

Special Section

The *Hartz IV* Case and the German *Sozialstaat*

Student Comment—Germany’s Commitment to the *Sozialstaat* Through Film

By Chaz Klaes*

A. Introduction

Trümmerfilme (“rubble films”) provide a first-hand, although cinematographic, view of postwar Germany. They depict the myriad of postwar living conditions and day-to-day problems. The German word *Vergangenheitsbewältigung* means “the process of dealing with the past.”¹ This term captures the film directors’ respective approaches to depicting the past as a process rather than a single act.² The *Trümmerfilme* are essential for anyone studying the postwar period. Although the films do not provide a complete or uniform approach, they provide numerous insights into the predominant problems faced by Germans during the immediate postwar period. Through the depiction of these social conditions, the films provide insight into the origin of the Basic Law’s commitment to the *Sozialstaat*.³

The German Basic Law guarantees certain social justice principles. This commitment includes the guarantee of a minimum basic standard of living for every German.⁴ Germany’s commitment to the Basic Law and the *Sozialstaat* partially developed from extensive infrastructure damage during World War II that led to German social devastation, suffering, yearning, and need.⁵ The *Trümmerfilme* place this suffering in

* Chaz Klaes is a third year JD candidate at Washington and Lee University School of Law. Chaz would like to thank Professors Russell Miller (Washington and Lee) and Frank Schorkopf (Georg-August-University in Göttingen) for their assistance. Chaz can be reached at klaes.c@law.wlu.edu.

¹ ANDREAS MAISLINGER, COMING TO TERMS WITH THE PAST: AN INTERNATIONAL COMPARISON 170 (2004).

² HEIDI FAHRENBACH, CINEMA IN DEMOCRATIZING GERMANY 8 (1995).

³ See generally Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] 9 Feb. 2010 (*Hartz IV*), 125 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS [BVERFGE] 175, 1 BvL 1/09 of 9 Feb. 2010, 2010 (Ger.), available at http://www.bverfg.de/entscheidungen/Is20100209_1bvl000109.html (last visited 3 Nov. 2011). The *Hartz IV* case is discussed in Section C. This commitment consists of certain provisions for housing, healthcare, food, education and cultural learning, as well as other necessities. Christian Bommarius, Directing Editor, Berliner Zeitung, Address at the German Law Journal Symposium in Washington, D.C.: German Law in Context (3 Dec. 2010).

⁴ See Bommarius, *supra* note 3.

⁵ *Id.*

context.⁶ The films illustrate the desperate hardship Germans faced, and hence, why the founders of the “new Germany” constitutionally committed to basic social rights. This commitment has endured for over half a century, and recently the German Constitutional Court reaffirmed this commitment.⁷

This Comment critically examines two of these films. It seeks to explain how the filmmakers portrayed the two greatest needs in Germany during this period of history: food and housing; it also explores why the Basic Law committed to providing these essentials. Further, this Comment considers the underlying message from two *Trümmerfilme*—*Germany: Year Zero* and *Somewhere in Berlin*—that social justice must come from a communal and cooperative Germany. Finally, this Comment examines the recent *Hartz IV* decision, and how these films relate to the Court’s re-affirmation of a commitment to basic social justice.

B. Film as a Window into Law’s Context

Film can be used for practical teaching; it can also be used in academic research to gain a better understanding of the culture and the principles that form law.

It is important to “read” the films for what they can teach about law.⁸ “Law and Film” is a subset of the “Law and Society” movement, which places law in its social, political, economic, and cultural context.⁹ Advocates of Law and Society draw from scholars across all fields to study socio-legal phenomena.¹⁰ Law reflects cultural and societal principles.¹¹ Yet, it is often difficult to discern these principles and grasp the underlying meaning of laws simply from looking at the plain meaning of the statute.¹² Film, however, is a visual transmitter of culture.¹³ Film can contribute to our understanding of law by providing us with “an understanding of the relationship of law to the social and economic environment

⁶ These films highlight the hunger and housing problems, and emphasize how the nation needed a communal approach to providing these necessities so no German ever experienced such suffering again.

⁷ *Hartz IV*, 125 BVERFGE 175, 1 BvL 1/09 of 9 Feb. 2010 (Ger.).

⁸ Symposium, *Popular Culture, Legal Films, and Legal Film Critics*, 40 *LOY. L.A. L. REV.* 745, 745 (2007).

⁹ *Id.*

¹⁰ LAURA NADER, *LAW IN CULTURE AND SOCIETY* vi (1997).

¹¹ *Id.*

¹² *Id.*

¹³ RENNDARD STRICKLAND, TERE FOSTER & TAUNYA BANKS, *SCREENING-JUSTICE—THE CINEMA OF LAW: SIGNIFICANT FILMS OF LAW, ORDER AND SOCIAL JUSTICE* xxii (2006).

in which it operates.”¹⁴ Film informs and colors a contextual approach to the study of law.¹⁵

This cinematic approach to understanding law’s social and economic conditions enhances our understanding of law as it illustrates the cultural context in which the law develops.¹⁶ Films, even those not primarily focused on legal subjects, reveal culture and cast light on societal problems and issues. Films also portray the popular culture of a specific period.¹⁷ Popular culture is reflected in a society’s views and actions, including its laws.¹⁸ Thus, film can inform us about the underlying purpose and meaning behind specific laws.

These films are more than a break from typical textbook study; they offer a unique and valuable perspective on our study of postwar Germany. The visual and auditory experience of film allows the viewer to connect with the social issues of the time and place represented on screen. The films portray the competing theses for the rebirth of the “new” Germany, and allow us to draw our own conclusions as to the reasons for which the founders committed to the *Sozialstaat*.

C. *Trümmerfilme* Genre

The *Trümmerfilme* portray the rubble-filled landscape of postwar Germany between 1946 and 1949, when the new West German state was founded. During this period, Germany was mired in political, physical, and moral chaos.¹⁹ *Trümmerfilme* depict a similar plot: “[Men] return home from the war and [are] confronted with the ubiquitous signs of destruction, [are] forced to make sense of [their] personal tragedy and, by extension, that of the German people.”²⁰ This theme serves as a metaphor for the physical destruction of Germany’s cities and the psychic and physical devastation of its people.²¹ The visual depiction of the ruins not only represents the cultural and societal crises plaguing postwar Germany, but also “sets the stage for the proscribed return to traditional family values.”²²

¹⁴ STEVE GREENFIELD, GUY OSBORN & PETER ROBSON, *FILM AND THE LAW* 3 (2001).

¹⁵ *Id.* at 3–4.

¹⁶ *Id.* at 11.

¹⁷ For our study, the films portray postwar Germany between 1946 and 1949.

¹⁸ See GREENFIELD ET. AL, *supra* note 14, at 12.

¹⁹ ROBERT SHANDLEY, *RUBBLE FILMS: GERMAN CINEMA IN THE SHADOW OF THE THIRD REICH* 2 (2001).

²⁰ SABINE HAKE, *GERMAN NATIONAL CINEMA* 98 (2002).

²¹ Eric Rentschler, *The Place of Rubble in the Trümmerfilm*, 37 *NEW GERMAN CRITIQUE* 9, 9 (2010).

²² HEIDI FEHRENBACH, *CINEMA IN DEMOCRATIZING GERMANY* 149 (1995).

A basic introduction of the history of the *Trümmerfilme* genre will help the viewer understand these films more fully. When Germany surrendered on 8 May 1945, it had one of the strongest, most productive film industries in the world.²³ After the surrender, the Allies silenced all public media—including film.²⁴ After surrender, four regional occupation zones replaced the Allied Supreme Command of the Invasion and were established under the sovereignty of the United Kingdom, France, the United States, and the Soviet Union.²⁵ Each zone set up its own military government and policies of governance.²⁶ Control of cultural activities came under the command of each separate military government.²⁷ This tension is directly reflected in the *Trümmerfilme* and the filmmakers' approaches to history, which were influenced by the East versus West theme.²⁸

The Western Allies firmly believed film could be used to advance their own political goals, “namely democratic reeducation.”²⁹ In 1945, the Allies asserted:

No German films may be shown in the United States Zone of Occupation which glorify the ideology of Fascism, Nazism, or racial distinction; glorify or idealize war or militarism; publically subvert or perfect Germany history or glorify or idealize the German Army; seem derogatory or uncomplimentary of or ridicule Allied peoples, their governments, their political or national leaders; deal with German revenge; ridicule or criticize religious feelings and religious attitudes; glorify or idealize the thoughts and/or acts of German leaders whose opinions, notions or political

²³ See SHANDLEY, *supra* note 19, at 9.

²⁴ See *id.* at 1 (explaining that the Allies “began a thorough and deliberate process of filtering the voices that were allowed to speak.”). The Allies purposely delayed the reentry of film into the public sphere because they appreciated the special influence film had as a propaganda tool. *Id.* at 2.

²⁵ *Id.* at 11.

²⁶ *Id.*

²⁷ See *id.* (summarizing many scholars who comment that “even before the Allied victory, tensions between the Western Allies and the Soviets were manifesting themselves, leading to even less cooperation between the Soviet zone and its Western counterparts”).

²⁸ *Id.* at 2. These films also tell us—as historians, scholars, and the public—how the transformation occurred from Nazism to Allied occupation to a new German state dedicated to social welfare.

²⁹ See NORBERT GROB, *DAS JAHR 1945 UND DAS KINO 86* (1995) (explaining how the Allies, following the American lead, adopted strict censorship rules regarding the flow of information and films); see also SHANDLEY, *supra* note 19, at 17.

philosophy was imperialistic, are based upon a book or script of a known Nazi Party member or supporter, or which originate through the creative efforts of known Nazi Party members or proven active supporters.³⁰

Thus, the Allies' censorship methods ensured that the people of the new German state were exposed only to specific political messages. The films produced pursuant to this screening process, contain democratic notions and contrast sharply with the Eastern/Soviet films.

The Russian-occupied zone produced different results in German filmmaking. In fact, there is no record of similar Soviet censorship activity.³¹ The Soviets directed their activity toward turning the Germans into political allies. The Soviets collaborated with the Germans instead of imposing all their ideas on them.³² As Thomas Heimann claims, "many of the Soviet cultural officers sought to improve upon the models they had seen in their own country."³³ For example, Soviet film policies did not impose lessons on Germans, but rather, they allowed Germans to discuss and understand their own history.³⁴

From the studios' early days, both parties (Germans and Soviets) were "united by one overriding concern, namely that of overcoming fascism . . . [I]t was important since it created a special climate in which artists could develop their ideas without fear of censorship and in which they could feel confident that they were both wanted and needed."³⁵ The Russians made greater advances with their influences because they encouraged and promoted German cultural life while more subtly infusing their ideas.³⁶

³⁰ PETER PLEYER, *DEUTSCHER NACHTKRIEGSFILM 1946–1948*, at 26 (1965).

³¹ *Id.*

³² See SHANDLEY, *supra* note 19, at 17 (discussing how, in early 1946, a committee of Soviet officers and German filmmakers came together to start the first German film company, DEFA (Deutsche Film AG)).

³³ See THOMAS HEIMANN, *DEFA, KÜNSTLER UND SED-KULTURPOLITIK: ZUM VERBÄLTNIS VON KULTURPOLITIK UND FILMPRODUKTION IN DER SBZ/DDR 1945 BIS 1959* (1994).

³⁴ See SHANDLEY, *supra* note 19, at 17.

³⁵ See HEIMANN, *supra* note 33.

³⁶ See SHANDLEY, *supra* note 19, at 18. The Soviet approach ensured that the East German films promoted contrasting messages for rebirth and growth of the new nation. The eastern filmmakers had different theses which aligned more with the Soviet communists. These films played an important role in binding war experiences into transformative postwar narratives. See ANKE PINKERT, *FILM AND MEMORY IN EAST GERMANY 14* (2008).

The emotional and physical rubble that defines and dominates this genre is the “primary external force to which the characters must respond.”³⁷ The films focus on their characters’ difficulty in obtaining the necessities of life and starting over in postwar Germany.³⁸ In fact, the films often serve as commentary on the daily compromises Germans made to obtain these necessities.³⁹ The films serve as a guide for understanding modern reality—especially the outgrowths of this period.⁴⁰

These films are considered box office failures.⁴¹ Furthermore, Professor Frank Schorkopf argues that “we must be skeptical towards the positions adopted by the filmmakers.”⁴² The filmmakers are criticized for being too emotionally involved in the hardships of postwar life and blind to other concerns such as personal or collective responsibilities for the crimes of the war.⁴³ The shortcomings exposed by these criticisms, similar to the genre’s praise, must be read in context.⁴⁴ The essential element is that we bear these criticisms in mind when examining these films and their portrayal of the socio-economic landscape in which the Basic Law’s commitment to the *Sozialstaat* was rooted.

³⁷ See PINKERT, *supra* note 37, at 120.

³⁸ Frank A. Birgel, *Rubble Films: German Cinema in the Shadow of the Third Reich*, 56 *FILM Q.* 61, 61–63 (2003) (reviewing ROBERT SHANDLEY, *RUBBLE FILMS: GERMAN CINEMA IN THE SHADOW OF THE THIRD REICH* (2001)).

³⁹ See HAKE, *supra* note 21, at 98.

⁴⁰ JULIA HELL AND ANDREAS SCHONIE, *RUINS OF MODERNITY I* (2009). Sometimes hard to bear for their raw portrayal of suffering, these films provide a valuable, albeit distinct, version of the period’s reality. See SHANDLEY, *supra* note 20, at 5.

⁴¹ See HAKE, *supra* note 20, at 112.

⁴² Letter from Frank Schorkopf, Professor, Institute for International and European Law, Georg-August-University in Göttingen, to author (19 Nov. 2010) (on file with author).

⁴³ See SHANDLEY, *supra* note 19, at 9. Similarly, the films “rarely confront the institutions, traditions, and assumptions that led to the catastrophe that was postwar Europe.” *Id.* at 4. In fact, these films are often characterized as simply “films with [continuous] scenes of bombed out ruins in German cities”—nothing more. The Spanish Prisoner (Austin Fields), *The Murderers Are Among Us*, *THE SPANISH PRISONER* (11 Apr. 2009, 9:18 AM), <http://thespanishprisoner.wordpress.com/2009/04/11/the-murderers-are-among-us/> (last visited 5 Nov. 2011). Further, these films are characterized as diverging from history, and their only success is as a “popular genre.” Angelica Fenner, *Review: Thomas Elasser, ed., with Michael Wedel. The BFI Companion to German Cinema*, 25 *GERMAN STUD. REV.* 382, 383 (2002).

⁴⁴ See HEIDI FEHRENBACH, *CINEMA IN DEMOCRATIZING GERMANY 149* (1995) (explaining why some argue that these criticisms contributed to the genre becoming a “bust” by 1948).

I. Germany: Year Zero

Roberto Rossellini's film *Germany: Year Zero* (1947) is a self-described "portrait of a destroyed city."⁴⁵ The film, the third in Rossellini's war film trilogy, depicts Germany's postwar physical and emotional ruin.⁴⁶ The film is described as "uncharacteristically dark and emotionally devastating" because it portrays the German devastation.⁴⁷ Rossellini's thesis runs from the opening scene through the climatic ending: "[T]he ones who would suffer most as a result of the scourge of Nazism would be the German people themselves."⁴⁸ In sum, although oxymoronic, Rossellini eloquently portrays the human suffering that was prevalent when the Basic Law was adopted in 1949. Even though this film was controversial and met with harsh criticism, it provides rich material for a contextual study of the founding of the West German Republic and its Basic Law, the Germans' troubled quest for necessities, and the Basic Law's subsequent commitment to the *Sozialstaat*.⁴⁹

The film's impact derives largely from its pseudo-documentary, naturalistic performances—most importantly from Edmund Koeher, the film's twelve-year-old lead character portrayed by an actor.⁵⁰ In fact, the majority of the performers were not professional actors but untrained "real" Germans, who were themselves suffering the hardships portrayed in the film.⁵¹ Rossellini worked in the Italian neo-realist tradition.⁵²

⁴⁵ *Germany: Year Zero (Germania: Anno Zero)* (G.D.B. Film 1948).

⁴⁶ Chris Wiegand, *Germany: Year Zero*, BBC ONLINE (Dec. 2009), <http://www.bbc.co.uk/bbcfour/cinema/features/germany-year-zero.shtml> (last visited 4 Nov. 2011).

⁴⁷ *Id.*

⁴⁸ James Travers, *Germania anno zero (1948)*, FILMS DE FRANCE (2003), http://filmsdefrance.com/FDF_Germania_anno_zero_rev.html. The film emphasizes a "concentration on the inner character"—a realism of the individual (last visited 4 Nov. 2011); see also DAVID FORGACS ET. AL, ROBERTO ROSSELLINI: MAGICIAN OF THE REAL 3 (2000).

⁴⁹ See TRAVERS, *supra* note 49.

⁵⁰ *Id.*; see also Tina Camilleri, *Roberto Rossellini's Germany, Year Zero: A Child's Journey Through the Crumbling Skeleton of War-Torn Germany*, SENSES OF CINEMA, <http://archive.sensesofcinema.com/contents/00/11/germany.html> (last visited 4 Nov. 2011). For Rossellini, fantasy did not stand in an antithetical relationship to realism and the introduction of fantasy elements into a film remained perfectly consistent with a broadly realist project. See FORGACS, *supra* note 48, at 10.

⁵¹ See Travers, *supra* note 48.

For my cast I roamed the streets of Berlin, looking for satisfactory physical types. The boy, Edmund, I discovered in a circus, where he had been born and lived all his life with his mother, and his father, the riding master. The old father I found sitting on the steps of a public home for the aged. Curiously enough he had been an actor for silent pictures in the early 1990s. The sister attracted my attention

Germany: Year Zero is a “stark and grueling feature document[ing] the endless struggles of post war [sic] life, including child labour and the reality of the black market to the prevalent worries of prostitution and poverty.”⁵³ Rossellini emphasizes the sheer destruction of housing, the mountainous amount of rubble left behind, and the dire need for minimal amounts of food for survival.⁵⁴ In fact, the film can be read as a statement of necessity.⁵⁵ Both of these necessities evaded most of the German people, and this left a society plagued by chaos, confusion, anger, and a heart-wrenching lack of hope for survival.⁵⁶ One could argue that Rossellini’s work overemphasizes certain needs, yet he masterfully conveys the most pressing social issues. His work articulates the Germans’ needs and poses stark questions about the areas that the Basic Law sought to address with its commitment to the *Sozialstaat*.⁵⁷ This commitment imposed a positive duty on the

by the expression of resigned despair on her pretty face as she stood on a food line. She was a ballet dancer in a chorus who supported her mother and herself. The Nazi brother comes from an outstanding academic family. He and his father were both imprisoned by Gestapo. Besides these leading players, in my wanderings I collected a Wehrmacht general, an ex-wrestler, a professor of literature and the history of art, a beautiful model, groups of boys and girls who were dying of boredom on the streets of Berlin. Most of the players had never acted before, but anyone can act provided he is in familiar surrounding and given lines that are natural.

ROBERTO ROSSELLINI & ADRIANO APRA, *MY METHOD: WRITINGS AND INTERVIEWS* 22 (1987).

⁵² See PETER BONDANELLA, *ITALIAN CINEMA: FROM NEOREALISM TO PRESENT* 31, 74, 103 (2007) (describing Italian neorealism as a style of film characterized by stories set amongst the poor and working class, filmed on location, frequently using nonprofessional actors). Italian neorealist films mostly contend with the difficult economic and moral conditions of postwar Italy, reflecting the changes in the Italian psyche and the conditions of everyday life: poverty and desperation.

⁵³ See Wiegand, *supra* note 46.

⁵⁴ See ROSSELLINI & APRA, *supra* note 51, at 22 (“The people of Berlin, it seemed to be, were interested in only one thing: to eat and survive. This, I believe, is the fruit of a defeat unparalleled in history, which has annihilated the conscience of an entire people.”).

⁵⁵ See FORGACS, *supra* note 48, at 13.

⁵⁶ See Camilleri, *supra* note 50.

I arrived in Berlin in March, . . . the city was deserted. The grey of the sky flowed back into the streets, and from about the height of a man one could look over fallen roofs. To find the streets again under the ruins, people had cleared away the rubble and piled it up . . . silence reigned; each noise intensified the silence. A sickish sweet odour of rotting organic matter exuded from the piled up rubble.

ROSSELLINI & APRA, *supra* note 51, at 64–65.

⁵⁷ See SHANDLEY, *supra* note 19, at 117, 124.

government to provide a certain level of sustainability to ensure that no German faced similar hardships.⁵⁸

In order to understand fully the film's impact, it is first important to gain a basic understanding of the plot.⁵⁹ Rossellini follows twelve-year-old Edmund Kohler during his daily adventures. Edmund lives with a brother, a sister, and their ailing father in a bombed apartment building with five other families. His sister is wrongfully accused of prostituting herself to Allied forces, while his brother, Karl-Heinz, refuses to register with the new forces out of fear of retribution because he was a Nazi soldier. These issues force Edmund to resort to drastic measures while attempting to help his family survive.

Edmund, following a group of older teens, partakes in the black market that ruled Berlin during this period. He learns how to swindle and steal in order to help provide food for his family. Edmund reacquaints himself with Herr Henning, one of Edmund's former teachers who is a pedophile and makes many advances towards Edmund. Henning still holds Nazi values, profits from selling Nazi memorabilia, and harbors former Nazis. He praises Edmund for having joined the Hitler Youth.

Henning tells Edmund that his father deserves to die because he is weak and sick. Edmund interprets this literally and poisons his father in order to eliminate the burden that his family endures by taking care of his sick father. Henning denies that he intentionally did this. Edmund is unable to bear his guilt and throws himself from a bombed-out building across the street from where his family lives, falling to his death.

Rossellini begins the film with a continuous rolling shot of rubble.⁶⁰ A closer look at this rubble reveals destroyed homes, their remains lining the roads and filling the interior of

⁵⁸ See generally *Hartz IV*, 125 BVERFGGE 175, 1 BVL 1/09 of 9 Feb. 2010 (Ger.); Bommarius, *supra* note 3. However, I must note that this is the author's interpretation of this point.

⁵⁹ See ROSELLINI & APRA, *supra* note 52, at 21 ("Although the story of Edmund and his family was invented by me, it nevertheless resembled that of most German families. Thus it is a mixture of reality and fiction There is no doubt that [everyone] in Germany would see in my film at least some phase of their own experience.").

⁶⁰ See FORGACS, *supra* note 48, at 55.

The picture we are given of Germany, though taken from reality, is entirely symbolic. Rossellini shows a dead, ghostly city, with buildings in ruins, their windows smashed, uninhabited, jagged with spires like a glacier. He concentrates on the rubble, the disconnected streets, the piles of detrius. A handful of people scutter about, but the long shadows of the buildings cast across the streets, broken by the holes of the windows through which the rays of the morning sun pass, reveal that many of the exteriors . . . the picture that Rossellini tries to give us is that of a world destroyed, whose shattered monuments are no more than the ruins of a culture swept away by an infernal ambition.

abandoned homes. The housing devastation is seen throughout the city. As Rossellini follows Edmund's daily trials and travels through various sectors, the rubble is ever-present. Homes are empty, destroyed, and, in some instances, exist only as gaping holes where apartments once stood. Remains of walls, doors, floors, and furnishings clog alleys and roads; children must climb the rubble to play, and men must climb it or try to avoid it on their way to work. The amount of rubble appears so massive that any effort to clear it would be futile, and yet this task is essential to the rebirth of the new nation. Thus, the devastation of war clutters homes and roads, just as it clutters the postwar German psyche.

Rossellini highlights the housing problems in another way as well. The housing shortage requires numerous families and individuals, often strangers, to cohabitate in small apartments and homes. In some instances the number of inhabitants makes the rooms almost unlivable. Edmund's family, a family of four living on just three ration cards, shares an apartment with four other families, totaling ten individuals. The apartment is very small and the families are cramped, always stepping on others' toes and hearing each others' conversations. The government runs strict checks on utility usage, and fights break out over water and electricity. These housing arrangements cause strife due to the hostile living conditions, which are not conducive to having sufficient personal space or any real quality of life. Rossellini's directorial choices ensure that the viewer realizes that these living arrangements exist because there are no other options.

Rossellini uses these two approaches to depict the housing crisis in postwar Germany because the crisis was not one of funding, but one of unavoidable physical reality: The war destroyed most of the housing and left no alternatives.⁶¹ His film depicts the need for the government to take a proactive role in providing a means for adequate housing and to take active measures to prevent any similar suffering in the future.

Rossellini also emphasizes another element of German postwar suffering: hunger. In fact, almost the entire plot and subplot revolve around the search for food. Immediately following the prologue, "the scene gives way to a shot of a dead horse, apparently knocked down by a street tram."⁶² Passers-by swarm over the animal to carve chunks of the flesh in an attempt to obtain some meat.⁶³ In a matter of minutes, the people have mutilated the body leaving a lifeless and stripped carcass in the street.

Subsequently, the audience's first encounter with Edmund emphasizes the measures people take to find food. Edmund is questioned and turned away from work because he

⁶¹ See SHANDLEY, *supra* note 19, at 2.

⁶² See Wiegand, *supra* note 46.

⁶³ *Id.*

has not reached the fifteen-year-old age requirement.⁶⁴ The work he seeks involved digging mass graves for the dead. Edmund tries to deceive officials so he can earn a pittance to help feed his dwindling family.⁶⁵ The other workers show no sympathy for Edmund or his plight. In fact, one woman turns him in to the officials “because [Edmund] is her son’s age, and she knows [Edmund] is too young to work.”

In fact, Rossellini depicts the entire society as using all means possible to find sustenance. Edmund’s older sister is forced to take on a motherly role with Edmund and the family. Nevertheless, in stark contrast to her motherly role, she and her friends visit nightclubs to “entertain” foreigners. Although no one directly says “prostitution,” the conversations between the young women raise the specter. Edmund’s sister is portrayed flirting with foreigners for cigarettes, only to say “she will smoke them in a little bit.” She later says that she intends to sell them on the black market for five Marks a piece.

Even with all of these added attempts to earn money for food, the Germans (as represented by Edmund) still had too little to eat.⁶⁶ In fact, Rossellini shows only a single meal throughout the entire film. That meal consists of sliced potatoes sitting in water because the family “couldn’t afford anything else.” Although Edmund’s family groans of “having potatoes again” or “only having potatoes,” they savor every bite of the meager meal. Rossellini refrains from having anyone explicitly say how often they eat meals; one can infer that meals are at most once daily.

Rossellini uses one scene to advance directly his thesis that the government is obligated to provide a certain level of sustainability. When Edmund’s father’s suffering becomes unbearable, Edmund’s family calls for a doctor who admits the father into a public government hospital. In the hospital the father is well fed with complete meals, and he regains his health and some strength. Once discharged, he returns to a sick state causing more burden on his family’s food and income supply, which eventually leads to his death when his son finally ends his suffering. It is essential to Rossellini’s thesis that the government-run hospital is the source of food and care. The government at the time was new and the only way the suffering Germans could get the proper sustenance was through the government. Thus, the new government must commit to providing basic necessities such as food.

Rossellini takes many approaches to continually depict the hunger of the German people. He shows that, regardless of people’s effort, there still is not enough food. The harsh reality of the hunger underscores the Basic Law’s commitment to the *Sozialstaat*, which

⁶⁴ See Camilleri, *supra* note 50.

⁶⁵ *Id.*

⁶⁶ See *Germany: Year Zero*, *supra* note 45.

includes the essential requirement that the government provide adequate nutritional sustenance.

Although not free of criticism, Rossellini realistically depicts the social horrors that postwar Germans faced.⁶⁷ He portrays the masses struggling for basic necessities—he shows the enormous struggle to survive. Although Germans faced countless social problems, lack of housing and hunger dominate the suffering portrayed in the film. His work gives a real-life portrayal of the issues the Germans faced while drafting the Basic Law and gives compelling insight into a possible basis for the Founders' commitment to the *Sozialstaat*.

II. Somewhere in Berlin

Gerhard Lamprecht's *Somewhere in Berlin* (1946) portrays the effect of postwar conditions on German children.⁶⁸ The film takes place in derelict Berlin, where the children must play in the remains of war, the rubble. Lamprecht's film is often considered one of the period's most factually accurate. In fact, most critics are unable to separate any discussion of the plot from the real problems plaguing Berlin's neighborhoods.⁶⁹ "He presents everyday problems faced by everyday Germans."⁷⁰

The film's central motif is destruction: physical, emotional, and psychological.⁷¹ Whereas many filmmakers, such as Rossellini, symbolize a fear of the rubble, Lamprecht engages it.⁷² Rather than simply representing "inner discontent, [for Lamprecht] rubble becomes a player."⁷³ In fact, "it is the primary external force to which the characters must respond."⁷⁴ It serves as a killer, a corrupter, a teacher, and the vehicle for rebuilding German spirits and society.

⁶⁷ See SHANDLEY, *supra* note 19, at 124; In fact, "Edmund, after that long strain of the difficult role, became ill and had to go to the hospital for a couple of weeks." (after the real person who played Edmund viewed the film). See also ROSSELLINI & APRA, *supra* note 52, at 23.

⁶⁸ See SHANDLEY, *supra* note 19, at 119.

⁶⁹ *Id.*

⁷⁰ *Id.* at 120.

⁷¹ *Id.* These films cast the psychic impairment of returnees in ways that contribute to the larger discursive efforts in the 1940s to render the experience of losses incurred by the war and, more specifically, war trauma and depression in terms of psychic abnormality and social failure. See PINKERT, *supra* note 36, at 14.

⁷² See SHANDLEY, *supra* note 19, at 118–19.

⁷³ *Id.* at 120.

⁷⁴ *Id.*

Lamprecht does not subtly communicate his message.⁷⁵ The plot of the film compels the characters to establish a “father figure” who can lead the children from misery.⁷⁶ The father figure can be understood to represent the new government and the children to represent the nation; thus, paternalistic help is necessary. It is important to note that this film came from the East—the emerging Soviet “puppet state.” Yet, Lamprecht’s thesis implores the new government to implement some of the West’s *Sozialstaat*. Although Lamprecht imparts the same message as the other films (that the new Germany must commit to providing basic subsistence necessities and secure social justice), he takes an alternative approach to showing the great suffering the Germans experienced.

*Somewhere in Berlin*⁷⁷ takes place in dilapidated Berlin, where children play with undetonated bombs and climb around in the rubble. A father who returns as a broken man from a prisoner of war camp disappoints his son with his attitude and unwillingness to do anything.⁷⁸ The children convince their father to clean and restore the father’s garage, which was destroyed by the bombings. This act gives the father new hope in the end.⁷⁹ A subplot emerges as the children and other Germans chase thieves through the city. The film culminates when one child decides to climb to the top of the rubble and falls to his eventual death.⁸⁰ This reinvigorates the Germans as the adult men and the children band together to clean the rubble and rebuild the city.⁸¹ Lamprecht uses this story to urge his audience to take similar action.

As with most films in the *Trümmerfilme* genre, Lamprecht begins with shots of the rubble.⁸² His opening scene portrays workers rebuilding a roof who stop work to observe a

⁷⁵ *Id.* at 125.

⁷⁶ *Id.* at 124.

⁷⁷ See PINKERT, *supra* note 36, at 43 (explaining that the film engaged economic crisis, psychological struggle, and political transformation by intertwining the story of children roaming in the ruins of Berlin with the exemplary narrative of a returning soldier who successfully recuperates his position in the paternal order and is reintegrated into postwar society).

⁷⁸ See *id.* at 44–45 (portraying the father after he is reinserted into the postwar panorama). The father returns from war imprisonment to the destroyed city of Berlin. *Id.* The film tracks his somewhat difficult, yet ultimately successful, reinsertion into postwar society and affirms the narrative and ideological values of domestic love, will power, and reconstructive work to fantastically cure his experience of past trauma. *Id.*

⁷⁹ *Irgendwo in Berlin (Somewhere in Berlin)*, DEFA FILM LIBRARY UMASS AMHERST, <http://www.umass.edu/defa/films/irgendwo.shtml> (last visited 4 Nov. 2011).

⁸⁰ See PINKERT, *supra* note 36, at 50 (noting that the boy climbs up onto the ruins of a bombed-out house to disprove that he is a coward, and was willing to sacrifice his life for some higher cause).

⁸¹ *Somewhere in Berlin*, TIMEOUT LONDON, <http://www.timeout.com/film/reviews/74977/somewhere-in-berlin.html> (last visited 4 Nov. 2011).

⁸² *Somewhere in Berlin* (DEFA 1946).

destroyed city.⁸³ The shot shows nothing but rubble for miles.⁸⁴ Whereas other filmmakers cast dark views and shadows over the rubble, Lamprecht takes a very artistic approach to the rubble scenes. Lamprecht also introduces the viewers to a group of children who play a central role in the film—symbolizing a new approach to rebuilding.⁸⁵ This approach means that someone other than the German men will rebuild the new country. Although the film provides a more hopeful approach to the suffering and German rebuilding effort, Lamprecht powerfully emphasizes the period's two most pressing needs: food and housing.⁸⁶

Lamprecht directly addresses the hunger crisis. In one scene, an older woman, followed by a mob complains to the police about a man who has been stealing from her. When asked what is wrong, the woman responds: "He stole 900 marks. Do you know how many vegetables that could buy?" Lamprecht deliberately chose the word "vegetables" to underscore the food shortage. The Germans suffered from hunger and they dedicated most, if not all, of their money towards foodstuffs.⁸⁷ He also uses this language to show that it is the most important issue on the Germans' minds. Similarly, he places this scene at the beginning of the film to highlight its importance. Hunger was paramount in the people's lives; he establishes this early and prominently in the film. Although it is one of the only times he directly addresses the issue, Lamprecht uses this scene to highlight the fact that hunger was one of the most pressing issues that Germans faced.⁸⁸ One can interpret such a scene to mean that the government should provide the basic necessity of food.

Lamprecht also addresses the housing issue throughout the film. In fact, it is the underlying theme. Unlike in the other film, however, we are not introduced to families who must combine homes or to living conditions that are completely unsupportable. However, Lamprecht does not directly portray the housing issue; he takes a metaphorical approach instead. The rubble itself symbolizes the housing crisis. The rubble envelops the Germans; the destruction is present in all aspects of their daily lives. Many buildings are destroyed, and the rubble is piled along the streets. Although Lamprecht, does not directly

⁸³ *Id.*

⁸⁴ See PINKERT, *supra* note 36, at 210 (noting the use of recurring urban scenes of young people, stranded and roaming around in deserted buildings, echoing other postwar rubble films).

⁸⁵ See INGELORE KÖNIG ET AL., VERGANGEN ZEITEN: ARBEITEN MIT DEFA-KINDERFILMEN 21 (1994); see also Walter Lenning, *Irgendwo in Berlin: Uraufführung des neuen DEFA-Films in der Staatsoper*, BERLINGER ZEITUNG, 20 Dec. 1946.

⁸⁶ See PINKERT, *supra* note 36, at 42 (explaining that Lamprecht's film defines "how [the postwar] suffering needed to be understood").

⁸⁷ See Bommarius, *supra* note 3.

⁸⁸ The other scenes involve potatoes falling down stairs and swindling meals.

show that numerous families must share the remaining homes, often in sardine-like conditions, his imagery emphasizes this point.

The rubble is central to Lamprecht's plot and themes. Children, the film's main emphasis, use the rubble as their playground. Older Germans meet in the street surrounded by rubble to converse. As the children play, they must run through the rubble and hide amongst the destruction. The destruction, however, did not just end when the war stopped. The Germans, in an attempt to rebuild, and the children, in an attempt to play and live normal lives, create even more destruction. Children pick up and throw a brick into the rubble causing more to fall, and the destruction continues to grow. Similar results occur when the children launch fireworks in the rubble, and this causes even more destruction. Lamprecht's strategic use of children shows that the suffering affected all Germans, and the solution must also help all. Thus, his film illustrates that the Germans alone, through normal rebuilding efforts, cannot fix the destruction. The film suggests that government should play a role in the rebuilding process and that the widespread suffering inspired the Basic Law's commitment to the *Sozialstaat*.

D. The Commitment to the *Sozialstaat*: The Right Answer?

These *Trümmerfilme* advance a common thesis. Rossellini and Lamprecht portray the horrors and the social needs the Germans faced during the postwar period. They portray the suffering and the sheer lack of basic necessities. They illustrate the social injustices plaguing society. I argue these depictions create a level below which no German should ever have to live again. These films also show how social conditions during the postwar period influenced the Basic Law's adoption, and this suggests some reasons why the Founders dedicated the Basic Law to ensuring the *Sozialstaat*.

Rossellini and Lamprecht provide differing approaches to the same underlying solution. Not surprisingly, their films are two of the most widely criticized films of the genre for their staunch approaches to the issue of social justice. Lamprecht's film serves as an example of a film that takes recovery and portrays it as a promise.⁸⁹ Rossellini, on the other hand, reveals social injustices but also focuses on the characters regaining their centeredness⁹⁰—specifically killing, suicide, and women's using relationships with the soldiers "to get what they want." Thus, the characters regain their individuality. Although both filmmakers agree that there must be a way to better Germany's social conditions and provide the necessities that the Germans desperately needed, they differ on the means to this end.

Rossellini, in *Germany: Year Zero*, argues that, although some commitment to social justice is necessary, it is for the individuals to provide lest the nation never emerge from its

⁸⁹ See SHANDLEY, *supra* note 19, at 186–87.

⁹⁰ *Id.* at 51.

apparent hopelessness. His work argues that the individual must provide subsistence necessities.⁹¹ This argument has many meanings, and this Comment will address each in turn.

Rossellini emphasizes this individualism in one of the film's opening scenes.⁹² As previously discussed, he shows a horse that drops dead in the middle of a busy street.⁹³ Starving Germans descend on the carcass, pushing and shoving in their search for food and instantaneously butcher the fallen animal. These people are not actors but real-life persons; they portray the raw sense of "selfishness," independence, and the need to survive. They highlight the importance of self-reliance in the midst of postwar poverty.

Similarly, Edmund's (the film's young protagonist's actions reveal this need for individual action. When Edmund realized that his family was suffering from his father's illness (both financially and emotionally), he murdered his father. He realized that one less mouth to feed meant more food for him, and he took that opportunity to secure more resources for himself, regardless of the cost—here, the cost was death.⁹⁴ However, the decision to accept this cost is not positively portrayed. In fact, the cost of killing his father was much greater than anticipated. Edmund's guilt becomes so overwhelming when he realizes that his former teacher did not approve of his decision that it drives Edmund to suicide—causing the family even more loss and destruction.⁹⁵

This individualism argument suggests three possible interpretations. First, it can be seen as Rossellini's attempt to show that the only solution to social problems would be for individual actors to provide these necessities through individual actions. However, Rossellini's characters show that an individual looking out for oneself is not the ideal approach. As previously discussed, the film involves many characters doing things to better themselves as individuals instead of society as a whole, and, consequently, progress is not made. Hence, the answer to providing social justice cannot be through the individual alone.

⁹¹ See TAG GALLAGHER, *THE ADVENTURES OF ROBERT ROSSELLINI* 246 (1999) (describing how Rossellini focused on the "possibility of individual revelation or redemption"). "As he shot . . . his focus . . . [was] the individual." *Id.* at 176.

⁹² See FORGACS, *supra* note 48, at 152 ("As a matter of fact every film I make interests me for a particular scene . . . such as the first part of [Germany: Year Zero] . . . Germany: Year Zero, to tell the truth, was conceived specifically for the scene with the boy wandering on his own through the ruins."). Thus, Rossellini, himself, explicitly confirms that his thesis argues rebirth through the individual.

⁹³ See *supra* Part C.I.

⁹⁴ See ROSSELLINI, *supra* note 51, at 116. In order to solve the problem of hunger, the boy thinks it is normal, indeed quite heroic, to kill the father, who has become useless, so as to save the life of the brother, who, at least, has fought. This boy finds no support around him, everybody is against him. This social cost was actually two deaths because during the film's climax, Edmund jumps from a window and plunges to his death.

⁹⁵ See *id.* at 199 ("The child . . . kills himself in a moment of despair.").

The second interpretation that can be made from Rossellini's individualist symbolism is that individuals must come together and create the Basic Law to ensure a commitment to social justice. Bommarius highlighted that sixty-five individuals came from across the German political and social spectrum to form the government.⁹⁶ Nonetheless, it would be impossible during the rebuilding of a postwar nation for the entire German population to contribute individually to the forming of a new government and new legal system—one would find “chatter” and most likely few quick solutions. Although this theory is the basic idea of democracy, it is plausible that Rossellini's individualism symbolizes the founders (certain individuals), who would all combine their needs and desires in creating the new German Basic Law, and therefore their sufferings would all contribute to their commitment to social justice.

The third and most plausible argument behind Rossellini's individualism is that each individual must also commit to the *Sozialstaat*.⁹⁷ Yes, the government must supply the basic necessities so that no German would ever have to experience such suffering again. Yes, the film is supposed to represent the deepest depths of suffering. However, even if the government commits to providing for its citizens, then the individual Germans must also commit to allowing the government to regulate supply of these necessities. The citizens must commit to receiving less of a certain item or paying higher taxes. Citizens commit by acknowledging they will receive a certain level of benefits, but they also must commit by ensuring that disadvantaged Germans will also receive benefits despite their inability to pay taxes or work, so the disadvantaged will not become too much of a drain on the social welfare system. The German people must not create any further suffering by not providing for all citizens according to the Basic Law's commitment to the *Sozialstaat* principle. Thus, Rossellini argues that individuals are just as important to the social welfare system as the Basic Law.⁹⁸

Similarly, one could suggest that the government's commitment to providing housing and other necessities was an attempt to achieve greater individualism. The rubble clearing efforts by the *Trümmerfrauen* (“German women who helped clear and reconstruct the bombed cities of Germany”) shortly after the war exemplifies this argument. These

⁹⁶ See Bommarius, *supra* note 3. Twenty-seven belonged to the CDU and its sister party the CSU. Another twenty-seven to the SPD. Two seats belonged to both the extremely conservative Deutsche Partei (DP), the Catholic Zentrum, which in economic and social policy was close to the SPD, while in its Christian orientation it stood close to the CDU and CSU, and the German Communist party, whose representatives were fanatical opponents of the founding of a West German state and which can definitely be called a representative of the Communist regime in East Berlin. The Free Democratic Party (FDP) held a key position with five seats.

⁹⁷ See KÖNIG ET AL., *supra* note 86; Lenning, *supra* note 86; see also GALLAGHER, *supra* note 92, at 280.

⁹⁸ See GALLAGHER, *supra* note 91, at 247 (“Edmund's . . . suicide—is an impulse for freedom.”). Thus, Edmund's independent act leads to freedom.

women cleared the rubble and helped rebuild; and in so doing their actions contributed to an environment that made possible a return to prewar expressions of individualism. It can be argued that the sense of rebuilding was not to provide communal good, but simply to rebuild the surroundings so the people could return to their normal private lives, which the war and subsequent destruction interrupted.⁹⁹ This argument applies to many other aspects of the postwar period.

Lamprecht makes a converse argument.¹⁰⁰ In fact, Lamprecht's argument for ensuring social justice is summed up in the film's final scene.¹⁰¹ Although a young boy's death causes more suffering, one boy uses the loss as a catalyst for recovery.¹⁰² The scene shows another young boy behind a closed gate. He flings the gate open, and what had previously been an empty street filled with rubble is now a street filled with Germans—both men and children. These Germans have shovels and tools, and they cheer as they begin the cleaning and rebuilding of their destroyed nation.¹⁰³ On the surface, this scene appears to represent a commitment to rebuilding Germany, yet it actually stands for much more.

Lamprecht's argument relies heavily on the symbolism of the child and the rebuilding effort. The child does not stand for the premise that the children will lead the way to the future, nor does the symbolism of the child mean that children will guarantee social justice. Lamprecht's choice illustrates that the way to ensure Germans never again lack such necessities nor experience such suffering must come from a new or different regime which is symbolized by the children. The fact that men, women, and children worked together reveals that the commitment to social justice must come from a communal effort.¹⁰⁴ This communal effort means that everyone must work to ensure social justice. First, this means that everyone must commit to the *Sozialstaat*. Similarly, it means that

⁹⁹ See Letter from Frank Schorkopf, *supra* note 42.

¹⁰⁰ See PINKERT, *supra* note 36, at 54 (explaining that while Rossellini focuses on the Individual, Lamprecht "indicates . . . the level of collective"). "In fact, Lamprecht's specific articulation of an integrationist narrative requires the death of the boy . . ." *Id.* at 50.

¹⁰¹ See *id.* at 52 ("When the body cuts through the frame, dropping into the inner crater of ruin (viscerally marked by the eerie absence of the otherwise predominant music score), the film's integrationist postwar project comes to a halt . . .").

¹⁰² See SHANDLEY, *supra* note 19, at 124–25. The "Boy" attempted to climb to the top of the destroyed building. He fell but did not immediately die. In fact, he did not die until his father, who throughout the film had been unable to do anything but simply stare at the war's destruction, promised to rebuild his former auto garage. This scene symbolized the elders' commitment to rebuilding the nation and providing for the suffering youth. Shortly after this scene, the young boy passes away.

¹⁰³ *Id.*

¹⁰⁴ See PINKERT, *supra* note 36, at 50 ("The film's message lies precisely in conveying that this kind of misunderstood heroism [the individualism] is not only futile but harmful."). Similarly, rebirth requires the "symbolic entwining of the two figures"—two (or more) working together. *Id.* at 53.

everyone must have the right to social justice. Thus, everyone will receive the benefits of social necessities. To make this idea logistically practicable, everyone must work to contribute to ensuring that the social welfare principle can be effective. This means that everyone must pay a higher tax, earn lower wages, or make other financial sacrifices. This may also mean that the social welfare floor may be lowered or raised during periods of economic fluctuation. Thus, Lamprecht argues that a strong communal commitment to the *Sozialstaat* is necessary to provide social justice. He argues that this period created this strong communal sense, which the Basic Law's founders infused into the new constitution; thus the founders committed the government to the *Sozialstaat*.

E. *Trümmerfilme* and the *Hartz IV* Decision

In twenty-first century Germany, the courts continue to uphold the Basic Law's commitment to the *Sozialstaat*. In fact, on 9 February 2010, the Federal Constitutional Court reaffirmed the social state principle and held that the government's method of calculating welfare benefits was not adequate and not ensuring social justice.¹⁰⁵ This Court's decision traces the need to rectify the issues which are ever-present in the *Trümmerfilme* genre—including the films discussed above. The Federal Constitutional Court based its decision on the theses advanced in these films, namely that social welfare has both individual and communal elements.

The social state principle emerges from Article 20.1 of the Basic Law, which mandates the legislature to ensure a subsistence minimum.¹⁰⁶ The Court defined the principle as

[guaranteeing] the whole subsistence minimum by a uniform fundamental rights guarantee which encompasses both the physical existence of the individual, that is food, clothing, household goods, housing, heating, hygiene, and health, and ensuring the possibility to maintain inter-human relationship and a minimum of participating in social, cultural and political life, given that humans as persons of necessity exist in social relationships.¹⁰⁷

The Court held that the need that the benefit system aimed to address "has not yet been covered . . . but must mandatorily . . . guarantee a subsistence minimum that is in line with

¹⁰⁵ See *Hartz IV*, 125 BVERFGE 175, 1 BVL 1/09 of 9 Feb. 2010, para. 4 (Ger.).

¹⁰⁶ See PINKERT, *supra* note 36, at 50.

¹⁰⁷ *Id.* at 51.

human dignity.”¹⁰⁸ Thus, these issues that the filmmakers portray as significant in the late 1940s are still present today.

The Court, throughout the opinion, emphasized the importance of foodstuffs to the welfare state. The Court determined that the current provisions were inadequate “to cover the dietary needs of a single person on a full diet.”¹⁰⁹ The social principle has a broad meaning of “foodstuffs”—aside from basic groceries, the stipend includes “[a]ccommodation service: visits to pubs and restaurants.”¹¹⁰ In fact, this necessity is so essential to one’s dignity that the legislation permits distribution of funds for food at a 96% share relative to the standard rate.¹¹¹ Thus, the case illustrates the welfare state’s commitment to providing foodstuffs to prevent the hunger and suffering that Rossellini and Lamprecht highlight.

The *Hartz IV* decision also gives insight into the question: Did the postwar period create a sense of community and communal responsibility, or did it create a notion of individualism? The Court appears to determine that it created both. The Court stated “the constitutional obligation to guarantee the subsistence minimum, which is said not to be able to be restricted to ‘survival pure and simple,’ but also had to facilitate participation in the life of society, is said to follow from . . . the principle of the social welfare state.”¹¹² Thus, it would appear that the Court highlighted the idea that the welfare principle creates a communal obligation to support others so that individuals who need assistance can participate in the community.

The Court, however, quickly adopted the individualist approach. It defined the benefits as “[being] oriented towards individual responsibility assumed by the individuals using their earning capacity, with the aim of rapidly assisting the person in need of assistance to ensure their own subsistence . . . [it] was said to promote individual responsibility.”¹¹³ However, the question then arises: Is the individual’s responsibility to work and ensure one’s dependence on welfare limited, or is it an individual’s responsibility to sacrifice to ensure that all Germans can experience the basic right to human dignity?

Although the government’s provision of necessities appears to be for the communal good and to create the idea of community, in fact, it does the opposite. The postwar period, as

¹⁰⁸ *Id.* at 7.

¹⁰⁹ *Id.* at 58.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 24, 29.

¹¹² *Id.* at 42.

¹¹³ *Id.* at 43.

seen through the films and scholarship discussing them, created a sense of individualism. Now, the welfare state does the same. The German subsistence living minimum provides a person with the opportunity to participate in the community and ensures that no German in the community experiences the same suffering as during the postwar period. Yet, it also does more: It provides the individual with the ability to participate. The community does not suffer along with an individual; only the individuals suffer. Those who receive the welfare are responsible for ensuring the money and goods are put to proper use; the community does not serve as an overseer. In these ways the postwar period, as adopted in the *Hartz IV* decision, created a sense of individualism in the social state that prevails today.

F. Conclusion

Film is an essential tool in legal studies. Film can show how the law works the way it does. Similarly, film can help scholars understand why the law is the way it is or what social influences played out in the crafting of a particular law. Law is a reflection of society's beliefs and culture. The *Trümmerfilme* reflect the culture and problems that plagued Germany during the postwar period, a culture which led to the Basic Law. The founders and the writers of the new constitution reflected on these problems—principally the widespread suffering caused by a lack of basic necessities—and dedicated the new government to the social state principle. These films illustrate the horrors and suffering that the Germans faced during the postwar period which led to this commitment.

The *Hartz IV* decision demonstrates that this commitment to social welfare, most especially to providing two of society's most basic needs—food and housing—is still prevalent and litigated today. There remains one unanswered and debated question: Did this period create a sense of community or individualism? The films, the scholarship, and the case reveal that this period did, in fact, create a sense of individualism: the individual's right to subsistence living and "dignity"; the individual receiving the benefits and controlling them. The individual must sacrifice to ensure the rest of society receives welfare benefits. Unfortunately, there is no "true" or "correct" answer to this question of whether the postwar period placed greater emphasis on individualism or a sense of community. However, the social welfare state, the *Sozialstaat*, continues as an important part of German constitutional law, and it must evolve with the times to ensure that it adequately provides the minimum subsistence, especially in regards to basic life necessities.