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SOMETHING IS ROTTEN IN THE STATE OF DENMARK: THE DEPRIVATION OF DEMOCRATIC RIGHTS BY NATION STATES NOT RECOGNIZING DUAL CITIZENSHIP

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TABLE OF CONTENTS

INTRODUCTION

Around the world, voting and holding elected office are modernly-recognized democratic rights. Yet nation states prohibiting dual citizenship prevent a large number of their own emigrated citizens and immigrants on their soil from exercising these and other important societal functions, as access thereto requires citizenship of one's nation of domicile. To obtain such citizenship, some nations still require applicants to renounce the citizenship of their countries of origin or even expatriate their own citizens against their

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will upon learning that they have naturalized abroad. Although in today's international and mobile world a large number of people move across borders for private and professional reasons, many are reluctant to give up their original citizenship for practical or sentimental reasons. This is because citizenship is often considered an integral part of one's cultural heritage and a safety valve allowing migrants to return to their countries of origin after having lived abroad. Dual citizenship would enable these migrants to avoid this legal bind. Whereas most nation states—especially those in the European Union (EU)—now fully allow dual citizenship, some still do not. Making matters worse, some nations operate with a highly inequitable system under which as many as 40% of immigrants from some nations are allowed to hold dual citizenship under various legislative exceptions, whereas immigrants from other nations, along with all the nation's own emigrants, are not. This tight-fisted exercise of what may be thought of as "long-arm jurisdiction" affects approximately fifty million Europeans living around the world, including a large number in the United States and Canada, just as it affects a large number of Americans and Canadians who have emigrated to these nations and seek democratic rights there.[1]

This Article analyzes how nation states prohibiting dual citizenship no longer have valid reasons to do so, but are increasingly setting themselves apart from the international legal development in comparable modern liberal democracies. The Article uses Denmark as an example of a nation state that stubbornly sticks to yesteryear's outdated legal and socio-political rationales against dual citizenship in a thinly-veiled, protectionist attempt to curb immigration. This goal remains unaffected by the mistaken and separate war against dual citizenship; a war which has proven unwinnable. Reality shows that allowing dual citizenship results in few, if any, legal or practical problems at the private or national level. Accordingly, the Article concludes that Western nations that still prohibit dual citizenship should legalize it to ensure equal access to this important right among its citizens and immigrants and to follow the general harmonization of laws in this area at a regional and international level.

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1. *See Tables, Graphs, and Maps Interface (TGM) Table: Total Population*, EUROSTAT, http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1 (last visited Dec. 25, 2010) [hereinafter EUROSTAT] (The author notes that the figure is "reversed engineered" from the Web site where the EU estimates that there are around 500 million people in the EU. Since the meticulous calculation done by the grassroots organization that she worked with shows that 90% of EU citizens have this problem, that would be fifty million people).

I. THE LAW OF CITIZENSHIP

Citizenship "is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."[2] "Citizenship serves as a central marker of nation-state membership and a means of regulating inclusion and exclusion of (non-)members."[3] Dual citizenship means that a person holds citizenship in two or more nation states at the same time.[4]

Because of the principle of domaine réservé, every nation state enjoys sovereignty to determine "the criteria for acquiring the citizenship of that state."[5] Citizenship may be obtained through the principles of *jus soli* or *jus sanguinis* or through naturalization. States that observe the *jus soli* principle ("the law of the soil") grants citizenship to children born within their territory.[6] The United States is an example of the *jus soli* principle.[7] States adhering to *jus sanguinis* ("the law of the bloodline") grant citizenship to children whose parents are citizens of the state in question.[8] Examples of such states are Turkey and Sweden.[9] Some states, such as Germany and Holland, adhere to both.[10] Finally, "[t]he term 'naturalization' means the conferring of [the] nationality of a state upon a person after birth, by any means whatsoever."[11]

As global emigration increases, and as national boundaries are becoming more and more porous, the trend in liberal democracies is to accept dual (and in some cases even multiple) citizenship.[12] Some states apply a *de facto* tolerance of dual citizenship whereby

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2. Nottebohm Case (second phase) (Liech. v. Guat.), 1955 I.C.J. 4, 23 (Apr. 6).

3. Thomas Faist, *The Fixed and Porous Boundaries of Dual Citizenship, in* DUAL CITIZENSHIP IN EUROPE: FROM NATIONHOOD TO SOCIETAL INTEGRATION 1, 32 (Thomas Faist ed., 2007) [hereinafter Faist Boundaries].

4. Eva Ersbøll, *Dansk Indfoedsret i Internationalt og Historisk Perspektiv* [Dual Citizenship in a Historical and International Perspective], *in* MARIANNE DELLINGER ET AL., DOBBELT STATSBORGERSKAB fra en INTERNATIONAL SYNSVINKEL: Rapport til brug for Folketingets førstebehandling af beslutningsforslag om dobbelt statsborgerskab [Dual Citizenship from an International Point of View: Report for the Parliamentary First Reading of the Resolution on Dual Citizenship], 4, 4 (2009) (Den.), *available at* http://www.ft.dk/samling/20081/beslutningsforslag/b55/bilag/6/644139.pdf (translated by author)[hereinafter Ersbøll Report]; *see also* EVA ERSBØLL, Dansk indfoedsret internationalt og historisk perspektiv [Danish Nationality International and Historical Perspective] 187-205 (2008) (translated by author) [hereinafter ERSBØLL Book].

5. Faist Boundaries, *supra* note 3, at 13.

6. *Id.* at 14; U.S. DEP'T OF STATE, 7 FOREIGN AFFAIRS MANUAL 1110, 1(2009), *available at* http://www.state.gov/documents/organization/86755.pdf [hereinafter FAM].

7. FAM, *supra* note 6, at 1; *see also* U.S. CONST. amend. XIV, § 1 (granting citizenship to "all persons born or naturalized in the United States.")

8. Faist Boundaries, *supra* note 3, at 14; FAM, *supra* note 6, at 1.

9. Faist Boundaries, *supra* note 3, at 22-23.

10. *Id.* at 22.

11. 8 U.S.C. § 1101(a)(23) (2010).

12. Faist Boundaries, *supra* note 3, at 20-21.

they are indifferent as to whether their citizens are also nationals of another country.[13] "For example, the 'oath of allegiance' notwithstanding, the United States does not require written evidence that immigrants have actually renounced a previous citizenship" before becoming naturalized citizens.[14] The United Kingdom does not regulate dual citizenship at all.[15] In contrast, other states tolerate dual citizenship *de jure*, in other words, through varying national policies.[16] Dual citizenship is an example of " 'internal globalization': it is . . . how nation-state regulations implicitly or explicitly respond to ties of citizens across states . . . [and] there is . . . a clear direction favouring it."[17] It has been "welcomed . . . as a means to equalize individual rights between natives and newcomers."[18] As the rights of citizens and persons have gained in importance in relation to considerations of mere state sovereignty, dual citizenship is even surfacing as a potential human right in international law contexts.[19] However, some nations still take a restrictive stance on dual citizenship and, for example, require that children holding dual citizenship choose one upon reaching maturity or even strip their nationals of citizenship upon naturalization in another country.[20] This attitude stands in stark contrast to the modern international development within citizenship law and policy and creates a multitude of problems for persons holding citizenship in these countries, even outside their borders.

However, citizenship is not only a benefit for the individual. With citizenship also comes "the dut[ies] to serve in the armed forces in order to protect state sovereignty against exterior threats," as well as the internal "dut[ies] to pay taxes, to acknowledge the rights and liberties of other citizens, and to accept democratically legitimated decisions of majorities."[21]

II. DUAL CITIZENSHIP IN A HISTORICAL EURO-INTERNATIONAL PERSPECTIVE

Socio-political views of citizenship have changed dramatically in the past two centuries. Modern citizenship can be traced back to

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13. *Id.* at 21.
14. *Id.*
15. *Id.*
16. *Id.* at 20-21.
17. *Id.* at 3.
18. Faist Boundaries, *supra* note 3, at 3.
19. *Id.* at 20.
20. *Id.* at 21; Act on the Acquisition of Danish Nationality §7(1)-(3) (1951) (amended 1991) (Den.), *available at* http://www.unhcr.org/refworld/docid/3ae6b4df3c.html [hereinafter Nationality Act].
21. Faist Boundaries, *supra* note 3, at 11.

the 1800s.[22] At the time, dual citizenship was mainly considered an "evil" to be avoided as it was seen as a source of conflicts of interests.[23] For example, nation states sought to avoid problems relating to extradition and military service duties.[24] Equally important was the notion that people could only be loyal toward one country.[25] Dual citizenship was even seen as a type of political bigamy or "cheating on" both nation states.[26] For example, in 1849, George Bancroft—the first American ambassador to Germany—stated that "one could just as . . . [well] tolerate a man with two wives as a man with" dual citizenship.[27] From 1868 to 1874, Bancroft helped instigate the U.S. entering into bilateral agreements with twenty-six nations aimed at avoiding dual citizenship.[28] In the 1900s, work was undertaken at the international level to limit dual citizenship and solve the conflicts it had caused.[29] Among other instruments, the 1930 Hague Convention was adopted with these goals in mind.[30] Its preamble expresses the clear belief that "it is in the general interest of the international community to secure that all its members should recognise that every person should have a nationality and should have one nationality only."[31] As its name evinces, the Council of Europe Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (1968 Convention) had the same aim.[32] Nonetheless, the Convention also recognized that multiple nationality does occur, in particular where the nationality of a second State Party has been acquired automatically, or where a state that is not a party to Chapter I allows multiple nationality in other cases.[33] As late as 1974, the Federal Constitutional Court of Germany interpreted dual citizenship as "an evil."[34]

Not withstanding such "iron laws"[35] and holdings, the fight

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22. Ersbøll Report, *supra* note 4, at 4.
23. *Id.*
24. *Id.* at 5.
25. *Id.*
26. *Id.* at 4; ERSBØLL Book, *supra* note 4, at 187.
27. Ersbøll Report, *supra* note 4, at 5.
28. *Id.*
29. *Id.*
30. Convention On Certain Questions Relating to the Conflict Of Nationality Laws, preamble, Apr. 12, 1930, 179 L.N.T.S. 89.
31. *Id.*
32. *See* Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, *opened for signature* May 6, 1963, 634 U.N.T.S. 221 (entered into force March 28, 1968) [hereinafter 1968 Convention].
33. *Id.* at art. 1.
34. Thomas Faist, *Dual Citizenship: Change, Prospects, and Limits, in* DUAL CITIZENSHIP IN EUROPE: FROM NATIONHOOD TO SOCIETAL INTEGRATION, *supra* note 3, at 181 [hereinafter Faist Changes].
35. Faist Boundaries, *supra* note 3, at 14.

against dual citizenship proved impossible to win.[36] Modern society developed in a much more international direction than governments foresaw prior to the 1968 Convention. Globalization, improved travel opportunities, and heavily increased migration patterns changed the national composition of many countries just as other citizenship-related issues gained more significance than the principle of avoiding dual citizenship altogether.[37] In particular, gender equality affected the discourse significantly.[38] Very few nation states have stuck to yesteryear's principle that upon marriage, women should give up their own citizenship and acquire that of their husbands.[39] Currently, women in mixed marriages typically retain their original citizenship and have the same right as their husbands to confer their citizenship to their children, who thus become dual citizens upon birth.[40] Further, because of increased migration patterns, more and more children are born to parents of different nationalities just as many refugees and immigrants are unable to become released from their original citizenship because it is either legally impossible to do so, or because it is so difficult bureaucratically that the emigrants' new nations do not insist on the release.[41] Accordingly, a great number of people now enjoy dual citizenship without this resulting in significant problems at the private or international level.[42]

In 1993, a more modern international view of dual citizenship resulted in the Second Protocol amending the 1968 Convention.[43] The foundation for this updated Protocol was twofold.[44] First, the Protocol was built on the notion that a large number of migrants have settled permanently in new host countries and that their integration in these countries can be assisted "through the acquisition of the nationality" of their host countries.[45] Second, that the large number of mixed marriages created a "need to facilitate acquisition by one spouse of the nationality of the other spouse and the acquisition by their children of the nationality of both parents,

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36. Ersbøll Report, *supra* note 4, at 5.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. MARIANNE DELLINGER ET AL, DOBBELT STATSBORGERSKAB fra en INTERNATIONAL SYNSVINKEL: Rapport til brug for Folketingets førstebehandling af beslutningsforslag om dobbelt statsborgerskab [Dual Citizenship from an International Point of View: Report for the Parliamentary First Reading of the Resolution on Dual Citizenship] (Den.) 2.

42. *Id.*

43. Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, *opened for signature* Feb. 2, 1993, E.T.S. No. 149 (entered into force March 24, 1995).

44. *Id.*

45. *Id.*

in order to encourage unity of nationality within the same family."[46] However, the Protocol only added the new provisions that the parties *may*, if they so desire, allow immigrants to retain their nationality of origin, but did not put any affirmative pressure on its parties to do so.[47]

This situation changed to some extent with the 1997 European Convention on Nationality (2000 Convention).[48] Whereas this Convention recognized "that each State is free to decide which consequences it attaches in its internal law to the fact that a national acquires or possesses another nationality,"[49] and thus enabled state parties to continue to reject dual citizenship, it also required state parties to allow for "children having different nationalities acquired automatically at birth to retain these nationalities," and for nationals of state parties to "possess another nationality where this other nationality is automatically acquired by marriage."[50] Further, it required that state parties "shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required."[51] Of value to today's discourse promoting dual citizenship is the fact that the 2000 Convention clearly enunciates the objective of achieving greater unity between its members in regards to citizenship law: the desire to avoid discrimination in matters relating to nationality; the principle that no one shall be arbitrarily deprived of his/her citizenship; the principle that nationals of a State Party in possession of another nationality shall have the same rights and duties as other nationals of that State Party; and, perhaps for the first time, connects dual citizenship to issues of human rights and fundamental freedoms.[52]

Realism and modern notions of equal access to democratic rights weigh in favor of liberal democracies allowing dual citizenship. Today, an increased tolerance of dual citizenship can thus clearly be discerned.[53] Even countries that previously conditioned the naturalization of immigrants on the "relinquishment of their previous citizenship" are currently much more likely to allow for

46. *Id.*
47. *Id.* at art. 1.
48. European Convention on Nationality, *opened for signature* Nov. 6, 1997, 2135 U.N.T.S. 213 (entered into force March 1, 2000) [hereinafter 2000 Convention].
49. *Id.* at preamble.
50. *Id.* at art. 14(1).
51. *Id.* at art. 16.
52. *See generally id.*
53. *See, e.g.*, Faist Boundaries, *supra* note 3, at 24; T. ALEXANDER ALEINIKOFF & DOUGLAS KLUSMEYER, EXECUTIVE SUMMARY: CITIZENSHIP POLICIES FOR AN AGE OF MIGRATION 6 (2002), *available at* http://carnegieendowment.org/files/Citizenship3_ExecSummary_English.pdf.

the retention of original citizenship.[54] "In a nutshell, the proliferation of dual citizenship is today not only a question of decision-making on the policy level, but is a widespread practice exhibiting a progressive trend."[55]

In the EU, twenty-one of twenty-seven EU nations currently accept dual citizenship.[56] Only six still automatically expatriate their citizens upon learning that they have become naturalized in other nations. These are Austria, Denmark, Estonia, Holland, Latvia, and the Czech Republic.[57] However, Holland applies a highly relaxed or pragmatic approach to this issue.[58] The Dutch Citizenship Act of 2000 made it easier for Dutch emigrants to retain Dutch citizenship and hold dual citizenship while making it more difficult to acquire Dutch citizenship.[59] Further, because Dutch legislation is "selectively accepting of multiple nationality,"[60] it contains a large number of exceptions that in reality result in dual citizenship being allowed in connection with about three-quarters of all naturalizations.[61] Similarly, Austria, Denmark, and the Czech Republic apply a number of exceptions to their official rules against dual citizenship,[62] thus muddling the situation further. For example, Austrian emigrants—like the Dutch—may retain their citizenship upon naturalization in another country.[63] Thus, approximately 90.5% of EU residents—451 million people[64]—enjoy

54. Faist Boundaries, *supra* note 3, at 14.

55. *Id.* at 26.

56. Schweizerische Eidgenossenschaft: Bericht des Bundesamtes für Migration über hängige Fragen des Bürgerrechts [Swiss Confederation: Report of the Federal Office for Migration Pending Questions of Citizenship] 97 (2005), *available at* http://www.schweizerpass.admin.ch/content/dam/data/migration/buergerrecht/berichte/ber_buergerrechte-d.pdf [hereinafter Swiss Confederation Report] (translated by author); *see also* Dellinger et al., *supra* note 41, at 6; *Danes Abroad Join Fight for Dual Citizenship,* STATSBORGER.DK (Den.), Apr. 29, 2008, http://www.statsborger.dk/english.htm.

57. Swiss Confederation Report, *supra* note 56, at 97; *See* ALFRED M. BOLL, MULTIPLE NATIONALITY AND INTERNATIONAL LAW 321, 360, 445, 447 (2007); Besvarelse af spørgsmål nr. 30 stillet af Folketingets Indfødsretsudvalg til ministeren for flygtninge, indvandrere og integration [Answer to Question No. 30 Posed by the Danish Parliament's Citizenship Committee to the Secretary of Refugees, Immigrants and Integration] 1 (2003) (Den.) [hereinafter Answer] (translated by author); Citizenship Act (Estonia), 1995, c. 1, § 2, *available at* http://www.legaltext.ee/text/en/X40001K6.htm; *Latvian Citizenship,* MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LATVIA, http://www.mfa.gov.lv/en/service/4727/ (last visited Jan. 15, 2011).

58. Betty de Hart, *The End of Multiculturalism: The End of Dual Citizenship? Political and Public Debates on Dual Citizenship in the Netherlands (1980-2004), in* DUAL CITIZENSHIP IN EUROPE: FROM NATIONHOOD TO SOCIETY INTEGRATION, *supra* note 3, at 78, 98; BOLL, *supra* note 57, at 466.

59. de Hart, *supra* note 58, at 78.

60. BOLL, *supra* note 57, at 466.

61. de Hart, *supra* note 58, at 98.

62. *See* BOLL, *supra* note 57, at 321, 360-61, 463-64.

63. *See id.* at 321 (noting that "[n]aturalisation abroad results in automatic deprivation of Austrian nationality, however an application may be made within two years before any foreign naturalisation to retain Austrian nationality").

64. EUROSTAT, *supra* note 1.

dual citizenship rights.[65] Still, this means that a significant amount of people—approximately fifty million Europeans—must, in many cases, either live with this highly unequal situation or relinquish their original nationality to obtain the important democratic and socio-political rights connected to enjoying citizenship in their countries of domicile. These figures just account for EU nationals. Globally, the figures are much higher, making the situation more inequitable.

III. THE DANISH CASE AND COMPARABLE NATIONS

Nations with the most restrictive rules in relation to dual citizenship can be identified by one or more of the following criteria:

(1) Assignment by birth: only one citizenship possible;

(2) Obligation to choose one citizenship on reaching maturity;

(3) Renunciation requirement (in some cases, proof also required) upon naturalization in another country; and

(4) Forced expatriation upon naturalization in another country.[66]

Denmark is an example of one of these nations. According to the Danish Minister for Refugee, Immigration, and Integration Affairs (Danish Minister), "[i]t is a basic principle in Danish citizenship legislation that dual citizenship is to be limited insofar as possible."[67] In pertinent part, the Act on Danish Citizenship thus provides as follows:

Danish citizenship will be lost by:

(1) anyone who acquires foreign citizenship upon application or explicit agreement;

(2) anyone who acquires foreign citizenship by entering into public service in another nation; and

(3) unmarried children under the age of eighteen who become foreign citizens by way of a parent, who has or shares the right of custody, acquiring foreign citizenship as mentioned in section 1 or 2 above, unless the other parent remains a Danish citizen and shares custody.[68]

Notably, the loss of Danish (and hence EU) citizenship is automatic, and no dispensations will be granted.[69] Further, children born with dual citizenship outside of Denmark who have never

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65. *Danes Abroad Join Fight for Dual Citizenship*, *supra* note 56.

66. Faist Boundaries, *supra* note 3, at 21.

67. *Dual Nationality*, NEW TO DENMARK.DK: THE OFFICIAL PORTAL FOR FOREIGNERS AND INTEGRATION, http://www.nyidanmark.dk/en-us/citizenship/danish_nationality/dual_nationality.htm (last visited Dec. 29, 2010).

68. Nationality Act, *supra* note 20, at § 7.

69. Answer, *supra* note 57, at 2.

lived in Denmark and who have no demonstrable connection to Denmark will lose their Danish citizenship by the age of twenty-two.[70] Similarly, foreign nationals applying to become naturalized Danish citizens will be stripped of their previous citizenship upon naturalization.[71] If the expatriation does not take place automatically upon naturalization in Denmark, the applicant will be required to demonstrate renunciation as a condition for naturalization.[72] For these reasons, Denmark meets criteria Nos. two through four, thus placing it among the most restrictive nations in the EU.

At the same time, Denmark allows a "large number of people," estimated at more than 40% of immigrants, to enjoy dual citizenship,[73] thus creating a situation of highly unequal access to this important privilege. This situation arises because of the following legislative exceptions:

(1) Children born to one Danish parent and one citizen of a nation that follows the *jus sanguinis* principle may remain dual citizens;

(2) Children born to two Danish parents in nations following the *jus soli* principle may remain dual citizens;

(3) Unmarried children under the age of eighteen will obtain Danish citizenship when a foreign mother marries a Danish father and may hold dual citizenship;

(4) Children adopted from abroad under the age of twelve will become Danish citizens upon adoption by an unmarried Danish citizen, or by a married couple of which at least one parent is a Danish citizen, but may retain their original citizenship when becoming Danish citizens;

(5) Foreigners between eighteen and twenty-three years old who have resided in Denmark for at least ten years, five of which must be within the past six years, and who have not been subject to criminal penalties may acquire Danish citizenship by submitting an affidavit declaring their intent to do so to a Danish municipal authority. Such persons will not be required to relinquish their original citizenship;

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70. Nationality Act, *supra* note 20, at § 8.

71. *Id.* at § 7.

72. *Id.* at § 4.

73. Folketingets Kommunaludvalg, Indfødsretsudvalget, Folketingets Lovsekretariat [Danish Parliament's Municipality Committee, Citizenship Sub-committee, Parliamentary Legal Department] 1 (2002) (Den.) [hereinafter Municipality Committee] (translated by author); Answer, *supra* note 57, at 4; Ministeriet for Flygtninge, Indvandrere og Integration, Udredning om reglerne for dobbelt statsborgerskab i Danmark, i andre lande og i forhold til internationale konventioner [Danish Ministry of Refugee, Immigration, and Integration Affairs, Explanation of the Rules for Dual Citizenship in Denmark, in Other Nations and in Relation to International Conventions] 5 (2009) [hereinafter Explanation of the Rules] (translated by author).

(6) Persons who have become naturalized Danish citizens and for whom it is not possible, or it is extremely difficult, to become released from their original citizenship, or where the Danish authorities accept the retention of the foreign citizenship, may retain dual citizenship.[74]

Thus, a large number of people in Denmark who were *not* originally Danish citizens already, in spite of an official government stance *against* dual citizenship, enjoy dual citizenship; whereas another large number of original Danish citizens living abroad do not have the same privilege, and will lose their citizenship upon naturalizing in their countries of domicile. Perhaps given this highly inequitable situation, Danish government officials twice told the author, a Danish citizen residing and working in the United States, that as long as she did not inform the Danish authorities if she obtains United States citizenship, they would never find out as the United States does not inform Denmark of newly naturalized American citizens,[75] thus, in effect, also signaling a *de facto* tolerance of dual citizenship, at least toward the United States.

In rejecting dual citizenship, Denmark continually cites to the traditional argument that dual citizenship must be limited to the greatest extent possible.[76] In doing so, Denmark still relies on the principles of the 1967 Convention, although clearly acknowledging both that it was a product of its time *and* that the 2000 Convention now clearly enables nations to adopt more up-to-date laws, if they so desire.[77] Further, Denmark continually cites to the Jan. 14, 2002 Common Nordic Agreement on the Implementation of Certain Citizenship Stipulations,[78] although dual citizenship laws have recently changed markedly in most of the other four Nordic countries. To wit: Finland, Iceland, and Sweden now fully accept dual citizenship.[79] Sweden is considered the most liberal because it has, since 2001, explicitly allowed for full dual citizenship rights without posing any requirements for renouncing one's former citizenship.[80] Currently, only Norway[81] and Denmark still require the renunciation of former citizenship when acquiring Norwegian and Danish citizenship, respectively.[82] Accordingly, although Denmark

74. Municipality Committee, *supra* note 73 at 4; Answer, *supra* note 57, at 1-2.

75. Names, titles, and dates withheld for reasons of confidentiality.

76. *See, e.g.*, Municipality Committee, *supra* note 73, at 1; Explanation of the Rules, *supra* note 73, at 1 .

77. Explanation of the Rules, *supra* note 73 at 7-9.

78. *Id.* at 9.

79. *Id.*

80. Faist Boundaries, *supra* note 3, at 22.

81. *Dual Citizenship*, NORWEGIAN DIRECTORATE OF IMMIGRATION, http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Citizenship-/Dual-citizenship/ (last visited Dec.29, 2010).

82. Nationality Act, *supra* note 20, at § 4.

cites to the Nordic "agreement" as if binding international law, the former majority behind this has actually eroded. Most Nordic nations now accept dual citizenship. Nonetheless, the Minister claims that Denmark's basic objective of limiting dual citizenship is in accordance with its international obligations in this area.[83] Whereas Denmark may follow the letter of the law, it certainly does not follow the spirit of modern international considerations in this area.

Traditionally, Denmark has accepted numerous immigrants from Turkey and Poland, just as many Danish citizens have emigrated to the United States and Canada. For comparative reasons, it is thus relevant to briefly examine the tolerance toward dual citizenship in those nations. Canada and the United States both accept dual citizenship.[84] The Turkish authorities also officially allow dual citizenship, "the only stipulation being that the person notifies the Turkish government when another citizenship is acquired."[85] Although Poland has made no legislative changes toward an official tolerance of dual citizenship, it has simply turned a blind eye on it, "thus engaging in *de facto* tolerance."[86] Thus, even outside the Nordic region and the EU, nations to and with which Denmark has strong mutual ties and interests have changed their attitudes toward dual citizenship, thus making it even more remarkable that Denmark, which normally equates itself with modern democracies and legal trends, does not change *its* legal landscape accordingly.

IV. REJECTION OF DUAL CITIZENSHIP: A PARADE OF HORRIBLES

Why do some nations widely accept dual citizenship whereas others still resist? One explanation may be that the more actively a state pursues the integration of immigrants through multicultural policies, the more likely it is to tolerate dual citizenship.[87] By contrast, the more national policies are geared toward assimilationism, in other words trying to melt immigrants into a uniform "majority core," the less likely such nations are to accept dual citizenship.[88] In Sweden and Holland, discourse involving culturally open-minded notions such as "multiculturalism" and "minorities policy" saw a meteoric rise in the 1980s, whereas in countries such as Denmark and Germany, the concept of "multiculturalism" has

83. Explanation of the Rules, *supra* note 73, at 8.
84. *Id.* at 9; Faist Boundaries, *supra* note 3, at 21.
85. Faist Changes, *supra* note 34, at 184.
86. *Id.*
87. *Id.* at 189.
88. *Id.*

been subject to some resistance and even stark political conflict.[89] In these nations, immigration is often looked upon as a "one-way street" where immigrants are more or less supposed to adapt fully to local culture without displaying "too many" of their own traits in public, and where undivided loyalty of citizens to the state is still required. In these "reluctant" nations, the dual citizenship discourse has been related not so much to actual national or international problems to be solved, but to rather simplistic arguments linked to "unrelated policy issues such as increased [but unwarranted] immigration, threats to welfare . . . systems, and criminality."[90] This could explain the more conservative view, as an example, of Germany's slow change toward allowing dual citizenship. In fact, it is typically the case that "the more polarized the respective party system is along ideological lines and the less consensus-oriented the political style of confrontation, the higher are the chances that political issues around nation, culture, and citizenship will tend to be conflict-ridden."[91] In the author's experience, such discourse is frequently seen in Western Europe among political parties that see immigration from non-Western nations as a threat to the nation state and the "way things used to be," rather than as an opportunity for positive societal growth or, at a minimum, an unavoidable trend in modern society which simply cannot be stemmed, and certainly not through the outright prohibition of dual citizenship. For example, current majority political interest in stemming immigration has, in Denmark, contributed significantly to the political and sometimes popular sentiment against dual citizenship. This is so even though legislation in the two areas is logically unrelated because unwanted and illegal immigration can be addressed through separate and tailored legislation while still allowing Danish citizens abroad and legal immigrants to Denmark to hold dual citizenship. In other words, dual citizenship affects only those people who have *already* obtained permission to reside in a certain country, or who are nationals thereof, whereas immigration law is geared toward regulating those who seek to *enter a* nation in the first place.

Another major argument against dual citizenship is the perceived problem of people being able to vote in more than one nation. "[T]he ties of citizens reaching into multiple states seem to challenge the supposed congruence of the demos, state territory, and state authority and, in particular, violate basic principles such

89. *Id.*
90. Faist Boundaries, *supra note* 3, at 38.
91. *Id.* at 28.

as 'one person, one vote.' "[92] The latter is not perceived as a threat by proponents of dual citizenship "because dual citizens do not have *multiple* votes in *one* polity," but rather "*one in each* polity of which they are full members," such as through residency.[93] It should not matter whether a Dane living in the United States, for example, can vote in both nations as long as he or she cannot vote more than once in each place, which, of course, nobody is promoting.

Of further stated concern is whether dual citizens would have to serve in the military of more than one nation. However, both the 1968 and the 2000 Conventions call for nations to recognize the equivalency of service in one nation as that in another.[94] Should a nation nonetheless retain a requirement that a person also serves in the military of that nation, dual citizenship applicants must evaluate the relative significance to their cases of this disadvantage before seeking to retain or obtain citizenship in such nations or before traveling thereto.[95] In resisting dual citizenship for the above reasons, Denmark, for example, also cites to national security interests and the fear that a person may be considered to be an enemy in both countries of citizenship.[96] The same counter-argument applies: in applying voluntarily for dual citizenship, this would be the (arguably highly remote) risk that the applicant must carefully balance.

In some nations, people with dual citizenship cannot hold certain high-level professional positions that allow them to exert more than *de minimis* influence on the government of their host nation.[97] In this case, it has been said to be advantageous for both the citizen and the nation state to limit citizenship in order to avoid true conflicts of interest to several nations.[98] On the other hand, an outright prohibition against dual citizenship results in arguably unreasonably severe limits on broader types of employment in nations such as the United States where only U.S. citizens may be appointed to the vast majority of federal jobs.[99] Exceptions to this rule may be granted in only very narrow circumstances and only

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92. *Id.* at 10.

93. *Id.*

94. 1968 Convention, *supra* note 32, at art. 5; 2000 Convention, *supra* note 48, at art. 21.

95. Ersbøll Report, *supra* note 4, at 6-7.

96. Explanation of Rules, *supra* note 76, at 19-21; *See* Municipality Committee, *supra* note 73, at 5.

97. Ersbøll Report, *supra* note 4, at 4.

98. *Id.* at 5-6.

99. *Federal Employment Information Fact Sheets: Employment of Non-Citizens*, USAJOBS, http://www.usajobs.opm.gov/EI/noncitizensemployment.asp (last visited Jan. 15, 2011).

by few agencies.[100] Further, a non-citizen applicant is told to "contact the agency in which he or she is interested, concerning questions of employment eligibility."[101] In the author's experience, federal agencies have enough applicants to choose from and thus always require U.S. citizenship for such eligibility. Thus, without any changes of law, agencies are free to impose stricter limits on this employment aspect than what official guidelines call for and to exclude people from employment based not on the applicant's substantive qualifications and loyalties, but on what modernly is seen as a formality, i.e. citizenship. Accordingly, citizens of nations that do not accept dual citizenship will thus have to choose between what may be attractive employment opportunities, and an equally strong interest in retaining citizenship in another country. In today's internationally competitive world, this is arguably as an unreasonable choice given the very few recognized advantages of prohibiting dual citizenship.

Traditional notions further held that nation states could never offer their citizens diplomatic protections and assistance in relation to other nations in which the affected person also held citizenship.[102] Some government officials thus still believe that clarity in relation to which country should render diplomatic aid is better ensured by prohibiting dual citizenship outright.[103] However, new proposed law has changed this situation. In 2004, the International Law Commission of the United Nations adopted nineteen draft articles on diplomatic protections.[104] Articles 6 and 7 specifically cover diplomatic protections in relation to multiple nationality. Article 6 relates to situations involving third-party states and provides that "[t]wo or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national."[105] Article 7, which relates to possible tensions between the two particular states of nationality provides that "a State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national *unless* the nationality of the former State is predominant . . . . "[106] The identification of a "dominant" or "effective" citizenship is done by emphasizing aspects such as residency, length of stay in a given nation, time of naturalization, place of education, employment, pay-

100. *Id.*
101. *Id.*
102. Ersbøll Report, *supra* note 4, at 7.
103. Interview with Birthe Rønn Hornbech, Minister for Refugees, Immigrants and Integration Affairs, in Roskilde, Den. (Apr. 8, 2009).
104. BOLL, *supra* note 57, at 121.
105. *Id.*
106. *Id.*

ment of taxes, bank accounts, military service, etc.[107] Further, "it is a clear principle of international law that the country where the dual citizen *is located at the moment* takes no account of the individual's other citizenship."[108] Accordingly, existing principles of international law already prescribe whether nations should grant protections to those of their citizens who hold dual citizenship. As mentioned, adults seeking dual citizenship must be presumed to be aware that certain disadvantages thereof may exist, and that one of those may be the lack of diplomatic protections as broad as if the person had been a citizen of one nation state only. As with most aspects of life, few things come with only advantages. Persons seeking dual citizenship should inform themselves thoroughly of the consequences thereof before accepting it. Holland, for example, acknowledges this viewpoint in allowing dual citizenship and affirmatively advises its citizens that it may not always be possible for Holland to exercise protection on behalf of its nationals in their other countries of nationality.[109]

In some countries such as Denmark and Norway, issues of family disputes and child abductions have been used extensively in arguing against dual citizenship.[110] This issue typically does not affect the citizenship of children since they already enjoy the right to dual citizenship, namely that of both their parents. Rather, the perceived problem may arise where one parent is prohibited from leaving the country for legal reasons, is ordered to deposit his/her passport with the government to ensure this, but can travel abroad with his/her child on the passport of the other country of citizenship. Whereas this problem may be real, the risk of child abduction already exists, dual citizenship or not: some nations refuse to absolve their citizens of citizenship, some abductors may simply use falsified passports, and even if naturalized citizens have been released from their original citizenship, they can fairly easily reacquire this and thus again possess two passports. An example of the latter was seen in the case of thousands of former Turkish citizens who reacquired their original citizenship after having been released therefrom when becoming naturalized German citizens.[111] It is, of course, a highly desirable goal to seek to prevent child abduction through all means possible, but rules against dual citizenship are largely ineffective in reaching that goal.

Some stark opponents even believe that dual citizenship may erode state sovereignty as citizens can withdraw from decisions

107. Ersbøll Report, *supra* note 4, at 4; BOLL, *supra* note 57, at 110, 282, 284-86.
108. Faist Changes, *supra* note 34, at 184 (emphasis added).
109. BOLL, *supra* note 57, at 466.
110. Ersbøll Report, *supra* note 4, at 7; Municipality Committee, *supra* note 73, at 5.
111. Faist Changes, *supra* note 34, at 183.

they helped create by "choosing the exit option and relocating to another country."[112] Finally, multiple loyalties have traditionally been seen as "damaging to the public spirit,"[113] although this notion seems to be losing prevalence.

Finally, Denmark further cites to the risk of dual citizens having to pay taxes in two nations.[114] However, taxation treaties, such as that between the United States and Denmark, have for years prevented that outcome, which Danish government officials recognize.[115] Denmark also stubbornly cites to perceived problems in connection with inheritance or property law,[116] notwithstanding the fact that numerous Danish citizens *already* face severe problems in this and in employment contexts by *not* having dual citizenship. It would typically be a legal advantage, not a disadvantage, for Danish and other EU citizens abroad to hold dual citizenship. In an example of what appears to be grasping for straws in rejecting this modern right, Denmark even cites to the "risk of [naturalized citizens] being prosecuted for alleged violations of the law when visiting their native countries,"[117] although this risk arguably already exists under international criminal prosecution agreements when the few potentially at-risk persons are *only* Danish citizens. Similarly, Denmark cites to an alleged "general uncertainty as to which civil or criminal legislation to apply in cases of international legal disputes,"[118] even though private or government attorneys practicing international law are presumably fully capable of advocating for and solving such choice of law problems.

In short, a few legitimate concerns over dual citizenship exist, but the parade of horrors envisioned by opponents is just that. Researchers have found "little empirical evidence to support the standard arguments raised against dual nationality and many compelling reasons for modern liberal-democratic states to accept it. Accepting the legitimacy of dual nationality is justified as a matter of respect for a migrant's connections and affiliations with the country of origin."[119]

Instead of serving legitimate goals, prohibitions against dual citizenship often result in both the "long arm" denial of significant democratic rights of citizens living outside their home countries,

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112. Faist Boundaries, *supra* note 3, at 10.

113. *Id.*

114. Municipality Committee, *supra* note 73, at 5.

115. *See generally* Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.-Den., *opened for signature* Aug. 19, 1999, T.I.A.S. No. 13,056 (entered into force March 31, 2000).

116. Municipality Committee, *supra* note 73, at 5.

117. *Id.*

118. *Id.*

119. ALEINIKOFF & KLUSMEYER, *supra* note 53, at 7.

and similar problems for immigrants to nations that do not allow dual citizenship. This is examined in the next section.

V. DEMOCRACY DENIED: NOT HAVING CITIZENSHIP IN ONE'S COUNTRY OF RESIDENCY RESULTS IN A LOSS OF SIGNIFICANT SOCIO-POLITICAL AND DEMOCRATIC RIGHTS

Modernly, having citizenship where one lives is of recognized social and democratic importance. First, "[c]itizenship is a functional prerequisite for political integration and reflects the state of societal integration."[120] Citizens who enjoy equal political liberty tend to obey the laws to whose creation they have contributed through regular democratic processes, "and to whose validity they thus consent" to a greater extent than non-citizens[121] who, in many cases, have no or severely restricted voting rights in their countries of residency. For example, in the United States, only citizens may vote in any referendum, whereas in Denmark, non-citizen residents may vote in local elections.

Accordingly, "immigrant groups, with few exceptions, have had little impact on policy debates and outcomes,"[122] including issues of dual citizenship. "In essence, citizenship builds on collective self-determination, i.e. democracy, and essentially comprises three mutually qualifying dimensions: first, the legally guaranteed status of equal political freedom and democratic self-determination; second, equal rights and obligations; and third, membership in a political community."[123] From a global perspective, "citizenship still remains one crucial defining aspect of full inclusion at the nation-society or nation-state level."[124] It has even been said that "[w]ithout a state, there can be no citizenship; without citizenship, there can be no democracy."[125]

At the private level, citizenship is important because it forms part of a person's identity.[126] Citizens not only feel attached to their nation states, but also to their fellow citizens and, in particular, to their close personal and professional relationships.[127] In today's globalized world, more and more people are experiencing emotional, personal, and professional attachments to more than

120. Faist Boundaries, *supra* note 3, at 35.
121. *Id.* at 10.
122. *Id.* at 29.
123. *Id.* at 9.
124. Faist Changes, *supra* note 34, at 199.
125. Faist Boundaries, *supra* note 3, at 9 (quoting Juan J. Linz & Alfred C. Stepan, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE 28 (1996)).
126. Ersbøll Report, *supra* note 4, at 6.
127. *Id.*

one nation state at a time.[128] As mentioned, many states now understand this and thus allow dual citizenship. In the author's experience, not having citizenship further means not being able to, for example, apply for most, if not all, federal employment (in the United States, especially after 9/11); not being able to be on the board of one's own company (Canada); being subject to diminished inheritance laws (United States); and potentially even risk being expelled from one's nation of residence upon the death of one's citizen spouse unless possessing a certain amount of money (Italy). Citizenship is also important in connection with property law in several nations.[129]

Given the above serious impairments of democratic, personal, and professional opportunities, why do emigrants not simply adopt citizenship in their new countries of residence when eligible to do so? Many nationals from or in the states that still do not recognize dual citizenship choose not to become citizens in their new nations of residency in order not to lose their original citizenship. Some harbor hopes of one day returning to their country of origin, perhaps upon retirement.[130] In the case of EU citizens residing outside the EU, some wish to be able to return to another EU nation, as is the case under current EU law. People do not necessarily move to another country to live there for the rest of their lives.[131] Many move from one country to another and on to a third, but would like to be able to return for family and other personal reasons.[132] Some feel a consistent and deep socio-psychological association with their country of origin although living and working in another state. To them, relinquishing their original citizenship would be akin to betraying their motherland, original culture, and ancestral roots. Yet others have children and want to be able to give them the chance of being able to choose the respective parent's citizenship and perhaps move back to study or work in the parent's country of origin, if only for a while. Some stubbornly hold on to their original citizenship out of a deep-rooted belief that the otherwise very uniform rules of the Union should, for democratic reasons, apply to all EU citizens and not, as is currently the case, exclude a minority for random and outdated reasons. No matter what the reasons, voluntarily giving up or being stripped of one's original citizenship is unquestionably a major change of identity that, in the case of voluntary citizenship relinquishment, is not undertaken easily.

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128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.*
132. Ersbøll Report, *supra* note 4, at 6

VI. SHOOTING ONESELF IN THE FOOT: NATION STATES MAY LOSE MORE THAN THEY GAIN BY NOT ACCEPTING DUAL CITIZENSHIP

Allowing dual citizenship also has recognized advantages at the national level. "[M]any emigration countries have seized upon dual citizenship as an instrument to forge and maintain transnational links with emigrants living abroad."[133] In turn, this could help emigration countries further their economic interests, such as through "continued flows of remittances and investments by emigrants."[134] It also could further the countries' political aims, such as by using "emigrants as loyal lobby groups."[135] For example, Turkey sees its migrant communities as a lobby group abroad that may eventually help open the doors to Turkey's much desired accession to the EU.[136] In short, dual citizenship may, from a transnational perspective, be seen as an extension of modern multicultural policy that further complements national membership for states interested in promoting or at least tolerating their "citizens' transnational social and symbolic tries for instrumental purposes."[137]

Although nations "are usually more tolerant of the multiple memberships of their own citizens living abroad than they are in relation to immigrant newcomers on their own territory," the latter carries the significant advantage that dual citizenship promotes—integration of immigrants.[138] Ironically, the nations that currently prohibit dual citizenship are often the same ones complaining about the alleged unwillingness of immigrants to assimilate to their new cultures. This is, for example, the case in Denmark. What such immigration countries seem to disregard is the fact that immigration is not necessarily a one-way street; with trust and equal rights among citizens typically comes greater social and political integration. Dual citizenship could also, from a perhaps harsh, but realistic point of view, be seen as exit insurance,[139] enabling immigrant nations to, in legally warranted cases, expel individuals to their original countries; whereas this would, of course, be impossible if the immigrant only holds the passport of their residence nation.

In what is known as "selective tolerance,"[140] some nations such as Holland and Turkey make it easier for their own nationals to

133. Faist Boundaries, *supra* note 3, at 5.
134. *Id.* at 6.
135. *Id.*
136. Faist Changes, *supra* note 34, at 183.
137. Faist Boundaries, *supra* note 3, at 18.
138. *Id.* at 16.
139. *Id.* at 18.
140. Faist Changes, *supra* note 34, at 182.

obtain citizenship abroad than for immigrants to obtain domestic citizenship.[141] Similarly, Turkey allows for "citizenship light"[142] by allowing its former citizens to hold a "pink card" giving them "rights equivalent to those held by full Turkish citizens, except the right to vote in Turkish elections."[143] This enables Turks abroad to participate in socio-political processes abroad as full citizens of their new countries of residency while preventing a previously existing transnational diplomatic problem between Germany and Turkey when Germany "demanded release from Turkish citizenship as a requirement for inclusion into German citizenship, [but where] the Turkish authorities had seen no problem in re-granting Turkish citizenship to those it had released before."[144] However, such differential treatment of citizenship rights is clearly undesirable seen from an equal rights point of view. In fact, "the more discretionary the rules and the more latitude the authorities have, the more th[e] trend [of selective tolerance] prevails, a state of affairs that essentially signals weak development of the rule of law."[145] In liberal-democratic states, citizenship policy ought to be "closely guided by the norms of fairness and justice that are fundamental to modern democratic ideals."[146] "Settled foreign nationals pay taxes, obey the law, contribute to the community, and bear the same economic and social misfortunes as citizens. Barring them from equal access to public benefits means that they contribute to the state without receiving the benefits that go to other members of the community."[147] Conversely, "[p]romoting political participation of settled foreign nationals recognizes that they are, in the main, fully functioning members of the social and economic life of a society, that they have an interest in their communities, and that they frequently have perspectives on issues that enhance the consideration of public policies."[148] Denying the same significant benefits to the nations' own original citizens abroad cannot but be in the overall national interest seen from a modern point of view.

In short, for democratic nations to accept dual citizens for immigrants at home on equal terms with citizenship for their citizens abroad would signal a greater and much needed amount of true respect for equal rights and opportunities. This ought to be of significant concern for any nation, but especially for nations who are

141. *Id.* at 177, 182; Faist Boundaries, *supra* note 3, 22-23.
142. Faist Changes, *supra* note 34, at 183.
143. Faist Boundaries, *supra* note 3, at 24.
144. Faist Changes, *supra* note 34, at 183.
145. *Id.* at 182.
146. ALEINIKOFF & KLUSMEYER, *supra* note 53, at 3.
147. *Id.* at 9.
148. *Id.* at 8.

often seen as, and wish to remain as, progressive models for democracy and the development of law. However, even though the reasons for fully and officially adopting dual citizenship seem obvious, certain nations remain unconvinced. Accordingly, the next section will analyze the theories, principles, and instruments of law that may be used to put pressure on these nations to adopt dual citizenship.

VII. A MODERN LEGAL AND POLICY-BASED FRAMEWORK FOR CHANGE IN CITIZENSHIP LAW

The days are long gone when international consensus was directed at limiting dual citizenship. But what about the reluctant nations that continue to reject modern trends in this area? Are they abiding by international law in doing so? Is there a way to apply pressure on them from an international legal angle to lead them onto a pathway toward more equal rights for all?

A. Top down solutions

From a traditional "hard law" point of view, little can be done. Sovereign nations are, as established, free to bestow citizenship upon the subjects they find eligible. Of course, this applies to EU nations as well: "[u]nder international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality."[149] Because states traditionally have been reluctant to relinquish their right to determine the conditions of their citizenship, Article 24(3) of the International Covenant on Civil and Political Rights (ICCPR) grants an affirmative right to acquire citizenship only to children.[150] In short, existing treaties do not affirmatively *require* states to accept dual citizenship.

An argument perhaps could be made under customary international law that, as in the Danish case, allowing more than 40% of immigrants to hold dual citizenship, while officially rejecting dual citizenship, amounts to consistent state practice. However, as Denmark repeatedly expresses its awareness of its right to limit dual citizenship under still existing, although outmoded, international agreements, as well as its intent to continue doing so, *opinio*

149. Case C-369/90, Micheletti v. Delegación del Gobierno en Cantabria, 1992 E.C.R. I-4239.

150. International Covenant on Civil and Political Rights art. 24, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), *available at* http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf [hereinafter ICCPR].

juris in favor of dual citizenship clearly does not exist in the Danish case.

Under modern "soft law" theories, especially those pertaining to human rights, a different picture emerges:

> [A] key factor influencing the increase in tolerance of dual citizenship . . . is perhaps the growing importance of human rights in international and national law. Viewed from a post-national perspective, citizenship has gradually emerged as a quasi-human right over the past decades, a trend that has been accelerated by supranational integration within the EU.[151]

This "rights revolution"[152] presents the "tension between the principles of universal human rights, on the one hand, and the principle of democratic self-determination" on the other.[153] For example, the European Court of Human Rights allows EU citizens to lodge an application against states bound by the Convention for the Protection of Human Rights and Fundamental Freedoms if the citizens believe that they have personally and directly been a victim of a violation of the rights set out in the Convention or its Protocols.[154] In particular, the court states that it recognizes the protection of the "right to vote and to stand for election," and prohibits "discrimination in the enjoyment of the rights and freedoms set out in the Convention,"[155] rights and protections arguably disregarded by current dual citizenship policies in select countries. Whereas half a century ago the judiciary primarily prioritized the state perspective when passing judgment on individuals' claimed links with states (as in the famous 1955 *Nottebohm* case), international courts are now increasingly shifting attention to the rights of individuals.[156] In both "legal cases and legislation, the rights of citizens and persons have gained in importance vis-à-vis considerations of state sovereignty."[157] However, no court has yet upheld the right to citizenship as a legal status.[158]

Although "sovereign states still unilaterally decide on the at-

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151. Faist Changes, *supra* note 34, at 174.

152. Faist Boundaries, *supra* note 3, at 5, 26.

153. *Id.* at 15.

154. REGISTRY OF THE COURT, EUROPEAN COURT OF HUMAN RIGHTS: QUESTIONS AND ANSWERS 3, *http://www.echr.coe.int/NR/rdonlyres/37C26BF0-EE46-437E-B810-EA900D18D49B/0/ENG_Questions_and_Answers.pdf* (last visited Dec. 30, 2010).

155. *Id.*

156. Faist Changes, *supra* note 34, at 174-75.

157. Faist Boundaires, *supra* note 3, at 20.

158. *Id.* at 15.

tribution of citizenship," it should come as no surprise that "they do so under conditions influenced by norms that are often codified both nationally and internationally."[159] Several international instruments have helped lay the groundwork for the gradual elimination of unquestioned sovereign prerogatives, and an increased recognition of the legitimate claims and rights of individuals. For example, Article 15(2) of the 1948 United Nations Universal Declaration of Human Rights (1948 Declaration) recognizes that "[n]o one shall be *arbitrarily* deprived of his[/her] nationality *nor denied the right to change* his[/her] nationality".[160] The binding character of the Declaration continues to be debated, but it has nonetheless become the accepted general articulation of this right.[161] When some nations allow a large percentage of individuals in their territories to hold dual citizenship under a range of legal exceptions, while officially prohibiting dual citizenship *and* automatically expatriating their own original citizens for obtaining citizenship outside their territory, it could be said that such nations arbitrarily deprive persons of their nationality. It also is interesting to note that the 1978 Convention mentions, as a human right no less, the right to change citizenship.[162]

Further, Article 13(2) of the Declaration stipulates that "[e]veryone has the right to leave any country, including his[/her] own, *and to return to his[/her] country.*"[163] If obtaining citizenship abroad, one cannot be certain to be able to return to one's home country any longer. For example, Denmark currently allows expatriated citizens to reacquire Danish citizenship after having resided in Denmark for two years. However, while this may sound like a workable compromise, it creates a false sense of security as one can never be sure that this stipulation will not change with changing political administrations. Thus the right to return to one's original country of citizenship is *not* fully safeguarded in the current situation (although opponents of dual citizenship would, of course, argue that "this" should simply be interpreted as the one of current citizenship, and if a person acquires second citizenship, the nation of this is the country to which the citizen should be permit-

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159. Faist Changes, *supra* note 34, at 173.

160. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/Res/217(III), at art. 15 (Dec. 10, 1948) (emphasis added) [hereinafter 1948 Declaration].

161. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 701 (1986). *See also* American Convention on Human Rights: Pact of San Jose, Costa Rica art. 20, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 123 (entered into force July 18, 1979).
[hereinafter 1978 Convention]. Article 20 sets forth that "(1) every person has the right to a nationality; (2) every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality, and (3) no one shall be arbitrarily deprived of his/her nationality or of the right to change it."

162. 1978 Convention, *supra* note 161, at art. 20.

163. 1948 Declaration, *supra* note 160, at art. 13(a) (emphasis added).

ted to return, not the original country of citizenship).

Article 21(1)-(2) of the 1948 Declaration further emphasizes that "[e]veryone has the right to take part in the government of his[/her] country, directly or through freely chosen representatives, [and] [e]veryone has the right of equal access to public service in his[her] country."[164] Similarly, Article 25(2)-(3) of the ICCPR urges nations to allow every citizen "to vote and to be elected at genuine periodic elections . . . [and] [t]o have access, on general terms of equality, to public service in his country."[165] Although strictly seen, these provisions govern "original citizens" only, they speak in favor of the ultimate goal of ensuring that people in general can participate in such basic, yet important societal functions as voting and holding public sector jobs. Yet that is precisely what countries prohibiting dual citizenship prevent via their long-arm reach into other nations on whose soil their citizens live, and who similarly deny dual citizenship to immigrants on their own soil. The only way to avoid this grip is for such people to renounce their original citizenship to obtain new citizenship, and thus lose the desired rights such as voting and having the ability to be elected, etc. But this is a step of such tremendous psychological impact that many emigrants simply do not take it, and thus have to exist in a somewhat marginalized way without being able to enjoy these recognized democratic rights that so many others similarly situated do.

In a new theoretical approach to this issue, it also is interesting to contrast the lack of voting rights and the right to be elected to office caused by prohibitions against dual citizenship to issues of poverty. Although at first blush it may seem preposterous to compare access to dual citizenship to an issue as severe as poverty, it should be noted that even the World Bank recognizes that

> As poverty has many dimensions, it has to be looked at through a variety of indicators – levels of income and consumption, *social indicators, and indicators of . . . socio/political access. . . . Poverty is . . . lack of representation.* . . . [What is needed is a] call to action so that many more may have . . . a voice in what happens in their communities. . . . [166]

Thus it is becoming clear that poverty is no longer just an issue of

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164. *Id.* at art. 21.

165. ICCPR, *supra* note 150, at art. 25.

166. *Overview: Understanding, Measuring, and Overcoming Poverty*, WORLD BANK, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/0,,menuPK:336998~pagePK:149018~piPK:149093~theSitePK:336992,00.html (pages accessed through http://web.archive.org) (emphasis added).

monetary resources only, but also of other significant societal opportunities, which is exactly what the long-arm reach of prohibitions against dual citizenship prevents.

In Europe, the divergence between national-level legislation and EU-level goals is significant. As shown, whereas most nations are tolerant to dual citizenship, some are clearly not. This is in spite of the fact that the preamble to the European Convention on Nationality promotes "greater unity between its members, . . . [the] desir[e] to avoid discrimination in matters relating to nationality, . . . [and that] account should be taken both of the legitimate interests of States *and those of individuals*."[167] Further, Article 5 of the Convention states the principle that "[t]he rules of a State Party on nationality shall not contain distinctions . . . [based] on the grounds of . . . *national* or ethnic *origin*."[168] This principle is certainly not followed by those countries, such as Denmark, that operate with two sets of rules: one for people from certain countries where it is impossible or merely difficult to be released from one's original citizenship, and another for other immigrants or emigrants wishing dual citizenship. Although these countries may mean well in making this distinction, it has the unjust effect of preventing equal access to citizenship on a broad global basis.

In particular, Denmark's attitude toward internationalism in general, and dual citizenship in particular, is marked by a high degree of double standards. For example, a ministerial report to some political parties proposing a renewed bill allowing dual citizenship *recognizes* the broad international trends and conventions tolerating and even furthering dual citizenship, acknowledges that other countries have *not* experienced any significant problems in connection with the traditional list of perceived problems of dual citizenship such as problems related to diplomatic assistance, military service, choice of law conflicts or national security, yet abruptly concludes that the Danish government "seeks to limit dual citizenship in part because of principles and in part based on practical considerations, [but] that more and more countries allow for dual citizenship, and that some countries retain the principle that dual citizenship must be limited as much as possible for reasons of principle."[169] The "principles" so ardently stuck to are widely known to stem from the current anti-immigration debate and the mistaken belief that in prohibiting dual citizenship, immigration can be curbed as well. Another way of explaining the nation's stance on this point simply may be, unfortunately, the fact that not

167. 2000 Convention, *supra* note 48, at preamble (emphasis added).
168. *Id.* at art. 5 (emphasis added).
169. Danish Ministry of Refugee, *supra* note 76, at 22-23.

enough votes are at stake to make this a major political issue, or something as simple as a lack of understanding of the true significance of the problem. In this case, it is true that "[c]oncepts such as human rights or democratic governance are universal reference points, even though they may not be understood in the same way everywhere."[170]

In an even more obvious display of double standards, Denmark seeks to obtain the benefits of globalization for itself at the national level. For example, in an official 2006 report on "Progress, Renewal and Security: Strategy for Denmark in the Global Economy" (a.k.a. the "Globalization Strategy"), Denmark proclaims that it must "participate actively in the international distribution of work" and "create opportunities for people to obtain improved jobs."[171] Further, "Denmark must be a nation where *everybody* has the best possible opportunities for employing their skills and creating progress for themselves and others. A nation with a *global attitude* playing an *active role in world society*."[172] "*Everybody* should be ready for *change* and innovation."[173] One would think that with these goals in mind, Denmark would realize the time has come to bring its dual citizenship legislation up to par with the current global attitude and international norms in the area. The statement that "everybody should be ready for change" presumably also applies to government lawmakers. The contrast between dual citizenship legislation and the Globalization Strategy is even more remarkable given additional statements in the Strategy that "globalization creates new opportunities for Danish citizens and companies *all over the world*" and that

> *Danish interests must be handled effectively on the global scene – politically*, financially, culturally *and specifically for Danish citizens* and companies . . . [T]he conditions for taking care of Danish interests abroad change continually. *An increasing number of Danes are outside of the Danish borders* where they are tourists or *live, work or study*. It is thus important to *ensure that Danish interests are taken care of effectively*.[174]

In short, it is stunning that on the one hand, the nation promotes

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170. Faist Changes, *supra* note 34, at 197.

171. GOVERNMENT OF DENMARK, FREMGANG, FORNYELSE OG TRYGHED: Strategi for Danmark i den globale økonomi [PROGRESS, INNOVATION AND SECURITY: Strategy for Denmark in the Global Economy] 6 (1991), *available at* http://www.globalisering.dk/multimedia/55686_indled.pdf (emphasis added) (translated by author).

172. *Id.* (emphasis added).

173. *Id.* (emphasis added).

174. *Id.* at 102 (emphasis added).

itself as a progressive player on the global scene, and even cites to the importance of taking care of private-level Danish interests inside and outside Danish territory for professional reasons, yet for no truly legitimate reason, refuses to take one simple step that other nations have long since recognized as being highly important in today's globalized world: namely allowing equal access to dual citizenship for both the nation's own citizens abroad as well as for all immigrants to the nation state in question.

One should think that ensuring equal access—through the acceptance of dual citizenship—to such important societal functions such as voting, having the ability to be voted into office, holding government jobs at the national level, and inheriting and enjoying property rights on par with other nationals, would be of prime importance to democratic nations, especially those in relatively close-knit regions such as the EU. However, this is not always the case. The current situation with exceptions being granted in a large number of cases, yet with official policies militating in the exact opposite direction, might, if nothing else, lead to the reluctant nations realizing that the difficulty in justifying each exception on reasonable grounds and the costs of administrative procedures in administering such unequal systems simply favor tolerating dual citizenship for all.

B. A bottoms-up approach

Thus far, individuals may have been patient in accepting the legal/political status quo, but initiatives to prompt change are being implemented. For example, the Assembly of French Expatriates joined forces with delegations of Europeans residing outside their country of origin and the French Ministry of Foreign Affairs during the French Presidency of the EU in 2008 and issued the "Paris Declaration" to promote a joint European policy for Europeans residents outside their nations of origin.[175] The Declaration emphasizes the knowledge shared by numerous scholars and, fortunately, also many politicians, that "Europeans resident outside their country of origin are contributors to improved economic, social, cultural and knowledge exchanges in Europe and the rest of the world" and are "bearers of a specifically European message in defence of Europe's values ([e.g.] *human rights and the rights of the citizen . . .*)."[176] In return, the Declaration rightfully calls for

175. *See generally* Paris Declaration for a European Policy on Europeans Resident Outside Their Country of Origin, Assembly of French Expatriates (Sept. 30, 2008), *available at* www.assemblee-afe.fr/.../DECLARATION%20DE%20PARIS%20%20%20ang.doc [hereinafter Declaration].

176. *Id.* at 2 (emphasis added).

"universal justice for all Europeans" whether residents within the EU *or* in third countries, and thus for member nations to mutually recognize the rights of all their citizens living outside their country of origin.[177] The Declaration promotes a uniform system of democratic representation, such as the right to vote in national elections, and finds that "it would be appropriate for *all* Member States of the Union to permit their nationals to acquire another nationality *without* thereby losing their nationality of origin."[178] This would result in many more EU nationals being able to vote in their countries of domicile if not also in their countries of origin. As the Declaration points out, "[a]ll European citizens are entitled to equal treatment under the laws and judicial institutions of all Member States."[179] The time has come "to put an end to all forms of protectionism,"[180] such as that effectuated through outmoded, regionally divergent, and ineffective anti-dual citizenship, largely aimed at keeping out immigrants rather than addressing dual citizenship issues. Several Danish grassroots organizations are promoting the same message and objective through action aimed at the Danish government.[181] Although people seeking dual citizenship from New Zealand to Norway are demanding action in this area now, it remains questionable whether their voices will be heard for the simple, yet ironic reason that they can neither vote in their countries of origin nor in their countries of domicile. Even if they could, their voices might instead be drowned by what currently is seen as more overriding concerns in political rhetoric: border protection, immigration control (whether aimed at legal or illegal immigration), and child abduction issues. These issues could and should be solved hand-in-hand with appropriate citizenship legislation.

"In sum, states' regulations bearing on citizenship can no longer be deemed to lie solely within their own jurisdictions but are in fact circumscribed by obligations to ensure the full protection of human rights."[182] "Citizenship in a mobile world is not a concept for navigating between the principles of universal justice and human rights on the one hand, and justice within bounded political communities such as nation-states on the other hand."[183] These principles can be merged, as has already been done without significant problems in the EU and beyond. Fragmentation of legisla-

177. *See id.* at 2-3.
178. *Id.* at 6 (emphasis added).
179. *Id.* at 3.
180. *Id.* at 4.
181. *See, e.g., Danes Abroad Join Fight for Dual Citizenship, supra* note 56.
182. Faist Changes, *supra* note 34, at 175.
183. *Id.* at 197.

tion and policies into isolated segments attempting to solve one problem at a time, without regard to the significant consequences in other areas, ought to be a thing of the past. This is especially so when the result is modern, otherwise liberal nation states denying equal access to important democratic rights. Just as preferences for, as an example, national-only trade, labor, and communications were broken down as the world became more international, so could and should concepts of nationality evolve into more harmonious, equitable solutions where nationhood is no longer the only or main predictor of citizenship.

VII. THE DESIGN OF NEW CITIZENSHIP LEGISLATION

This article has demonstrated that it would be more rational for nations to give up the fight against dual citizenship, which cannot be won. Instead, they should adopt appropriate legislation allowing for equal access to dual citizenship as well as the rights and duties related thereto. It is beyond the scope of this article to propose such actual legislation, but it is of course entirely feasible to do so, as shown by countries such as Sweden. Eva Ersbøll, a dual citizenship scholar and researcher, recommends that

> [i]t should be a starting point that citizenship is the expression of a real connection to a state. Of course, this means that 'citizenship of convenience' should be avoided. Dual citizenship should be obtainable for first- and second-generation immigrants as well as for emigrants with close connections to both the emigration and immigration states. The decisive factor is whether the applicant can be presumed to have a strong, real interest in remaining attached to both states. Such a presumption does not apply to subsequent generations. It is thus recommended that a state does *not* use the *jus sanguinis* in such a way that third-generation immigrants and beyond automatically acquire the citizenship of the host country. Basically, third and subsequent generations cannot be presumed to have a strong attachment to the state from which their grandparents, great-grandparents or great-great-grandparents emigrated. [Further,] persons with dual citizenship must first and foremost observe the laws of their host nation. Issues of civil status and the like should thus be decided based on the legislation of this nation. Po-

> litical rights should first and foremost be exercised in the host nation. Public sector employment where the employee can truly influence how the nation state is governed could be conditioned upon the employee possessing only citizenship of that nation and thus not dual citizenship.[184]

The latter concern—allowing only single-citizenship holders access to positions in which great influence can be exercised over the national affairs of a country—could similarly be considered by the United States. Currently, most, if not close to all, federal agencies require U.S. citizenship for employment.[185] This excludes non-citizens (who nonetheless display great loyalty to the United States) from numerous jobs with no impact whatsoever on any law, policy, or governmental decision-making.[186] Further, for some positions it is even required that the applicant be a U.S. citizen *only*, thus excluding even dual citizens from federal employment.[187] This is in spite of the fact that no U.S. law requires such stringent policies and even stipulates that, for example, nationals of NATO allies may, in fact, obtain federal employment.[188] To be sure, nations have an important interest in ensuring that only persons who are truly loyal to the nation work in influential, if not all, national positions, but as demonstrated, citizenship defined *only* on the basis of nationhood is no guarantee of such loyalty (think Unabomber, Timothy McVeigh, and José Padilla, just to name a few). Similarly, many non-citizens in reality display an even greater sense of loyalty to their host country than their country of origin, although wishing to remain a citizen of both for the reasons described above.

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184. Ersbøll Report, *supra* note 4, at 5-6.

185. *See, e.g., Frequently Asked Questions: What if I don't have a Social Security Number (SSN)? Are there jobs for non-citizens?*, USAJOBS, http://www.custhelp.usajobs.gov/cgi-bin/usopm.cfg/php/enduser/std_adp.php?p_faqid=24 (last visited Jan. 3, 2011). The site explains that "[o]nly United States citizens and nationals may be appointed in the competitive civil service. However, Federal agencies may employ certain non-citizens who meet specific employability requirements in the excepted service or the Senior Executive Service. Several factors determine whether a Federal agency may employ a non-citizen. There are only a limited number of Federal jobs that are available to non-U.S. citizens."

186. *See, e.g., Linguist Career Opportunities*, FEDERAL BUREAU OF INVESTIGATION CAREERS, http://www.fbijobs.gov/1241.asp (last visited Jan. 3, 2011). The job description states that FBI Contract Linguist applicants must be United States citizens and willing to renounce dual citizenship.

187. *Id.*

188. *See, e.g., Hiring Noncitizens to Fill Permanent Positions*, U.S. DEP'T OF AGRICULTURE: ADMINISTRATIVE AND FINANCIAL MANAGEMENT, http://www.afm.ars.usda.gov/hrd/jobs/VISA/Noncitizens-PermanentPositions.pdf (last visited Jan. 3, 2011) (stating that "[e]very Appropriations Act since 1939 has included a ban on using appropriated funds to employ noncitizens within the continental United States" but that "[n]ationals of countries currently allied with the United States in a defense effort (e.g., NATO allies)" are exempt from these bans).

VIII. CONCLUSION

Little empirical evidence supports the standard arguments raised against dual citizenship.[189] Instead, many compelling reasons exist for modern democracies to fully legalize dual citizenship. Doing so would be not only "a matter of respect for a migrant's connections and affiliations with the country of origin"[190] but also a much greater degree of equality between not only residents of those nations that fully accept dual citizenship and those that do not, but among residents living in nations that allow dual citizenship only for certain immigrants.

Although it may sound relatively simple to give up one's citizenship to naturalize in a new country of residence in order to obtain the full range of legal and democratic rights and protections of that territory, in the author's knowledge, many migrants are simply not ready to sever their ties to their countries of origin and thus do not apply for citizenship in their new host countries. Nor should they have to sever these ties when so many others similarly situated are allowed to retain the original citizenship that so many consider an integral part of their basic identity. Further, reality shows that most nations already have adopted dual citizenship laws with few, if any, legal or practical problems. Nations that have not done so should now take steps in the same direction to ensure full equality among citizens at the national, regional, and supranational levels.

189. ALEINIKOFF & KLUSMEYER, *supra* note 53, at 7.
190. *Id.* at 7.