

# PERENNIAL OUTSIDERS: THE EDUCATIONAL EXPERIENCE OF TURKISH YOUTH IN GERMANY

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## INTRODUCTION

“When you talk about the debate on Turkey’s E.U. membership,” a German of Turkish origin who serves in the Parliament of the European Union explains, “it immediately becomes a talk about head-scarf issues and building mosques.”<sup>1</sup> This is in part because

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1. Anna Mulrine, *Europe’s Identity Crisis*, U.S. NEWS & WORLD REP., Jan. 10, 2005, at 36.

Western Europe has long considered itself a “Christian Club.”<sup>2</sup> The treatment of second-generation Turks in Germany and other European countries offers a window into the obstacles that must be confronted and overcome before Turks gain full equality in Europe.

Totaling about four million, persons of Turkish origin make up the largest immigrant group in Europe, and virtually all of them are Muslims.<sup>3</sup> So when the European Union rendered Turkey “eligible” for membership—a long process described elsewhere in this issue<sup>4</sup>—Prime Minister Erdogan proclaimed that the invitation proved Europe was “not a Christian Club” after all.<sup>5</sup> But what does it mean to call an increasingly secular Europe a Christian Club? To a substantial degree, the culture that unifies Europe today is defined by the “other” who is not part of that culture.<sup>6</sup> The Christian Club, then, may be seen as cultural rather than overtly religious, and Turks may represent the quintessential “other.”<sup>7</sup>

This Article explores the status of Turks who reside in the European Union by drawing in part from the social science literature on the second generation of contemporary immigrants—that is, the children of migrant parents, raised in the receiving society—a field

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2. See Ian Ward, *The Culture of Enlargement*, 12 COLUM. J. EUR. L. 199, 207 (2005-06) (quoting German Chancellor Helmut Kohl) (observing that EU enlargement brings “into ever sharper focus” differences between traditional European self-identification and Turkish culture and religion). The European Union ultimately rejected Kohl’s viewpoint when it omitted any mention of Christianity, or for that matter God, in its draft Constitution. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1. As of 2008, it is unclear whether the Treaty will ultimately be ratified by all 27 states. *The Lisbon Treaty: The Ratification Game*, ECONOMIST, June 26, 2008 (reporting that only ten of the twenty-seven EU member states have fully ratified the Treaty, which requires unanimity).

3. Maurice Crul & Hans Vermeulen, *The Second Generation in Europe*, 37 INT’L MIGRATION REV. 965, 968-70 (2003) (noting that over half of Europe’s Turkish population is in Germany). Cf. Ward, *supra* note 2, at 207 (noting that “virtually all” people in Turkey are Muslim).

4. See Fernanda Nicola, *Turkey’s Admittance to the E.U.*, 24 AM. U. INT’L L. REV. 711 (2009).

5. Ward, *supra* note 2, at 210.

6. See *id.* at 207.

7. See *id.* at 215-17 (citing EDWARD W. SAID, ORIENTALISM xviii, 1-2, 70 (25th anniv. ed., Vintage Books 2003) (1978)) (arguing that Turkey’s Muslim culture and geographic proximity embody a construction of Orientalism critical to European self-identification).

whose practitioners concede it is still “in its infancy.”<sup>8</sup> This Article focuses on Germany because it is home to more than half of Europe’s Turks, and on youth, because an important test of the permeability of social boundaries is whether the second and third generations of immigrants can cross them. Part I provides an overview of the demography and history of Germany’s Turkish population, and introduces the questions I will be examining. Part II turns to the educational system, focusing on the stratification of students into tracks that have a lifelong impact on career paths and socio-economic status, and the correlation between ethnicity and assignment to the lowest track. Part III examines religious identity within the public school system as played out through the differential treatment accorded to training in Islam during the school day when compared to classes offered to children who practice other major religions. Finally, Part IV explores some lessons one can draw from the experience of second-generation Turks in Germany, and what their apparent lack of mobility augers for the treatment of Turkey as an equal partner in Europe, assuming that it gains acceptance into the European Union. Finally, this Article concludes that despite recent progress, legal and cultural barriers continue to inhibit the assimilation of German Turks into mainstream German society.

## I. THE LEGAL AND SOCIAL STATUS OF TURKISH IMMIGRANTS AND THEIR CHILDREN IN GERMANY

Roughly half of all Turks in Europe live in Germany. There are approximately 3.5 million Muslims of all nationalities in Germany, constituting about 4% of the German population.<sup>9</sup> As in the rest of the European Union, most of Germany’s Muslims are of Turkish origin. About 2.7 million Turks live in a reunited Germany, predominantly in the former West and in Berlin.<sup>10</sup> Persons of Turkish

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8. Roxane Silberman, Richard Alba & Irène Fournier, Segmented Assimilation in France? Discrimination in the Labour Market against the Second Generation, 30 *ETHNIC & RACIAL STUD.* 1, 1 (2007).

9. Fed. Office for Migration and Refugees, F.R.G., Islam in Germany, [http://www.integration-in-deutschland.de/nn\\_284456/SubSites/Integration/EN/03\\_Akteure/ThemenUndPerspektiven/Islam/Deutschland/deutschland-node.html?\\_\\_nn=true](http://www.integration-in-deutschland.de/nn_284456/SubSites/Integration/EN/03_Akteure/ThemenUndPerspektiven/Islam/Deutschland/deutschland-node.html?__nn=true) (last visited Feb. 1, 2009). The German government does not collect data on religious affiliation, so no exact numbers are available. *Id.*

10. *Cf.* FED. MINISTRY OF THE INTERIOR, F.R.G., MIGRATION AND

origin account for approximately 2.4% of the total population of Germany, although they make up a much higher proportion of the residents of certain areas.<sup>11</sup> When pundits assert that “[t]he integration of Muslims into German society is a forefront issue,”<sup>12</sup> they are largely referring to Germans of Turkish origin.

The history of Turkish immigration to Germany is well documented. Turks began immigrating to Germany in the 1960s and 1970s, when West Germany welcomed Turks as casual laborers or “guestworkers.”<sup>13</sup> Initially, Germany expected Turkish men to come without their families and then to return home.<sup>14</sup> The foreign laborers shared this expectation. They thought of themselves as sojourners, transient residents who would ultimately return to their homeland.<sup>15</sup> But many Turkish laborers eventually sent for their families, children of Turkish parents were born in Germany, and whole families often settled in.<sup>16</sup> These immigrant families tended to be headed by

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INTEGRATION: RESIDENCE LAW AND POLICY ON MIGRATION AND INTEGRATION IN GERMANY 28, 30-32 (2008), available at [http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2008/Migration\\_und\\_Integration\\_en,templateId=raw,property=publicationFile.pdf/Migration\\_und\\_Integration\\_en.pdf](http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2008/Migration_und_Integration_en,templateId=raw,property=publicationFile.pdf/Migration_und_Integration_en.pdf) (indicating that Turkey is the country of origin for the largest group of foreigners living in Germany and that twice as many foreigners live in the former West Germany as in the former East Germany).

11. Central Intelligence Agency, *The World Factbook: Germany*, <https://www.cia.gov/library/publications/the-world-factbook/geos/gm.html> (last visited Feb. 1, 2009).

12. Edward J. Eberle, *Free Exercise of Religion in Germany and the United States*, 78 TUL. L. REV. 1023, 1060 (2004).

13. Subsequent waves of Turkish immigrants to Germany included those seeking political asylum, many of whom were better educated. Cf. Richard D. Alba et al., *Ethnic Inequalities in the German School System*, in *PATHS TO INCLUSION: THE INTEGRATION OF MIGRANTS IN THE UNITED STATES AND GERMANY* 115, 116-17 (Peter H. Schuck & Rainer Münz eds., 1998) (suggesting that the immigration resulting from formal recruitment of guest workers was later replaced by asylum seekers because of the German Constitution’s formerly liberal asylum provision).

14. Cf. Nicole Jacoby, *America’s De Facto Guest Workers: Lessons From Germany’s Gastarbeiter for U.S. Immigration Reform*, 27 FORDHAM INT’L L.J. 1569, 1582 (2004) (describing how the early regulations determined whether a guestworker could stay on the basis of a worker’s personality and whether the worker was “worthy of hospitality”).

15. See *id.* at 1604 (describing the reluctance of Turks to renounce Turkish citizenship for German citizenship because they “adhered to the dream of returning to their homeland”).

16. See *id.* at 1590 (noting that Turkish workers began to leave employee sponsored housing once their families came to Germany).

uneducated fathers from peasant backgrounds; they remained poor and relatively religious despite the secular state they left behind.<sup>17</sup>

The Turkey which the guestworkers left behind in the 1960s was a world apart from what they found in Germany. The guestworkers came from small towns dependent on an agricultural economy.<sup>18</sup> At least one-third of the women were illiterate.<sup>19</sup> Although Turkey is the only predominantly Muslim country which does not base its legal system on Sharia law, virginity largely determines an unmarried woman's status: until 2002 the legal system permitted expulsion of school girls failing a virginity test.<sup>20</sup> Similarly, until legal reforms made in connection with Turkey's application to the European Union became effective in 2005, the criminal code recognized the honor killing of a "first degree relative[ ] involved in an illicit relationship" as a mitigating factor that permits reduction of the penalty in homicide cases.<sup>21</sup> Small wonder that Turkish immigrants and Germans did not adjust easily to each other.

Prior to an overhaul of naturalization law in 1999, relatively few guestworkers or their children qualified for German citizenship. The reforms allowed the children of foreign workers who had resided in

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17. See, e.g., AYHAN KAYA & FERHAT KENTEL, CTR. FOR EUR. POLICY STUDIES, EURO-TURKS: A BRIDGE OR A BREACH BETWEEN TURKEY AND THE EUROPEAN UNION? 3-4, 7 (2005), available at [http://shop.ceps.eu/BookDetail.php?item\\_id=1189](http://shop.ceps.eu/BookDetail.php?item_id=1189) (discussing stereotypes of Turkish guestworkers and noting that Turkish guestworkers in the 1960s were more educated and skilled compared to Turkish guestworkers arriving in the 1970s from more rural parts of Turkey).

18. Cf. Ward, *supra* note 2, at 212 & n.75 (acknowledging the historical predominance of rural agricultural economy in Turkey).

19. Cf. *id.* (observing that—even in contemporary Turkey—a third of women are illiterate). A recent study of elementary school children revealed that 21.5% of the mothers who were raised in Turkey had less than five years of formal education. See BIRGIT LEYENDECKER, HEINRICH BÖLL STIFTUNG, BILDUNGSZIELE VON TÜRKISCHEN UND DEUTSCHEN ELTERN: WAS WIRD UNTER BILDUNG VERSTANDEN UND WER IST FÜR DIE VERMITTLUNG VON BILDUNG ZUSTÄNDIG? (2008), [http://www.migration-boell.de/web/integration/47\\_1499.asp](http://www.migration-boell.de/web/integration/47_1499.asp).

20. See, e.g., Marcia L. Pearson, Comment, *A Blemish on the Modern Face of Turkey: The Historical Background and Social, Legal, and International Implications of Virginity Testing in Turkey*, 28 N.C. J. INT'L L. & COM. REG. 663, 663-64 (2003) (explaining that a woman's "chastity" still determines her "worth" in Turkey, even though the government recently stopped virginity testing by schools).

21. Rebecca E. Boon, Note, *They Killed Her for Going Out with Boys: Honor Killings in Turkey in Light of Turkey's Accession to the European Union and Lessons for Iraq*, 35 HOFSTRA L. REV. 815, 829 (2006).

Germany for at least eight years to hold dual citizenship in Germany and their parents' country of origin, but they must still relinquish one nationality by the age of eighteen.<sup>22</sup> Despite these changes, the rate of citizenship remains low among the Turks in Germany, roughly 26%.<sup>23</sup> There is a high correlation between poverty and religiosity among the Turks in Germany, and the poorer, more religious Turks are least likely to seek citizenship.<sup>24</sup> The low citizenship rate means that Turks have relatively little influence in politics, whether at the national level or in local elections that influence issues such as educational policy.

The presence of a large group of "outsiders"—whether citizens or not—gives rise to a variety of concerns, especially in light of a declining birthrate among ethnic Germans and an aging population. Turks tend to be younger than persons of German origin, and they generally have larger families, although the original guestworkers are also aging.<sup>25</sup>

If and when Turkey joins the European Union, membership will presumably bring new waves of Turkish migrants, freer to move in

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22. See, e.g., Jacoby, *supra* note 12, at 1603-05 (suggesting that first- and second-generation Turkish immigrants to Germany did not embrace German naturalization until Germany changed its laws to allow dual citizenship); Ruben Seth Fogel, Note, *Headscarves in German Public Schools: Religious Minorities are Welcome in Germany, Unless – God Forbid – They are Religious*, 51 N.Y.L. SCH. L. REV. 618, 627 & n.66 (2006-07) (citing Ulrich Mammey & Karl Schwartz, *The Demographic Characteristics of the Immigrant Population in Germany*, in COUNCIL OF EUR. DIRECTORATE FOR SOC. AFFAIRS & HEALTH, *THE DEMOGRAPHIC CHARACTERISTICS OF IMMIGRANT POPULATIONS 203* (Werner Haug, Paul Compton & Youssef Courbage eds., 2002)) (predicting that the relaxation of old German laws barring dual citizenship in Turkey and Germany will yield a larger percentage of Muslims in the German population).

23. KAYA & KENTEL, *supra* note 13, at 95.

24. *Cf. id.* at 27 (indicating that inner city enclaves of Turkish immigrants have become increasingly impoverished and increasingly segregated and that these groups have a greater distrust of the state).

25. *Cf.* FED. STATISTICAL OFFICE, F.R.G., *GERMANY'S POPULATION BY 2050: RESULTS OF THE 11TH COORDINATED POPULATION PROJECTION 50* (2006), available at <http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Content/Publikationen/SpecializedPublications/Population/GermanyPopulation2050.property=file.pdf> (projecting that by 2050, the average age of Turkish people will be younger than the average age of the German population). See also OECD, *International Migration Outlook, Population: age, sex and nationality*, 1, January 2006, <http://statline.cbs.nl/statWeb/table.asp?STB+G1,G2,G3&LA=en&DM=SL EN&PA=03743> (last visited Jan. 3, 2008).

and out of European countries.<sup>26</sup> How will they be assimilated? Will they seek assimilation or prefer to maintain primarily Turkish identities? Will new migrants feel merely tolerated and marginalized, or will they feel that they are treated as equals? Hints may be found in the experiences of the second-generation Turks, children of the guestworkers who arrived beginning in the 1970s.<sup>27</sup>

This Article draws heavily on the research conducted by social scientists who have applied methodologies derived from the study of U.S. immigrants to the case of second- and third-generation Turks in Europe during the last decade.<sup>28</sup> They have examined questions such as whether the continuing disadvantages found among the children of the guestworkers are attributable in whole or in part to their socioeconomic status, their minority status, their sociocultural distance from middle class norms (*i.e.*, lack of cultural capital), or a shared perception that they are transients within the community. In analyzing these issues it is important to ask whether disadvantages are embellished or diminished over time, and to remember that one generation remains a short period of time in which to evaluate integration.

Social scientists distinguish between characteristics attributable to the immigrants themselves and indicators of disadvantage that are

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26. See generally European Parliament and Council Directive 2004/38/EC, 2004 O.J. (L 158) 77 (codifying previous directives into one instrument to provide nationals of EU Member States and their families the right to move freely among EU Member States).

27. The children of more recent waves of immigration are largely excluded from the studies on which I rely below, except to the extent that they had reached school age at the time the data were collected.

28. See Richard Alba, *Bright vs. Blurred Boundaries: Second-Generation Assimilation and Exclusion in France, Germany, and the United States*, 28 ETHNIC & RACIAL STUD. 20, 20 (2005) (applying observations in sociological literature on assimilation in the United States to the social construction of ethnicity in contemporary Europe). Alba points out that, although anthropologist Fredrik Barth conducted “pioneering investigations” of social boundaries in the 1960s, “relatively little work has been done to theorize their nature and the processes that affect them, even though it is apparent that both are critical to ethnic construction and change.” *Id.* at 20. Most of the important work has been done by academics in the United States, whose theories have recently been applied to the study of immigrants in Western Europe. See, e.g., Alba et al., *supra* note 22, at 120; Crul & Vermeulen, *supra* note 3, at 966-67; cf. Maurice Crul & Jeroen Doornik, *The Turkish and Moroccan Second Generation in the Netherlands: Divergent Trends between and Polarization within the Two Groups*, 37 INT’L MIGRATION REV. 1039 (2003).

imposed by society's legal structures and customs.<sup>29</sup> With respect to the first set of issues, social scientists have examined whether the sources of disadvantage attributable to characteristics of the immigrants are immutable (such as complexion or hair color), or subject to reduction through the assimilation process (such as language, dress, or manners).<sup>30</sup> The attitudes of the immigrants themselves may prove critical. Turkish scholars Ayhan Kaya and Ferhat Kentel identify three distinct perspectives based on their preliminary survey data on Euro-Turks: (1) "bridging groups," who are liberal Euro-Turks who see themselves as bridging two cultures, with varying degrees of affiliation with the homeland and the host country; (2) "breaching groups," characterized by "extreme religi[osity]" and nationalism for their homeland; and (3) the "assimilated", whom they estimate comprise only about 20% of the Euro-Turkish population, with the remaining 80% divided roughly equally between the bridging and breaching groups.<sup>31</sup>

The indicators imposed by society include access to citizenship, language, religion, and education,<sup>32</sup> all of which come into play when we examine the social position of German-Turks. In Germany, for example, the "social distance" that both symbolizes and causes what sociologists call a "bright boundary" (one that is difficult to cross) was underscored by the historical difficulty of obtaining naturalization.<sup>33</sup> So too, separation persisted in the educational system, which is the focus of the rest of this essay.

## II. THE STRATIFICATION OF TURKISH-GERMAN YOUTH IN GERMAN SCHOOLS.

Students in German public schools are consigned to specific tracks that determine their life prospects from a very early age. With some regional variations, after fourth grade German children generally enter one of three school systems: the Hauptschule, the Realschule or

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29. Cf. Alba, *supra* note 28, at 41 (arguing that the precise nature of each social boundary determines its permeability).

30. See, e.g., Alba et al., *supra* note 13, at 123.

31. Compare KAYA & KENTEL, *supra* note 17, at 69 (linking permeability of the immigrant-host boundary to socioeconomic and religious stratification within Turkish-German immigrant groups), with Alba, *supra* note 25, at 27-29 (discussing the bright and blurred types of boundaries).

32. See, e.g., Alba, *supra* note 28, at 27-37.

33. *Id.* at 27-29.

the Gymnasium.<sup>34</sup> A fourth school system—the Gesamtschule—combines all three forms of schooling under one roof, allowing students to move from track to track as warranted; created in the 1970s, it primarily serves underprivileged children, including the children of immigrants.<sup>35</sup>

The Hauptschule is the least prestigious track; Hauptschule students receive “the least demanding curriculum.”<sup>36</sup> The population of the Hauptschule is dominated by immigrants and other children deemed to be “educationally disadvantaged.” Observers report that it is “extremely rare” for a Hauptschule student to transition to a Gymnasium or gain entrance to a university.<sup>37</sup> Precise figures are unavailable, but experts estimate that somewhere between two-thirds and three-quarters of all of the Turkish-German children in the German schools are assigned to the Hauptschule, in contrast to about one-third of German children.<sup>38</sup> Indeed, children of Turkish origin are significantly more likely to be assigned to the Hauptschule than non-Turkish children from similar socio-economic backgrounds, as defined by factors such as their parents’ educational attainment and job, and family size.<sup>39</sup> Children of Turkish background who were born in Germany are slightly less likely to be assigned to the Hauptschule than those who arrived in the country after age five.<sup>40</sup>

The Realschule—the middle track—offers a more solid education, a six-year course culminating in an examination and, after passing the exam, a certificate. The certificate qualifies graduates to attend

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34. See Alba et al., *supra* note 13, at 125.

35. Interview with Ralph Ghadban, in Princeton, N.J. (Oct. 24, 2008); see also Alba et al., *supra* note 13, at 124-27 (discussing the benefits and drawbacks of each of the three educational tracks in the German systems).

36. Alba et al., *supra* note 13, at 125.

37. *Id.*

38. See, e.g., Crul & Vermeulen, *supra* note 3, at 976 (observing that a greater proportion of Turkish children in Germany enter vocational school than of Turkish children in France, Belgium, or the Netherlands); Alba et al., *supra* note 22, at 129 (observing that two-thirds of Turkish and Italian children, as compared to one-third of German children, enter vocational school).

39. See, e.g., Alba et al., *supra* note 13, at 138 (stating that children of German parents with non-ethnic backgrounds similar to parents of Turkish-German children are 13 to 16% less likely to be assigned to the Hauptschule than the Turkish-German children).

40. *Id.* at 137.

post-secondary training in a Fachhochschule where they can train for white-collar careers, for example, civil engineering or social work.<sup>41</sup>

The highest educational track is the Gymnasium, which offers the only pathway to a university education. The Gymnasium requires eight or nine years of study, followed by a difficult examination (the "Abitur"); a student must pass the Abitur to gain entrance to a university program.<sup>42</sup> In the 1990s, German children were four to five times more likely than Turkish children to gain entrance to a Gymnasium.<sup>43</sup> A government survey conducted in 2005-2006 reported that 44.7% of children of German background were enrolled in a Gymnasium, compared to only 13.2% of children who reported Turkish origin, reflecting large disparities but some progress over the last decade.<sup>44</sup> Children from other immigrant groups, such as those from Greece and the former Yugoslavia, are more likely to enter a Gymnasium than the children of Turks or Italians.<sup>45</sup>

Increasingly, as the labor market has tightened, assignment to a lower track also reduces a child's chance of being placed in an apprenticeship for a skilled job. Young people in the Realschules and even Gymnasium students compete for apprenticeships and often prevail over Hauptschule students. Gymnasium students have better opportunities than those in the lower tracks to obtain apprenticeships in skilled or white-collar occupations that carry prospects for good income, security, and social prestige, and large numbers of university-bound students also pursue apprenticeships.<sup>46</sup> Even with this stiff competition from students from the higher tracks, German Hauptschule students entering an apprenticeship outnumber those who do not by 3 to 1.<sup>47</sup> However, roughly half of all children of

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41. *See id.* at 125.

42. *See id.* at 124-25.

43. *See id.* at 128.

44. Beauftragte Für Migration, Flüchtlinge, und Integration, F.R.G., Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration über die Lage der Ausländerinnen und Ausländer in Deutschland [Report of the Representative of the Federal Government For Migration, Refugees and Integration on the Situation of Foreigners in Germany] 58 (2007), available at [HTTP://WWW.BUNDESREGIERUNG.DE/CONTENT/DE/PUBLIKATION/IB/ANLAGEN/AUSLAENDERBERICHT-7,PROPERTY=PUBLICATIONFILE.PDF](http://www.bundesregierung.de/content/de/publikation/ib/anlagen/auslaenderbericht-7,property=publicationfile.pdf).

45. *See Alba et al., supra* note 13, at 129 (explaining that Greeks have an advantage over other immigrant groups because their children attend a separate Gymnasium system for Greek students in some parts of Germany).

46. *See id.* at 130-31.

47. *Id.* at 130 (adding that only approximately one in ten Germans leave school

immigrants in the Hauptschule leave school without either a certificate or apprenticeship.<sup>48</sup> As a result, Turks and other children of immigrants, such as those from the former Yugoslavia, leave the Hauptschule with minimal education. They are approximately 1.5 times more likely to lack a certificate (required for many jobs and to qualify for an apprenticeship) than their German peers.<sup>49</sup> About one-third of the children of immigrants coming out of the Hauptschule fail to receive an apprenticeship, and those who do are concentrated in a limited range of jobs where wages are low and full time jobs scarce, such as beautician for girls or mechanic for boys.<sup>50</sup> It should be noted, however, that despite their concentration in the lower educational tracks and limited vocational training, second-generation Turks have made some modest economic progress when compared to their parents.<sup>51</sup>

It may be tempting to attribute the high concentration of youth of Turkish origin in the lower tracks to intentional discrimination, but the reality appears to be more complex. Parental aspirations play a role in assignment to a course of schooling in every culture. Many Turkish parents may not understand the stakes, and may not advocate for their children when the assignments to tracks are made in fourth grade.<sup>52</sup> Further complexities arise when parents plan to return to Turkey because they may not see the value of an education they do not expect their children to use.<sup>53</sup>

When it comes time to assign children to the differing educational tracks, teachers and school administrators exercise enormous discretion. Teachers may unintentionally discount the talents of Turkish-German youth, especially those who do not speak German at

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with a Hauptschule diploma and no apprenticeship).

48. *Id.*

49. *See id.* at 130, 139.

50. *Id.* at 130-31.

51. *See generally* Wolfgang Seifert, *Social and Economic Integration of Foreigners in Germany*, in *PATHS TO INCLUSION: THE INTEGRATION OF MIGRANTS IN THE UNITED STATES AND GERMANY* 83 (Peter H. Schuck & Rainer Münz eds., 1998) (noting also that immigrants from Turkey have been disadvantaged in the labor market by competition with “immigrants” from East to West Germany and from other EU countries).

52. *See* Alba et al., *supra* note 13, at 127 (arguing that immigrant parents may not understand the “near finality” of the linkage between the educational track and “different tiers of the labor market”).

53. *Id.*

home.<sup>54</sup> Indeed, the extent to which the child's family functions well in the German language and has made strides toward assimilation is the best predictor of whether the child will be assigned to the Hauptschule. Three-quarters of children who have one parent who is not fluent in German are assigned to the Hauptschule.<sup>55</sup> The available research does not yet offer reliable conclusions about whether these placements are the result of prejudice, are tied to underperformance in primary school, or perhaps, are traceable to factors that inhibit the parents' ability to advocate for a higher placement.

Comparative data suggest that several factors promote better educational outcomes for immigrant and second-generation youth. These include starting school at an earlier age, having more contact hours with teachers, availability of help from outside the family with homework, and later assignment to an educational track.<sup>56</sup> Turkish children in Germany, who do not enter school until age six and initially attend for only half the day, receive no help with homework from the state, and are consigned to educational tracks at age ten fare poorly compared with their immigrant peers in France and Belgium. In the latter countries, children start school at age two and one-half, attend for the full day, receive mentoring for homework, and are not assigned to educational tracks until age 14 or 15.<sup>57</sup> Experts conclude that the Turkish children in Germany "are in the worst possible situation."<sup>58</sup> They start school relatively late, spend fewer hours in school, receive no structural support outside of school, and then are assigned to stratified tracks just four years after beginning their education, with no time to catch up. As a result, "Germany performs worst of all" among European countries with respect to educating its migrant children.<sup>59</sup>

While Germany's educational policies exacerbate the problems

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54. Cf. Crul & Doomernik, *supra* note 28, at 1050 (finding such "unconscious lower[ing]" of standards in the Netherlands).

55. Alba et al., *supra* note 13, at 144.

56. Crul & Vermeulen, *supra* note 3, at 978-79. In France and Belgium, students begin school at two and one-half years of age and are not assigned to an educational track until they reach fourteen or fifteen, whereas in Germany students do not start school until they are six, and are assigned to an educational track at ten years of age. *Id.*

57. *Id.*

58. *Id.* at 979.

59. *Id.*

Turkish-German children confront, the state's choices do not account for all of the variations between Turks and other immigrant groups, inside or outside of Germany. Alba et al. suggest that immersion in a thriving ex-patriot social community may be as important to school assignment as parental failure to acquire language skills or starting school before age six.<sup>60</sup> Fully two-thirds of children whose household head (generally the father) identifies another Turk as his closest friend are found in the lowest track.<sup>61</sup> The more evidence that strong communal bonds enrich an immigrant family's life, the more likely the child will be assigned to a lower school track. If "progress" is measured by the degree of assimilation attained, Turks appear to be making slow progress in Germany.<sup>62</sup>

According to Alba et al. three possible explanations account for the persistent disadvantage of Turkish youth when compared to groups that arrived in Germany more recently. First, the Turks are immersed in their own ethnic and cultural world, including friends, language and food. Second, many parents still think of themselves as sojourners. They intend to return to their homeland, even if they never do so, and some of them send their children back to Turkey for at least part of their schooling. Third, they may be the victims of discrimination. Immersion in Turkish culture proves to be the most important factor distinguishing the Turks from other immigrant groups.<sup>63</sup> It appears that the strong communal bonds among Turks that enrich daily life may hold their children back from educational and economic achievement in Germany.

A major break with the Turkish family and community may accompany strides toward upward mobility. Consider the story of Mehmet, a Turk born and raised in Germany who is a professor at a

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60. See Alba et al., *supra* note 13, at 144-45 (describing the ethnic characteristics of immigrant students in Hauptschule, showing that the German-speaking ability of parents and the ethnic composition of neighborhoods are good indicators of an immigrant students success in the German educational system).

61. *Id.* at 144; *cf.* Seifert, *supra* note 51, at 98 (noting that even among the second generation, who speak German better than their parents did, the vast majority do not name a single German among their three closest friends). If the head of household's friendships continue to serve as a predictor of school placement, this does not auger well for the school success of the third generation.

62. See Crul & Vermeulen, *supra* note 3, at 983 (showing similar results among the Turkish immigrant population in the Netherlands).

63. See Alba et al., *supra* note 13, at 145-46.

university in the United States.<sup>64</sup> Mehmet is the eldest of three children of a Turkish laborer who had come to Germany as a guest worker. Neither of his parents completed secondary school, and neither held a skilled job. When Mehmet was in fourth grade, his teacher offered him a boost: the teacher assigned Mehmet to a Realschule, the middle track. For reasons he has never explained, Mehmet's father protested, arguing that Mehmet should be in Gymnasium. The school took the position that if the boy could not succeed in Gymnasium and had to be placed back into the Realschule after a few months or more, it would be a humiliating and public defeat.<sup>65</sup> Ultimately, Mehmet entered Gymnasium where he was the only person of Turkish origin in his class. When he reached high school he decided to come to the United States as an exchange student, a plan he developed and pursued on his own. He never returned to Germany to study or live.<sup>66</sup> Instead, after a year with an American family, he received a scholarship to a small liberal arts college in the American south and from there went on to an Ivy League university where he earned a Ph.D. Mehmet's younger brother completed Realschule and works in a restaurant.<sup>67</sup> His older sister is a housewife and mother of two, although she completed an Ausbildung (apprenticeship) as a hairdresser and eventually obtained a Meisterbrief (master craftsman's diploma).<sup>68</sup> In short, Mehmet's biography does not offer any magic bullet for dramatic mobility in family culture.

Researchers in the Netherlands suggest that the influence of an older sibling or other relative outside the nuclear family who can help mediate between generations may prove pivotal to educational

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64. Interview with Anonymous (Jan. 9, 2008). To protect his privacy, and with his permission, in this Article the subject of this interview will be referred to as "Nehmet."

65. *Id.*

66. *Id.* Apparently many Turks born in Germany who earn German university degrees also leave the country or want to do so. A recent survey of 250 Turkish-Germans with university degrees revealed that 38% of them were considering moving to Turkey where their skills would be valued, the cost of living is lower, and they would be accepted socially. Michael Sontheimer, *Jung, gut und unerwünscht*, DER SPIEGEL, May 19, 2008, at 52. To the extent that they follow through, positive role models for children in the Turkish-German community will become scarcer. *Id.*

67. See Interview with Anonymous (Jan. 9, 2008).

68. *Id.*

achievement for second-generation immigrants.<sup>69</sup> These outside influences may help with homework, and offer both positive and negative examples: some have pursued higher educational tracks and been rewarded; others—especially women—may have married early, left school, and regretted their own lack of options.<sup>70</sup>

The experience of those who cross bright boundaries and leave the worlds of their family and childhood behind is not easy. Social science research indicates that where boundaries are bright, and where people know which side of the boundary they stand on, assimilation:

will generally be experienced by the individual as something akin to a conversion, *i.e.*, a departure from one group and a discarding of signs of membership in it, linked to an attempt to enter into another, with all the social and psychic burdens a conversion entails: growing distance from peers, feelings of disloyalty, and anxieties about acceptance.<sup>71</sup>

The personal price of boundary crossing may mean that some individuals do not even aspire to make the journey. To the contrary, some Euro-Turks resist “assimilation,” which they expressly contrast to “integration”: the former means becoming culturally European, and the latter means preserving Turkish culture and identity while gaining access to education and jobs.<sup>72</sup> But this choice imposes costs. Young people who choose to preserve a primary identification as Turkish, and even use Turkish as their primary language, are disadvantaged in education and employment.<sup>73</sup> This pattern is consistent with research on the “downward assimilation” of some

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69. See Crul & Doornik, *supra* note 28, at 1052, 1054 (declaring these findings to be especially strong for girls whose older sisters married very young, and who urge their younger siblings to pursue an education).

70. *Id.*

71. Alba, *supra* note 28, at 24.

72. See KAYA & KENTEL, *supra* note 17, at 69 (explaining that a majority of Euro-Turks have integrated in their host countries, while only approximately 20% of Euro-Turks have assimilated and gained citizenship in their host countries); *cf.* Fulya Özerkan, *Turk-German Ties Coming Apart at the Seams*, TURKISH DAILY NEWS, Feb. 13, 2008, available at <http://turkishdailynews.comtr/article.php?enewsid=96303> (reporting that Turkish Prime Minister Recep Tayyip Erdogan denounces “assimilation” as “a crime against humanity”).

73. See Özerkan, *supra* note 72 (citing “problems” with second- and even third-generation Turks who lack German language skills and noting “a real problem” with unemployment among young Turks in Germany).

minority youth in the United States who consciously or not “elect the path of ethnic loyalty” and join subcultures “established in opposition to mainstream norms.”<sup>74</sup> Contemporary concerns in Germany, as elsewhere in Europe, about the potential lure of radical Islam for young people who feel excluded or disadvantaged reflect awareness of this alternative path,<sup>75</sup> and are a critical backdrop against which to consider religious identity and education in Germany’s public schools.

### III. OUTSIDER STATUS, IDENTITY AND RELIGIOUS EDUCATION IN GERMANY’S PUBLIC SCHOOLS

Despite constitutional guarantees of religious freedom, religious training is integrated into the public school curriculum in Germany in ways that disadvantage the country’s considerable Muslim population. Students in Germany are permitted to express individual religious or cultural identity by, for example, veiling, so the dispute over student religious garb has not been central to policy debates in Germany as it has in other European democracies.<sup>76</sup> Instead, the debate centers on questions about who speaks for the Muslim community and the nature of religious training offered during the school day. For German-Turks, the perception that they are outsiders is reinforced when they are singled out not to receive religious training in school, and in more subtle ways through signals that they are not respected or valued.

#### A. THE CONSTITUTIONAL FRAMEWORK

When Germany adopted its Constitution (known as the Basic Law) in 1949, virtually all of its residents were Christians, whether

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74. Alba, *supra* note 28, at 25.

75. See generally Robert S. Leiken, *Europe’s Angry Muslims*, FOREIGN AFF., July-Aug. 2005, at 120, 127, 132-33 (studying the root causes and effects of the spread of radical Islam among descendants of Muslim immigrants in Europe).

76. See, e.g., CATHERINE J. ROSS, CHILDREN AND RELIGIOUS EXPRESSION IN SCHOOL: A COMPARATIVE TREATMENT OF THE VEIL AND OTHER RELIGIOUS SYMBOLS IN WESTERN DEMOCRACIES 1, 2 (2008), available at <http://ssrn.com/abstract=1136366>. The German Constitutional Court banned teachers from wearing headscarves in public schools. Bundesverfassungsgerichts [BVerfG] [Constitutional Court] Sept. 24, 2003, 108 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 282 (F.R.G.).

Protestants or Roman Catholics. The Christian Democrat Party, in power in 1949 and for decades after, proclaimed that the values of the Basic Law mirrored the fundamental values of Christianity, which they saw as inclusive rather than exclusive.<sup>77</sup> Drafted in the wake of World War II, the Basic Law rigorously protects freedom of religion.<sup>78</sup> However, in contrast to the United States, the German Constitution expressly provides for religious instruction in public schools.<sup>79</sup> Most German states reserve two hours each week for instruction in religion or values.<sup>80</sup> Article Seven of the Basic Law provides that parents shall designate the religion in which they want their children to receive instruction and have the right to opt out of religious instruction.<sup>81</sup> Parents may also elect non-religious values training known as “secular humanist” ethics or “philosophy” instead of a religious course of instruction.<sup>82</sup>

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77. See GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GG] [Constitution] (F.R.G.); Peter C. Caldwell, *The Crucifix and German Constitutional Culture*, 11 CULTURAL ANTHROPOLOGY 259, 263 (1996).

78. See GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GG] [Constitution] art. 4 (F.R.G.) (providing in pertinent part: “(1) Freedom of faith and of conscience, and freedom of creed religious or ideological, are inviolable. (2) The undisturbed practice of religion is guaranteed.”).

79. Compare *id.* art. 7 (guaranteeing that “(2) The persons entitled to bring up a child have the right to decide whether they shall receive religious instruction. (3) Religious instruction forms part of the ordinary curriculum in state and municipal schools, excepting secular schools. Without prejudice to the state’s right of supervision, religious instruction is given in accordance with the tenets of the religious communities.”), with *Everson v. Bd. of Educ.*, 330 U.S. 1, 14-15 (1947) (finding that it is a violation of the First Amendment’s Establishment Clause for a state to reimburse parents for bussing to religious schools); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203, 223 (1963) (prohibiting public schools from requiring a prayer in schools because it violates the Establishment Clause of the First Amendment).

80. See Roger Cohen, *Long Dispute Ends as Berlin Court Backs Islamic School Lessons*, N.Y. TIMES, Nov. 6, 1998, at A13.

81. Ingrid Brunk Wuerth, *Private Religious Choice in German and American Constitutional Law: Government Funding and Government Religious Speech*, 31 VAND. J. TRANSNAT’L L. 1127, 1147-50 (1998) (providing a general overview of religious instruction in German public schools); Eberle, *supra* note 12, at 1032 (describing parents’ rights to religious education for their children under the German Basic Law). In some ways, the German approach may be comparable to Justice O’Connor’s vision of individual choice made by private parties when parents use vouchers to send their children to sectarian schools. See *Zelman v. Simmons-Harris*, 536 U.S. 639, 663 (2002) (O’Connor, J., concurring) (discussing the Court’s emphasis on verifying that parents exercise “true private choice” in placing their children in religious schools).

82. Cf. Edward J. Eberle, *Religion in the Classroom in Germany and the*

In Germany, the constitutional structure relies on religious groups to mediate between the religion and the state. In each instance, the religion or humanist course is administered by one incorporated body that represents the entire group (*e.g.*, Lutherans, Roman Catholics, Jews, secular humanists). The state delegates authority to the recognized group representative to develop the curriculum and to teach the religion classes in the public school building during school hours.<sup>83</sup>

Islam has no organizational structure comparable to “congregations” united within a denominational hierarchy.<sup>84</sup> In the absence of a uniform hierarchy that can be deemed to speak for all Muslims, the German government has concluded that no representative speaks for the Muslim citizens.<sup>85</sup> For this reason, and others that will be explored below, most of the states and cities in Germany do not offer Muslim religious training during school hours. It appears to be undisputed that there is no city or state in Germany in which the public schools treat Islam in a manner comparable to the treatment accorded the branches of Christianity.<sup>86</sup>

In the absence of official Islamic instruction in school, Muslim parents are often allowed to send their children to mosques during the periods set aside for religious training.<sup>87</sup> Many Muslim parents,

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*United States*, 81 TUL. L. REV. 67, 76-77 (2006) (stating that three states—Bremen, Berlin and Brandenburg—are permitted not to offer religious instruction in schools).

83. *See id.* at 71.

84. *See* Wuerth, *supra* note 81, at 1156 (explaining that one argument for not treating Islamic instruction equally to Christian studies is because Islam lacks an organizational structure, thus making it too decentralized to meet the requirements of a “religious community” within the meaning of the Basic Law’s Article Seven, which provides for religious instruction in public schools).

85. *See id.* (suggesting that administrative complications resulting from the lack of fixed content for Islam in Germany are another reason German states give for not treating instruction of Islam on par with that of Christian religions).

86. *See id.* (asserting that although most German states accept the theory of treating Islamic education equally with Christian education, they do not do so in practice); Sabine Ripperger, *Teaching of Islam in German Schools Gains Ground*, DEUTSCHE WELLE, May 27, 2007, available at <http://www.dw-world.de/dw/article/0,2144,2553750,00.html> (“More than 700,000 Muslim students attend school in Germany, but nowhere does the religious curriculum deal with Islam in the same way as Christianity.”).

87. *See* Lucian Kim, *Dilemma for Muslims in Berlin*, CHRISTIAN SCI. MONITOR, Mar. 10, 2000, at 6; Ripperger, *supra* note 86 (explaining that “most schools rely on their local mosque for guidance” resulting in “large discrepancies

however, object on several grounds. Some disagree with the particular brand of Islam taught in the mosque near their children's school, and, in particular, express fears that the mosques will indoctrinate their children in radical brands of Islam.<sup>88</sup> Other parents may object to the fact that if they decline to send their children to a mosque for instruction, their children will remain idle while Christians and others receive religious instruction on site.<sup>89</sup>

#### B. ISLAMIC INSTRUCTION IN THE CITY OF BERLIN SCHOOL SYSTEM

The confusion over who speaks for Germany's Muslims dates back to at least 1980 and has intensified since the September 11, 2001 terrorist attacks on the United States. In 1980, the Islamic Federation began to seek permission to provide the religious instruction for Muslims in West Berlin's schools.<sup>90</sup> The Islamic Federation is affiliated with Turkey's Welfare Party, a populist Islamic movement which is monitored by Germany's Office for the Protection of the Constitution.<sup>91</sup> Consistent with German policy, West Berlin declined to recognize any religious corporation that did not speak for all of its co-religionists. During the 1980s an experiment with Muslim religious training in schools in one German

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in the content and quality" of religious instruction).

88. See Kim, *supra* note 87; cf. Richard Bernstein, *Lessons of Islam in German Classrooms*, N.Y. TIMES, June 30, 2004, at A4 (discussing Berlin officials' suspicions that Islamic classes, which non-Muslims are not allowed to attend, may be teaching an intolerant form of Islam); Wuerth, *supra* note 74, at 1157 (suggesting that German state officials are making an effort to offer in-school Islamic education to discourage students from attending private Koran school, which they view as "extremist"); Dilek Güngör, *Eltern Fordern Kontrolle über Lerninhalte [Parents ask for Control Over Learning]*, BERLINER ZEITUNG, Nov. 5, 1998, available at <http://www.berlinonline.de/berliner-zeitung/archiv/.bin/dump.fcgi/1998/1105/none/0064/index.html> (expressing parents' concerns that private Koran education is difficult to control).

89. See Lucian Kim, *Dilemma for Muslims in Berlin: Some parents are uneasy that an Islamic group last month was put in charge of religion classes in schools*, CHRISTIAN SCI. MONITOR, Mar. 10, 2000, at 6 ("I would never send my children to such an organization, because I know that one day they may be poisoned," says Ahmet Cengiz, a teacher and the father of two school-age children.').

90. See Kim, *supra* note 87 (explaining that the Islamic Federation's ten-year struggle for permission to teach the Koran in Berlin public schools required the German federal court's designation of the group as a "religious community").

91. Mulrine, *supra* note 1, at 36.

state offered classes in the Turkish language.<sup>92</sup> This approach may be criticized from two directions: first, it marginalizes Turkish children by encouraging them to speak Turkish instead of German (one of the factors tied to consignment to the lowest educational track<sup>93</sup>), and second, it makes it difficult for school officials to know what is going on in the classroom.

After years of fruitless negotiation, in 1998 proponents of Islamic education won a court order requiring Berlin (now a unified city) to provide religious training in school for the city's roughly 35,000 Muslim students.<sup>94</sup> The Islamic Federation, which represented a portion of the city's roughly 225,000 Muslim residents, was designated to offer the classes. But many of the city's Muslims objected to the radicalism of the Federation. In addition, the Berlin City Council wanted the classes offered in the German language, while the Federation planned to offer the classes in Turkish.<sup>95</sup>

An appellate ruling followed in 2000, upholding the initial order and the designation of the Federation as the representative group.<sup>96</sup> Again, many Muslim parents objected, primarily on the grounds that they wanted a modern curriculum "based on democratic values," including tolerance.<sup>97</sup> Such concerns may well be justified. In 2005, the principal of a school in Berlin entered the Islamic classroom under the guise of repairing a window after the instructors had refused her request to observe the lessons. She reported culturally objectionable curriculum, including instruction in gender discrimination. The teacher informed the children, for example, that "women are for the house, for the children." The girls, she said, appeared subdued, eyes cast downward, in contrast to their demeanor

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92. Mathieu Magnaudeix, *Germany's Muslims to Unite so Islam Can be Taught in Schools*, AGENCE FRANCE PRESSE, Mar. 2, 2005 (discussing Bavaria). In several other parts of Germany, diplomatic representatives of Turkey provide language instruction in Turkish, which may include some religious instruction, a departure from the general provisions governing religious instruction in schools. Wuerth, *supra* note 81, at 1156.

93. See discussion, *supra* Part I.

94. Bundesverwaltungsgericht [BVerwG] [Federal Administrative Court] Feb. 23, 2000, 110 Entscheidungen des Bundesverwaltungsgerichts [BVerwGE] 326 (F.R.G.) (affirming the lower court's order).

95. Cohen, *supra* note 80.

96. Bundesverwaltungsgericht [BVerwG] [Federal Administrative Court] Feb. 23, 2000, 110 Entscheidungen des Bundesverwaltungsgerichts [BVerwGE] 326 (F.R.G.).

97. Kim, *supra* note 87.

during secular classes. This, she concluded, “is fundamentalism,” which she argued should be barred from German schools.<sup>98</sup>

Although religious classes are being offered, the court orders did not fully resolve the controversy. In addition to lingering debates about the nature of the religious curriculum, only a small portion of Berlin’s Muslim students have enrolled—4,500 between 2003 and 2007.<sup>99</sup> Several Muslim groups began a collaborative effort to develop a curriculum for religious training, but one important group has boycotted the project. Despite these problems, one commentator states that imams currently provide religious instruction to Muslim students in more than thirty Berlin schools.<sup>100</sup>

The opinion of the Berlin courts has no impact on most states in Germany, because Berlin, Brandenburg, and Bremen are exempt from the Constitutional requirement that the state pay for and supervise religious education in public schools.<sup>101</sup> In 2005, the Federal Administrative Court issued an opinion in a case arising from the state’s denial of a petition from two Islamic umbrella organizations seeking the right to offer religious instruction in the public schools of North Rhine-Westphalia—a state in which the constitutional provision applies.<sup>102</sup> The court remanded the case to the lower court after establishing some guidelines for evaluating the claim. Much of the decision involved the question of whether the umbrella groups satisfied the Constitutional definition of a “religious

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98. Mulrine, *supra* note 1, at 36 (describing the increased problems at Rixdorfer school in neighborhood known as Little Istanbul since the German court permitted the Islamic Federation to conduct Muslim religious instruction in Berlin schools).

99. Ripperger, *supra* note 86 (noting further that the Islamic Federation expects the number enrolled to increase in the coming years and is calling for schools to begin long term planning to keep up with increased demand for Islamic instruction in public schools).

100. Interview with Ralph Ghadban, (German scholar and writer, involved with the education of immigrant youth in Germany) in Princeton, N.J. (Oct. 24, 2008).

101. See Diana Zacharias, *Access of Muslim Organizations to Religious Instruction in Public Schools: Comment on the Decision of the Federal Administrative Court of 23 February 2005*, 6 GERMAN L.J. 1319, 1333 (2005). (noting that the distinction between educational requirements in these cities and the rest of Germany dates back to how the nation was governed following the loss of World War II).

102. Bundesverwaltungsgericht [BVerwG] [Federal Administrative Court] Feb. 23, 2005, 123 Entscheidungen des Bundesverwaltungsgerichts [BVerwGE] 49 (F.R.G.); Zacharias, *supra* note 94, at 1321.

community” qualified to offer instruction. On remand, the lower court determined that the petitioners did not constitute a “religious community,” and dismissed the case.<sup>103</sup> More importantly, the Federal Administrative Court identified additional requirements for eligibility to offer religious instruction in cooperation with the state. These include clear rules about membership to enable the schools to identify students who should attend, and a commitment from the religious community that it will respect the educational goals of the state, including religious tolerance.<sup>104</sup>

For now, most German schools continue to rely on nearby mosques to provide off-site Islamic instruction. Splits among Sunnis, Shia, Alevis, and others continue to plague efforts to develop a uniform curriculum.<sup>105</sup> Indeed, the State of Baden-Wuerttemberg announced a plan to offer separate courses in its public schools: one for Sunnis and Shia, and another for Alevis.<sup>106</sup> The State of North Rhine-Westphalia has accepted the application of the Alevitic Community of Germany to provide instruction in the Alevitic branch of Islam in its schools.<sup>107</sup>

Recently, some religious leaders have encouraged Muslim parents to be more receptive to their children’s assimilation. For example, in April 2006, “the new chairman of the Central Muslim Council in Germany” urged those parents who had resisted to allow their children to participate in co-educational gym classes and school trips “to foster better integration” into the school population.<sup>108</sup>

### C. BARRIERS AND BRIDGES TO INTEGRATION

As with other minorities all over the world, German-Turks are subject to express as well as subtle forms of exclusion. In Bavaria,

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103. Cf. Lamy Kaddor, *Classes in Islamic Religion and Studies at German Schools*, GOETHE INSTITUT, Apr. 2007 (Andrew Sims, trans.), <http://www.goethe.de/wis/sub/thm/int/en2131719.html> (“Even today, the Muslim umbrella organisations cannot legally act as partners in the sense of religious communities representing the Muslims living in Germany.”). Other groups have subsequently sought accreditation to offer Islamic instruction in the state.

104. See Zacharias, *supra* note 101, at 1329-31.

105. See Ripperger, *supra* note 86.

106. *Id.*

107. Zacharias, *supra* note 101, at 1333.

108. Frances Mehan-Schmidt, *Muslim U-turn on PE and Sex Lessons*, TIMES EDUC. SUPP., Apr. 7, 2006. It is unclear how much influence the Council has among Turks, since there are presently no Turkish members of the Council. *Id.*

for example, the crucifix is still prominently displayed in most schools, although the courts have ruled that it must be removed if anyone objects.<sup>109</sup> Such symbols send a powerful message of outsider status—even disrespect—to non-adherents who have to identify themselves to demand that the school remove the crucifix.

A telling example occurred in a German history class when the teacher was discussing Kristallnacht, the evening of notorious attacks on Jewish shops and synagogues on November 9, 1938. The lesson, designed to teach empathy and tolerance, turned into a reminder of Turkish vulnerability:

A Turkish student asked why the Jews had not fled Germany. The teacher replied by asking why the Turks do not flee Germany today, following murders, assaults, and arson attacks against them. The student answered, “Things won’t get that bad.” The teacher replied, that is what many Jews believed as well and thereby found it difficult to leave, just as a Turk who owns a shop or an apartment in Germany today would find it difficult to leave without his or her possessions. This effort to build on the student’s own experience and position in this context may make empathy an ingredient of education—but it also communicates: you, like the Jews, are vulnerable here, there is no long-term future for you here.<sup>110</sup>

Such messages may well exacerbate tendencies to alienation, leading young German-Turks to reject Western norms, including norms of toleration and gender equality, and encourage them to flirt with radicalism.<sup>111</sup>

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109. BVerfG, Oct. 27, 1997, docket number 1 BvR 1604/97, at juris online/Rechtsprechung; see Alba, *supra* note 25, at 33.

110. Martha Minow, *Tolerance in an Age of Terror*, 16 S. CAL. INTERDISC. L.J. 453, 493 (2007).

111. See *id.* at 494 (warning of the danger of “competitive intolerance”: in which rejection of “Western norms” leads Muslim immigrants to ask themselves why they should be tolerant of those who are intolerant of them). Other parts of Western Europe also fear that alienation of Muslim immigrant populations will exacerbate the threat of radicalism. See Mulrine, *supra* note 1, at 36 (discussing the concerns of “overwhelmingly unreligious” Europeans that Islam and democracy cannot coexist and fears that radical Muslims are attempting to take advantage of democratic values to further extremism); IAN BURUMA, MURDER IN AMSTERDAM: LIBERAL EUROPE, ISLAM, AND THE LIMITS OF TOLERANCE 30-35 (2006) (suggesting the “clash of values” between Islam and the West, including views on gender equality and individualism, contributed to the 2004 murder of Dutch filmmaker, Theo van Gogh, by an Islamic extremist who believed one of his films

The state is lending muscle to integration efforts. For example, a court in Duesseldorf upheld a fine imposed on parents whose children did not engage in school sports for religious reasons.<sup>112</sup> Broader changes are also being introduced. A new immigration law effective in 2005 established German language courses for new immigrants, and directed the government to take measures to promote integration.<sup>113</sup> Further statutory changes in 2007 provided that immigrants arriving to join their spouses in Germany must either speak some German or enroll in government-sponsored language classes.<sup>114</sup> Many German-Turks protested against what they apparently regarded as forced assimilation.<sup>115</sup> Nonetheless, in the context of educational achievement for the children of immigrants, it seems clear that it cannot hurt children attending German schools to have parents who can speak to their teachers and help at least minimally with their homework.

In 2006 and 2007 the federal government convened national conferences on integration that focused in large part on the educational system.<sup>116</sup> The conferences led to a series of social, economic, and educational reforms to be implemented by local, state, and federal governments. The innovations include steps to reduce the gap in language development between children of Turkish origin and

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insulted Mohammed).

112. See Mechan-Schmidt, *supra* note 101 (describing a case in which the court, reasoning that “scantily-clad” girls are everywhere, upheld a fine against Muslim parents who forbade their son from attending swimming lessons).

113. See Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern [Zuwanderungsgesetz] [Immigration Law], Aug. 5, 2004, BGBl. I at 1950, §§ 42-45 (F.R.G.).

114. See, e.g., Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet [Aufenthaltsgesetz] [Residency Act], July 30, 2004, BGBl. I at 1950, *amended by* Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union [Act for the Transformation of Residency and Asylum Rights Guidelines of the European Union], Aug. 19, 2007, BGBl. I at 1970, art. 1, § 30 (F.R.G.).

115. David Gordon Smith, *Immigration Law 'Hits Turks Below the Belt'*, SPIEGEL ONLINE, July 12, 2007, <http://www.spiegel.de/international/germany/0,1518,494027,00.html> (describing the boycott of a German integration summit by several Turkish groups).

116. DIE BUNDESREGIERUNG, F.R.G., DER NATIONALE INTEGRATIONSPLAN: NEUE WEGE – NEUE CHANCEN [THE NATIONAL INTEGRATION PLAN: NEW PATHS – NEW OPPORTUNITIES] (2007), *available at* <http://www.bundesregierung.de/Content/DE/Artikel/2007/07/Anlage/2007-10-18-nationaler-integrationsplan,property=publicationFile.pdf> [hereinafter NATIONAL INTEGRATION PLAN].

ethnic Germans when they start school, moving to a full school day rather than the half day system that relied on parents to supplement lessons, and providing information to parents about the education system and what it expects of students and their parents.<sup>117</sup> These changes supplement other programs introduced by the government in the last decade or so, including pairing children with adults who can help with schoolwork (“Bildungspaten”), and better vocational training for the children of immigrants.<sup>118</sup>

Despite these efforts, most children in the German-Turkish community today remain outsiders. Liberated from Atatürk’s enforced public secularism, they may use that freedom to identify with fundamentalist religion. They may be misled by the proclaimed right to manifest their religion in public, not understanding that doing so may diminish their chances of assimilation and material success. They may even prove susceptible, as many Europeans fear, to recruitment into antisocial behaviors, including violence or terrorism.<sup>119</sup>

How, then, to facilitate education and social mobility, while allowing immigrants who choose to do so to preserve their cultural identity, religion, and self-respect? Success in finding answers to these questions may well determine the future relationship between Euro-Turks and their hosts as more Turks become citizens of European countries and Turkey moves toward accession.

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117. *See id.* at 25-26, 64-65; *see also* BUNDESAMT FÜR MIGRATION UND FLÜCHTLINGE, F.R.G., INTEGRATION IN ZAHLEN [INTEGRATION IN FIGURES] 12 (2006), *available at* [http://www.integration-in-deutschland.de/cln\\_101/nn\\_442496/SharedDocs/Anlagen/DE/DasBAMF/Publikationen/broschuere-integration-in-zahlen-2006,templateId=raw,property=publicationFile.pdf/broschuere-integration-in-zahlen-2006.pdf](http://www.integration-in-deutschland.de/cln_101/nn_442496/SharedDocs/Anlagen/DE/DasBAMF/Publikationen/broschuere-integration-in-zahlen-2006,templateId=raw,property=publicationFile.pdf/broschuere-integration-in-zahlen-2006.pdf) (emphasizing the importance of mothers’ attending integration courses because of their ability to influence their children’s education).

118. *See, e.g.*, NATIONAL INTEGRATION PLAN, *supra* note 116, at 65; BUNDESMINISTERIUM DES INNERN, F.R.G., WILLKOMMEN IN DEUTSCHLAND: INFORMATIONEN FÜR ZUWANDERER—INTEGRATIONSKURS [WELCOME TO GERMANY: INFORMATION FOR IMMIGRANTS—INTEGRATION COURSE] 3 (2005), *available at* [http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2006/WiD\\_\\_Integrationskurse\\_\\_de,templateId=raw,property=publicationFile.pdf/WiD\\_Integrationskurse\\_de.pdf](http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2006/WiD__Integrationskurse__de,templateId=raw,property=publicationFile.pdf/WiD_Integrationskurse_de.pdf).

119. Ward, *supra* note 2, at 225; *see, e.g.*, ORHAN PAMUK, SNOW 79-80 (Maureen Freely trans., Alfred A. Knopf 2004) (2002) (discussing a fictional depiction of this susceptibility: “I became used to feeling degraded, and I came to understand how my brothers felt.”).

## CONCLUSION

The distinctive legal and cultural norms in each society influence how individuals manage issues of identity, inclusion, and exclusion. In Germany, a number of legal and cultural boundaries have inhibited the assimilation of second-generation Turks. These include—on the side of the cultural boundary controlled by the state and the dominant culture—the historical difficulty of gaining citizenship, overrepresentation in the lowest educational tracks, and modest occupational mobility, as well as the constitutionalization of religious identity and training in the public schools. If Islamic nationalists assume responsibility for Islamic religious training in Germany's public schools, they threaten to undermine the very tolerance for diversity that the Basic Law arguably promotes. Moderate Muslim parents would be left with a choice between allowing their children to be taught a brand of religion with which they disagree or appearing to ignore their children's religious and ethical upbringing.

On the other side of the cultural boundary—controlled by Turkish immigrants themselves—the strong ethnic ties and identification with the homeland that characterize German-Turks provide meaning and comfort in daily life, but appear to impede assimilation, educational success, and economic opportunity. The proud assertion of “otherness” may be both a product of and a stimulus to discrimination, in ways that lie beyond the law's ability to control.