MODERN GERMAN CITIZENSHIP, JÜRGEN HABERMAS, AND *DER HISTORIKERSTREIT*

ABSTRACT

This article provides an overview of the 2000 German citizenship law and its impact up to 2008, and shows how it arose from debates that took place between 1985 and 1999 on Germany's recent past. Jürgen Habermas, a proponent of modernism, and German revisionist historians, joined in this debate. This article showcases the new *Citizenship Law* as representing a major shift in Germany and as a continuation of that country's unfolding democratization.

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Views presented in this article do not necessarily reflect those of the Government of Canada.

Whereas Canada is a country of immigrants (and their descendants) who 400 years ago started joining the Aboriginal peoples of this country, and whereas since the early 1970s multiculturalism has become one of Canada's defining characteristics (both in demographic and legal terms), the countries of Europe continue to be largely based on ethnically defined borders and national languages, a basis that Europeans perceive to be threatened by the emergence of European multiculturalism, at least demographically.

Some Eurocentric critics and media in Canada do not understand that Canadian multiculturalism is different from its European equivalent. There is confusion, when one compares Canada with Europe, between multiculturalism as a demographic and sociological reality on the ground, and the Canadian laws and programs that were created to harness its benefits. For example, in light of violent events that unfolded in France and in the UK, critics are quick to deplore "what multiculturalism has done to Europe," but their real intention is to chip away at Canada's healthy and functioning multiculturalism. The truth is that these European countries have not – yet – established Canadian-style multiculturalism laws and programs.

But Europe is changing. Many new laws are moving towards recognizing diversity among the population, and are shifting away from narrow definitions of a nationality law based on race. Integration within European Union institutions and rules is also contributing to this process of accepting and respecting population diversity.

German citizenship

A new German nationality law, which was passed by the Bundestag in 1999 and enforced on January 1, 2000, marked a significant – though not total – departure from Germany's ethnic and cultural past, and brought German citizenship policy into the European mainstream. This law made it easier for long-term foreign residents and their German-born children to acquire German citizenship.

Germany is now home to 7.3 million people who are ethnically non-German; this represents 9% of the country's total population. The progressive impact of the new law (German Embassy in Washington) is exemplified by the number of foreign residents who were able to obtain German citizenship.

When new regulations were introduced in 2000, approximately 3.6 million foreign residents (4.4% of the population) immediately qualified for citizenship, as they had suddenly fulfilled the new eight-year residency requirement. By 2004, 1.3 million people had successfully applied for and obtained German citizenship.

To better appreciate how German citizenship progressed from being ethnically- and racially-defined to being civically- and universally-defined, we have sketched a quick outline of how this evolution came about.

Between 1913 and 1999, the 1913 *Nationality Law of the German Empire and States* governed German citizenship, the goal of which was to maintain an ethnically and culturally pure citizenry. While the 1913 law was implemented by the Weimar Republic in the wake of World War I, it quickly came under attack by the rising Nazis in the early 1930s. Between 1935 and 1945, this law was amended under the Nazi regime and sections were overruled by the 1935 *Nuremburg Laws* (*Nürnberger Gesetze*), which were in fact denaturalization laws that were racially motivated to discriminate against German Jews and other minorities. Citizenship was based on "German-blood" ancestry, so that persons who had one or two Jewish grand-parents were not considered Aryan but rather *Mischling*, or crossbreeds, of

Table 1
Naturalization of foreigners in Germany per (selected) country and year

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Total
Turkey	31,578	42,294	42,240	59,664	103,900	82,861	76,573	64,631	56,244	44,465	**608,450**
Iran	874	649	1,171	1,529	1,863	14,410	12,020	13,026	9,440	6,362	**61,344**
Serbia & Montenegro	3,623	2,967	2,244	2,721	3,444	9,776	12,000	8,375	5,504	3,539	**54,193**
Afghanistan	1,666	1,819	1,475	1,200	1,355	4,773	5,111	4,750	4,948	4,077	**31,174**
Morocco	3,288	2,918	4,010	4,981	4,312	5,008	4,425	3,800	4,118	3,820	**40,680**
Lebanon	595	784	1,159	1,782	2,491	5,673	4,486	3,300	2,651	2,265	**25,186**
Croatia	2,479	2,268	1,789	2,198	1,536	3,316	3,931	2,974	2,048	1,689	**24,228**
Bosnia-Herzegovina	2,010	1,926	995	3,469	4,238	4,002	3,791	2,357	1,770	2,103	**26,661**
Vietnam	3,357	3,464	3,129	3,452	2,270	4,489	3,014	1,482	1,423	1,371	**27,451**
Poland	10,174	7,872	5,763	4,968	2,787	1,604	1,774	2,646	2,990	7,499	**48,077**
Russian Federation	–	–	–	–	–	4,583	4,972	3,734	2,764	4,381	**20,434**
Ukraine	–	–	–	–	–	2,978	3,295	3,656	3,889	3,844	**17,662**
Iraq	364	363	290	319	483	984	1,264	1,721	2,999	3,564	**12,351**
Israel	1,025	0	584	0	802	1,101	1,364	1,739	2,844	3,164	**12,623**
Total	**71,981**	**86,356**	**82,913**	**106,790**	**143,267**	**186,688**	**178,098**	**154,547**	**140,731**	**127,153**	**1,278,524**

Source: Official 2005 Migration Report, p. 175.

"mixed blood" and those with a third or fourth Jewish grand-parent were considered Jewish.

The first law[1] (*The Law for the Protection of German Blood and German Honor*) prohibited marriages and extramarital intercourse between "Jews" and "Germans" as well as the employment of "German" females under 45 in Jewish households. The second law, *The Reich Citizenship Law*, stripped persons without German blood of their German citizenship and introduced a new distinction between "Reich citizens" and "nationals."

After World War II, the Federal Republic of Germany repealed the Nazi laws and regulations and reintroduced the 1913 law (Green 2000: 105-124). However, the demographic changes that took place in Germany between 1968 and 1998, which were especially tied to immigration, rendered the very object of the 1913 ethnic nationality law obsolete. German citizenship based on ethnicity was no longer sustainable and thus necessitated a more inclusive citizenship law.

This new citizenship law (2000) introduced significant improvements over the 1913 law and addressed some issues related to the Nazi legacy. For example, as a general rule, individuals born to a German-citizen parent are German citizens, regardless of whether they were born in or outside of Germany or whether the parent is a foreign resident. Those individuals whose German citizenship was denied under the Nazi regime (mainly German Jews) became eligible for citizenship without requiring residence in Germany and without relinquishing their existing citizenship. This provision also targeted the children and grandchildren of such persons. Certain ethnic Germans from Eastern Europe may also claim German citizenship under the *Right of Return* law.

The most important change in Germany's citizenship law is that the principle of *jus sanguinis*, which defines citizenship by inheritance, has been supplemented by the principle of *jus soli* ("right of soil"), which defines citizenship by place of birth. Applicants for German citizenship are required to demonstrate German language proficiency and declare their allegiance to the *Basic Law* (*Grundgesetz*), the Federal Republic's Constitution.

The new law was enacted after many years of discussion on how best to integrate long-term residents of the country into German society. In a policy statement before the Bundestag in November 1998, Chancellor Gerhard Schröder noted that "for far too long, those who have come here to work, who pay their taxes and abide by our laws have been told that they are just 'guests.' But in truth they have for years been part of German society. For this reason, this government will modernize the law on nationality." The revisions to the citizenship and naturalization laws are intended to send Germany's foreign residents "a signal that we welcome all those who profess loyalty to our democratic constitutional state as citizens with equal rights," as Federal Minister of the Interior Otto Schily told the Bundestag in presenting the new legislation.

Habermas' modernist position

The 2000 citizenship law can be seen as the culmination of intellectual debates that took place in Germany, and in a certain way as a triumph for Enlightenment ideals. Championing these ideas was German philosopher Jürgen Habermas.[2]

Over the past 40 years, Habermas has constructed a comprehensive framework of social theory and philosophy by drawing on a number of early German intellectual traditions, including Kant, Schelling, Hegel, Marx, Max Weber, the Frankfurt School (i.e., Max Horkheimer, Theodor Adorno, and Herbert Marcuse), and other thinkers such as Émile Durkheim and Jean Piaget (France), Wittgenstein (Austria) and John Dewey (United States).

Multidisciplinary in its approach, Habermas' system of thought is based on the communicative theory of reason and underlines the potential of transforming the world by arriving at a more humane, just, and egalitarian society through the realization of the human potential for reason. Human emancipation and an inclusive universalist moral framework which aims at mutual

understanding in all public speech are the defining landmarks of Habermas' theory.

In his major work entitled *Theory of Communicative Action* (Habermas 1985), he criticizes the one-sided process of modernization led by forces of economic and administrative rationalization. As routinized political parties and interest groups act as substitutes of participatory democracy, society is increasingly administered at a level that is far removed from citizens and their input. Democratic public life only thrives where institutions enable citizens to debate matters of public importance.

Habermas remains the boldest defender of the unfinished project of modernity and a forceful champion of the Enlightenment legacy (Oord 2003: 7). While acknowledging universal ideals, including abstract ones where the human evolution toward the idealist world of the Enlightenment plays a prominent role, Habermas distances himself from much of the contemporary pessimistic and misdirected discourses of postmodernist thought. For the postmodern age is one in which cultural activity is dominated by media industries capable of appealing directly to the public, thereby bypassing any existing cultural elite (Oord 2003: 1).

Postmodernists, in turn, criticize Habermas' defense of Western rationality, humanism, and the legacy of the Enlightenment, claiming that the dream of modernity has led to the authoritarianism of communist regimes in China, Russia, and Cambodia. Yet for Habermas, post-modernism would lead to easy assimilation or accommodation with the status quo. He argues that the very grammar of critique requires some standard, measure and basis for critique. Otherwise, there is, as Habermas claims, the danger of this critical impulse consuming itself (Oord 2003: 4).

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Der Historikerstreit (The historians' debate)

Habermas responded to critics in several essays (Habermas 1985b). He argued that any post-modernist discourse that abandons the modernist approach is "neo-conservative" precisely because it eliminates the notions that accompanied the various reforms that have shaped the history of Western democracies since the Enlightenment; Enlightenment notions are the tools that are now needed to criticize the socio-economic institutions of both Western-style democracies and communist or oppressive regimes. Abandoning the universal modernist standpoint betrays the social hopes which have been central to liberal politics.

In the 1980s, Habermas utilized his theoretical work in the *Historikerstreit* (historians' debate) with revisionist German historians Ernst Nolte, Michael Stürmer, and Andreas Hillgruber. In an article titled "A Kind of Settlement of Damages," published in the daily *Die Zeit*, he criticized historians for their apologetic history writing of the Nazi era, and for seeking to "close Germany's opening to Western democracy," which has existed since 1945. He argued that these revisionist historians had tried to detach Nazi rule and the Holocaust from the stream of German history for ideological anti-modernity purposes, but not to "build" on the past for the future. They explained away Nazism as a reaction to Bolshevism, and partially rehabilitated the reputation of the *Wehrmacht* (the German Army) during World War II. Habermas also maintained that the revisionists' insidious rewriting of history would cheat the murdered victims out of the one thing that can still be granted, remembrance.

The German problem of "coming to terms with the past" (*Aufarbeitung der Vergangenheit* or *Vergangenheitsbewältigung*) occupies a significant portion of Habermas' articles to the daily press and public interviews. For decades after World War II the German question remained: "How could the nation of Goethe, Kant, and Schiller become the perpetrator of crimes against humanity?" For Habermas, a *modern healthy national identity* of Germany could only result from the forthright acknowledgement of those aspects of German history which facilitated the Nazi catastrophe of 1933-1945. The rise of conservative politics in the 1980s and the efforts made by some German historians to circumvent the question was disturbing to Habermas, since historians were not only providing dishonest and evasive answers, but were voiding and nullifying the very act of posing the question (Habermas 1989: ix).

Between 1949 and 1963, there was very little reflection on the Nazi period as the focus of the country's leadership was on economic reconstruction and development. The lesson learnt in that period – the wrong one – was one of total rejection of the genocidal politics of Nazism, which has led to overwhelming political apathy and a *Wirtschaftswunder* (economic miracle) without a soul. Psychological surveys of the German character conducted in the 1950s and then later suggested a neurotic side as well as a marked repression of the Nazi era and an unwillingness to come to terms with the past.[3]

For Habermas, countries may achieve economic progress relatively quickly, but democratic societies do not come into being overnight (Habermas 1989: x). The fact that so many Nazi officials from the Nazi period readily found positions of power and influence in government suggested that the essential structure of the authoritarian state remained intact behind the veneer of democratic institutions. There were highly inventive rationalizations of the past: Germans were victims too; the bombing of Dresden was as bad as Auschwitz; the Cold War is proof that Hitler was right about the threat of communism and

his war in the East; the fate of uprooted Germans in Eastern Europe was comparable to that of the Jews; it was Hitler and the Nazi leaders themselves that were to blame for the crimes of the war, and this line of reasoning absolved Germans from collective responsibility (Habermas 1989: x).

Supporting historical rationalizations, historian Michael Stürmer argued that it was the task of the historian to assist in the renewal of national self-confidence by providing *positive* images of the past in order to win the future. Andreas Hillgruber, another revisionist, further argued that in scrutinizing Germany's war against Russia, one is faced with the choice of "identifying" with one of the three parties: a) Hitler; b) the victorious Red Army; or c) the *Wehrmacht* (the German Army). For him, identifying with the brave German soldiers was the evident choice.

In Habermas' view, however, a responsible historian should arrive at an independent and morally just verdict regarding the past rather than "play favourites" with historical protagonists (Habermas 1989: 221). It was the same heroic German Army in the East that established the Jewish ghettos, and served as guarantor of all Nazi atrocities in Eastern Europe, from mass extermination to the sadistic enslavement of the populations of the occupied territories. Finally, Hillgruber's thesis is misleading since it was this German army's brutal war of aggression in the East, a war that resulted in the death of 20 million Soviet soldiers and civilians, which was responsible for unleashing the "revenge" of the Red Army on German soil.

The most sensational revisionist thesis was the one that was set forth by historian Ernst Nolte in 1986. He claimed that the atrocities perpetrated by Hitler in Auschwitz were merely an understandable "response" to a "more original Asiatic deed" (Stalin's Gulags), of which Hitler considered himself a potential victim.[4] "Why continue to blame the Germans? The communists did it first anyway. And after all, during the war we were fighting on the right side[5] – at least in the East."

Habermas, appalled at how Nolte denied the singularity of the Nazi atrocities, reducing them to merely one of many crimes, added, "[n]o one can take our place in the liability required of us;"[6] only the "analytical powers of remembrance" can in truth break the nightmarish grip of the past over Germany's present (Habermas 1989: xii) and determine its future moral fiber.

Joachim Fest and Klaus Hildebrand joined this debate (Niven 2002: 175), which lasted well into the late 1990s. The debate was closely monitored by the media and included highly publicized episodes about a book on the Holocaust (Goldhagen 1997), the *Crimes of the Wehrmacht Exhibition* and the Walser-Bubis debate. Habermas remained the subject of attack for allegedly donning the role of "guardian intellectual" (Niven 2002: 178). Where the revisionists downplayed the Holocaust or denied it for nationalistic reasons, Habermas and other intellectuals reinforced the need to recognize and come to terms with the past. This led rightist critics to accuse the liberal left of not liking any positive national German feeling, claiming that this liberal-inspired "coming to terms with the past" has kept Germans in a self-condemnatory state of mind, thus preventing the emergence of any positive national feeling (Niven 2002: 181).

In line with Habermas' thinking, recognizing the past is part of becoming an enlightened civic citizen. The new citizenship law was a sign that the more enlightened the public became, the more the new legislation must reflect modernist thinking. Increased interaction of public and private spheres on issues surrounding the Holocaust took place in Germany between 1995 and 2005 and opened horizons of new relations between Germans and minorities in the country.

In contrast, revisionists (Walser, Dohnanyi, Nolte, etc.) relativized the past, arguing that concentration camps also have to be assessed in the light of general human fallibility, which potentially afflicted not only perpetrators, but victims as well (Niven 2002: 184). They implied that the acts of Nazism, mass gatherings and mass killings, were common to dictatorships around the world. Additionally, Stürmer and Hillgruber's nostalgia for the old German Reich, coupled with Nolte's desire to minimize the historical significance of the war crimes, downplayed the 1933-1945 period in the trajectory of German history as a whole.

In *Neoconservative Cultural Criticism*, Habermas remarks that the revisionists saw their role "on one hand, in mobilizing pasts which can be accepted approvingly, and on the other, morally neutralizing other pasts that would provoke only criticism and rejection" (Habergas 1989: xx). In participating in this debate, Habermas emphasized the integrity and function of scholarship in a democratic society for *coming to terms with the past*. Far from ideology, scholarship should assume a more skeptical and critical attitude vis-à-vis the national past for which Auschwitz is an unavoidable metaphor.

For Habermas (1985b: note 34), the gains of modernity – the institutionalization of universal morality, political justice and fairness, and professional sciences and academia – are indisputable in postwar Germany. Not

furthering these achievements can only result in regression and in the loss of valuable cultural skills that were acquired late and with great difficulty.

Conclusion

The national debates between 1985 and 1999, of which only a portion is described above, bore fruit, and helped open up public understanding and come to terms with recent history (Niven 2002: 189). In line with Habermas' thinking, recognizing the past is part of becoming an enlightened civic citizen. The new citizenship law was a sign that the more enlightened the public became, the more the new legislation must reflect modernist thinking. Increased interaction of public and private spheres on issues surrounding the Holocaust – its significance and ways to commemorate it – took place in Germany between 1995 and 2005 and opened horizons of new relations between Germans and minorities in the country.

For Habermas, opening Germany to Western democracy was "the great intellectual accomplishment of the post-war period." The attempt to revive nationalist dogmas – whose disastrous outcome is a painful matter of historical record – must be thwarted by *constitutional or civic identity and citizenship* that does not alienate Germany from the democratic West.[7] Therefore – and herein lies Habermas' master statement for this article – all *legislation should be evaluated in light of universal normative percepts embodied in the Constitution itself.*

In line with his philosophical discourse, Habermas argued that national identity should be based on an appeal to universal principles of justice, human rights and democracy, and not on beliefs of right or wrong based on immediate particularistic points of reference as reinforced by one's peer group (even if that means the majority) or nation: "Laws are legitimate only if they are in tune with the opinions, values, and norms generated discursively in civil society….Legitimate laws must be consistent with moral, ethical, and pragmatic considerations and serve the good of the legal community" (Finlayson 2005: 141-142). For a democratic constitution to take root it must be supported by a political culture consistent with modern morality, which resonates with ethical understanding of all cultural groups in the country, since this political culture cannot be seen as an expression of the particular values of the majority culture (Finlayson 2005: 128).

Germany's 2000 *Nationality Law* is a step towards increased equality and democratization, and away from the ethnically-based nationality that troubled the country between 1913 and 1999. Canada is not free of historians who idolize a uniform, pre-multiculturalism, past and who argue that Canada was an oasis of Western democracy which may be spoiled by the coloured immigrant. One such historian is Granatstein (2007: xii), who stated in *Who Killed Canadian History?*:

> [Canada] must be one of the few political entities to overlook its own cultural traditions – the European civilization on which our own nation is founded – on the grounds that to do otherwise would systematically discriminate against those who come from other cultures.

But Canada is progressing as an example to the world of a successful democracy which respects all of its citizens, and is learning from the past in order to come to terms with it and to look to the future.

Habermas viewed the revisionists' desire to return to a conventional national identity as a regression from the modest gains that Germany had made as a democratic nation in the decades following the war (Habermas 1989: xviii, note 27). His quest was sensible: a civic patriotism geared toward the Constitution, or "constitutional patriotism," as opposed to a narrow, nationalistic approach to it. He saw hope in the new era of political community, which transcended the ethnically homogeneous nationalism-based state and embraced one based on the equal rights and obligations of *legally vested citizens.* This civic democracy requires a political community that can collectively define its political will and implement it as policy within the legislative system. This political system requires an activist public sphere, where matters of common interest and political issues can be discussed, and the force of public opinion can effectively influence the government's decision-making process. Habermas' call for *civic citizenship* as opposed to *ethnic citizenship* found meaning in Germany of the 1990s, and went well with his philosophy of a modernity that progresses towards increased democratization.

References

Finlayson, J. G. 2005. *Habermas: A Very Short Introduction.* Oxford: Oxford University Press, p. 141-142.

German Embassy in Washington. C*itizenship Reform and Germany's Foreign Residents.* Background Papers. Retrieved from <www.germany.info/relaunch/info/archives/background/citizenship.html>.

Goldhagen, D. 1997. *Hitler's Willing Executioners.* New York: Vintage.

Granatstein, J. L., 2007. *Who Killed Canadian History?* Toronto: Harper Perennial, p. xii.

Green, S. 2000. "Beyond Ethnoculturalism? German Citizenship in the New Millennium." *German Politics* 9, 3 (December). University of Birmingham, p. 105-124.

Habermas, J. 1989. *The New Conservatism: Cultural Criticism and the Historical Debate*, Cambridge (MA): The MIT Press, p. ix.

———. 1986. "A Kind of Settlement of Damages." *Die Zeit* (July 11).

———. 1985b. "Modernity versus Postmodernity." *The Philosophical Discourse of Modernity.*

———. 1985a. *Theory of Communicative Action, Volume 2. Lifeworld and System: A Critique of Functionalist Reason.* New York: Beacon Press.

———. 1981. *Theory of Communicative Action, Volume 1. Reason and the Rationalization of Society.* New York: Beacon Press.

Niven, B. 2002. *Facing the Nazi Past: United Germany and the Legacy of the Third Reich.* London: Routledge, p. 175.

Oord, T. J. 2003. "Postmodernism – What is It?" *The Tennysonian* (March 24), p. 7.

Notes

[1] Below is the text of the law dated September 15, 1935.

Preamble: Entirely convinced that the purity of German blood is essential to the further existence of the German people, and inspired by the uncompromising determination to safeguard the future of the German nation, the Reichstag has unanimously resolved upon the following law, which is promulgated herewith:

Section 1: Marriages between Jews and citizens of German or kindred blood are forbidden. Marriages concluded in defiance of this law are void, even if, for the purpose of evading this law, they were concluded abroad. Proceedings for annulment may be initiated only by the Public Prosecutor.

Section 2: Extramarital intercourse between Jews and subjects of the state of Germany or related blood is forbidden.

Section 3: Jews will not be permitted to employ female citizens of German or kindred blood as domestic workers under the age of 45.

Section 4: Jews are forbidden to display the Reich and national flag or the national colours. On the other hand they are permitted to display the Jewish colours. The exercise of this right is protected by the State.

Section 5: A person who acts contrary to the prohibition of Section 1 will be punished with hard labour.

A person who acts contrary to the prohibition of Section 2 will be punished with imprisonment or with hard labour.

A person who acts contrary to the provisions of Sections 3 or 4 will be punished with imprisonment up to a year and with a fine, or with one of these penalties.

Section 6: The Reich Minister of the Interior in agreement with the Deputy Fuhrer and the Reich Minister of Justice will issue the legal and administrative regulations required for the enforcement and supplementing of this law.

Section 7: The law will become effective on the day after its promulgation; Section 3, however, not until January 1, 1936.

[2] Some biographical material is derived from the Wikipedia entry on Habermas.

[3] Such as by a study by Adorno, Schuld und Abwehr, 1975, cited in Habermas, p. xxvii.

[4] Frankfurter Allgemeine Zeitung, June 6, 1986, cited in Habermas (1989: xvii): "Was not the 'class murder' of the Bolsheviks the logical and factual prius of the "race" murder of the National Socialists?"

[5] Against communism.

[6] "On the Public Use of History."

[7] Habermas, "Apologetic Tendencies", and "Historical Consciousness and Post-Traditional Identity: Orientation Towards the West in West Germany". Cited in Habermas, p. xxi.

