, the overall number of immigrants in industrialized countries has never reached anything close to what could be described as an 'invasion.'

3. Effectiveness and Differences in Migratory Policies

Furthermore, recent data demonstrate the efficacy of governmental actions. In Germany, constitutional reform instituted in 1992 has led to a decrease in the number of asylum applicants from 438,200 in 1992 to 127,200 in 1994. In France, the number of foreign workers – the only group effected by the immigration ban of 1974 – entering the country went from 174,000 in 1970 and 132,000 in 1973, to 24,388 in 1993 (of which 15,796 were residents of the European Union.) Regarding immigration by the families of foreign workers, in 1974, the level was approximately 80,000 per year. This dropped to 63,000 in 1976, and then to 45,000 in 1978-1979. For the past three years, the numbers have held steady at about 35,000 each year, with exactly 32,435 in 1993. In the 1980s, France was confronted with an increase in asylum requests, from 22,000 in 1983 to 61,000 in 1989. However, since 1989, successive governments have passed more restrictive legislation: as a result, between 1989 and 1994, the number of asylum requests decreased by 56% (from 60,000 to 26,000).

In Great Britain, the effect of the Commonwealth Immigration Acts of 1962 and 1965 was to decrease labour permits from 57,700 in 1960 or 136,400 in

1961 to 28,678 in 1963 (the first year of full implementation of the 1962 Act) and 5,141 in 1966 (the first year of full implementation of the 1965 Act).²⁰

And yet, a look back to the 1960s reminds us that in Western Europe, for example, immigration rates peaked as a result of the overlapping interests of industry, and the governments of the labour-exporting and labour-importing countries. During the same time period, however, restrictive migration-flow policies in nations that were also experiencing rapid economic growth (such as Japan), and, inversely, in nations with a high emigration potential (such as the Soviet Union), demonstrate the dramatic impact that such policies can have on migration. In Europe, when the convergence of interests mentioned above ceased to exist, the political decision to stem the flow of foreign labour proved to be relatively effective.²¹

Furthermore, recent legislative and administrative actions cannot logically be considered as part of an unstoppable movement towards ever more liberal policies. This is particularly apparent in the recent tendencies in American politics and policies. Likewise, in Great Britain and France, nationality laws have been reformed to further restrict immigration flows. Finally, despite the hypothesis of Yasemine Soysal, the nation-state is not disappearing as an important legal and effective boundary within the host country. The most recent statistics on naturalization demonstrate that the distinction between citizens and non-citizens *does* matter. Otherwise, it would be difficult to account for the unprecedented number of naturalizations in the United States (one million applications for naturalization in 1995) and in France (a record of 92,484 naturalizations in 1994).

These facts run counter to theories which emphasize the declining ability of governments to perform the following tasks: master immigration flows; be effective when they pass restrictive legislation; constrain the rights of immigrants in national territory; stem the erosion of distinctions between citizens and non-citizens. As Stephen Castles and Mark J. Miller have already noted, the different theories of immigration which exclude government policy as a central factor in explaining the number of immigrants do not stand up to the facts.²²

²⁰ See J. Crowley, *Immigration, 'relations raciales' et mobilisations minoritaires au Royaume-Uni, La démocratie face à la complexité sociale*, PhD dissertation, Institut d'études politiques de Paris (1995) 141.

²¹ Schain, 'Policy Effectiveness and the Regulation of Immigration in Europe', *Paper prepared for the Annual Meeting of International Studies Association*, 25 February 1995.

²² S. Castles and M. Miller, *The Age of Migration, International Populations Movements in the Northern World* (1993).

Accepting this premise, this study undertakes to explain the divergence in the choices and implementation of policy central to the understanding of differences in the number of immigrants received by most countries. Despite the globalization of the world economy, increased population movements, the explosion of telecommunications, and the comparable economic and demographic conditions in the countries of Western Europe, rates of immigration in both absolute and proportional terms vary greatly from one country to another and from one year to the next. Despite great differences in the sizes of their populations, Sweden, Belgium and Great Britain each welcomed almost the same number of foreign nationals in 1993: between 53,000 and 55,000.²³ Germany has admitted the largest number of immigrants over the past decade (welcoming 1207,600 persons in 1992 and 986,900 in 1993 for example), approximately ten times the number of French admissions; 116,000 in 1992 and 99,200 in 1993.²⁴

It is therefore clear that in order to make sense of the differences in the data and of comparative migration phenomena, a better understanding of immigration control policies is essential. By using a State-oriented approach focusing on institutions as well as policy inputs and outcomes, this study will seek to explain why different countries which have very similar formal rules in their immigration policies have different 'results' in terms of policy implementation.

²³ *Trends in International Migrations*, SOPEMI-OECD Report, at 205.

²⁴ SOPEMI-OECD Report of 1993.

B. Nation-States and Immigration Policies: The Three Historical Stages of a Convergent Evolution

The point of departure for this analysis is the reality of a world divided into around 190 nation-states (186 members of the United Nations and a few others). These nation-states are defined by the territory they control and the population to whom nationality/citizenship of the State is attributed. Using this definition of the organization of the world's population, each nation-state includes a small percentage of the human race and excludes the remaining large majority of the world population. This organization, this fundamental split, is at the core of the definition of the issue of 'international migration.' Therefore, by definition, the State defines its contacts with foreign States and foreign individuals through the elaboration of rules of access to its territory and to its nationality/citizenship.²⁵

1. The Autonomy of State Policy

Theoretically, if a State wishes to stop immigration, to deport every immigrant, or to block all forms of naturalization, it can do so. In practice, no State has gone to such an extreme, but the principal of sovereignty has nonetheless brought about the creation of immigration rules and practices of control.

Not only is such control legitimate, but it has always existed, even in the nineteenth century United States, during a time in American history when contemporary myths would lead one to think the contrary.²⁶ Yet the degree to which this control was exercised has varied greatly throughout history. At the end of the nineteenth and in the beginning of the twentieth century, when the flow of immigration became massive in immigration-oriented countries such as the United States and France, means of control were hotly debated and immigration policies developed considerably. However, in these two countries, debate has never been centred on the question of total control or the complete lack thereof; it has always revolved around the level of control or on the means required for implementation of these controls.²⁷ During the peak period of immigration mentioned above and until the Second World War, the autonomy of the State to determine the level of immigration and the means of control was almost complete.

²⁵ On the legal justification of this approach, see R. Plender *International Migration Law* (1972) Chapter 1 and T. Aleinikoff *et al. Immigration Process and Policy* (3rd ed., 1995) Chapter 1, sec A.

²⁶ See Neuman, 'The Lost Century of American Immigration Law (1776-1875)', 93 *Columbia Law Review* (1993) 1833.

²⁷ Currently, for example, in the American Congress in 1995-96, the debate rests on limiting the number of legal immigrants allowed into the country annually to between 500,000 and 800,000. There is no discussion of a zero option.

Before World War II, when selection of immigrants became an issue in the United States and in France because of their massive arrival, the debate in the two countries was organized, roughly speaking, around two forms of control: an 'egalitarian' and 'universalistic' selection based on individual qualifications (physical, mental, moral, and eventually educational, involving the infamous literacy test) or a 'racialist' selection based on national or racial affiliation. In the US, the racialist approach regained strength in the years following the end of the Civil War (1870) and officially dominated US policy from the 1920s through 1965. Starting in the 1920s, the United States implemented a policy of selecting immigrants based on their nationality and their race. The candidate not only had to fulfill the condition of being part of a national quota, but also had to belong to a race eligible for naturalization. Furthermore, those admitted to the United States had to be deemed 'unlikely to be a public charge'. In the 1930s when unemployment figures peaked, these national quotas were never filled, despite the needs of hundreds of thousands of European refugees fleeing Nazi oppression.²⁸ In France, the racialist approach was never publicly chosen. But, following the First World War, it was implemented in practice. During the 1920s, France deported 'undesirable' colonial soldiers and workers, imported during the war, back to their colonies of origin. For racial reasons, the French authorities did not want these foreigners to settle in the metropolitan area. At the end of the 1930s, a climate of economic crisis was compounded by the threat of war with Germany and the impending arrival of refugees that would surely result, lead France to the verge of adopting national and racial quota policy similar to that used in the US. In fact, even after the war, the government, with the approval of Charles de Gaulle, considered implementing such a policy. However, the French civil service opposed such a project, arguing that an immigration policy based on a hierarchy of racial or national origins would too closely resemble Nazi ideology. As such, any legislation based on the explicit mention of national criteria as a basis for the selection of immigrants was stigmatized.²⁹

This stigmatization of any forms of 'racial science' due to its similarity to Nazi ideology had a huge effect on the extension of democratic norms through several countries. Immigrant selection or selective procedures for naturalization based on racial criteria or national origins were progressively eliminated from legislation in the United States and in France, with a full repeal of national quotas in the United States in 1965. When other European countries, followed by Japan, became countries of immigration, they were forced to join this

²⁸ R. Divine, *American Immigration Policy, 1924-1952* (1957).

²⁹ See Weil, 'Racisme et discriminations dans la politique française de l'immigration: 1938-1945 / 1974-1995', *Vingtième Siècle* (1995) 74-99.

normative constraint and to formally apply the rule of non-rejection of immigrants based on national or racial origins.

2. *The Rise of Normative Constraints on Immigration Laws*

The condemnation of a racist approach as a means of selection at ports of entry had the consequence of creating alternative legal categories: refugees, families of immigrants, and two different kinds of worker: skilled workers and temporary workers. The world's woefully inadequate response to Nazi persecution prior to and during the course of World War II provoked the development of a new international humanitarian normative structure³⁰ which throughout the 1970s and 1980s had another consequence: that of placing limits on the type of restrictive control policies which could be legitimately implemented by democratic governments. As Peter Schuck has written, in the case of the United States the rise of these normative constraints produced a 'transformation of immigration law'.³¹

(a) A right of Access

Apart from the end of a racist approach to immigration selection, the first factor constraining governments in their immigration policy is the extension of rights guaranteed by international conventions or internal laws, particularly those concerning special rights guaranteed on national territory, or in some cases access to it, given to refugees, asylum seekers and families of foreign residents.

i) The Refugees and Asylum Seekers:

All the European States nowadays practice territorial asylum and are party to the 1951 Geneva UN Convention and the New York 1967 UN protocol relating to the status of refugees. Territorial asylum and refugee status are two different legal situations with different histories.

Territorial asylum is a unilateral protection given by a State to a foreigner or a Stateless person. Historically related to an ancient religious and political tradition in Classical Greece, asylum developed in the Christian tradition as a religious obligation. It has progressively been transferred and transformed with the emergence of modern European States into a status provided by kings and kingdoms as an act of sovereignty. Its political dimension was only theorized in the eighteenth century by philosophers such as Voltaire and theorists of international law such as Vattel or Beccaria. At the end of the same century, the

³⁰ Martin, 'Reforming Asylum Adjudication: On Navigating the Coast of Bohemia', 138 *University of Pennsylvania Law Review* (1990) 254.

³¹ Schuck, 'The Transformation of Immigration Law', 84 *Columbia Law Review* (1984) 1-90.

American and the French Revolutions permitted the implementation of asylum on a large scale by two means: the two new Republics proclaimed themselves to be lands of asylum for persecuted people, and thus became so; but their emergence also provoked emigration of refugees from America and France, leading to the arrival of tens of thousands of people in the English Territories and the German States. During the first part of the nineteenth century, the practice of territorial/political asylum was extended to all modern States of the Western world³² and still remains to this day a sovereign power of every State.

The creation of an individual international status for the 'refugee' is the product of a complex process resulting from the upheavals of the twentieth century. In the aftermath of World War I, the flow of refugees, which previously had tended to be relatively limited, quickly became massive. Because of this change, a definition and a status assigned to refugees took shape.³³ The Russian October Revolution provoked the departure of almost one and half million persons, who, by the decree of 15 December 1921, were often deprived of their Russian citizenship. The Council of the League of Nations established the Office of High Commissioner for Refugees with the Norwegian Fridtjof Nansen at its head. So to ensure the juridical protection lost by their 'denaturalization', international travel documents were provided to Russian refugees living outside the territory of the Soviet Union on 5 July 1922. These 'Nansen passports' were recognized by 54 countries and permitted the refugee to travel across these countries from the country of first welcome. On 31 May 1924 the applicability of Nansen identity certificates was extended to Armenian refugees, and on 30 June 1928, 155,000 refugees of seven other different origins and on 26 October 1933, the Council of the League of Nations created the High Commissioner for refugees coming from Germany.

On 28 October 1933 an international conference adopted the first Geneva Convention on the International Status of the Refugee, which ratified the former definition given to Russian and Armenian refugees: a person who no longer enjoys the protection of the Soviet or the Turkish Republics and who has not acquired other nationality. The signatory States (who were not very numerous at first; 8 in all) agreed to respect important rights for refugees: 'non-refoulement', access to the labour market, education, social security, etc.

The next step in defining refugees was to extend the status to persons persecuted even if they had not lost their nationality of origin – an extension

³² On the definition and history of refugee and asylum statutes, see F. Crépeau, *Droit d'asile – De l'hospitalité aux contrôles migratoires*, (1995), particularly the first section.

³³ Hathaway, 'The Evolution of Refugee Status in International Law: 1920-1950', 33 *ICLQ* (1984) 348-80.

from a juridical need for protection to a political one.³⁴ This extensive definition was given to the refugees from the Saar Territory (24 May 1935), to German refugees (4 July 1936) and to refugees from the Sudetenland (17 January 1939). The 10 February 1938 Convention concerning the status of refugees coming from Germany concerned 'persons possessing or having possessed German nationality and not possessing any other nationality, who are proved not to enjoy, in law or in fact, the protection of the Government of the Reich'.³⁵ When, after the Anschluss, the Evian Conference (6-15 July 1938) on the situation of the Jewish population in territories under the domination of the Nazi regime was held at the initiative of President Franklin Roosevelt, a third definition emerged, different in its essence and at the same time more restrictive and more extensive in its grounds of protection.

This third definition by the Intergovernmental Committee on Refugees provided the first individualized definition of the refugee.³⁶ The latter was no longer defined by his origin but by his individual situation: 'a person who has not already left his country of origin (Germany including Austria) but who must emigrate on account of their political opinions, religious beliefs, and racial origin'. This definitional transfer from a group to an individual could have involved a restriction in the scope of protection, but for the first time, the definition concerned persons still in their country of origin and would have the effect of greatly enlarging the number of persons eligible for refugee status. This approach benefited the Spanish republicans, for example. After the war, the General Assembly of United Nations created the International Refugee Organization (IRO) in December 1946 in an effort to unify juridically, if not practically, the status of displaced persons and refugees since the First World War. The assistance of the IRO was given to persons who could not be repatriated or those who 'in complete freedom and after receiving full knowledge of the facts... expressed valid objections to returning to [their countries of origin]'. This task was then transferred to the Office of the United Nations High Commissioner for Refugees (UNHCR) just before the signature of the Geneva Convention on 28 July 1951.

In the negotiations of the convention which took place in Geneva (2-25 July 1951), three main questions were discussed:

1) What would be the definition chosen and how would the process of recognition be constituted?

³⁴ Hathaway, *ibid*, to whom I owe this analytic of a three stage evolution, qualified the political stage as 'social'.

³⁵ Hathaway, *ibid*, at 364.

³⁶ Hathaway, *ibid*, at 370-80.

- 2) Would the convention include an automatic right of admission of a potential refugee on the territory of a signatory State?
- 3) Would it include criteria based on origins or on events justifying refugee status?

The definition of a refugee adopted at the convention confirmed the move towards individualization. Article 1 of the Convention defines a refugee as a person who is unwilling or unable to return to his or her country 'owing to a well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion'.

But the agreement can be seen as a defeat for international recognition of individuals in favour of the sovereignty of the nation-state. A restrictive compromise based on the largest common denominator preserved of the sovereignty of each nation-state.

Unlike the 1938 definition, the 1951 definition of a refugee no longer mentions 'persons who have not already left their country of origin'. So as to enforce national sovereignty, the right of automatic admission, the possibility to impose on a signatory State the entrance on its territory of a potential refugee (as argued by France against the conception defended by the United States and Great Britain) was not accepted.³⁷ As long as admission to national territory remains in the realm of competence of each State, the State will continue to define the right of territorial asylum using its own criteria, following its own domestic procedure.³⁸

At the demand of the French Ministry of Foreign Affairs and with the backing of the United States, the Convention permitted each signatory State not only to implement the general time limit laid down by the convention (which specified that a person could only acquire refugee status 'as a result of events occurring before 1 January 1951') but also to impose a territorial limit by inserting after the word 'events' the optional words 'occurring in Europe' prior to the critical date.³⁹

The Convention did not guarantee that an applicant would be granted asylum if he deserved it: it simply stipulated that he would not be returned 'to the frontiers of territories where his life or freedom would be threatened' (Article 33). Nor did it recognize the automatic right to the highest level of social and civil rights (either in the form of the same treatment as citizens of the country of

³⁷ C. Norek and F. Doumic-Doublet, *Le Droit d'Asile en France* (1989) 35.

³⁸ G. Goodwin-Gill, *The Refugee in International Law* (1983).

³⁹ G. Noiriel, *La tyrannie du National, Le droit d'asile en Europe 1793-1993* (1991) 139-52.

residence or the most favourable treatment accorded to those citizens of a foreign country residing in the host country). Later, the creation of new nation-states out of former colonies provided the grounds for the extension of the convention beyond Europe to all countries without limitation of date (codified in the 1967 Protocol of New York).

Although all the countries involved in this study now recognize and claim to obey the convention, the modes of recognition occurred differently in each one.

- In France, the differentiation between political refugees and other types of immigrants is not new. France received the largest number of refugees in Europe in the period between the two World Wars, even when, for economic reasons, the immigration of foreign workers was prohibited. In 1938, for example, restrictions on immigration were reinforced, but at the same time the right of asylum and refugee status were formally guaranteed.⁴⁰ After the Second World War, France ratified the Geneva Convention including the restrictive option clause which was not repealed until 1971.⁴¹ The French Office for the Protection of Refugees and Stateless Persons, created in 1952, is in charge of the recognition of refugee status. The Preamble of the 1958 French Constitution specifies that 'any person persecuted on account of his actions in favour of Liberty has a right to asylum within the territories of the Republic.' Additionally, at the discretion of the State, *de facto* refugee status and permission to remain on French territory can be provided to refugees who lack individual proof of well-founded fear of persecution necessary to claim Geneva status.

- Despite its liberal reputation and the exemption given to political and religious refugees from the main requirements of the Alien's Act of 1905,⁴² the United Kingdom did not welcome numerous refugees after the First World War. Accordingly to Michael M. Marrus,⁴³ only about 15,000 Russians and 1,000 Armenians migrated to Great Britain. 'In contrast to France, British officials had no pretense about a long-standing policy of asylum'.⁴⁴ Therefore, it was only in reaction to the refugee crisis of 1938 as well as in compensation for the

⁴⁰ See Weil, 'La politique d'immigration de la France et des Etats-Unis à l'égard des réfugiés d'Europe Centrale à la veille de la Seconde Guerre mondiale', *Les Cahiers de la Shoah* (1995-2) 51-84.

⁴¹ Decree n°71-289 of 9 April 1971 publishing the 1967 Protocol relating to the Status of Refugees (606 UNTS 267). On the French Policy towards refugees after World War II see, Cohen, 'Insertion et Transit: les réfugiés juifs de l'après-guerre 1945-1948', Liana Levi (ed.), *Archives Juives*, 29/1, (1er sem. 1996) 92-101.

⁴² R. Plender, *supra* note 26, at 231-2. The distinction was present in the 1905 Act, but had disappeared in the alien legislation of 1914-1919.

⁴³ M. Marrus, *The Unwanted, European Refugees in the Twentieth Century* (1985) 149-54.

⁴⁴ *Ibid*, at 150.

restrictionist policy towards Jews who wanted to settle in Palestine that Great Britain cautiously opened its doors.⁴⁵ At the end of 1939 about 50,000 refugees from the Reich and 6,000 from Czechoslovakia had received asylum on the territory of the United Kingdom, and London was the seat of 1938 ICR. Since that moment, Great Britain has involved itself in international action for refugees and participated actively in the elaboration of the Geneva Convention. Great Britain implemented the convention formally, choosing its universal option ('in Europe and elsewhere') as a nod towards liberalism.

- Founded in 1949, the Federal Republic of Germany far surpasses the restrictions of the Geneva convention which it signed in 1951. The inclusion of a provision related to asylum in the 1949 Basic Law was seen by its drafters as an important commitment to human rights in the aftermath of the war, symbolizing the rejection not only of national socialism but also responding to political persecution in Eastern Europe.⁴⁶ Article 16 paragraph 2, sentence 2 of the German Constitution provides that 'the politically persecuted shall enjoy asylum'. Three kinds of applicants, and therefore refugees, are recognized in the German system:⁴⁷ 'Article 16' refugees, Geneva convention refugees, and the *de facto* refugees who lack individual proof of a well-founded fear of persecution needed to obtain Geneva status but who are nonetheless permitted to remain on humanitarian grounds, under the implicit rule of 'non-refoulement'.

⁴⁵ C. Holmes, *John Bull's Island, Immigration and British Society, 1871-1971* (1988) 140-8.

⁴⁶ Kanstroom, 'Wer Sind Wir Wieder? Laws of Asylum, Immigration, and Citizenship in the Struggle for the Soul of the New Germany', 18 *The Yale Journal of International Law* (???) 194.

⁴⁷ See Neuman, 'Buffer Zones Against Refugees: Dublin, Schengen, and the German Asylum Amendment', 33 *Virginia Journal of International Law* (1993) 509-11.

ii) Family Reunification

A religious sacrament before becoming a domestic civil right, a normal family life was progressively guaranteed by international conventions and national courts. The first stage of international recognition⁴⁸ of a right to live with one's family was the recognition of the United Nations Universal Declaration of Human Rights of 17 December 1948, stipulating that any human being can marry and have a family, considered as the 'natural and fundamental element of the society.' The General Assembly of the United Nations ratified two pacts on 16 December 1966, relating to the implementation of the principles in the Declaration of 1948. In Europe, the European Convention for the safeguard of human rights signed in 1950 guarantees the right for any human being living on the territory of a member State the right to a normal family life and the freedom of marriage.

Progressively British, French and German courts introduced these rights in their internal jurisprudence. The French *Conseil d'Etat* recognized it in a GISTI decision of 1978. In Germany, the Federal Constitutional Court has extended the protection of the family provided for by Article 6 of the Basic Law⁴⁹ to immigrants, as for example in 1987.⁵⁰ In France, as in Germany, alien residents who wish to be joined by their family members must satisfy the following three requirements: a) legal residence b) sufficient living space c) means of financial support.

(b) The Development of the Rule of Law on the Territory of Immigration Countries

i) The Protection of Illegals

In all countries of Europe the last two decades have been marked by a parallel, yet contradictory evolution. As administrators and legislators became increasingly concerned with illegal immigration, national courts extended the protection of illegals, thereby constraining public action. Peter Schuck analyzes this evolution as the unfolding of 'communitarian' principles grounded in the perception that individuals, societies and nations are bound to each other by 'pervasive interdependencies ... (implying) certain moral and legal consequences'⁵¹ towards 'all individuals who manage to reach America's shores, even to strangers whom it has never undertaken, and has no wish to

⁴⁸ See, 'La famille au ban de l'Europe', 25 *Plein Droit* (1994).

⁴⁹ Para. 1: Marriage and family shall enjoy the special protection of the state. Para. 2: The care and upbringing of children are a natural right of, and a duty primarily incumbent on, the parents.

⁵⁰ Motomura, 'The Family and Immigration: A Roadmap to the Ruritanian Lawmaker', 43 *AJCL* (1995) 517.

⁵¹ Schuck, 'The Transformation of Immigration Law', 84 *Columbia Law Review* (1984) 50.

protect'.⁵² In Europe, the same phenomenon can be interpreted as a reaction to the scars left by the events of World War II.

ii) A Quasi-Ban on Deportation of Legal Residents

Finally, a *de facto* right has emerged in the 1970s. The democratic countries have learned that even if legal selection not based on racial or national criteria at entry is legitimate, the categorization of immigrants into various groups (temporary, permanent, refugee, guest workers etc.) has had little impact on the actual duration of the stay. Before the Second World War, legal immigrants were often deported back to their countries or territories of origin at the expiration of their residence permit when economic downturns created competition for jobs between nationals and foreigners. This was the case in France for numerous Poles in 1934-35 during the peak years of the economic depression. These policies have progressively become illegitimate since World War II, even if the learning process regarding this international norm has proceeded at different rates from one country to the next.

In the United States, where legal immigration traditionally leads to citizenship, therefore forced deportation of legal immigrants for economic reasons has never been considered. This type of solution can be envisaged, however, by a country which has welcomed 'workers on a temporary basis'.

In France, this obligation came from the ethical and practical impossibility of repatriating 'undesirable' foreign workers by force. For racist reasons, President Valéry Giscard d'Estaing attempted a forced repatriation of the majority of legal North African immigrants, especially Algerians, between 1978 and 1980.⁵³ However, due to a strong reaction from the political Left, the labour unions, the RPR, and the CDS, the initiative failed. Giscard d'Estaing's idea of repatriation also provoked a vivid reaction from the French Administrative Supreme Court (the *Conseil d'Etat*). In its decision, the Court, while primarily referring to republican values and constitutional principals, also invoked the damaging effects of such a policy for France's image abroad. The force of this rebuttal caused the government to back down. In June 1984, the French Parliament passed an Act which eventually guaranteed permanent residence for all foreign citizens living in France, regardless of their origin.

In Great Britain, the 1948 law granted not only the right of permanent residence but also full citizenship to many undesirable citizens of the New Commonwealth as soon as they set foot on British soil. It is perhaps due to this

⁵² *Ibid*, at 4.

⁵³ See P. Weil, *La France et ses étrangers* (1991) Chapter V.

fact that Great Britain restricted immigration from 1962 onwards, much earlier than other European countries.

In Germany the result was similar, but the process did not occur in the same manner. In Germany, the courts were at the centre of a policy revolution which has not been readily admitted in official discourses. Officially, the Federal Republic of Germany argued that it was not a country of immigration even if it had organized and recruited a large number of foreign workers since the end of the 1950s who were needed to operate the nation's rapidly expanding economic infrastructure. These immigrants were officially considered as temporary workers who would return to their countries of origin after several years of work in Germany. Conversely, the Federal Republic favoured the return to the 'mother nation' of those populations having German ancestors or, in other words, 'German blood', who lived in the GDR or other regions in Eastern Europe. These immigrants were easily and automatically conferred German nationality, in conformity with the conception, still dominant at the time, that the nation was defined by the ethnic origins of the German people, regardless of their geographic distribution throughout Eastern and Central Europe.

In 1970,⁵⁴ a Bavarian administrative court ruled that a foreign worker's sojourn of more than five years was sufficient grounds 'to deny further residency (authorization), as each extended residency (authorization) would tend towards settlement, which ordinarily runs counter to State interests because the Federal Republic of Germany is not a country of immigration.' This decision was overruled at the federal level and in 1972 the federal government stated that 'the limitation of the duration of the stay of foreign employees will not be regulated through repressive measures under the law related to foreigners.' The German Constitutional Court based its judgment on the Preamble of the Basic Law which recognizes and protects fundamental human rights as well as economic and social welfare rights. The Constitutional Court drew on the Basic Law and its jurisprudence, considered as a 'spiritual-moral confrontation with the previous system of National-Socialism',⁵⁵ to extend the principal of the basic rights and protections of the *Jedermann Grundrechte*, not only to German citizens but also to aliens living in Germany. In 1978, the Court recognized that 'an alien acquires a constitutionally protected reliance interest to remain in Germany as a result of prior routine renewals of his residence permit and his

⁵⁴ Miller, 'Policy Ad-Hocracy: The Paucity of Coordinated Perspectives and Policies', *Annals*, AAPSS, 485, (May 1986) 71 quoting H. Reister, *Ausländerbeschäftigung und Ausländerpolitik in der Bundesrepublik Deutschland*, Berlin, Fachhochschule für Verwaltung und Rechtspflege, monograph n°38.

⁵⁵ See Kanstroom, *supra* note 47.

integration into German Society'.⁵⁶ After the failure of the voluntary return policy in 1983-1984, this legal right became a massive sociological reality.

This moral and legal constraint on the forced departure of legal and illegal immigrants provided by the international democratic community contrasts sharply with the relative liberty with which non-democratic States, which are not as responsive to the moral constraints imposed by the international community, are still deporting legal foreign workers (i.e. Saudi Arabia in 1991, Iraq in 1990, Libya in 1984, and Nigeria in 1983, among others).

The fact that host democratic nations are more or less forced to accept 'undesirable' settlers as permanent immigrants (Turks in Germany, Koreans in Japan, immigrants from former colonies in Great Britain and in France), led many specialists to claim that immigration policies lose their meaning.⁵⁷ Such assumptions were based on a categorization of different types of immigration: economic/demographic or political – each category corresponding to an implicit duration of residency. As such, economic migration was often considered as temporary, lasting only as long as there was a labour shortage in the host country; political migration was linked to the risk of persecution in the nation of origin; and only demographic immigration was by definition permanent. This approach is no longer valid in the current state of affairs, nor is an opposite one which would echo the following statement: 'The major difference between refugees and other migrants is that refugees appear to see their immigration from the very start as permanent'.⁵⁸

3. *The Third Stage of the Immigration Policies: Multiple State Responses to Normative Constraints*

Democratic States have learned that the immigrant's status *vis-à-vis* the host nation upon his arrival has little real effect on the actual duration of stay. Today, any foreigner authorized for legal residence has to be considered by the State as a potential permanent immigrant. This is not to say that all immigrants who enter will stay indefinitely, since every year there are a significant number of immigrants who spontaneously return to their country of origin – and who are often not counted by official statistics. In any case, the weak link between an immigrant's status and the length of stay has had the important consequence of

⁵⁶ *Ibid*, at 171. It is the judgment of 26 September 1978, 49 BVerfGE 168. See also the judgment of 10 May 1988, 78 BVerfGE 179, 196-7.

⁵⁷ For example P. George, *Les migrations internationales* (1974).

⁵⁸ M. Piore, *supra* note 5, at 29.

demonstrating that policy measures that provide for temporary residence permits are largely inefficient, if not counter-productive.⁵⁹

As a result of the learning curve concerning the entry and the prolonged settlement of foreigners, host countries have progressively adapted their policies. Formally, three categories of immigrants are authorized to enter all of the countries involved in this study with relative ease: 1) foreign-born spouses of citizens, 2) political refugees, and 3) families of foreign residents. A fourth group, skilled workers, are still often encouraged. However, over the past decade or so, as governments have been submitted to increasing political pressure to stop immigration, a policy mobilization, often highly politicized, has led to the development of new means of restrictive action within the different State agencies. Nonetheless, the time lag between the surprise to policy-makers that has resulted from the transformation of jurisprudence in immigration law and the transformation of policies which are its consequences, has been significant. In order to reduce this gap before new policies were implemented, some regularization or legalization of illegals was often undertaken so as to start with a 'clean slate' (as was the case in France in 1981 and in Spain and Italy between 1985 and 1991).⁶⁰

The new immigration policies are still in the course of being implemented. However, legislation from this more recent period demonstrates a continuing process of State adaptation to immigration phenomena and the evolution of jurisprudence. These new policies all include employer sanctions, legal deterrence, international cooperation, and an increase in funding for the State agencies that implement immigration policy. However, as argued above, the convergence of national policies due to international constraints or policy transformations has resulted in very different policy outcomes in different countries. These differences are due to the divergent role of several factors in the environment of immigration policy as well as different choices of policy tools.

⁵⁹ This learning curve has not yet resulted in the harmonization of definitions. Although the European States have essentially eliminated the distinction between temporary workers and permanent workers, the US still considers temporary workers to be non-immigrants. Of 21 million such non-immigrants admitted to the US in 1993, 17 million were tourists, 3 million were business visitors, and 1 million from miscellaneous groups, including 165,000 temporary foreign workers, 257,000 foreign students etc. The last category, foreign students, holds particular promise for those wishing to become permanent settlers. Martin and Midgley, 'Immigration to the United States: Journey to an Uncertain Destination', 49 *Population Bulletin* (1994) 6-7.

⁶⁰ In France 132,000 illegals were regularized. Regularizations that occurred in Spain in 1985-1986 and 1991 involved respectively 44,000 and 105,000 persons; in Italy in 1987/88 and 1990, 105,000 and then 216,000 additional illegal migrants were declared to be legal immigrants.

C. Geopolitics and Domestic Politics: The Factors of Differentiation of Policy Outcomes

The factors resulting in differences in the implementation of immigration policy can be divided into two categories: 1) the geopolitical context of immigration; 2) immigration politics and the policy process.

1. The Geopolitical Context of Immigration

When put into practice in different countries, policies have had to take into account:

- different geographical situations;
- differing political cultures;
- specific historical interactions;
- international and diplomatic interest;

(a) The Geographical Situation

Natural or physical borders are much easier to control than land or political borders. It is therefore easier for Island nations such as Japan or Great Britain to control immigration than it is for Germany, and to certain extent, France or the United States.

(b) Some Examples of Cultural Constraints

- The Market, the State and Society

Control of immigration involves an often fragmented police and justice administration, in addition to a number of economic actors (employers, unions, etc.). The differences in the levels of interaction and control between the State, the market, and the society as well as the values shared by the society can have important effects on the implementation of immigration policy.

- General attitudes towards immigration

A nation's general attitude towards immigrants depends largely on the role which immigration played in the founding and the development of the society: one can differentiate between countries of immigrants like the United States, where even in periods of restrictive policy, immigration is still perceived as constituting the initial building blocks of the society; countries of immigration like France, where the incorporation of immigrants is reluctantly perceived as a necessity or a burden; or more recent immigration countries like Germany or Japan which still refuse to admit that they have become countries of immigration and which see the settlement of immigrants as a legal constraint. The apparent convergence of the rules and practices governing migration-flow policy conceals widely diverging cultural perceptions of immigration that have contributed to the development of diverse policy outcomes.

- Last but not least, some constitutional and ethical values can have effects on the organization of immigration policy, such as the right of the police to control identity through photo identification papers.⁶¹ The use of such identity controls as a means to control immigration is largely dependent on political culture: for example, in continental Europe, identity control is legitimate, while this is far from being the case in Great Britain, where the ideal of individual freedom is more easily respected in part due to the ease with which the borders of an island nation can be controlled.

(c) History

Historical attitudes of countries towards refugees or immigrants (foreign or colonial) can have a significant influence on the types of policies that can be considered as legitimate.

For similar reasons, the history of the relationship between the host country and the countries of origin can also strongly affect immigration policy. One can cite as examples in Europe the relations of Germany with political refugees, and with Turkey and Turks, France with Algeria and Algerians.

The reactions of France and Germany to the economic crisis following the first oil shock in 1973 is an interesting case. Despite differing historical traditions concerning immigration, reactions to the crisis by the French and German governments with regard to their immigrant policies differed more than their historical traditions would have led one to believe. Among European countries, France has historically had one of the most liberal immigration policies. At the end of the nineteenth century, France implicitly favoured immigration, a de facto policy stand that was later made permanent through the decrees of 1945. At the root of this desire – unique in Europe – to favour the permanent settlement of foreign families and the acquisition of French nationality are, first, economic reasons, and more importantly, the concerns brought about by France's weak demographic growth. However, between 1978 and 1980, President Giscard d'Estaing attempted to organize the forced return of several hundred thousand resident immigrants to their countries of origin, in particular the Algerians. He therefore took measures which no other European country considered. His initiative failed, but what is interesting is that he tried in the first place. It was paradoxically France's historical image as the birthplace of human rights which made it at all possible to envisage such a step.⁶²

Germany halted all new arrivals of guest workers in November 1973. With the passing of the years, it became clear that the economic crisis and a steadily

⁶¹ D. Papademetriou and K. Hamilton, *Managing Uncertainty: Regulating Immigration Flows in Advanced Industrial Countries*, A Carnegie Endowment Book (1995), at 14.

⁶² See P. Weil, *supra* note 54, Chapter V.

increasing unemployment rate was creating a contradiction between the original conception of immigrants as a simple labour force and the permanent settlement of this 'surplus' population. Given the explicitly temporary statute of immigrant workers, one would have expected the implementation of an active policy of the return of its guest workers to their countries of origin. But this is forgetting that the F.R.G. is, since 1945, a State which is limited, more than any other, by moral constraints concerning civil and human rights. Ethically, it was impossible to organize the forced repatriation of foreigners. Attempts have been made more recently to strike a deal with the countries of origin by offering substantial financial aid in return for the return of unwanted immigrants. This has been rather unproductive, as the measures have concerned only those who already had the intention of returning, and the operation has proved to be a heavy burden on public expenditures.

(d) Immigration and International Relations

By definition, immigration policies are related to foreign policy. Until their naturalization, immigrants remain citizens of foreign countries. Often migrants have come from countries with which the welcoming country has intensive relations: common borders, historical allies or enemies, former colonies. Often immigration issues are included in a large set of bilateral issues which impose bargaining and/or are treated in a multilateral system which imposes norms and values. Depending on the state of diplomatic relations and on the relative strength of the sending and receiving countries, the margins of action for the host country vary.

2. *Immigration Politics and the Policy Process*

The other set of constraints concern:

- a) the effect of politicization on the policy-making process;
- b) the process of agenda building;
- c) administrative and legal traditions; structures and systems of resource allocation between government agencies.

These constraints will be rapidly defined here and developed in the national examples in the following section where their articulation is more significant.⁶³

(a) Politicization and Policy-making

Immigration involves national identity and human rights. Thus, by definition it is an issue lending itself to politicization in one form or another. Whether or not immigration becomes a political issue depends in large part on the organization of the political system, the specific modes of agenda building as well as the context of partisan competition.

⁶³ They are developed in Papademetriou and Hamilton, *supra* note 62, Chapter 2.

(b) The Process of Agenda Building

Political inertia is largely dependent on the procedures for decision-making and execution. For example, in France or in Great Britain where the dependence of the Parliament on government and party discipline is high, it is very easy for the government to pass a law. For example, five laws on immigration, including a Constitutional reform, were passed in France in 1995. In the United States, however, with a tradition of checks and balances, the rivalry between the White House and the Congress considerably slows the legislative process and requires frequent compromises. The 1986 immigration legislation passed after more than five years of discussion and negotiation, and the 1990 bill took nearly four years to be passed.⁶⁴

Therefore, there is a variable time lag from one polity to another between the emergence of the problem on the political agenda, the development of a possible solution, and the implementation of that solution. The content of the agenda also depends in large part on the way in which a 'problem' emerges and is articulated: in Europe, proposals are determined almost solely at the political or administrative level, while in the United States, a multitude of private interest groups (representing ethnic, religious, humanitarian or professional groups) as well as academics and other experts intervene to influence the content of a certain regulation or piece of legislation.

When reforms imply the modification of the Constitution, the process becomes even more complicated and prolonged. Again, in France, it is relatively easy to revise French nationality law, while it is considerably more difficult in Germany.

(c) The Method of Policy Implementation

This is also vital: does implementation depend on fragmented and/or competing administrative agencies or unified ones? On local or on national agencies?

In Germany, naturalization and the settlement of asylum seekers are organized at the level of the *Länder*, whereas in France such actions are still centralized. Information on who is implementing a policy can have profound effects on the results of that policy as well as the policy choices involved in achieving those results.⁶⁵

Lastly, the capacity of a State to act rapidly also depends on the degree of independence of national or constitutional courts which can block legislation.

⁶⁴ *Ibid.*, at 15-19.

⁶⁵ Body-Gendrot and Schain, in D. Horowitz and G. Noiriel (eds), *Immigrants in Two Democracies: French & American Experiences* (1992).

D. The Interplay of Factors Determining Policy Illustrated by Case Studies

The combination of the different factors described above can often help to explain specific choices in policy development, their means of implementation, and finally, their outcomes. This inter-relation will be illustrated in the study of Germany, Great-Britain, France, as well as the policy within the European Union as an whole, especially since the Schengen agreement of 1985.

1. Germany

Beyond the constraints we have already described which have forced Germany to accept the permanent settlement of temporary workers, the German Basic Law and the geographical situation of Germany have transformed it into the country receiving the greatest number of immigrants in Europe.

But even if German authorities are still publicly declaring that Germany is not a country of immigration, in practice they are creating a highly rational immigration policy.

Through the instrumentalization of the European Union in German politics, the conservative coalition succeeded in adopting a constitutional amendment restricting an extremely liberal asylum law, thereby aligning German laws with the laws and practices in other European countries and subsequently causing a significant decrease in the number of demands for asylum. But this reform of asylum laws, so as to limit fraudulent requests, did not prevent Chancellor Helmut Kohl from recently reaffirming Germany's moral responsibility to accept refugees from the war-torn territories of ex-Yugoslavia.

In order to prevent illegal immigration from their eastern neighbours, Germany has developed agreements with them, making each country responsible for stemming the flow of illegal aliens from third countries through their own country.

In addition, the German government has implemented bilateral accords on the entry of seasonal, border, or trainee labour. To combat illegal employment in the sectors where the supply of workers in its own national market is insufficient, Germany recently created four kinds of contracts that regulate the hiring of seasonal or temporary foreign workers, as agreed in accords signed most often with the nations of central and eastern Europe. The four categories of contracts are 1) Czech, Slovak, or Polish *Grenzarbeitnehmer* (border dwellers) who can work every day in a zone stretching 50 kilometers to the west of the border, on the condition that they return home every night or that they only work on weekends; 2) Quotas allow 5,700 foreign trainees (*Gastarbeitnehmer*) to work

and learn a trade for eighteen months in Germany; 3) Approximately 200,000 seasonal workers (*Saisonarbeitnehmer*) work for a maximum of three months; and lastly, 4) the status of *Werkvertragsarbeitnehmer* allows foreign companies to meet honour contracts in Germany by importing their own workers.⁶⁶ Such short-term regional migrations meet the common needs of the nations as well as the economic actors involved.

2. Great Britain

In the aftermath of the Second World war, British authorities recognized that the reconstruction of the British economy would require an injection of foreign labour.⁶⁷ The 1949 Royal Commission on Population stated that immigration would be welcome 'without reserve' if 'the migrants were of good human stock and were not prevented by their religion or race from intermarrying with the host population and becoming merged into it'.⁶⁸ The British government therefore tried mainly to attract Poles, but also the so-called displaced persons from Eastern Europe or Spain, and single women of Latvian, Lithuanian, Estonian, Austrian or German nationality. In addition, many Italians of both genders, mainly from Southern Italy, came to Great Britain until the middle of the 1950s. Finally, the traditional Irish immigration did not stop – on the contrary. But all together this 'racially desirable' immigration was of a limited extent and not sufficient to provide the necessary manpower for the labour market.

It was the awaited massive arrival of a new immigration coming from the so-called New Commonwealth which changed the dimensions of the problem. Chinese immigrants coming for example from Hong Kong, Black people coming partly from Africa but mainly from the Caribbean. After the symbolic arrival from Kingston, Jamaica of a boat with 492 passengers aboard in June 1948, immigration from the West Indies was boosted by the state of the labour market in Great Britain and the curtailment of immigration into the US imposed by the 1952 McCarran-Walter Act. Last but not least, immigration from the Indian subcontinent started at end of the 1940s and developed in the 1950s, including a large contingent from Pakistan.

This New Commonwealth immigration was facilitated by the content of the British Nationality Act which gave the citizens of the New Commonwealth

⁶⁶ K. Groenendijk and R. Hampsink, *Temporary Employment of Migrants in Europe* (1994). H. Werner, *Agreement Providing for Short-term Migration for Employment and Training Purposes*. Strasbourg, Conseil de l'Europe, Select Committee of Experts on Short-term Migration (1994).

⁶⁷ C. Holmes *supra* note 46, in particular Chapter V.

⁶⁸ Royal Commission on Population, Report, Cmd. 7695 (1949) 124.

countries the right to freely enter British territory and therefore to become British citizens.

The backlash against the free entrance of the 'racially undesirable' immigration started at the end of the 1940s with incidents involving opposing groups of white and black people which attracted the attention of the Labour government. From 1948 until 1962, when the Commonwealth Act was passed, the 'problem' never really left the governmental agenda. The passing of a restrictive immigration law was facilitated by the dramatic and violent confrontations occurring in August 1958 in Nottingham⁶⁹ as well as by the fact that contrary to colonial immigration to France in the 1950s and 1960s, and Turkish immigration in Germany which was considered to be temporary, Commonwealth immigrants were allowed to permanently reside on the territory of the United Kingdom and become citizens. The passing of such a law was also facilitated by the decline of the British Empire, the increasing disappointment felt about Commonwealth newly independent countries, and the increasing involvement of Great Britain with the European Community.

The 1962 Act made New Commonwealth immigrants' entry into the UK subject to the possession of an employment voucher. Passed into law in 1962 by a Conservative government, this restrictive approach was endorsed in 1965 by the new Labour government, which reinforced the regulation on vouchers while introducing the 1965 Race Relations Act. Since then, the two major parties have followed a balanced and rather consensual approach to immigration policy: The 1968 Commonwealth Immigrants Act controlling entry of East African Asians was compensated for by a new Race Relations Act and the Immigration Act of 1971 by the 1976 Race Relations Act.⁷⁰ In a measure to stem the immigration of Commonwealth citizens, the British Parliament also reformed the nationality law through elite consensus, transforming it from a traditional 'Ancien Régime' subjecthood status to a more sociological, one could say 'French' approach of nationality.⁷¹ This reform represented a break with a century long tradition and was adopted without deep debate.

Benefitting from a positive human rights image, a unique geographical situation, and an elite-driven political consensus, the early restriction of immigration, clearly for racist reasons, was quite easy to implement. Because it was counterbalanced by an active antiracist policy with regard to colonial

⁶⁹ C. Holmes, *supra* note 46, at 259

⁷⁰ On this history see J. Crowley *supra* note 21, at 131-215 and Layton-Henry Zig, *The Politics of Immigration, Immigration, 'race' and 'Race' Relations in Post-war Britain* (1992).

⁷¹ Weil, 'Nationalities and Citizenships: The Lessons of the French Experience for Germany and Europe', in *Citizenship, Nationality & Migration in Europe* (1996) 74-87.

migrants already settled, and because policy was built on a political consensus which avoided high politicization, the restrictive approach to new immigration did not tarnish Great Britain's liberal international reputation. Clearly, the efficient implementation of this restrictive policy was, in large part, due to a favourable geographical situation.

3. France or the Extreme Politicization of Immigration Policy

Despite the decrease in legal immigration registered since July 1974, the halt of arrivals of new immigrant workers and the drop in the number of asylum seekers registered since 1989, the pressure to control and decrease immigration has not let up in France. This is in large part due to the use of immigration for electoral purposes despite the fact that the level of legal immigration is low: around 100,000 per year while France attracts more tourists than any other country in the world (over 100 million border crossings per year). Due to frequent verification of identification documents, tight control of the labour market, and the geographical situation of France in Western Europe (no common land borders with a high-emigration country), the number of illegal immigrants in France does not seem to be very high when compared to the United States for example. Despite this, the French political sphere is marked by the presence of an extreme right party (the *Front National*), whose platform is based on the deportation of all non-European immigrants – legal and illegal. The terms of political discourse chosen by the major traditional parties over the last twenty years, in addition to the common policies implemented by the traditional political Left and Right, have actually opened two political avenues to the *Front National*. Since 1974, no political leader has clearly declared to the general public the dual reality that new immigrants are still allowed to come to France, and that their arrival cannot be halted without betraying the French Constitution and the international conventions which link France with the rest of the civilized world. To publicly make the distinction (as is done continuously in the United States) between legal immigration (numerically much smaller than that of the 1970s) and illegal immigration is very important. For example, a resident of an area in which new immigrants are still arriving, upon hearing public commitments from politicians concerning the objective of 'zero immigration,' is likely to come to certain conclusions: that France is being 'invaded' by illegal immigrants and/or that his political representatives are lying to him. This partisan discourse has the particular drawback of allowing the *Front National* to present itself as the most truthful of all the political parties. Although, by definition, the French government cannot reach its declared objective of 'zero immigration', it has nevertheless tried by passing new laws in 1993 with repression as the sole strategy to reach this goal by any means. The fight against illegal immigration was reinforced, but the main result was to deter legal

immigration, family reunification, marriages, and access of students to permanent status, under the pretext of fighting illegal access to these categories.

This often had the effect of transforming people who would have been legal immigrants under the previous legislation into illegal immigrants. After all, legal reunification of a family can be delayed, but it is almost impossible to keep a father from living with his wife and children for an extended period of time. In an effort to combat 'marriages of convenience', legitimate French-foreigner marriages were viewed with suspicion, and the fundamental rights of those involved were sometimes violated.

Lastly, the control of immigration has been disorganized. The police, asked to control and possibly to arrest foreign students, families, spouses, illegal labourers, and delinquents, yet without a significant increase in resources, is overloaded with work. Forced to choose, they often opt for the easiest and least dangerous targets: students, families, or future spouses, instead of pursuing the truly delinquent illegal immigrants: such as those who have been released from prison after serving their sentence and who face deportation, but who, due to administrative miscommunication between carceral and police bureaucracies, disappear into the night. In short, the most spectacular results of the five laws approved by the French Parliament in 1993 were obtained at the expense of legitimate foreign residents, while the fight against the most dangerous illegal immigrants was, on the whole, less effective. In the presidential elections of May 1995, Jean-Marie Le Pen, the president of the *Front National* received 15.2% of the vote and in 1996 new repressive bills are being discussed in the French Parliament.⁷²

4. Schengen and European Cooperation

The differing interplay between political and geographical factors is creating important differences between Germany and France with regard to European cooperation within the Schengen Agreement.

International cooperation in Europe has been perceived as a potentially effective tool in preventing illegal immigration by some European governments. Over the past few years, cooperation between States has increased, as demonstrated by the integration of migration problems in the Maastricht accords. This treaty in effect states that rules of entry, temporary visits by foreigners, the issuing of visas, the granting of asylum, and measures taken to stop illegal immigration fall within the jurisdiction of the European Union.

⁷² The recent developments in French immigration policy are analyzed in Weil, 'Pour une nouvelle politique de l'immigration', *Esprit* (1996) 136-54.

Decisions made by the Union in this domain will still require, for some time, the unanimous vote of member-States. However, it was the treaty signed 14 June 1985 at Schengen (in conjunction with the technical application agreement signed on 19 June 1990 – both of which became effective on 26 March 1995) by Germany, France, Spain, Portugal, and the Benelux countries that represents the truly decisive step in European cooperation in the domain of immigration. These accords created a common external border among the nations signing the accords, thus guaranteeing free travel within this ‘enlarged border’ primarily for the citizens of the countries in question. However, the elimination of control posts on the common borders between these countries requires the harmonization of visa policies for citizens of non-member countries, as well as common deportation policies which would allow, for example, an illegal immigrant to be sent back to Germany, Spain, or Belgium if that person passed through that country prior to arriving illegally in France. In reality, the elimination of border control posts between the members of the Schengen group does not mean that all identity checks have been eliminated as well. Quite the contrary. By obeying the regulations to the letter, any citizen of a country which is not part of the group entering France from a Schengen member-country should fill out a declaration form upon his arrival in France, and then be able to prove that his visit is legal if someone asks to see his identification. Before the Schengen Accords, the actions of the border police were largely static – essentially limited to the border. Today, border police can theoretically control identity papers anywhere on national territory. ‘Theoretically’ because in reality each country seeks different benefits from the Schengen treaty. Technically, this cooperation agreement is all the more rational since the borders covered by the treaty are land borders and are therefore difficult to control. Because it is an island, Great Britain therefore had much less to gain in entering the Schengen group, because abandoning identification checks at ports and airports of passengers coming from France, Germany, or Spain would have required the British to carry out identification checks within their own borders, which is contrary to their political tradition.

Although both countries signed the accords, Germany and France did so for very different reasons. Germany’s motivation has always been more political than technical. Immigration flows from France or Belgium into Germany since the fall of the Berlin Wall have been much less substantial than those coming from Eastern Europe. Nonetheless, in 1985 the cooperation in this domain represented a step towards the political construction of Europe and, since 1989, has facilitated the passage of a reform of the German Constitution limiting access to its territory by asylum seekers.⁷³ Later, movement towards European

⁷³ Neuman, ‘Buffer Zones Against Refugees: Dublin, Schengen, and the German Asylum Amendment’, 33 *Virginia Journal of International Law* (1993) 503-15.

unification has also permitted the German government to negotiate agreements with Poland and the Czech Republic to limit immigration flows.

France finds itself in the opposite situation. While France has a 'technical' interest in the accords, signing the treaty was politically risky for a series of French governments. Since all its land borders are with Schengen member-countries (with the exception of Switzerland), France has a strong interest that these countries enforce the accords rigorously. If German, Belgian, or Spanish police and customs agents were as strict with the papers of foreigners passing through their country on their way to France as they are with foreigners trying to enter their own country and planning to remain there, the French police would greatly benefit from the accords: less work, more mobility – thus more effectiveness in their efforts. However, if the identity checks are lax, then France would be the country with the most to lose, especially in light of the current debate over immigration in France, since increased immigration from France's eastern or southern borders would have powerful political repercussions. This accord is thus a truly risky wager for European cooperation. One could easily have imagined another system: a multinational brigade of border police stationed at all external borders. But the choice was made to have reciprocal confidence in each nation's border police to properly implement control for the benefit of all the other countries. Still, if the accord is properly implemented, France will be the primary beneficiary, with the border police of the other Schengen nations essentially screening all incoming visitors long before they reach France's land borders.

E. Comparison of the Tools at the Disposal of Immigration States

With many policy-makers today asking themselves the same question posed by Gary Freeman in the title of his article, 'Can Liberal States Control Unwanted Migration?',⁷⁴ the answer should be 'yes' but with two qualifications:

- Far more effective factors in explaining differences in migration patterns than market forces or demographic data are the interplay between geographic, historic, political, and cultural factors, which define the environment of both immigration policy and politics, in conjunction with the specific institutional structure of the government in question.

- It is clear that while some means of control are transferable across several such frameworks, others are not: thus it is necessary to choose the policy tools that are best adapted to the national interplay mentioned above:

⁷⁴ Freeman, 'Can Liberal States Control Unwanted Migration?', *Annals AAPSS*, 534 (July 1994) 7-30.

The possibility of successfully transferring such immigration control techniques depends mainly on their 'fitting' and on their adaptation to the particular constraints we have detailed for each country.

1. From a Policy of Origins to a Policy of Preference

While it is no longer possible to judge the 'desirability' of an immigrant on the basis of ethnic or national criteria and to refuse entrance on the basis of 'negative discrimination', it is still legitimate to make some exceptions in the form of 'positive discrimination' which is practiced by democratic countries every day. France is still giving special access to its labour market to Vietnamese, Cambodian, Laotian and Lebanese citizens (while restricting the arrival of North Africans and black Africans) and Germany is giving preference to immigration from Eastern Europe rather than from Turkey or the Mediterranean countries.

2. Economic Prevention

In order to combat the development of the use of undocumented immigrants in the work forces of essentially four economic sectors (construction, labour intensive services, textiles and agriculture), the organization and the control of seasonal labour (as in Germany), and the selection of foreign trainees (Japan) have proved to be effective measures. All those affected by these measures benefit from such policies: the seasonal workers obtain skills and earn a salary which they can then use in their country of origin, thus providing them with a substantial advantage in purchasing power compared to that with which they would have had in the country where they worked. Their country of origin benefits from the influx of resources and a more highly skilled work force. The company hiring such workers profits through lower wage rates and freedom from heavy fines imposed under the earlier hiring of illegal immigrants. Finally, the host State reduces illegal immigration, reduces the cost of border control, resource-draining legal procedures and eventual deportation. The State can also benefit from taxes and social welfare contributions of these temporary or seasonal workers. Of course, in these programs, a fraction of these workers overstayed the duration of their contract and remain illegally in the country. Yet the continued presence of a few illegal immigrants is preferable to a 'laissez-faire' policy with large sectors of the economy depending on the work of totally undeclared illegal immigrants. Yet the success of this kind of policy needs the legitimacy of the State's involvement within the economy: it makes it therefore more difficult to implement in the US than in Continental Europe or Japan.

3. Legal Decrease

In this domain there are several types of policy measures which have been implemented. In the United States the Congress can decrease the quotas of admission for each legal category; this is not the case in Europe where their admission is rather based on general 'principles.'

Some of these principles, such as family reunification, are implemented very differently, depending on differences in domestic legal definitions of words such as 'family', 'spouse', 'child', and 'resident'.⁷⁵ In the US, there are discussions regarding the limitation of the definition of family members having the right to immigrate to the nuclear family (spouse and children) as it is already the case in Europe. This definition would exclude siblings, brother- and sister-in-laws and their children, etc. In Europe, where the nuclear approach to the family is the rule, the differences are mainly due to the breadth of discretion commonly conferred on administrative agencies, when they have to determine if the wages or the housing of the applicant are sufficient to permit the arrival of his/her family.

4. Legal Deterrence

Restricting former rights or benefits to certain categories of applicants for legal residence can be a strategy which helps to discourage some unfounded demands and decrease illegal overstays. Visa policy towards tourists has been used for years in Europe as a means of decreasing overstays, for example by France with regard to African countries, especially Algeria. This kind of policy is easier to implement in a country like Japan where, despite an increase in tourism, visitors totaled 3 million in 1990 compared to 15 million in the United States and 70 million in France.⁷⁶

At the end of the 1980s, the number of asylum seekers in France increased from 23,000 in 1983 to 63,000 in 1989. With an ever-increasing delay in processing these requests (often three or four years), the person requesting asylum often has created a stable existence in France with a work permit and a stable job before the issue of asylum is settled. Due to the long delay, it became humanly impossible to deport such a person once their refugee status had been denied. More often than not, such persons were eventually accepted as legal immigrants. In 1989, funding was increased for the OFPRA, an organization specialized in determining the status of refugees. The means at the disposition of specialized appeals courts were also expanded. As a result of these changes, the

⁷⁵ R. Plender, *supra* note 43, at 200.

⁷⁶ Zlotnik, Hania, *supra* note 2.

delay was reduced to six months, appeals included. In addition, the work permits formerly given to asylum seekers were replaced by a small monthly payment granted to each asylum seeker. Since 1991, the number of asylum applicants has decreased and has now stabilized at approximately 25,000.

This method has been studied by American scholars and has been partially implemented in the United States. For David Martin, 'expeditious procedures are far more effective in deterring abuse than is a tightening of the substantive standards. Indeed, standards can be made quite draconian without much affecting deterrence, if the overall system remains mired in procedural delays'.⁷⁷ In this area, the United States has imitated European procedures for processing the applications of asylum seekers. The process has been accelerated through the creation of a 'specialized' corps of professional asylum officers in eight asylum offices across the country who are to receive special training in international human rights law, conditions in countries of origin and other relevant national and international refugee laws.⁷⁸ In addition to the recruitment of additional staff, the creation of new positions for judges through the 1994 reforms has split the work of hearing asylum claims between two separate courtrooms. Under the new procedure, the asylum officer only has the power to grant asylum and may no longer deny it. If he has doubts on the merits of a specific case, he then transfers it to the Immigration Judge in a procedure involving minimal paperwork. These reforms greatly accelerate the process and deter the filing of false asylum applications in an effort to obtain a temporary labour permit during the application review process.⁷⁹

Some means of discouraging fraudulent marriages could also be internationally practiced: for example, the rights of permanent residence or of naturalization of foreign spouses could be delayed for two or three years after the marriage. Without contesting their right of legal residence, the delay could prove to be long enough to deter false marriages.

Other means of immigration control have been used successfully in Europe,⁸⁰ but would be difficult if not impossible to replicate in the United States: for example, the modification of nationality laws. Nationality laws are easy to change in Europe at the national level since amending them does not necessarily imply a modification of the Constitution. In the United States, children of illegal

⁷⁷ D. Martin, *Statement before the Subcommittee on Immigration and Refugee Affairs, Senate Committee on the Judiciary*, 28 May 1993, section C.

⁷⁸ Aleinikoff *et al.*, *supra* note 26, at 765.

⁷⁹ These reforms are clearly analyzed by Martin, 'Making Asylum Policy: The 1994 Reforms', 70 *Washington Law Review* (1995-3) 725-55.

⁸⁰ Rogers, 'Western European Responses to Migration', in M. Weiner (ed.), *International Migration and Security* (1993) 121-3.

aliens born on United States territory are American by virtue of the 14th Amendment of the Constitution. Nonetheless, the political resources which need to be mobilized to operate such a change are currently not at hand and will be extremely difficult to assemble in the near future.

Inversely, the reduction of social benefits for legal immigrants are not transferable from the United States to Europe for the simple reason that the equality of social rights between European citizens and legal immigrants are guaranteed by European conventions which are binding on national laws.

5. *International Action*

In this domain where different kinds of action can be envisaged,⁸¹ economic intervention has often been seen as a priority.

But the two main tools used, economic assistance to development and free trade agreements cannot prevent migrations in the short term.⁸²

Other kinds of international actions include diplomatic pressure. But in this domain, pressure from France on African countries linking financial aid to cooperation in controlling migrations or cooperation in the repatriation of their illegal citizens is more efficient than the same pressure on Turkey by Germany.

Increasingly, cooperation has been developed between neighbouring countries, as in Europe with the Schengen agreement. Organized specially as a mean to coordinate asylum procedures, it nevertheless carries the risk that different countries can reach different conclusions on the evaluation of the danger of persecution.⁸³

6. *Administrative Organization and Resources*

Over the last ten years, the budgets of departments involved in immigration policies have greatly increased. More than a century ago, the United States put into place a centralized administration to treat the problems linked to immigration and naturalization. In Europe and in Japan, the practical problems linked with immigration were for a long time neglected by national administrations. As a result, this domain of competence is shared by many

⁸¹ Weiner, 'Security, Stability and International Migration', in M. Weiner, (ed.), *International Migration and Security* (1993) 21-26.

⁸² See P. Martin, *Trade and Migration: NAFTA and Agriculture*, Washington D.C., Institute for International Economics (October 1993).

⁸³ G. Neuman and G.L. Neuman, 'Buffer Zones Against Refugees: Dublin, Schengen, and the German Asylum Amendment', 33 *Virginia Journal of International Law* (1993) 522.

different departments, and policy implementation suffers from low levels of cooperation and dialogue. As immigration was not a problem in the past in most of these countries, it is all the more a challenge in the present and the future in Europe and in Japan. The American Immigration and Naturalization Service could become an example for the necessary administrative reforms of the European institutions carrying out immigration, naturalization and social integration policies.

Conclusion: The Future of Immigration Policies

The evolution of immigration policies demonstrates the adaptability of the democratic industrialized States. In reaction to the increased migratory pressure and the extension of rights for immigrants, States have answered by mobilizing more legal, financial and bureaucratic means. Therefore the transformation of immigration into a worldwide phenomena has not automatically involved an increase of migratory flows: when this has happened, it was primarily due to legal windows still opened allowing entry. The closure of these windows has demonstrated that regulation is possible for a democratic State. Regulation means the continuing of immigration flows at a low level. When the level of uncontrolled flows is still high, it depends more on cultural and historical values than on economic or demographic factors. These facts have to be explained clearly to the citizens.

Yet in almost all of these countries some misleading conceptions are undermining these policies:

- Germany declares itself still officially as not being a country of immigration, probably so as to delay the effects of being a country of immigration on its *jus sanguinis* nationality laws.
- French authorities are lying to their people by maintaining that they can attain the objective of zero immigration.

To tell the truth about immigration policy and its context is everywhere a condition of the decline of the pressure of public opinion, and a condition of its own legitimacy. Speaking openly about immigration is the only way for policy-makers to decrease unfounded fears and to avoid a deep crisis of values. In short term calculations, some politicians think that they can utilize immigration, mix categories – i.e. combine or confuse illegals/refugees etc. – in order to satisfy public opinion, and at the same time make the policy evolve. In the long term, they are undermining the structural values of democratic States which are strong enough to resist the temptation of having to resort to drastic measures, which in any case are never effective.

Respect of universal values and a good understanding of the phenomena might permit a next step in the transformation of immigration policies through the attribution of an international, ultimately more protective individual status 1) to refugees and 2) to temporary workers.

To protect all humans from fear of persecution, the international community could move back to the 1938 definition of refugee, which implied interference in internal affairs. The closure of national territories as a consequence of the transformation of immigration policies has the effect of endangering people living within their country of origin and increasing difficulties in leaving it. The right and obligation of interference in internal affairs if human rights are endangered should be therefore developed and encouraged.

But above all, governments must be able to read the phenomenon correctly. Governments should take more seriously into account the opinion of Michael Piore who states that

migrants are a solution because they typically view their migration as temporary. Their hope is to come to the developed area for a short period of time, earn and save as much money as possible, and then return home to use their savings to facilitate some activity in their place of origin.⁸⁴

It is often claimed that because of the decreasing costs of international transportation, illegal or legal immigrants can move more easily to the host countries. But this argument can be reversed and one can add that if illegal or legal immigrants are more mobile, this means that they can also return to their country of origin more easily. In a world of rapid and inexpensive transportation, where a continuing reluctance to permanently emigrate is still dominant among migrants, a round-trip journey is often the best solution for many players in the immigration game: immigrants, companies, receiving States and States of origin. States who have always preferred persons to be static have to adapt themselves to increasing movements. An international status of temporary workers, particularly seasonal workers, which would provide to some of them the right to work for a short period of time in some defined countries, might be in future usefully developed.⁸⁵

In the 'common knowledge' on immigration there has often been a lack of emphasis on a recognition and analysis of the differences in the outcomes of the

⁸⁴ Piore, 'The Shifting Grounds for Immigration', *Annals*, AAPSS, 485, (May 1986) 24.

⁸⁵ K. Groenendijk and R. Hampsink, *Temporary Employment of Migrants in Europe* (1994). H. Werner, *Agreement Providing for Short-term Migration for Employment and Training Purposes*, Strasbourg, Conseil de l'Europe, Select Committee of Experts on Short-term Migration (1994).

immigration control policies of European States. Rather, 'common knowledge' has accepted, magnified and emphasized the divergences between nationality and citizenship laws in Europe. The belief is strong: nationality laws are part of nation states' histories and identities; therefore, they are divergent. Nevertheless, since 1980 the nationality laws of the fifteen members of the European Union have changed and are now converging. With one exception: Germany. But an historical comparison between the German and the French case can demonstrate that many conditions are coming together which may permit a German move in a European common direction.

II. POSSIBLE CONVERGENCE IN NATIONALITY AND CITIZENSHIP LAWS IN EUROPE: THE LESSONS OF THE FRENCH EXPERIENCE FOR GERMANY AND EUROPE

The Maastricht Treaty is said to have established a European citizenship. The rationale of the leaders meeting at Maastricht in December, 1991 was to correct or disguise the overly economic and financial nature of the treaty. But by instituting suffrage for nationals of the European Union in local and European elections without first reconciling each member State's laws regarding nationality, the Union accepted the probably false notion that there are essential and unavoidable differences between the national traditions of each country. The method chosen by the leaders, far from creating a feeling of citizenship or allowing for the emergence of a true European citizenship, might rather have the effect of upsetting the basic conditions for the integration of resident immigrants.

A. Possible Convergence of National Legislation

The primary obstacle to the creation of common European nationality law is the belief shared to a great extent in France as well as in Germany that the traditions of the different countries would be too difficult to reconcile. However, a more detailed socio-historical analysis of the origin of these nations and their legislation regarding nationality would have allowed the leaders to determine similarities among the laws and to emphasize these similarities. To dispute the flawed assumption of the leaders, we will first analyze the preconceptions of the French tradition and then compare the French and German systems.

In France, those who are trying to define the specificity of the French national identity focus on two points: the first is that the French nation is held together and in fact exists through the free will and consent of the people. This notion comes from the text of a lecture delivered by Ernest Renan: 'A nation ... is the consent, the clearly expressed desire to continue communal life... The existence

of a nation is a daily plebiscite'. This notion contradicts the German ethnic self conception defended by Strauss, a philosopher, in a debate in which he participated with Renan.⁸⁶

The second assumption is that the tradition of *jus soli* was established in 1889 by the French Republic, as opposed to the German tradition which is based on the *jus sanguinis*.⁸⁷

But nowadays, 95% of all Frenchmen have never been required to explicitly express their desire to be of French nationality, to be considered as French. This leads one to ask – if this is the case, where does this myth of 'freewill' and 'consent' come from?

And furthermore, it is important to note that the criteria for determining who is of French nationality, as they were defined in 1889, and as are still in effect today, have many points in common with the definition of French nationality that existed in the jurisprudence of the courts of the *Ancien Régime* (the *Parlements*) throughout the eighteenth century and up until the first days of the French Revolution.

The following period, which began with the issuing of the *Code Civil* in 1804 and continued through the adoption of a key law regarding nationality in 1889, seems then, in the history of the definition of 'Frenchness,' to be unique. For this was the only period in French history when, as in contemporary Germany, the *jus sanguinis* had precedence over the *jus soli*. An explanation of the origin of the myth of 'free will and consent,' as well as why and how the previously dominant criteria of *jus sanguinis* came to be progressively replaced by the *jus soli*, might then allow a possible means of achieving Franco-German and European agreement on this issue.⁸⁸

To understand this return to the *jus soli* at the end of the nineteenth century, one must first examine the history of French nationality. Like all other legislation involving nationality, ever since the seventeenth century the French tradition has been based upon a mixture, or a blend – as in a painting, several colours are mixed to achieve the desired effect. In the case at hand, two of these 'colours' are always mentioned: 1) the birthplace, or *jus soli*: the fact of being born in a

⁸⁶ This debate is reproduced in E. Renan, *Qu'est-ce qu'une nation? (What is a Nation?) and Other Texts* (1992).

⁸⁷ This thesis is specifically defended by R. Brubaker, *Citizenship and Nationhood in France and Germany* (1992).

⁸⁸ On the history of French immigration and nationality policy, see P. Weil, *La France et ses Etrangers – L'aventure de la politique française de l'immigration de 1938 à nos jours* (1995) 592.

territory over which the State extends, has extended, or possibly wishes to extend its sovereignty, and 2) family/blood ties, or *jus sanguinis*, that is to say the nationality of one or both parents. However, two other 'colours' are often forgotten, or neglected: 3) marital status, for to be married to a citizen of a certain country often leads to ties of citizenship with that country, and, lastly, 4) past, present, or future residence, considered at any given moment for a duration, extended or otherwise, in the past or supposedly in the future, within the borders of the country.

The mixture of these four basic 'collars' on the different legal 'palettes' that have evolved over the centuries determines what one must do in order to be granted French nationality. Among these four criteria, the *jus soli* is dominant prior to the French Revolution – throughout the Ancien Régime, the *jus soli* was the primary requirement for the attribution of French nationality. And although, beginning in the seventeenth century the *jus sanguinis* could independently be used to access French nationality, it is important not to be mistaken on this point – birth on French soil still took precedence over birth by French parents (regardless of birthplace) as a legitimate criterion for determining French nationality.

The proof of this can be seen through an example provided by Jean-François Dubost: during this period, children of French parents born outside of France and residing on French territory needed to request from the king a letter of naturalization in order to confirm their status as Frenchmen.⁸⁹ Children born in France of foreign parents would not have needed to do this. It is important to take into account the major changes that were brought about by the French Revolution. First, the constitution of 1791 created a uniform nationality code – prior to this time, requirements for attributing French nationality varied by 'Parlement' and therefore by region. Second, the Revolution allowed non-Catholics, and notably Jews, access to French nationality. Lastly, the Revolution led to the emergence of the modern notion of citizenship – that is to say, individual participation in national sovereignty. It was this last transformation which would upset the construction of the definition of 'French' developed under the *Ancien Régime*.⁹⁰ For the response to the question of which of the monarchy's subjects' (then named 'Passive citizens') could become active citizens of the Republic vary greatly between 1789 and 1804. With the rapid succession of rule changes, the characteristics of loyalty and allegiance to the

⁸⁹ Cf. Dubost, 'Significations de la lettre de naturalité dans la France des XVII^e et XVIII^e siècles,' *Working Paper HEC No. 90/3*, October 1990, European University Institute, San Domenico, Italy.

⁹⁰ The constitution of 1791 institutes that an active citizen will be a French male, at least 25 years old, paying a direct contribution equal at least to the value of three days' work, and having taken the civic oath.

new regime were constantly sought. Those who drafted the 1793 constitution believed that, considering the conditions of that time, a link, even tenuous, with the newly-created French Republic would be sufficient to ground citizenship (for example, residence in Paris with an active social presence – although many Frenchmen who fought against the Revolution outside of French territory could satisfy this condition). A few weeks later, the Convention decided that foreign origin, on the contrary, constituted a threat to the Republic – so foreigners were imprisoned. Finally, in 1804, it was decided against the will of Napoleon that birth within the borders of the country was not enough to guarantee the loyalty of the children of those foreigners born in France. Legislators warned of the danger the country could face if it forced these people to call themselves French against their will. The *Code Civil* thus rejected the simple *jus soli* and instituted a monopoly on the automatic transferal of French citizenship through a father's direct blood line. Beginning in 1804, this new right of citizenship based on blood ties, temporarily stabilized, would be tried out. This legislation very rapidly produced unanticipated social consequences that E. Rouard de Card presented in this way:

A few years after the *Code Civil* had been instituted, it was observed that numerous individuals who had been born on French territory, even though they belonged to families who had lived on French territory for an extended period, were in no hurry to formally request their French citizenship... They would take advantage of the benefits of our social state by passing themselves off as French citizens while avoiding any public responsibilities by claiming to be foreigners.⁹¹

Long before 1889 and the creation of the Third Republic, which would only accelerate the progression that was already underway, the *Assemblée Législative* decided to require a number of these individuals to become French, regardless of their individual will. A first effort to write this into law in 1831 did not come to fruition. Then, a law passed on February 7, 1851 created the double *jus soli* rule: it stated that an individual born in France of a foreign parent who himself was born in France would be considered as French starting at birth. However, such an individual could still avoid this designation by indicating when he reached legal adulthood his desire to be considered as a foreigner. A law enacted December 16, 1874 reinforced the restriction, stating that an individual as described above could only renounce his French citizenship by producing a statement prepared by his 'original' country that indicated that the person in question 'had maintained his original nationality.' A law passed in 1889 finally removed all opportunity for a child born in France of foreign parents born in France to renounce his citizenship: on the basis of double *jus soli*, French citizenship became mandatory at birth.

⁹¹ E. Rouard de Card, *La nationalité française* (2nd ed., 1922), at 37-8.

When the judiciary commission of the *Chambre des députés* in 1889 proposed to impose this rule and to develop extensively the role of *jus soli* in the French legislation, it was because, for them, a child born in France of parents who themselves were born in France is 'French from the point of view of spirit, inclination, habits, and morals.' The *Chambre des députés* made no reference to public schools or the army (which, of course, would later play an important role in the socialization of the children of foreigners), as if to say that this socialization could have taken place without the assistance of these institutions. But the *Chambre des députés*' decision to leave out these references was also in the best interest of the State for two reasons: a) between 1851 and 1889 mass immigration had developed, particularly in border regions, and b) more precisely Italian colonies in the recent French acquisition of the Savoy and of Nice and in Algeria were perceived as a risk of 'irredentism'. The *jus soli* was therefore imposed more in the name of the public order than for reasons of equality.⁹² If in 1804 the hesitation in providing children born in France of foreigners born in France with French nationality (and therefore potentially with 'active' citizenship) was based on a fear of their individual disloyalty, in 1889 the acknowledgment of their assimilation as well as the fear of their collective separatism justified the shift of citizenship laws in favour of the *jus soli*. This reform also represented a compromise between the opinions of several social groups, as Gérard Noiriel indicates: in favour of the change, were

representatives of French industry, with a vital need for workers, elected officials from industrial areas seeking to stop foreign competition, and those in the military, who wanted to rebuild a powerful army. Those opposing the change were the defenders of the French race and identity, who were massively recruited from the French aristocracy.⁹³

Thus, from that time, French nationality was transmitted by foreign parents themselves born in France to their children just as it was transmitted to the children of French parents. However, with the institution of the *jus soli* in 1889, the Third Republic was not creating it, it was merely reestablishing it. It had then taken a century from 1789 to 1889 to clarify the relationship between nationality and citizenship, as well as to incorporate the definitions of these words into the mind of the Frenchman.⁹⁴ The current rules regarding French nationality that were reintroduced into the *Code Civil* in 1993 have changed very little since 1889 – the most important of these changes was the equalization of men's and women's rights to access to and transmission of French nationality. If any judicial innovation took place in 1889 it was not the

⁹² *Ibid.*, at 66-67

⁹³ G. Noiriel, *La tyrannie du national*, (1991), at 88.

⁹⁴ On the theoretical links between the two, cf. Leca, 'Nationalité et citoyenneté dans l'Europe des immigrations', in J. Costa-Lascoux, P. Weil, (eds), *Logiques d'Etats et Immigrations* (1992) 13-57.

institution of the *jus soli* but rather the Republic's total and complete reversal in the handling of an often neglected factor in the attribution of French nationality: the criteria of residence. In the time of the *Ancien Régime*, the criteria of residence was very important: when recognition of French nationality could only be based upon French parents giving birth abroad or foreign parents giving birth in France, the *Parlements* required that current and future residence be established within the kingdom. This was the sign of personal allegiance, both present and future, to the king. However, over the course of the nineteenth century, the requirement of current and future residence changed to become instead a requirement of past residence. In the shift from loyalty to the king to loyalty to the nation, this loyalty would no longer be judged on individual ties but instead on a person's socialization and education in French culture – and past residence on French territory was in some ways the guarantee of these qualities. The 1889 nationality law thus made a child socialized in French culture into a Frenchman by law, whether born in France of foreign parents and educated in French society or born abroad to French parents and raised in the French language and culture.

Nowadays access to French nationality is automatic if at birth the child has either a direct blood tie with a Frenchman or a double *jus soli* with France (two generations born on French territory). Some examples are a child born in Columbia of a 'Franco-Chinese' couple or a child born in France of an Algerian parent born in Algeria before 1962 (when Algeria was still a French territory). Acquisition of French nationality is almost automatic for a child born in France of foreign parents, but the acceptance of French nationality only becomes binding when between the ages of 16 and 21 the child voluntarily declares his desire to become French. For a foreigner without any birth ties to France to acquire French nationality, a formal link with France must be created, either through marriage or through an extended period of residence in the country and a formal request for citizenship. If the link with France that is used to become a French citizen is marriage to a French man or woman, the State imposes a check, albeit weak and *a posteriori*, on the request for acquisition of French nationality. The request is made using a 'declaration,' which constitutes, for those who meet the criteria laid out by law, a right. Therefore, all that is needed to claim French nationality is that the desire to claim it be formally expressed. The State bureaucracy must content itself with checking to see that the necessary legal requirements have been satisfied. If the link used is an extended period of residence in France, the State exercises a much more powerful and a priori control, through the process of naturalization. Today, naturalization is granted fairly freely to those requesting it (80 to 90% of requests are granted, although the average wait is 18 months), although relatively strict socialization criteria are expected of the applicant (a minimum of five years spent in France, knowledge of the French language, stable financial resources, current residence

in France). These rules differentiate the French from the American or the German traditions. A child born in the United States of foreign parents becomes American even if he has not lived in the United States and therefore not been educated there; a child born in Germany of foreign parents will often remain a foreigner while the great-grandson of a German raised abroad, to the east of Germany, without any ties to German culture, could claim German nationality simply by deciding to live in Germany. The law of 1889 thus, in reintroducing into law the principal of the *jus soli* and altering the role of residence, legitimated the concept of socialization. And it is this fusion of socialization and passive citizenship (previously referred to in law as 'nationality') which made French nationality law unique.⁹⁵ Instead of contract-based or ethnic origin-based citizenship, this concept of nationality permitted, in its primary usage, to symbolize a unique legislation based on socialization; a process and therefore neither an ethnic 'given' nor a simple voluntary act. French republican law bases French nationality more on the acquisition of certain codes of sociability than on the expression of one's individual will, one's origin, or one's birthplace. In the end, these are nothing but tokens of this acquisition.

Thus, the concept that the French nation exists out of the free will and consent of individuals is a philosophical invention based solely on circumstance, that originally served a strategic purpose: Renan in 1882 had as his primary objective the need to differentiate the French nation from the German nation to illegitimate the annexation of the Alsace-Lorraine by the German Empire, regardless of the cultural and ethnic ties that could be seen as tying it to the Empire. For the residents of the Alsace-Lorraine at the time, the desire to be French could well have been a daily plebiscite; but today 95% of French people have never been required to state their individual desire to have the nationality that they had been assigned just as virtually all nationality is assigned in the world – automatically and without any possibility for choice. And as for those who can express such a desire, they can only do so under certain tangible social conditions (residence, marriage, knowledge of the language, etc.). However this logic, which bases nationality more upon codes of sociability and citizenship than on individual desire, does not allow French national identity to be readily defined. The French legal system, which presents several means by which to receive French nationality, fails to respond simply to a question which each individual must ask himself: who am I? In responding to this question, a German could still respond that he is German because his ancestors were German – a response that not all French people could give. The French Republic therefore responds to the requirement for a common identity, necessary for the unity of any human group and therefore any nation, with symbolic republican

⁹⁵ On this point, see Noiriel, 'Le mirage des mots,' *Le monde des débats* (July/August 1993).

values: you are French because you adhere (that is to say sociologically you can adhere) to republican values; those same values which give French citizens the desire to live together. This political identity is not embodied in daily plebiscites, but rather in occasional ones, through for example the 'ceremony of voting.' The vote, a republican rite confirming that one belongs to the nation, was historically a means of symbolically identifying the members of the sovereign French nation. He who votes is French and a citizen. There is no differentiation in the French social imagination, between identity, citizenship, and nationality; between local and national citizenship. It is for this reason that the creation of a citizenship that is enlarged to include all foreigners or only Europeans (that which is decided by the Treaty of Maastricht) which would break the bonds between the vote, citizenship, nationality, and identity is still very hotly contested.

B. The Implications of the French Experience for Germany

From this history of French nationality, it is possible to discover for today's Germany an important consideration in the form of a question: can such an important democratic country, a country of welcome and refuge, continue to deny German nationality to the large majority of foreigners and their children who live in Germany? All of the countries of Europe have become, willingly or not, countries of immigration: foreigners who received temporary authorization to live in the country for a short but undetermined period of time usually ended up obtaining for himself and his family the right to stay more or less permanently. And then what of their access to the nationality of the country in which they are living? It seems to me that the profound changes that have taken place since 1945 could help to highlight and to favour the similarities between German legislation and that of its European neighbours.

Many of these possibilities come independent of German reunification, but the most important can be seen as having resulted from it.

- The settlement of the question of territory: German reunification no longer left enough Germans outside of German territory to justify that which had been the unique and central focus of German nationality law: that the right of nationality based on family ties maintains a bond between citizens who are dispersed over the territory of several States.

- The intermingling of the citizens of East and West Germany which rendered null and void the myth which had previously structured German nationality: that of the community based on common origin. The West Germans waited for 40 years to welcome their brothers from the East; but once the much-anticipated reunion took place, they often felt that, despite their common ancestors, 40 years

of separation and of life in different societies have left them greatly different. And, in addition to this, a reality, that of mass immigration, notably of Turks, foreign by law but in reality more and more integrated, sociologically quasi-German in their activities and their social habits.

- Next, a political reality has imposed itself since 1949, that of a vibrant German democracy that the West Germans gradually took for their own, founded on shared social habits and on values that the foreigners residing in the country share. The bonds that had developed between the West Germans and the resident foreigners are such that those in the latter group often sociologically seem more to be citizens than do the East Germans.

- And lastly, maintaining the status quo could in the end seem to be the most dangerous option to those strongest conservatives who are concerned above all with the security of the German State. The continued presence of those of a foreign nationality and thus under the judicial authority of a foreign country, a population born and raised in Germany, determined to live and to grow old there, could be seen (as was the case in France in 1889) as more of a risk than would be a progressive integration of this group into the German nationality.

Thus, objective social and political realities put into question, in Germany, the concept of national identity based on the *jus sanguinis*. Often, however, objective social and political factors only lead to modifications of powerful and legitimate historical traditions when they are brought about as a result of a shocking event which reshapes dominant representations based on new points of reference. Lawrence Fuchs reminds us that the shift in the balance of power in American society on the question of black civil rights was the result of the World War II, which saw GI's of all collars and origins fighting in the same army for the freedom of the American people.⁹⁶ This positive jolt was accentuated by the negative shock of the revelation of the atrocities of the Nazi regime. Lastly, the Cold War created a context that was favourable to the unification of all Americans and in general the questioning of the principal of 'separate but equal' which had been the standard since the end of the Civil War. The events that have recently taken place in Germany would seem to have been an example of this kind of traumatic and restructuring shock – this is possible but not certain.⁹⁷ French political and historical experiences provide reasons that allow us to hope that this is in fact the case.

⁹⁶ Cf. L. Fuchs, *The American Kaleidoscope* (1987) 87-109.

⁹⁷ Cf. Leggewie, 'La pression des faits,' *Le monde des débats* (July/August 1993).

C. The Risks of Maastricht European Citizenship

These reasons for hope are found to a much lesser extent in the current method for the construction of European citizenship developed by the Treaty of Maastricht. Up until now, a central debate in Europe has opposed the partisans of a local citizenship attributed to all foreign residents to the defenders of the strong, traditional relationship between nationality and citizenship that is very prevalent in France. The Treaty of Maastricht brings this debate to closure and proves both of these parties to be wrong. In France, the partisans of reform believe that reform will only take place through a process of equalization of rights – after receiving social and then civil rights, resident foreigners will then receive political rights, all the more legitimate since these foreigners pay local taxes. This will require mayors to more equitably distribute the resources of their towns in favour of the neighbourhoods with the highest immigrant populations. Those in favour of the status quo consider that, on the contrary, there is no direct relationship between integration and the right to vote. This right, provided without any consideration to socialization, could even have the opposite result: the leaders of different communities could negotiate, as in Great Britain, collective votes in exchange for the creation of strong ethnic communities. An advantage of the strong relationship between nationality and citizenship is that it permits an open conception of the nation. Socialization into French culture rather than blood relations is the principal criterion for membership in the nation. Once blood relations has become but one criteria among several (birth in the country, marriage, or extended residence) for the attribution of French nationality, citizenship and its corollary, the vote, are the means of identifying and unifying the members of the national community – he who votes is a citizen and is French. The creation of a local citizenship, in breaking the link between citizenship and nationality, risks over the long term justifying a redefinition of nationality around an ethnic conception of an ‘original’ or ‘true’ Frenchman.⁹⁸ Partisans of a local right to vote and defenders of the republican tradition disagree on this point, but solely in terms of means and not in terms of their objective: their common goal is the integration of resident foreigners into French society, without any distinction based on national origin. The Treaty of Maastricht institutes a citizenship based on inequality and national origin which creates a distinction among resident foreigners. This does not come without risks.

⁹⁸ Even during the upheaval of the French Revolution, the link between nationality and citizenship, which at that point had to be defined, was never broken. In the constitution of 1791, the foreigner achieved citizenship through nationality, whereas in the constitution of 1793 it was citizenship which allowed him to acquire nationality. If that constitution had lasted, a law would have been necessary to formally layout the rules of access to nationality (passive citizenship) for children and women. These were not established in the 1793 constitution.

a) This new European citizenship is based on inequality because, according to one's place of birth, a child educated in the European Union either will or will not become a citizen. In effect, one becomes a European citizen by receiving the nationality of one of the States of the European Union. As a result of the differences between the fifteen sets of laws regarding nationality (the Treaty of Maastricht reaffirmed that they would continue to be determined sovereignly by each of the fifteen member-States of the European Union), near-absurd conditions of inequality have been created. Let us examine the case of two brothers, who, with their wives, emigrated from Turkey in 1970 – one to Paris and one to Frankfurt. Let us say that the following year, each of the wives gives birth to one child. If, after the ratification of the Treaty of Maastricht in 1991, the child born in Paris decides to move in with his uncle in Frankfurt, for example to find a job there, he could theoretically vote in Frankfurt's city elections – unable to speak German, and unfamiliar with Germany and the problems of the city of Frankfurt. However, his cousin, born in Frankfurt, raised in German society and possibly able to speak only one language – German – would not be able to vote in this same election. The first child would have become French at age eighteen and therefore voted there as a French citizen; the child born in Germany would not have become German as a result of refusing to make a formal request for naturalization which would have necessitated his repudiation of his Turkish nationality. Above all, not being a citizen of one of the fifteen member-States of the European Union becomes, among foreigners living in France, a factor of discrimination. Real-life situations, extent of integration, and length of residence are not taken into account: a Quebecois or Polish person who has lived in Paris for twenty years has now fewer rights than a Greek or Irish person who has just arrived in France. It is important not to delude oneself – it is as shortsighted to think that giving the right to vote to all Europeans from the European Union would be an initial step towards giving this right to all resident foreigners as it was in the past to think that the right to be different could aid or lead to integration. The text of the constitutional reform adopted by the French Congress leaves little doubt on the subject – Maastricht represented a closure and not an opening.

b) Additionally, as put into practice without any corrective language, the creation of this kind of European citizenship could have as its first result the irritation of social and political tension tied to immigration in European countries. Those in Europe who, in the debate over integration of resident foreigners, create a distinction between Europeans (the 'assimilable') and non-Europeans (the 'non-assimilable') will be comforted by the current framework for European citizenship. In France, this reform will legitimate the fight for the restriction of access to French nationality on the basis of European origin (previously referred to by former French President Valéry Giscard d'Estaing or by the *Front National*), to the detriment of the republican tradition. German

nationality law evolves slowly. Very recently, legislation was modified so as to make it easier for the children of those born and educated in Germany to acquire German citizenship. Nonetheless, a large number of foreign immigrants are neglected by this integration into German nationality. The Treaty of Maastricht continues and accentuates the marginalization of those who are not citizens of the fifteen member-States of the European Union, primarily those from Turkey and the former Yugoslavian republics. This increases once again the risk of conflict and inter ethnic confrontation on the local level.

Conclusion

The creation of a legitimate European citizenship should take place more through strengthening the controls the citizens of the fifteen members of the European Union have over the supranational bodies of the Union than by the creation of a local citizenship. What precautions have been neglected on the road to the European monetary union? How many experts have been consulted, how many commissions created and ministerial meetings convened? How many late-night negotiations regarding the range of fluctuation of various currencies within the framework of a 'snake' and then a European monetary system, debated hotly to the nearest .25%? How many steps will be judged necessary before the coordination of the various economic and budgetary policies will be assured? All this will have lasted over twenty years, minimum. Citizenship, nationality, collective identity, inter ethnic relations – these are likely more delicate than questions of money and economics. With what speed, if not off-handedness, decisions on these subjects have been made, without seeking to learn from past experience, without taking the time to study similarities in nationality law from the 15 member-States. Mistakes made in economic policy are quickly made evident through indicators such as increases in the inflation, the unemployment rate, the deficit, and the national debt. In matters of collective identity or inter ethnic relations, however, mistakes are often noticed only much later, in human, social, and political terms. The Treaty of Maastricht having been adopted, the fifteen countries of the European Union should reflect, with the priority needed but also the precaution it deserves, on how best to put European citizenship into practice.

APPENDIX

Tables III.2. and III.4.: Organization for Economic Co-operation and Development, SOPEMI, *Trends in International Migration. Continuous Reporting System on Migration. Annual Report 1994* (1995).

Tables A.1., A.2., A.3. and I.8.: Organization for Economic Co-operation and Development, SOPEMI, *Trends in International Migration. Continuous Reporting System on Migration. Annual Report 1996* (1997).

Table III.4. The Acquisition of Nationality in Special Circumstances in OECD Countries¹

	Marriage to a national (mode of acquisition)		Option, declaration or registration ² (criteria applied)			Recovery of nationality ³ (mode of acquisition)		Apparent status ⁴
	Declaration ⁵	Simplified naturalisation	Parent a national	Born in the country	Resident in the country	Declaration	Simplified naturalisation	
Australia		x		x	x		x	
a)								
b)								
Austria	x				University professor or similar and his family	x	x	
Belgium			x		x	x		x
Canada		x					x	
Denmark		x			x ⁶	x		
Finland		x	x		x ⁶	x		
a)								
b)								
France	x			x	x	x	x	x
Germany		x					x	
Greece		x			x ⁷	x		x
Ireland		x					x	

Table III.4. The Acquisition of Nationality in Special Circumstances in OECD Countries¹ (cont'd)

	Marriage to a national (mode of acquisition)		Option, declaration or registration ² (criteria applied)			Recovery of nationality ¹ (mode of acquisition)		Apparent status ⁴
	Declaration ³	Simplified naturalisation	Parent a national	Born in the country	Resident in the country	Declaration	Simplified naturalisation	
Italy	a) x b)		x	x	x	x		
Japan		x				x		
Luxembourg	a) x b)		x	x	x ⁸ x ⁸	x		
Netherlands		x		x	x		x	
New Zealand		x	← Sec United Kingdom b) and c) →				x	
Norway		x			x ⁶		x	
Portugal	x			x	x	x		
Spain		x	x		x	x		
Sweden	a) x b)	x	x ⁹		x ⁶ x ⁶	x	x	
Switzerland		x					x	x ¹⁰

Table III.4. The Acquisition of Nationality in Special Circumstances in OECD Countries¹ (cont'd)

	Marriage to a national (mode of acquisition)		Option, declaration or registration ² (criteria applied)			Recovery of nationality ³ (mode of acquisition)		Apparent status ⁴
	Declaration ⁵	Simplified naturalisation	Parent a national	Born in the country	Resident in the country	Declaration	Simplified naturalisation	
Turkey	x ¹¹	x ¹²				x	x	
United Kingdom	a) b) c)	x	x ¹¹ x ¹⁴	x x	x x ¹³ x ¹⁵	x		
United States		x					x	

1. An 'x' in a given column indicates that the mode of acquisition or criterion given by the column heading is applied in the country in question.

2. In certain countries nationality may be acquired by simple declaration or option for people satisfying certain criteria. In the United Kingdom citizenship is granted following registration of the declaration.

3. This procedure is found in all countries which allow the possibility of renouncing nationality. Declaration and naturalisation are subject to similar conditions but only some of the conditions applicable to naturalisation are required (see Table III.3).

4. Apparent status describes the situation of a person who has been conducting himself as a national and been considered as such by third parties over a certain period of time, even if this has no legal basis in fact.

5. The declaration is made at the time of marriage in Turkey or Portugal. Ireland requires 3 years of marriage, Turkey 3 years (or regular residence within the country of at least 6 months) and France 2 years. Belgium requires residence by the couple of at least 6 months and Luxembourg of the spouse of at least 3 years.

6. Any foreigner who has resided in one of the Nordic countries during his minority for a total period of at least 5 years and who since the age of 16 has had his permanent residence in one of them may, when he reaches 21, acquire nationality by declaration before the Prefect.

7. Concerns only foreigners of Greek ethnic origin who enlist as volunteers in the army during a period of mobilisation.

8. On condition that the entire period of compulsory schooling has been passed in Luxembourg.

9. Concerns natural children of a national father; citizenship is awarded automatically if the mother is a national.

10. Swiss law enables a foreigner who for 5 years at least has lived under the conviction of being Swiss and has been treated as such by a cantonal or communal authority to benefit from a simplified naturalisation procedure.

11. When the foreign spouse is a woman.

12. When the foreign spouse is a man.

13. It is enough that one of the two criteria be met at any moment after birth.

14. The two parents must be British citizens by descent at the time of birth.

15. The parents must have resided in the United Kingdom for 3 years at any time before the birth or for the 3 years preceding the application for registration.

Table III.2. Criteria Determining the Attribution of Nationality at Birth in OECD Countries¹

		Situation of the child					
		Legitimate child		Natural child			Adopted child
		Father or mother a national	Born in the country	Father or mother a national	Mother a national	Born in the country	Adopting parent a national
Australia	a)	x ²	x	x ²		x	x
	b)	x ³		x ³			
Austria	a)	x			x ⁴		n ^c
	b)		x ⁶			x ⁶	
Belgium	a)	x	x	x		x	x ⁷
	b)	x ^k		x ^k			
	c)		x ⁶			x ⁶	
Canada	a)		x			x	n ⁵
	b)	x		x			
Denmark		x			x		x
Finland		x			x		x ⁹
France	a)	x		x			x ⁷
	b)		x ⁶			x ⁶	
Germany		x			x ⁴		x
Greece		x			x ¹⁰		x
Ireland	a)		x			x	x
	b)	x ¹¹		x ¹¹			
Italy		x		x			x
Japan		x			x ⁴		n ⁵
Luxembourg		x		x			x ⁷
Netherlands	a)	x			x ¹⁰		x
	b)		x ¹²			x ¹²	
New Zealand	a)		x			x	x
	b)	x ³		x ³			
Norway		x			x		x ¹¹

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		Situation of the child					
		Legitimate child		Natural child			Adopted child
		Father or mother a national	Born in the country	Father or mother a national	Mother a national	Born in the country	Adopting parent a national
Portugal	a)	x	x	x			x
	b)	x ¹⁴		x ¹⁴			
Spain	a)	x		x			x ⁷
	b)		x ⁶			x ⁶	
Sweden		x			x		x
Switzerland		x			x ⁴		x
Turkey	a)	x			x ¹⁰		n ⁵
	b)		x ⁶			x ⁶	
United Kingdom	a)	x ²	x	x ²			x
	b)	x ³		x ³			
United States	a)		x			x	n ⁵
	b)	x ¹⁵		x ¹⁵			

1. An 'x' in a given column indicates that the criterion given by the column heading is applied in the country in question. When more than one line appears for given country, the first gives the usual criteria for the attribution of nationality at birth. For countries where birth in the country is normally a criterion, the second line gives the conditions applicable when the child was born outside the country. For the other countries, the additional line describes a second means of obtaining nationality at birth. The column concerning an adopted child clearly does not concern nationality at birth; it has been included here for the sake of completeness.
2. It is sufficient that either father or mother be authorised to establish their permanent residence in the country.
3. The citizenship of the parent must not be a citizenship by descent.
4. In these countries paternal recognition has no effect other than to allow for a simplified naturalisation procedure.
5. The letter "n" indicates that adoption has no automatic effect aside from permitting a simplified naturalisation procedure.
6. One of the parents must also have been born in the country.
7. In these countries, an adopted child is treated as a legitimate child. When one of the adopting parents is a national, the child is considered to have been a national at birth.
8. One of the Belgian parents must have been born in Belgium and have made a declaration claiming nationality for the child.
9. A declaration is necessary.
10. Paternal recognition confers nationality when the father is a national.
11. The parents or grandparents must have been born in Ireland and the birth must be registered.
12. One of the parents must reside in the Netherlands or the Netherlands Antilles.
13. Nationality is granted by a decision of the Prefect.
14. The Portuguese parent must be in the service of the State or his legal representative must register the birth in the Portuguese national registry.
15. Residence conditions apply when only one of the parents is a national (see note 5 of text).

Table A.1. Stocks of Foreign Population in Selected OECD Countries
Thousands

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Austria ¹	304.4	314.9	326.2	344.0	387.2	456.1	532.7	623.0	689.6	713.5	723.5
% total population	4.0	4.1	4.3	4.5	5.1	5.9	6.8	7.9	8.6	8.9	9.0
Belgium ²	846.5	853.2	862.5	868.8	880.8	904.5	922.5	909.3	920.6	922.3	909.8
% total population	8.6	8.6	8.7	8.8	8.9	9.1	9.2	9.0	9.1	9.1	9.0
Denmark	117.0	128.3	136.2	142.0	150.6	160.6	169.5	180.1	189.0	196.7	222.7
% total population	2.3	2.5	2.7	2.8	2.9	3.1	3.3	3.5	3.6	3.8	4.2
Finland	17.0	17.3	17.7	18.7	21.2	26.3	37.6	46.3	55.6	62.0	68.6
% total population	0.3	0.4	0.4	0.4	0.4	0.5	0.8	0.9	1.1	1.2	1.3
France ³	..	..	..	..	..	3 596.6	..	..	..	..	..
% total population	..	..	..	..	..	6.3	..	..	..	..	..
Germany ⁴	4 378.9	4 512.7	4 240.5	4 489.1	4 845.9	5 342.5	5 882.3	6 495.8	6 878.1	6 990.5	7 173.9
% total population	7.2	7.4	6.9	7.3	7.7	8.4	7.3	8.0	8.5	8.6	8.8

Note: Data from population registers or from registers of foreigners except for France (Census), Portugal (residence permits), Ireland and the United Kingdom (labour force survey) and refer to the population on the 31st of December of the years indicated unless otherwise stated. Stocks of foreign population by nationality are given in Tables B1.

1. Annual average. Prior to 1992, the figures have been revised on the basis of the 1991 census.

2. In 1985 and in 1992, following changes in nationality laws which granted Belgian nationality to a significant number of foreigners, the stock of foreign population dropped sharply. The decrease in 1995 can be explained both by the continuation of the effects of the change in nationality laws and the removal from the register of almost 11 000 asylum seekers awaiting a decision.

3. Data are from the population census of 1990. The figure for the 1982 census is 3 714.2.

4. Data from 1987 to 1989 have been adjusted, taking into account results of the population census of 1987. Population counts cover western Germany only up to 1990 and Germany as a whole from 1991 on.

Table A.1. Stocks of Foreign Population in Selected OECD Countries¹ (cont'd)
Thousands

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Ireland ⁵	79.0	77.0	77.0	82.0	78.0	80.0	87.7	94.9	89.9	91.1	96.1
% total population	2.3	2.2	2.2	2.4	2.3	2.3	2.5	2.7	2.7	2.7	2.7
Italy ⁶	423.0	450.2	572.1	645.4	490.4	781.1	863.0	925.2	987.4	922.7	991.4
% total population	0.7	0.8	1.0	1.1	0.9	1.4	1.5	1.6	1.7	1.6	1.7
Japan ⁷	850.6	867.2	884.0	941.0	984.5	1 075.3	1 218.9	1 281.6	1 320.7	1 354.0	1 362.4
% total population	0.7	0.7	0.7	0.8	0.8	0.9	1.0	1.0	1.1	1.1	1.1
Luxembourg ⁸	97.9	97.3	102.8	105.8	106.9	113.1	117.8	122.7	127.6	132.5	138.1
% total population	26.7	26.3	26.8	27.4	27.9	29.4	30.2	31.0	31.8	32.6	33.4
Netherlands ⁹	552.5	568.0	591.8	623.7	641.9	692.4	732.9	757.4	779.8	757.1	728.4
% total population	3.8	3.9	4.0	4.2	4.3	4.6	4.8	5.0	5.1	5.0	5.0
Norway ¹⁰	101.5	109.3	123.7	135.9	140.3	143.3	147.8	154.0	162.3	164.0	160.8
% total population	2.4	2.6	2.9	3.2	3.3	3.4	3.5	3.6	3.8	3.8	3.7

5. Estimated from the annual labour force survey. Fluctuations from year to year may be due to sampling error.

6. Children under 18 who are registered on their parents' permit are not counted. Data are adjusted to take account of the regularisations which occurred in 1987-1988 and 1990. The decrease observed for 1989 and 1994 is a result of a clean-up of the register of foreigners: duplicate entries and entries of persons who had returned to their country of origin were removed. In 1995 data do not include permits delivered following the 1995-1996 regularisation programme.

7. Data are based on registered foreign nationals which include foreigners staying in Japan for more than 90 days.

8. Figures have been revised from 1987 on to take into account the effect of the change in the legislation on naturalisation which took place at the end of 1986.

9. Figures include administrative corrections. The decrease observed from 1994 to 1995 is the result of a clean-up of the population registers. The data for 1995 are provisional.

10. From 1987 on, asylum seekers whose requests are being processed are included. Note that prior to 1987 the number of asylum seekers was quite small.

Table A.1. Stocks of Foreign Population in Selected OECD Countries¹ (cont'd)
Thousands

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Portugal ¹¹	..	..	..	94.7	101.0	107.8	114.0	123.6	131.6	157.1	168.3
% total population	..	..	..	1.0	1.0	1.1	1.2	1.3	1.3	1.6	1.7
Spain ¹²	242.0	293.2	334.9	360.0	249.6	278.7	360.7	393.1	430.4	461.4	499.8
% total population	0.6	0.8	0.9	0.9	0.6	0.7	0.9	1.0	1.1	1.2	1.2
Sweden	388.6	390.8	401.0	421.0	456.0	483.7	493.8	499.1	507.5	537.4	531.8
% total population	4.6	4.7	4.8	5.0	5.3	5.6	5.7	5.7	5.8	6.1	5.2
Switzerland ¹³	939.7	956.0	978.7	1 006.5	1 040.3	1 100.3	1 163.2	1 213.5	1 260.3	1 300.1	1 330.6
% total population	14.5	14.7	14.9	15.2	15.6	16.3	17.1	17.6	18.1	18.6	18.9
United Kingdom ⁵	1 731	1 820	1 839	1 821	1 812	1 723	1 750	1 985	2 001	1 946	2 060
% total population	3.1	3.2	3.2	3.2	3.2	3.2	3.1	3.5	3.5	3.4	3.4

11. Figures include all foreigners who hold a valid residence permit. In 1994 data include 39 200 permits delivered following the 1992-1993 regularisation programme.

12. Number of foreigners with a residence permit. Permits of short duration (less than 6 months) as well as students are excluded. The decrease in 1989 is the result of a clean-up of the register of foreigners. Data for 1991 include 108 372 permits delivered following a regularisation programme.

13. Number of foreigners with an annual residence permit or with a settlement permit (permanent permit). Seasonal and frontier workers are excluded.

Table A.2. Inflows of Foreign Population into Selected OECD Countries
Thousands

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Belgium ¹	37.5	39.3	40.1	38.2	43.5	50.5	54.1	55.1	53.0	56.0	53.1
Denmark ²	15.6	17.6	15.2	13.8	15.1	15.1	17.5	16.9	15.4	15.6	..
Finland ³	..	..	..	..	4.2	6.5	12.4	10.4	10.9	7.6	7.3
France ⁴	43.4	38.3	39.0	44.0	53.2	102.4	109.9	116.6	99.2	69.3	56.7
Germany ⁵	398.2	478.3	473.3	648.6	770.8	842.4	920.5	1 207.6	986.9	774.0	788.3
Japan ⁶	156.5	157.5	180.3	234.8	237.4	223.8	258.4	267.0	234.5	237.5	209.9
Luxembourg	6.6	7.4	7.2	8.2	8.4	9.3	10.0	9.8	9.2	9.2	9.6
Netherlands ⁷	46.2	52.8	60.9	58.3	65.4	81.3	84.3	83.0	87.6	68.4	67.0
Norway ⁸	15.0	16.8	23.8	23.2	18.5	15.7	16.1	17.2	22.3	17.9	16.5

Note: Data are from population registers except for France (residence permits), Japan (register of foreigners) and the United Kingdom (annual labour force survey). The criteria governing who gets registered differ from country to country and the data are therefore not fully comparable. Counts for the Netherlands, Norway and especially Germany include substantial numbers of asylum seekers.

1. Small numbers of asylum seekers are included. In 1995, asylum seekers awaiting a decision are registered on a temporary register.
2. Entries of foreigners staying in Denmark more than one year. Asylum seekers and refugees with a provisional residence status are not included.
3. Entries of foreigners intending to stay in Finland for longer than one year.
4. Up to 1989, inflows include permanent workers, holders of provisional work permits and persons admitted under family reunification. From 1990 on, spouses of French nationals, parents of French children, refugees, the self-employed and others eligible for a residence permit are also included. Provisional work permits, on the other hand, are not included. If unregistered flows (inflows of family members of EU citizens for example) are included, estimates for total inflows are 135 400, 116 200, 82 800 and 68 300 from 1992 to 1995.
5. Entries of foreigners staying in Germany more than 3 months. The data cover western Germany only up to 1990. Germany as a whole from 1991 on.
6. New entries excluding entries of temporary visitors, which include registered immigrants who declare their intention to stay in Japan for more than 90 days.
7. The population register data include some asylum seekers, in particular persons who receive provisional stay permits, who are recognized as refugees, or who are admitted on humanitarian grounds; asylum-seekers in reception centres are excluded.
8. Entries of foreigners intending to stay in Norway for longer than six months.

Table A.2. Inflows of Foreign Population into Selected OECD Countries (cont'd)
Thousands

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Sweden ⁹	27.9	34.0	37.1	44.5	58.9	53.2	43.9	39.5	54.8	74.7	36.1
Switzerland ¹⁰	59.4	66.8	71.5	76.1	80.4	101.4	109.8	112.1	104.0	91.7	87.9
United Kingdom ¹¹	55.4	47.8	46.0	49.3	49.7	52.4	53.9	52.6	55.5	55.1	55.5

9. Data are from population registers and refer to persons who declare their intention to stay in Sweden for longer than one year. Figures do not include asylum seekers who are waiting for decision neither temporary workers.

10. Entries of foreigners with an annual residence permit or with a settlement permit (permanent permit) who return to Switzerland after a temporary stay abroad. Seasonal and frontier workers (including seasonal workers who obtain an annual permit) are excluded.

11. The inflows in the table correspond to permanent settlers within the meaning of the 1971 Immigration Act and subsequent amendments. Citizens of the Republic of Ireland are not included.

Table A.3. Inflows of Asylum Seekers into Selected OECD Countries
Thousands

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Australia ¹	..	..	..	..	0.5	3.8	17.0	4.1	4.6	4.2	5.1
Austria ²	6.7	8.6	11.4	15.8	21.9	22.8	27.3	16.2	4.7	5.1	5.9
Belgium	5.3	7.7	6.0	4.5	8.2	13.0	15.4	17.6	26.5	14.7	11.7
Canada	8.4	23.0	35.0	45.0	19.9	36.7	32.3	37.7	21.1	21.7	25.6
Denmark	8.7	9.3	2.7	4.7	4.6	5.3	4.6	13.9	14.3	6.7	5.1
Finland	-	-	-	0.1	0.2	2.7	2.1	3.6	2.0	0.8	0.8
France ¹	28.8	26.2	27.6	34.3	61.4	54.8	47.4	28.9	27.6	26.0	20.4
Germany	73.8	99.7	57.4	103.1	121.3	193.1	256.1	438.2	322.6	127.2	127.9
Greece	1.4	4.3	6.3	9.3	6.5	4.1	2.7	2.0	0.8	1.3	1.4
Italy ¹	5.4	6.5	11.0	1.4	2.3	4.7	31.7	2.6	1.3	1.8	1.7
Netherlands	5.6	5.9	13.5	7.5	13.9	21.2	21.6	20.3	35.4	52.6	29.3
Norway	0.8	2.7	8.6	6.6	4.4	4.0	4.6	5.2	12.9	3.4	1.5
Portugal	0.1	0.1	0.2	0.3	0.1	0.1	0.2	0.6	2.1	0.8	0.5
Spain ¹	2.3	2.8	3.7	4.5	4.1	8.6	8.1	11.7	12.6	12.0	5.7
Sweden	14.5	14.6	18.1	19.6	30.0	29.4	27.4	84.0	37.6	18.6	9.0
Switzerland	9.7	8.5	10.9	16.7	24.4	35.8	41.6	18.0	24.7	16.1	17.0
United Kingdom ¹	6.2	5.7	5.9	5.7	16.8	38.2	73.4	32.3	28.0	42.2	55.0
United States ¹	16.6	18.9	26.1	60.7	101.7	73.6	56.3	104.0	144.2	146.5	149.1

1. Data refer to principal applicants and do not include dependents.

2. Figures do not include *de facto* refugees from Bosnia Herzegovina.

3. Data have been adjusted to include dependants.

4. Data refer to fiscal year (October to September of the given year) and do not include dependants.

Table I.8. The Acquisition of Nationality¹ in Selected OECD Countries, 1988-1995

	Number of persons								Naturalisation rate, ² %
	1988	1989	1990	1991	1992	1993	1994	1995	
Countries where national / foreigner distinction is prevalent									
Austria	8 233	8 470	9 199	11 394	11 920	14 402	16 270	15 309	2.1
Belgium	8 366	8 797	8 657	8 457	46 368	16 376	25 787	26 109	2.8
Denmark	3 744	3 258	3 028	5 484	5 104	5 037	5 736	5 260	2.7
France ³	74 000	82 000	88 500	95 500	95 300	95 500	126 400	92 400	2.7
Germany ⁴	40 783	68 526	101 377	141 630	179 904	199 443	259 170	313 606	4.5
Italy	...	...	...	4 542	4 408	6 485	6 613	7 442	0.8
Japan	5 767	6 089	6 794	7 788	9 363	10 452	11 146	14 104	1.0
Luxembourg ⁵	762	604	748	582	609	678	739	802	0.6
Netherlands	9 110	28 730	12 790	29 110	36 240	43 070	49 450	71 440	9.2
Norway	3 364	4 622	4 757	5 055	5 132	5 538	8 778	11 778	7.2
Spain ⁶	8 137	5 918	7 033	3 752	5 280	8 412	7 802	6 751	1.5

1. Statistics cover all means of acquiring the nationality of a country, except where otherwise indicated. These include standard naturalisation procedures subject to age, residency, etc. criteria, as well as situations where nationality is acquired through a declaration or by option (following marriage, adoption, or other situations related to residency or descent), recovery of former nationality and other special means of acquiring the nationality of a country.

2. Number of persons acquiring the nationality of the country in the most recent year available as a percentage of the stock of the foreign population at the beginning of the year.

3. Data are estimates and include people automatically acquiring French nationality upon reaching legal majority (this procedure was in effect until 1993) as well as people born in France to foreign parents who declared their intention to become French in accordance with the legislation of 22 July 1993.

4. Statistics include naturalisation claims, which concern essentially ethnic Germans.

5. Minor children acquiring the nationality of Luxembourg as a consequence of the naturalisation of their parents are not included.

6. Persons recovering their former (Spanish) nationality are not included.

Sources: National Statistical Institutes (for details see the introduction to the tables of the Statistical Annex) © The Author(s), European University Institute.

Table I.8. The Acquisition of Nationality¹ in Selected OECD Countries, 1988-1995 (cont'd)

	Number of persons							Naturalisation rate ² %	
	1988	1989	1990	1991	1992	1993	1994		1995
Sweden	17 966	17 552	16 770	27 663	29 326	42 659	35 084	31 993	5.9
Switzerland	11 356	10 342	8 658	8 757	11 208	12 928	13 757	16 795	1.3
United Kingdom	64 600	117 100	57 300	58 600	42 200	45 800	44 000	40 500	2.1
Countries where native-born / foreign-born distinction is prevalent									
Australia	81 218	119 140	127 857	118 510	125 158	122 085	112 186	114 757	..
Canada	58 810	87 478	104 267	118 630	116 201	150 570	217 320	227 720	..
United States	242 063	233 777	270 101	308 058	240 252	314 681	407 398	445 853	..



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