

Government Structure’s Effect on Immigration Law: The United States and Germany

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I. INTRODUCTION

The United States Constitution set up the U.S. Government as a federal representative democracy.¹ In this system, the President acts as the head of government as well as the head of state, giving him a large amount of power as well as a large amount of influence on the American people.² This is different from another first world country, Germany, where their Constitution sets up a federal parliamentary democracy.³ In this system, there is one official acting as head of state and another as head of

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1. See Eugene Volokh, *Is the United States of America a Republic or a Democracy?*, WASH. POST (May 13, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/13/is-the-united-states-of-america-a-republic-or-a-democracy/>.

2. See *The Executive Branch*, WHITEHOUSE.GOV, <https://www.whitehouse.gov/about-the-white-house/the-executive-branch/> (last visited Sept. 27, 2019).

3. See *Federal State*, TATSACHEN-UEBER-DEUTSCHLAND.DE, <https://www.tatsachen-ueber-deutschland.de/en/chapter/state-politics/federal-state> (last visited Sept. 27, 2019).

government.⁴ These different structures of government have many other differences, and these differences have a strong impact over how a nation's legislation is enacted.⁵

Immigration is an area of law that has always sparked heavy debate in the political atmosphere.⁶ Historically, countries have aimed to assert the image of an "immigrant country."⁷ In present day, however, as the number of migrants steadily increases, strict government influence on the issue increases as well.⁸ In America, the President is given wide discretion to control immigration policy.⁹ In turn, presidential candidates use promises of strict immigration law to fuel strategies for their campaign race rather than focusing on creating an immigration system built to last.¹⁰ When the political party in power switches, every four or eight years, the immigration policies from the previous President begin to slowly unravel and the new President starts to enact many different policies that he promised during his campaign trail.¹¹ Contrarily, in Germany, the structure of a coalition government helps create an immigration system based on efforts of compromise rather than campaign promises from one individual.¹²

This Comment will explore the political systems of the United States and Germany and the effect a structure of government can have on a major area of law, specifically immigration law. Additionally, it will give examples of this influence by specifically exploring present-day issues within immigration law in the United States and Germany.

4. *Id.*

5. See Margaret D. Stock, *Immigration and the Separation of Powers*, FEDERALIST SOC'Y (Sept. 14, 2015), <https://fedsoc.org/commentary/blog-posts/immigration-and-the-separation-of-powers>; see also *The Mediation Procedure*, DEUTSCHER BUNDESTAG, <https://www.bundestag.de/en/parliament/function/legislation/15mediproc-245880> (last visited Sept. 27, 2019).

6. See Yuval Harari, *What Are the Real Debates Surrounding Immigration in an Increasingly Globalized World?*, WORLD ECON. F. (Nov. 5, 2018), <https://www.weforum.org/agenda/2018/11/how-can-we-ignore-the-pressing-reality-of-immigration-in-an-increasingly-globalised-world/>.

7. See Bernard A. Weisberger, *A Nation of Immigrants*, AM. HERITAGE (Feb/Mar. 1994), <https://www.americanheritage.com/nation-immigrants>.

8. See *id.*

9. See Adam Liptak, *The President Has Much Power over Immigration, but How Much?*, N.Y. TIMES (Feb. 5, 2017), <https://www.nytimes.com/2017/02/05/us/politics/trump-immigration-law.html>.

10. See Nolan D. McCaskill, *Trump Promises Wall and Massive Deportation Program*, POLITICO (Aug. 31, 2016), <https://www.politico.com/story/2016/08/donald-trump-immigration-address-arizona-227612>.

11. See Kevin R. Johnson, *Immigration and Civil Rights in the Trump Administration: Law and Policy Making by Executive Order*, 57 SANTA CLARA L. REV. 611, 629 (2017).

12. See *The Mediation Procedure*, *supra* note 5.

II. OVERVIEW OF AMERICAN STRUCTURE

A. *Constitutional Power to Govern Immigration*

America was formed as a country of immigrants.¹³ However, since the founding of the country, American immigration law has remained highly exclusive.¹⁴ A few examples include the 1790 Naturalization Act, excluding any nonwhites from becoming United States, “U.S.,” citizens;¹⁵ the 1882 Chinese Exclusion Act, banning Chinese laborers and deporting any unauthorized Chinese immigrants;¹⁶ and the Immigration Act of 1917, banning a large amount of Asians and Pacific Islanders, along with “idiots, imbeciles, feeble-minded persons, epileptics, insane persons” etc.¹⁷ American immigration law is founded on keeping people out, rather than opening opportunities to welcome people in.¹⁸ As the number of migrants continuously increases, the policies on immigration grow harsher.¹⁹ However, the policies that control immigration have little foundation in the U.S. Constitution, and this question presents a problem with immigration enforcement and the policy that controls it.²⁰

The express power to regulate immigration law is absent from the U.S. Constitution.²¹ When examining the federal powers listed in Article 1 and Article 2 for the Legislature and the Executive, it is evident that there is nothing in the text expressly relating to the regulation of immigration laws.²² However, the Constitution outlines powers under Article 1, such as to regulate commerce with foreign nations, to provide for the common defense, to define and punish international crimes, and also to define rules concerning “captures” on land and water.²³ These powers outlined by the Framers are now assumed to mean that Congress is solely in charge of

13. See Weisberger, *supra* note 7.

14. See *id.*

15. See An Act to Establish an Uniform Rule of Naturalization, ch. 3, § 1, 2 Stat. 103 (1790) (repealed 1795).

16. See An Act to Execute Certain Treaty Stipulations Relating to Chinese, ch. 126, pmb., at 59 (1882) (repealed 1943).

17. See An Act to Regulate the Immigration of, Aliens to, and the Residence of Aliens in, the United States, ch. 29, at 875 (1917) (repealed 1952).

18. See Weisberger, *supra* note 7.

19. See *id.*

20. See Ilya Somin, *Does the Constitution Give the Federal Government Power over Immigration?*, CATO UNBOUND (Sep. 12, 2018), <https://www.cato-unbound.org/2018/09/12/ilya-somin/does-constitution-give-federal-government-power-over-immigration>.

21. See *id.*

22. See U.S. CONST. arts. I-II.

23. See *id.* art. I, § 8.

regulating immigration.²⁴ The Supreme Court has agreed with this notion on many occasions.²⁵ For example, early on, in *Chy Lung v. Freeman*, the Court ruled that the regulations for immigration law belong solely to the Federal Government, specifically Congress, and that States shall have no say in the laws on immigration.²⁶

This idea has continued throughout history and has been reaffirmed in a more recent Supreme Court decision, *Arizona v. United States*.²⁷ In *Arizona*, the majority opinion stated that the Federal Government's power over immigration rests on the constitutional power granted to Congress in Article 1 to regulate the rules of naturalization.²⁸ Additionally, the Court listed Congress's inherent power as sovereign to control and conduct relations with foreign nations as authority.²⁹ In the dissent, Justice Scalia harshly argued aspects of the Constitution that support a clear grant of immigration authority to States.³⁰ For example, Article I authorizes State sovereignty, including the ability for each State to control its borders and protect their territory.³¹ Scalia promotes the idea that "after the adoption of the Constitution there was some doubt about the power of the Federal Government to control immigration, but no doubt about the power of the States to do so."³²

There are also no express powers listed under Article 2 that give the President authority to enact immigration laws.³³ The first express grant of Presidential immigration power was given by Congress in the Alien and Sedition Acts of 1798.³⁴ This Act stated that the President has the power "to exclude all such aliens as he shall judge dangerous to the peace and safety of the United States."³⁵ This power was criticized by politicians such as James Madison and Thomas Jefferson in the Kentucky and Virginia Resolutions, who believed the granting of this power to the President was unfounded and that it would be dangerous to grant this

24. See Somin, *supra* note 20.

25. See *Chy Lung v. Freeman*, 92 U.S. 280, 280 (1876); see also *Chae Chan Ping v. United States*, 130 U.S. 581, 604 (1889); see also *Toll v. Moreno*, 102 S. Ct. 2977, 2982 (1982).

26. See *Chy Lung*, 92 U.S. at 280.

27. *Arizona v. United States*, 132 S. Ct. 2492, 2498 (2012).

28. *Id.*

29. *Id.*

30. *Id.* at 2511.

31. *Id.* at 2512.

32. *Id.* at 2513.

33. See Somin, *supra* note 20.

34. Sedition Acts of 1798, ch. 58, § 1, Stat. 596 (expired 1801).

35. *Id.*

broad authority.³⁶ The whole of this Act was only in operation for two years, but the section granting presidential authority to deport, known as the “Alien Enemies Act,” is still in full force today.³⁷ Most recently, President Trump’s supporters used the Act to justify his Travel Ban in 2016.³⁸

The Supreme Court has aided in granting broad immigration authority to the Executive as well.³⁹ Somewhat recently, in *Knauff v. Shaughnessy*, the Court stated, “The exclusion of aliens is a fundamental act of sovereignty The right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation.”⁴⁰ The President, as Commander in Chief, is in charge of foreign affairs of the nation and of enforcing the laws necessary to protect the nation.⁴¹ Therefore, under Article II of the Constitution, the President also has the individual ability to determine how to enforce the law.⁴² For example, a President has the authority to enact an “executive order,” as long as it has basis in the Constitution or federal law.⁴³ The power to enact executive orders is inherently broad, especially since Congress has little ability to regulate or limit his authority.⁴⁴ The Judicial and Legislative’s recognition of the Executive’s authority in immigration law, combined with the President’s individual authority to act as Commander in Chief, leaves little room for immigration policy enacted by the President to be challenged.⁴⁵

The power to govern immigration policy is not firmly found in the U.S. Constitution.⁴⁶ The Supreme Court consistently rejects judicial review in relation to immigration questions as outside the scope of their jurisdiction.⁴⁷ All three branches of government have found immigration

36. Va. Resolution of 1798, Gen. Assemb. (Va., 1798), <https://billofrightsinstitute.org/wp-content/uploads/2019/08/Resolutions.pdf>.

37. 50 U.S.C. § 21-24 (2012); Walker Schneider, *Schneider: Remember 1978: A Comparison of the Trump and Adams Administrations*, DARTMOUTH (Nov. 14, 2017), <https://www.thedartmouth.com/article/2017/11/schneider-remember-1798>.

38. See Schneider, *supra* note 37.

39. See *Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950).

40. *Id.*

41. See *The Executive Branch*, *supra* note 2.

42. U.S. CONST. art. II.

43. See *Executive Orders*, HERITAGE FOUND., <https://www.heritage.org/political-process/heritage-explains/executive-orders> (last visited Sept. 27, 2019).

44. *Id.*

45. See Stock, *supra* note 5.

46. See Somin, *supra* note 20.

47. See Gerald L. Neuman, *Immigration and Judicial Review in the Federal Republic of Germany*, 23 N.Y.U. J. INT’L L. & POL. 35, 83-84 (1990).

policy to be largely exercised under the Legislative and enforced under the Executive.⁴⁸ The Legislative Branch started enacting immigration policy in 1790, and through that policy discretion is given to the Executive.⁴⁹

B. History of Immigration Policy in America

America formed as an independent nation in 1776 after gaining independence from Britain in the Revolutionary War.⁵⁰ It was not until 1875 that the Supreme Court, in *Chy Lung*, declared the regulation of immigration to be a federal responsibility; however, Congress began enacting immigration law in 1790.⁵¹ The Naturalization Act of 1790 focused on limiting the privilege of citizenship to free whites of “good moral character” who lived in the United States for at least two years.⁵² The above-mentioned Alien and Sedition Acts were enacted next in 1798, starting the grant of Executive authority within immigration law.⁵³

As the United States continued to grow as a country, the need for laborers grew.⁵⁴ This brought about Abraham Lincoln’s address to Congress asking them to establish a system to encourage immigration to America.⁵⁵ Congress answered Lincoln by enacting the Immigration Act of 1864 that established the position of the Commissioner of Immigration, who acts in accordance with the Secretary of State and further helps encourage foreign immigration.⁵⁶ In addition to this, the State Department under Secretary William Seward created the Bureau of Immigration.⁵⁷ The Bureau worked steadily to encourage and increase immigration, focusing on creating contracts between immigrants and employers and working with railroad companies to secure transportation.⁵⁸ The Bureau began to face difficulties in pursuing these tasks, but Lincoln hoped to amend the

48. See Somin, *supra* note 20.

49. See *id.*

50. See *American Colonies Declare Independence*, HISTORY.COM (July 27, 2019), <https://www.history.com/this-day-in-history/american-colonies-declare-independence>.

51. See *Chy Lung v. Freeman*, 92 U.S. 275 (1876); see also *Major U.S. Immigration Laws 1790-Present*, MIGRATION POL’Y INST. (Mar. 2013), <https://www.migrationpolicy.org/research/timeline-1790>.

52. See *Major U.S. Immigration Laws 1790-Present*, *supra* note 51.

53. See *id.*

54. See Weisberger, *supra* note 7.

55. See Jason Silverman, *Lincoln’s ‘Forgotten’ Act to Encourage Immigration*, PRESIDENT LINCOLN’S COTTAGE (July 1, 2018), <https://www.lincolncottage.org/lincolns-forgotten-act-to-encourage-immigration/>.

56. *Id.*

57. *Id.*

58. *Id.*

Act in order to fix the issues.⁵⁹ However, Lincoln was assassinated shortly after he proposed amendments.⁶⁰ As a result, the Immigration Act was repealed in 1865, and the Bureau only lasted until 1867.⁶¹

The Immigration Act of 1882 created the first foundation for regulations on immigration.⁶² At that time, the states and local levels of immigration ports were mainly in control of immigration policy.⁶³ However, this Act built the framework for federal oversight over immigration and established categories of who would be barred entry to the United States.⁶⁴ These people included a “convict, lunatic, idiot, or person unable to take care of himself or herself without becoming a public charge.”⁶⁵ This idea of exclusion continued throughout the rest of policy, including the Chinese Exclusion Act (1882), the Act to Prohibit the Coming of Chinese Persons into the United States (1892), and the 1917 Immigration Act that created the “Asiatic barred zone.”⁶⁶ It was not until 1952 that Congress established the Immigration and Nationality Act (INA), consolidating several immigration laws into one statute.⁶⁷ The INA also established that U.S. consular offices are in charge of screening foreign nationals for admissibility into the United States and are given the ability to deny visas to individuals found inadmissible.⁶⁸ The INA has been amended multiple times to include more precise guidelines and quotas for the availability and access of immigrant visas.⁶⁹ The most recent amendments to the INA were made in 2013.⁷⁰ Today, the INA is the governing statute relating to immigration issues and claims in immigration court.⁷¹ Through the INA, Congress granted express authority to the Department of Homeland Security to administer and enforce the immigration laws.⁷²

59. *Id.*

60. *Id.*

61. *Id.*

62. See An Act to Regulate Immigration, ch. 376, 22 Stat. 214 (1882).

63. See Terrence S. Welch, *Local Government Regulation of Immigration*, A.B.A., https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/municipal-law/local-government_regulation_immigration/ (last visited Sept. 27, 2019).

64. See *id.*

65. An Act to Regulate Immigration, ch. 376, 22 Stat. 214.

66. See *Major U.S. Immigration Laws 1790-Present*, *supra* note 51.

67. *Id.*

68. *Id.*

69. See *Public Laws Amending the INA*, U.S. CITIZENSHIP & IMMIGR. SERV. (May 2013), <https://www.uscis.gov/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-1.html>.

70. See *id.*

71. 8 U.S.C. § 1103(a) (2012).

72. *Id.*

C. *Structure of the American Immigration System*

After the U.S. territory was attacked on September 11, 2001, Congress passed the Homeland Security Act in November 2002.⁷³ This Act created the Department of Homeland Security (DHS), a Cabinet-level department formed under the Executive Branch to further national homeland security efforts.⁷⁴ Under this department lies the United States Citizenship and Immigration Services (USCIS), United States Customs and Border Protection (CBP), and United States Immigration and Customs Enforcement (ICE).⁷⁵ Each contributes to the regulation and enforcement of immigration policies.⁷⁶ In addition to these offices, the immigration system is also composed of the Department of Justice (DOJ), where immigration claims are decided.⁷⁷ The Attorney General sits at the head of the DOJ, and he oversees the Executive Office for Immigration Review (EOIR), the Board of Immigration Appeals (BIA), and the Offices of Immigration Litigation.⁷⁸ These offices adjudicate immigration cases and take direction from the acting Attorney General.⁷⁹ The Attorney General takes direction from the head of the Executive Branch, the President.⁸⁰

The INA governs most of what happens within the administrative review of immigration claims.⁸¹ The Immigration Courts mostly determine removability and decide applications for relief from removal, such as asylum claims.⁸² The decision of the Immigration Court is final, unless the applicant files for an appeal to the BIA.⁸³ The BIA is directly accountable to the Attorney General, and the Judges that sit on the BIA are appointed by the Attorney General.⁸⁴ The Attorney General is appointed by the President at their discretion, with the approval of the Senate.⁸⁵

73. See *Creation of the Department of Homeland Security*, DEP'T HOMELAND SEC. (Sept. 24, 2015), <https://www.dhs.gov/creation-department-homeland-security>.

74. *Id.*

75. See Megan Davy et al., *Who Does What in U.S. Immigration*, MIGRATION POL'Y INST. (Dec. 1, 2005), <https://www.migrationpolicy.org/article/who-does-what-us-immigration>.

76. *See id.*

77. See U.S. DEP'T OF JUSTICE, IMMIGRATION COURT PRACTICE MANUAL (Aug. 9, 2019), <https://www.justice.gov/eoir/page/file/1084851/download>.

78. *Id.* at 1-2.

79. *Id.* at 4.

80. 28 U.S.C. § 503 (2012).

81. See 8 U.S.C. 1229(a) (2012).

82. David Weissbrodt & Laura Danielson, *THE IMMIGRATION NUTSHELL* ch. 3 (2004) (draft chapter) (on file with University of Minnesota Human Rights Library); see also U.S. DEP'T OF JUSTICE, *supra* note 77, at 4.

83. See Weissbrodt & Danielson, *supra* note 82.

84. *Id.*

85. 28 U.S.C. § 503.

In immigration cases, the Attorney General sets quotas, initiatives, and policies with which he expects the judges to follow through.⁸⁶ Most recently, the former Attorney General, Jeff Sessions, acting under President Donald Trump, set out new guidelines for an immigration judge to get a satisfactory rating on their performance evaluations.⁸⁷ These quotas include completing 700 cases a year, as well as having less than 15% of their decisions overturned on appeal.⁸⁸ The Attorney General also has the power to “certify” immigration cases to himself.⁸⁹ Certification is a process that “allows a political appointee who heads an enforcement agency, and is subject to the policy agenda of the administration he or she serves, absolute authority to overrule or completely re-write the decisions of a tribunal comprised of judges.”⁹⁰ Thus, the Attorney General can promote policy stances through his ability to rule on the case independently.⁹¹

The immigration system is one of administrative processes.⁹² Therefore, the rights an average American would expect to have in an independent judicial court are mostly not found inside immigration courts.⁹³ Immigrants in proceedings have a right to a lawyer, but only at their own expense. Many are forced to remain in detention while their cases are pending, and many are denied an opportunity for bond.⁹⁴ The judges who are appointed to preside over these hearings are not typical Article III federal judges, rather they are administrative law judges.⁹⁵ These judges are appointed by the Attorney General and, according to Justice Department rules, must act in line with the BIA as well as the Attorney General’s precedents.⁹⁶

86. 8 U.S.C. § 1103(a) (2012).

87. See Joel Rose, *Justice Department Rolls Out Quotas for Immigration Judges*, NPR.ORG (Apr. 3, 2018, 1:09 PM), <https://www.npr.org/2018/04/03/599158232/justice-department-rolls-out-quotas-for-immigration-judges>.

88. *Id.*

89. See Jeffrey S. Chase, *The AG’s Certifying of BIA Decisions*, OPINION/ANALYSIS ON IMMIGR. L. (Mar. 29, 2018), <https://www.jeffreyschase.com/blog/2018/3/29/the-ags-certifying-of-bia-decisions>.

90. *Id.*

91. *Id.*

92. See Weissbrodt & Danielson, *supra* note 82.

93. See Gretchen Gavett, *What Are Immigration Detainees’ Legal Rights?*, PBS.ORG (Oct. 18, 2011), <https://www.pbs.org/wgbh/frontline/article/what-are-immigration-detainees-legal-rights/>.

94. *See id.*

95. See *Judicial Oversight v. Judicial Independence*, TRAC.SYR.EDU (2008), https://trac.syr.edu/immigration/reports/194/include/side_4.html.

96. See U.S. DEP’T OF JUSTICE, *supra* note 77.

III. OVERVIEW OF THE GERMANIC STRUCTURE

A. *Constitutional Authority to Govern Immigration*

Germany is a Member State of the European Union (EU) and is expected to comply with EU laws that are enacted to affect all of the member nations.⁹⁷ Therefore, there are some areas of German immigration law that are governed by the EU, and others that are left to the Member States to determine.⁹⁸ The EU Treaty, also known as the Treaty of Lisbon, is an EU law that applies to all Member States, and the treaty has been amended multiple times as new countries are added to the EU.⁹⁹ Most recently edited in 2009, the treaty outlines multiple immigration guidelines, which the Member States are to consider when creating their own laws.¹⁰⁰ Article 62 puts forth policy stating that the EU is in charge of maintaining external European border controls, while it is up to each Member State to enact its own internal border controls.¹⁰¹ This Comment will focus on Germany's legislation on internal border controls.

After World War II ended, Germany started over as a new country along with a new Constitution, called the Basic Law.¹⁰² The Basic Law has been amended multiple times since its enactment in 1949.¹⁰³ However, the initial implementation for Germany's structure of government has remained the same.¹⁰⁴ The Basic Law established Germany as a parliamentary democracy, similar to the United States with a legislative, executive, and judicial branch.¹⁰⁵ The executive branch creates two positions, the Federal President as the head of state and the Federal Chancellor as the head of government.¹⁰⁶ The Chancellor, as the head of government, has the right to form the Cabinet by choosing Ministers for

97. See Treaty of Lisbon Amending the Treaty on European Union and the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2 1997, 1997 O.J. (C 306) 41.

98. *Id.* arts. 2, 3a.

99. *Id.* art. 3a.

100. *Id.* art. 62.

101. *Id.*

102. GRUNDGESETZ [GG] [BASIC LAW], translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf.

103. See *id.*

104. See *Federal State*, *supra* note 3.

105. See *Political System of Germany*, LEGIS. COUNS. SECRETARIAT H.K. (Feb. 18, 2015), <https://www.legco.gov.hk/research-publications/english/1415fsc05-political-system-of-germany-20150218-e.pdf>.

106. *Id.*

each position.¹⁰⁷ However, the Basic Law emphasizes the Minister's right to act autonomously and on their own responsibility.¹⁰⁸

The legislative branch is made up of representatives who compose two bodies called the Bundesrat and the Bundestag.¹⁰⁹ The Bundesrat is a small group of representatives appointed by Germany's sixteen state cabinets to represent each state's interests.¹¹⁰ The Bundestag is a much larger group of representatives elected through what is known as a mixed member proportional representation system.¹¹¹ This system allows German citizens two votes: one for local representatives and one for their political party.¹¹² Once the percentage of seats a political party will receive is determined, the elected local representatives are appointed to those seats in the order determined by the amount of votes each received.¹¹³ This system allows for multiple parties to be represented in the Bundestag, requiring a coalition government.¹¹⁴ The Bundestag currently sits six different political parties: the Christian Democratic Union (CDU), the Christian Social Union (CSU), the Social Democrats (SPD), the Alternative for Germany (AfD), the Free Democrats (FDP), The Greens, and The Left.¹¹⁵ Finally, the judicial branch is represented by the Federal Constitutional Court (FCC).¹¹⁶ The FCC is the supreme constitutional court of Germany, but there are five other Supreme Federal Courts situated based on areas of law.¹¹⁷ The Federal Administrative Court is the Supreme Court responsible for administrative claims, including immigration.¹¹⁸

The Basic Law explicitly outlines a list of matters under exclusive legislative power in Article 73.¹¹⁹ Specifically, Article 73 states that the Federation shall have exclusive legislative power with respect to

107. See *Structure and Tasks*, OFF. FED. GOV'T, <https://www.bundesregierung.de/breg-en/federal-government/structure-and-tasks-470508> (last visited Sept. 27, 2019).

108. *Id.*

109. See *Federal State*, *supra* note 3.

110. *Id.*

111. *Id.*

112. Elizabeth Schulze, *Baffled by the Electoral College? Germany's System Might Be More Confusing*, CNBC.COM (Sept. 15, 2017), <https://www.cnbc.com/2017/09/15/german-elections-explained-chancellor-bundestag-voting-parties-and-merkel.html>.

113. See *Federal State*, *supra* note 3.

114. *Id.*

115. See *Parliamentary Groups in the German Bundestag*, DEUTSCHER BUNDESTAG, <https://www.bundestag.de/en/parliament/groups/groups-distribution-197644> (last visited Sept. 27, 2019).

116. See *Federal State*, *supra* note 3.

117. See generally GG.

118. See *Appeals Against the Decision*, FED. OFF. FOR MIGRATION & REFUGEES (May 16, 2019), <http://www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/Rechtsmittel/rechtsmittel-node.html>.

119. GG art. 73.

“[f]reedom of movement, passports, residency registration and identity cards, immigration, emigration and extradition.”¹²⁰ Therefore, the Basic Law clearly grants authority for immigration law to the legislative branch, the Bundestag.¹²¹

B. History of Germany's Immigration Policy

Following World War II, it was necessary for Germany to be open to migration from ethnic Germans who were displaced during the war.¹²² Additionally, there was a need to recruit migrants to address labor shortages.¹²³ The Act on Foreigners of 1965 was the first prominent immigration legislation.¹²⁴ The Act regulated the residence status of foreigners and the entry into Germany.¹²⁵ It held that every foreigner who took residence in Germany had to apply for a residence permit, and that a residence permit could be granted as long as the presence of the foreigner “does not compromise the interests of the Federal Republic of Germany.”¹²⁶ This requirement seemed broad and was brought before the FCC, who stated that the requirement was not unconstitutionally vague but instead necessary to allow the Foreigners Act to be flexible with changes in the country.¹²⁷ The Act on Foreigners was implemented by agencies at the local level of German states, subject to federal administration.¹²⁸

Germany continued to implement certain laws to help rebuild the country.¹²⁹ From 1955 to 1968, the German government signed bilateral recruitment agreements with countries such as Italy, Spain, Greece, Turkey, Morocco, Portugal, Tunisia, and the former Yugoslavia.¹³⁰ These agreements provided for migrants to become “guest workers” in Germany, where they would remain for a definite period and then, at a certain point, return to their home countries.¹³¹ However, these workers would

120. *Id.*

121. *Id.*

122. Jenny Gesley, *Germany: The Development of Migration and Citizenship Law in Postwar Germany*, LAW LIBR. CONGRESS 2 (Mar. 2017), <https://www.loc.gov/law/help/migration-citizenship/migration-citizenship-law-postwar-germany.pdf>.

123. *Id.*

124. *See id.* at 4.

125. *Id.*

126. *Id.* at 5.

127. *Id.*

128. *See generally* Gesley, *supra* note 122.

129. *See id.* at 6.

130. *Id.* at 3-4.

131. *Id.* at 4.

eventually settle in Germany.¹³² In 1978, administrative guidelines were issued to encourage immigration agencies to issue residence to these guest workers who had resided in Germany for eight years.¹³³ However, shortly after, in 1983, the Return Assistance Act was enacted to encourage guest workers to return to their country of origin.¹³⁴ The German government would provide 10,500 deutsche mark (German currency at the time) to help the guest workers have a smooth transition back to their home country.¹³⁵ It was a fair offer, but the total number of foreigners did not drop significantly with this effort.¹³⁶

The next major act of legislation on migration was the Act on Foreigners of 1990.¹³⁷ It was a continuance of the original Act on Foreigners, passed on the premise that Germany was not an immigration country.¹³⁸ Germany believed that the goal of recruiting ethnic Germans and laborers to Germany was fulfilled and therefore explained that their preference of immigrants was now for people of German heritage, foreigners fleeing persecution, and EU citizens.¹³⁹ The Act tightened the rules for removal and deportation, and expanded the discretion of foreigners' offices.¹⁴⁰ However, the Act also introduced more simplified rules for family reunification, naturalization, and asylum applications.¹⁴¹ As the rates of asylum continually increased, Germany's citizens felt that their country's asylum laws were too lenient.¹⁴² Therefore, the Bundestag at the time, composed of four different political parties, created the Asylum Compromise of 1992.¹⁴³ This compromise amended Article 16 of the Basic Law that granted the right of asylum to anyone and added the ideas of a "safe third country" and "safe country of origin" to the law.¹⁴⁴ The number of asylum applications started to decrease after this enactment.¹⁴⁵

132. *Id.*

133. Neuman, *supra* note 47, at 43.

134. Gesley, *supra* note 122, at 6.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Merih Anil, *No More Foreigners? The Remaking of German Naturalization and Citizenship Law, 1990-2000*, 29 *DIALECTICAL ANTHROPOLOGY* 453, 460 (2005) (Germany completed its historic project of building a nation state); Gesley, *supra* note 122, at 6.

140. Gesley, *supra* note 122, at 7.

141. *Id.*

142. *Id.* at 8.

143. *Id.*

144. *Id.*; see Anil, *supra* note 139, at 459.

145. Anil, *supra* note 139, at 459.

In early 2000, Germany was faced with issues of declining birth rates resulting in a loss of young workers, which created a harmful effect on the economy.¹⁴⁶ In order to determine the best move for Germany's future, Chancellor Gerhard Schroder and the Minister of the Interior, Otto Schily, created an independent commission to assess the problem.¹⁴⁷ Schily, a Social Democrat, appointed Rita Sussmuth, a member of the opposition Christian Democratic Union, to head the commission.¹⁴⁸ The Commission consisted of high-level representatives of employers' associations, trade unions, churches, local governments, and political parties in order to find a consensus among all of these groups.¹⁴⁹ The Commission admitted that Germany had become a country of immigrants and further that the country needed a concrete immigration policy to best adhere to that reality.¹⁵⁰ The Commission presented the need for a new migration system geared to meet future demographic and labor market needs.¹⁵¹ The law that developed from the Commission's report included multiple governing immigration provisions all consolidated into one Act.¹⁵² These provisions include the Act on the Residence, Employment, and Integration of Aliens in Germany (the Residence Act), the Freedom of Movement Act, the Nationality Act, the Asylum Seekers Assistance Act, and other laws.¹⁵³ The Immigration Act entered into force on January 1, 2005.¹⁵⁴ Today, this Act is known as the Residence Act and has been amended multiple times since 2005, most recently in 2017.¹⁵⁵ The Residence Act grants authority for the Federal Government to appoint a Commissioner for Migration, Refugees, and Integration and provides that the Commissioner's office shall be established at one of the supreme federal authorities.¹⁵⁶ Today, the

146. Rainer Munz, *New German Law Skirts Comprehensive Immigration Reform*, MIGRATION POL'Y INST. (Aug. 1, 2004), <https://www.migrationpolicy.org/article/new-german-law-skirts-comprehensive-immigration-reform>.

147. *Id.*

148. *Id.*

149. *Id.*

150. Gesley, *supra* note 122, at 9.

151. *See id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet [AufenthG] [Residence Act] repromulgated Feb. 25, 2008, BUNDESGESETZBLATT Teil I [BGBl I] at 3618, *as amended* http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.pdf.

156. *Id.* § 92.

Federal Office for Migration and Refugees under the Federal Ministry of the Interior is responsible for implementing immigration law.¹⁵⁷

C. Germany's Immigration System

The German immigration system is shared by two authorities: the Ausländerbehörde (foreigners' registration authority) and the Federal Office for Migration and Refugees (BAMF).¹⁵⁸ The foreigners' registration authority is mainly run by the regional state governments.¹⁵⁹ Article 83 of the Basic Law permits the German States to execute federal laws in their own right.¹⁶⁰ Further, Article 84 requires states to provide for the establishment of the requisite authorities and regulate their administrative procedures.¹⁶¹ Therefore, although the law on foreigners is federal law, the states are in charge of administering and enforcing the immigration laws.¹⁶²

The immigration courts, similar to the United States, decide cases of deportation and asylum.¹⁶³ Deportation orders are usually ordered by the BAMF, while the enforcement of these orders are conducted by federal and local police.¹⁶⁴ Those who are issued deportation orders or rejected for their asylum application may appeal their decision to an administrative court.¹⁶⁵ The Residence Act states that a foreigner must be given an opportunity to contact a legal adviser of his choice and informed of the legal consequences and available legal remedies.¹⁶⁶ Once an application is rejected, an applicant only has one or two weeks to file their appeal to an administrative court.¹⁶⁷

The Federal Administrative Court is the supreme court of administrative law and is prescribed by Article 97 of the Basic Law as an independent judicial court.¹⁶⁸ There are three tiers to the administrative

157. See *The Authority*, FED. OFF. FOR MIGRATION & REFUGEES, <http://www.bamf.de/EN/DasBAMF/Aufgaben/Beh%C3%B6rde/die-behoerde-node.html> (last visited Sept. 27, 2019).

158. See Ben Knight, *How Do Deportations Work in Germany?*, DW NEWS (July 16, 2018), <https://www.dw.com/en/how-do-deportations-work-in-germany/a-44694746>.

159. See *id.*

160. GG art. 83.

161. *Id.* art. 84.

162. *Id.*

163. Residence Act, BGBL I, at 3618.

164. See Knight, *supra* note 158.

165. Residence Act, BGBL I, § 58a.

166. *Id.*

167. *Id.*

168. GG art. 97.

court system.¹⁶⁹ The lowest tier has fifty-one courts across Germany, each is responsible for its court district and decides as the court of first instance.¹⁷⁰ Judges sitting at the lowest tier are appointed by the State's justice ministry in which the court sits.¹⁷¹ The Higher Administrative Courts are the middle tier of the administrative jurisdiction and sit in each of the sixteen federal states.¹⁷² The judges sitting at the middle tier are also appointed by the State's justice ministry.¹⁷³ Finally, at the top tier sits the Federal Administrative Court.¹⁷⁴ Five professional judges adjudicate judgments based on oral hearings.¹⁷⁵ The judges sitting on the Federal Administrative Court are appointed by a judicial selection committee, consisting of all sixteen state justice ministers and sixteen appointed members of the Bundestag.¹⁷⁶ The state administrative court's decision may be reviewed by the higher administrative court and then ultimately by the Federal Administrative Court.¹⁷⁷ The Basic Law states, "[j]udges shall be independent and subject only to the law."¹⁷⁸ If the individual believes that the final decision violated his or her rights under the Basic Law, then they may bring a constitutional complaint to the FCC.¹⁷⁹

IV. A COMPARISON OF IMMIGRATION ISSUES: UNITED STATES AND GERMANY

A. *Present-Day Immigration in America*

The immigration system in America is largely controlled by the Executive Branch of Government.¹⁸⁰ This structure has a large impact on the immigration system and how policy is construed in light of the President in office.¹⁸¹ In the U.S. Constitution, the President is the only

169. See *Structure of the Administrative Jurisdiction*, BUNDESVERWALTUNGSGERICHT, <https://www.bverwg.de/en/rechtsprechung/verwaltungsgerichtsbarkeit/aufbau-der-verwaltungsgerichtsbarkeit> (last visited Sept. 27, 2019).

170. *Id.*

171. See Volker Wagener, *How Does Germany Choose Its Judges? Always the Best Pick?* DW NEWS (Sep. 27, 2018), <https://www.dw.com/en/how-does-germany-choose-its-judges-always-the-best-pick/a-39846970>.

172. See *Structure of the Administrative Jurisdiction*, *supra* note 169.

173. See Wagener, *supra* note 171.

174. See *Structure of the Administrative Jurisdiction*, *supra* note 169.

175. *Id.*

176. See Wagener, *supra* note 171.

177. See *Appeals Against the Decision*, *supra* note 118.

178. GG art. 97.

179. See *Appeals Against the Decision*, *supra* note 118.

180. See Stock, *supra* note 5.

181. See *id.*

political official to be elected nationally.¹⁸² This stands for the proposition that the President is a representative of the national body and should be expected to respond to national interests.¹⁸³ However, America's two-party system has turned what should be a nationally representative position into a mostly one-sided position.¹⁸⁴ A President's stance on immigration combined with the power to oversee the entire system gives him the ability to direct officers to act according to his party's agenda.¹⁸⁵

This has been apparent in the Donald Trump administration.¹⁸⁶ Donald Trump ran his campaign on the famous phrase "Make America Great Again," focusing his effort on strict immigration laws.¹⁸⁷ The ideas that Trump boasted consisted of building a border wall between the United States and Mexico, banning all Muslims from entering the United States, and deporting millions of illegal immigrants residing in the United States.¹⁸⁸ He continually reiterated getting rid of "the gang members, the drug dealers and the criminals who prey on our people" and targeted all Muslim people as terrorists.¹⁸⁹ This campaign was a scary time for immigrant communities in America.¹⁹⁰ However, the notion of using immigrants as the scapegoat for the nation's problems is not a new method.¹⁹¹ American immigration history was founded on exclusive laws and continues this rhetoric today.¹⁹² This becomes a large problem, however, when it is the President with the Executive who is given large discretion to control immigration policy.¹⁹³

When Trump was elected in 2016, it only took him seven days to sign his first executive order, known as the "travel ban."¹⁹⁴ This order halted

182. William P. Marshall, *Why the Assertion of a "Nationalist" Presidency Does Not Support Claims for Expansive Presidential Power*, 12 U. PA. J. CONST. L. 549, 549 (2010).

183. *Id.*

184. *Id.* at 554.

185. *Id.*

186. See Adam Goodman, *The Core of Donald Trump's Immigration Policy? Fear.*, WASH. POST (Aug. 24, 2017), https://www.washingtonpost.com/news/made-by-history/wp/2017/08/24/the-core-of-donald-trumps-immigration-policy-fear/?utm_term=.4c73efc2440e.

187. *Id.*

188. See Jenna Johnson, *Here Are 76 of Donald Trump's Many Campaign Promises*, WASH. POST (Jan. 22, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/01/22/here-are-76-of-donald-trumps-many-campaign-promises/>.

189. See Goodman, *supra* note 186.

190. *Id.*

191. *Id.*

192. See Weisberger, *supra* note 7.

193. See Somin, *supra* note 20.

194. See Steve Almasy & Darran Simon, *A Timeline of President Trump's Travel Bans*, CNN.COM (Mar. 30, 2017), <https://www.cnn.com/2017/02/10/us/trump-travel-ban-timeline/index.html>.

the entrance of Syrian refugees as well as citizens from Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen into the United States.¹⁹⁵ The travel ban blocked residents coming from majority Muslim countries, indicating that Trump was targeting people based on religion.¹⁹⁶ He claimed the ban was to protect America from terrorists, but it rather seemed that Trump was associating all Muslims with being terrorists.¹⁹⁷ Trump's Attorney General Sally Yates refused to support the ban and consequently, Trump fired her.¹⁹⁸ The order was challenged in numerous Federal Courts and amended three times, until eventually it reached the Supreme Court in *Trump v. Hawaii*.¹⁹⁹ The Court held that Trump's travel ban was within his authority granted to him under the INA.²⁰⁰ The exact provision that grants him the authority allows the President, acting alone, to "suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants."²⁰¹ The deference to the President within the INA is not questioned by the Court, and further, the Court also rejected arguments that the President should be required to explain his finding in banning the aliens in order to trigger the power of judicial review.²⁰² The deference to the President that the Supreme Court recognized has led Trump to continue enacting harsh immigration laws.²⁰³ Since taking office, Trump has enacted nine executive orders related to immigration.²⁰⁴ These orders include hiring 15,000 additional border and interior enforcement officers, eliminating "sanctuary cities," and building the wall along the southern border.²⁰⁵

The President's harsh stance on immigration contributed to the Justice Department and the DHS implementing a "zero-tolerance" policy at the U.S.-Mexico border.²⁰⁶ Under this policy, these departments pledged to work together to criminally prosecute everyone who crossed the border.²⁰⁷ However, the departments do not have the resources or the man power to effectively detain and prosecute these individuals, leading to an

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

200. *Id.* at 2408.

201. 8 U.S.C. § 1182(f) (2012).

202. *Trump*, 138 S. Ct. at 2409.

203. See Sarah Pierce et al., *U.S. Immigration Policy Under Trump: Deep Changes and Lasting Impacts*, MIGRATION POL'Y INST. 2 (July 2018), <https://www.migrationpolicy.org/research/us-immigration-policy-trump-deep-changes-impacts>.

204. *Id.* at 2-3.

205. *Id.*

206. *Id.* at 1.

207. *Id.*

overflow of detention facilities and a congestion of the immigration courts.²⁰⁸ Additionally, this program led to the separation of migrant children from their parents at the border, likely the most controversial aspect of this “zero-tolerance” policy.²⁰⁹

Trump’s appointed Attorney General, Jeff Sessions, helped push this harsh stance directly through the immigration courts as well.²¹⁰ Sessions specifically made it immensely more difficult for immigrants fleeing persecution on the basis of domestic violence and gang violence to gain asylum here in the United States.²¹¹ Sessions used his certifying power to overrule a case already decided by the BIA.²¹² In *Matter of A-B*, Sessions promulgated that persecution based on domestic violence or gang violence was outside the scope of the purpose of the asylum statute, stating that “the asylum statute is not a general hardship statute, [or] some ominous catch-all for solving every heart rendering situation.”²¹³ This decision has made it immensely harder for victims of domestic abuse and gang violence to achieve asylum status in the United States, leaving them to face persecution in their home country.²¹⁴

B. Present-Day Immigration in Germany

In 2015, Europe faced a large migration crisis when millions of refugees were fleeing humanitarian catastrophes happening in Iraq and Syria.²¹⁵ Germany’s Chancellor Angela Merkel responded to the crisis by opening Germany’s borders and letting in nearly 1 million asylum seekers and other migrants.²¹⁶ This has been a point of controversy within Merkel’s administration, even though the numbers of incoming migrant arrivals has dropped significantly since 2015.²¹⁷ Since then, the major issue in Germany’s immigration policy has been mostly one of political crisis

208. *Id.* at 5.

209. *Id.*

210. *Id.*

211. See *Matter of A-B*, 27 I&N Dec. 316, 320, Interim Decision 3929, WL 3091048, at *5 (U.S. Att’y Gen. 2018).

212. *Id.* at 346.

213. *Id.*

214. See Pierce et al., *supra* note 203, at 5.

215. See generally James McAuley & Rick Noack, *What You Need to Know About Germany’s Immigration Crisis*, WASH. POST (July 3, 2018), https://www.washingtonpost.com/news/worldviews/wp/2018/07/03/what-you-need-to-know-about-germanys-immigration-crisis/?utm_term=.475430479718.

216. *Id.*

217. *Id.*

rather than an actual migrant crisis.²¹⁸ Most recently, Merkel's political party, the CDU, was at odds with her strongest alliance, the CSU.²¹⁹ The CSU seeks to implement harsher stances on immigration policy, including allowing the German police to refuse refugees who are registered as asylum seekers in other European countries.²²⁰ Merkel refused this proposal, creating a power struggle between two parties of the Bundestag who have long worked together.²²¹ Interior Minister Horst Seehofer, leader of the CSU party, and Merkel worked together to devise an arrangement that would satisfy both parties.²²² The two parties agreed to build transit centers on the German side of the border with Austria, and require asylum seekers to be returned from those centers to other European countries where they first entered.²²³ Merkel and Seehofer spent hours in negotiations to achieve this result and agreed that it was a good compromise for both parties.²²⁴

Since then, the next major immigration law that came into effect made it easier for skilled workers to move and find work in Germany.²²⁵ The coalition government focused on two main points considering solutions to fill the skilled labor gap in Germany through targeted immigration and prospects for allowing asylum seekers to find work and integrate into society.²²⁶ The law allows for any non-EU citizen with adequate training and education to have more relaxed requirements seeking work in Germany.²²⁷ Additionally, the law offers an opportunity for rejected asylum seekers, who can secure a permanent job, to obtain a residency permit and remain in the country.²²⁸ Representatives of the business community expressed positive reactions to this compromise, stating that these types of agreements are necessary to maintain Germany's economic competitiveness.²²⁹

218. *Id.*

219. See Soraya Sarhaddi Nelson, *A Compromise on Migration Keeps Germany Chancellor Angela Merkel in Power*, NPR.ORG (July 2, 2018), <https://www.npr.org/2018/07/02/625444579/a-compromise-on-migration-keeps-german-chancellor-angela-merkel-in-power>.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. See Friedel Taube, *Germany's New Immigration Laws Open Door for Skilled Labor*, DW NEWS (Feb. 2, 2018), <https://www.dw.com/en/germanys-new-immigration-laws-open-door-for-skilled-labor/a-45734442>.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

Finally, refugees who have been appealing the rejection of asylum claims by German migration authorities are winning their cases before the administrative courts.²³⁰ Almost 44% of immigrant's cases that have been challenged have been granted asylum status in Germany.²³¹ This brought officials to question the quality of BAMF's ability to reject asylum applications.²³² Ulla Jelpke, the Left Party expert for domestic affairs, stated that these numbers show an obvious issue of BAMF authorities issuing unjustified rejections.²³³ Additionally, she emphasized the result of these unjustified rejections, forcing those seeking protection to be sent back to war, torture, and persecution.²³⁴

V. CONCLUSION

It is apparent that the head of the Executive Branch, the President, has a large effect on the immigration policy in America. The immigration system sits directly under the Executive Branch and further is subject to the Attorney General's discretion.²³⁵ The Attorney General, appointed by the President, is able to use his position to influence various immigration decisions and directly affect the implementation of enforcement.²³⁶ Through the INA, Congress legislated this large grant of authority and largely ignores its effects.²³⁷ Congress now has the responsibility to remedy the situation. The current administration has set a precedent for the future that needs to be resolved before it continues to harshly affect the lives of millions of people.²³⁸

Further, the Supreme Court has consistently refused to acknowledge the issue by sharply rejecting the power of judicial review to ensure observance of constitutional limitations.²³⁹ The Supreme Court relies on "foreign policy overtones" and insists that immigration law is not within

230. See *Almost Half of Rejected Asylum Seekers in Germany Winning on Appeal*, DW NEWS (Jan. 15, 2018), <https://www.dw.com/en/almost-half-of-rejected-asylum-seekers-in-germany-winning-on-appeal/a-42155593>.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. See *The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool*, SOUTHERN POVERTY L. CTR. (June 25, 2019), <https://www.splcenter.org/2019/06/25/attorney-generals-judges-how-us-immigration-courts-became-deportation-tool>.

236. *Id.*

237. *Id.*

238. See *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

239. See Neuman, *supra* note 47, at 35-6.

their discretion to delegate.²⁴⁰ This idea is outdated, and the reality is that the United States is a country made up of immigrants living, working, and beneficially contributing to society.²⁴¹ It is time for the Supreme Court to acknowledge that harsh policy is not how American immigration law should be promoted. The use of administrative courts, subject to the Attorney General's discretion, is not enough to ensure that immigrants are afforded the rights they deserve as members of America's society.

In contrast, Germany has a stronger hold on the immigration system as a whole.²⁴² Chancellor Angela Merkel clearly has a say in immigration law, but she is not entitled to affect the immigration system through her individual acts.²⁴³ The Chancellor and Cabinet have a stronger focus on Germany's exterior border regulation, while the BAMF, along with the administrative courts, independently handle interior immigration issues.²⁴⁴ The Federal Administrative Court is an impartial judicial body given authority under the Basic Law.²⁴⁵ The administrative courts are able to delegate the immigration standards from the Legislature, with discretion to act as an independent judicial body.²⁴⁶ Further, the judges that sit on these courts are appointed by each state's justice ministries, or a judicial committee, giving way for a wider spectrum of opinions.²⁴⁷ The overall impact of the widespread authority to govern immigration provides for a lasting system of compromise, rather than policies enacted on the whim of one person.

The difference in government structure can affect a nation's legislation in various ways. In America, it is clear that the authority granted to the Executive to oversee immigration can directly affect people's lives. Further, America's two-party system leads to a constant tug-of-war in immigration policy.²⁴⁸ This is not a productive way to control a system that needs a strong basis to work successfully. America has always had exclusive immigration policies, based on keeping people out rather than figuring out a way to effectively handle hard situations.²⁴⁹ This attitude has

240. *Id.*

241. See Gretchen Frazee, *4 Myths About How Immigrants Affect the U.S. Economy*, PBS (Nov. 2, 2018), <https://www.pbs.org/newshour/economy/making-sense/4-myths-about-how-immigrants-affect-the-u-s-economy>.

242. See generally GG; Nelson, *supra* note 219.

243. See generally Nelson, *supra* note 219.

244. See generally GG.

245. *Id.*

246. *Id.*

247. *Id.*

248. See Stock, *supra* note 5.

249. See Weisberger, *supra* note 7.

rung true throughout American immigration history and still affects the system today.²⁵⁰ Germany, however, uses the base of a coalition government, which allows for much debate and negotiation before any policy is enacted.²⁵¹ In addition, Germany's rebuilding after World War II contributes to the principle that they need immigrants in order to promote their economy.²⁵² There are fundamental differences between the two nations that impact how immigration is viewed within the country and the ability of the government to address these issues. However, the structure of each country's government is the ultimate factor in delegating and enforcing the law, and for immigrants, the impact is crucial.

250. *Id.*

251. *See The Mediation Procedure, supra* note 5.

252. *See Gesley, supra* note 122, at 2.