FROM ETHNIC NATIONHOOD TO REPUBLICAN INTEGRATION

Citizenship in Germany Since the 1990s*

ABSTRACT

The reform of the German citizenship law in 1999 presents a veritable puzzle. While the law now provides for significant liberalization and more tolerant naturalization, it remains restrictive in terms of dual citizenship. Analyses of citizenship must transcend the tradition of ethnic nationhood and focus on how the politics of membership and integration have shaped legislation. There are at least two versions of republicanism in German public debates: a more communitarian one, on the one hand, and a liberal equal rights perspective, on the other.

THOMAS FAIST

Thomas Faist is Professor of Transstate Relations and Sociology of Development and directs the Center on Migration, Citizenship and Development (COMCAD) at the Faculty of Sociology, Bielefeld University, in Germany. His research and policy interests are international migration, immigrant integration, citizenship, social policy and development studies.

The German citizenship puzzle

The reform of the German citizenship law in 1999 presents a veritable puzzle and a significant challenge to those who have held a civic or republican understanding of nationhood as the liberal-democratic solution to immigrant membership. While the law now provides for a significant liberalization with the introduction of a strong *jus soli* element and of a more tolerant naturalization, it still remains restrictive in terms of dual citizenship (Table 1). The principle of *jus sanguinis* was complemented by *jus soli*: children born in Germany of whom at least one parent has resided in Germany for six years can now acquire German citizenship and their parents' nationality. Also, as-of-right naturalization is now permitted after eight years instead of the earlier 15 years. Yet dual citizenship is not accepted as a rule although some exceptions have been added. Interestingly, a compromise between the contending political parties on *jus soli* and dual citizenship was made possible by reverting to a principle mostly used in the 19th century: the compulsory option principle. It says that the person who acquires German citizenship under this new law by *jus soli* must choose one nationality or the other upon reaching maturity. In sum, a very glaring disjunction exists in Germany: although this country now has a fairly liberal *jus soli* regulation, along with Austria, Denmark and Iceland, it remains one of the most restrictive countries in Europe regarding dual citizenship.

Why has there been a liberalization regarding birthright acquisition of citizenship (*jus soli*) and rules of as-of-right naturalization but not of dual citizenship? A first approach towards solving the puzzle can be found in the "tradition of nationhood" approach, most cogently presented by Rogers Brubaker (1992). According to Brubaker, there are two types of nationhood: civic nations and ethnic nations, with the dominant exemplars being France and Germany. From the perspective of individuals, civic or republican membership is a question of subjective will and of individual readiness to affiliate and express loyalty to state and nation, whereas, according to an ethnic understanding, the objective belonging to a cultural and linguistic community based predominantly on descent is a precondition for political membership. Concerning political community inclusion from a republican vantage point, citizenship is seen as a crucial precondition for public mindedness. By contrast, according to an ethnic understanding, inclusion in the nation is seen as pre-political, and traced to common descent, cultural traditions or lineage. Political participation and opportunities are seen as an issue of intergenerational continuity. Therefore, access to citizenship is often differentiated according to ethnic origin and assumed cultural proximity, whereas, in republican nations, it is open under the same conditions to all kinds of immigrants.[1] We would expect that in countries where the republican concept dominates, states would be at least indifferent towards tolerance of dual nationality, while those in which the ethnocultural/ethnonational concept reigns supreme would be averse to toleration.

The problem with this approach is, first, that it would only account for the resistance towards an increased tolerance towards dual citizenship but not for the change in German citizenship law, that is, the introduction of *jus soli*. Second, and even more puzzling, there is no empirical evidence that, at the time of the crucial debates on citizenship reform in 1998-1999, the ethnocultural tradition was

relevant. No such arguments can be found in German parliamentary debates. To paraphrase Nathan Glazer's felicitous title, German policy-makers of the late 1990s espoused a civic outlook: "We are all 'Republican' now."

To understand the citizenship law reform, let us ask two questions. The first question is the following: how did the change in this law come about and why has there been a delay? After all, the leaders of German political parties had agreed for years – as early as 1984 – to reform the law. Throughout the 1990s, civil society spokespersons propagated the necessity of reforming the law of 1913 in order to raise the comparatively low naturalization rates, which, during the 1990s, were approximately five times higher in France and ten times higher in Sweden.

The second question is this: if the ethnic vs. civic understanding of nationhood does not describe the situation, what are the cleavage lines around which public debates about citizenship revolve and guide respective political interests? This author argues that there are at least two versions of republicanism – or more precisely, overall societal and immigrant integration – to be detected in German public discourse: a more communitarian one, on the one hand, and a liberal equal rights perspective, on the other. We should not simply focus on traditions of nationhood as characteristics of countries as a whole but on how the politics of membership and the underlying belief systems have shaped citizenship legislation.

Since the settlement of former guest workers became obvious in the late 1970s, the overall debate on admission and membership has been about whether Germany should perceive itself as a "country of immigration" or "not a country of immigration."

What accounts for the delay of German citizenship reform?

To account for the delay of the *jus soli* element until 1999 and the rejection of dual citizenship as a rule (*de jure*) in 1999, we need to take a closer look at political institutions. Throughout the 1980s, after the collapse of the former political elite consensus on guest-worker migration, cleavages among political party elites became dominant. Party coalition politics, characterized by meta-politics, pitted party blocs against one another and slowed down the reform of German citizenship law for almost a decade.

The meta-politics of immigration

Meta-politics refers to a coupling of symbolic and populist politics, especially in connecting issues such as immigration to exceedingly difficult "social problems" like unemployment and crime. Since the settlement of former guest workers became obvious in the late 1970s, the overall debate on admission and membership has been about whether Germany should perceive itself as – or not as – a "country of immigration". Even proponents of the latter position did not dispute the necessity of reforming the *Reichs- und Staatsangehörigkeitsgesetz* of 1913. From the early 1980s until 1998, all political parties from some regional states (*Länder*) put forth numerous draft legislations. As well, civil society groups – including unions, churches, immigrant associations, intellectuals and mass media representatives – put forth demands for the repeal of the 1913 law. However, none of the proposals could have relied on a majority. No reform occurred during the 1980s. During the 1990s, and thus after reunification, partial reform did occur despite meta-politics.

Three turning points in the citizenship debate

At least three sets of factors can be identified as having led to the eventual reform in 1998. First, akin to existing policies in the Netherlands (since 1985) and Sweden (since 1975), the Federal Constitutional Court decided in 1989 on the issue of granting local voting rights to permanent resident non-citizens. Yet, unlike the situation in these two countries, local voting rights for denizens did not arise in the context of either extending political rights to permanent residents at the national level or dual nationality. In Germany, the political actors who brought the issue before the courts – the *Länder* of Schleswig-Holstein and Bremen – looked for a venue to clarify who belongs to the demos. The Federal Constitutional Court ruled that local voting rights for foreigners could not be granted. Instead, the court urged legislators to create congruence between the resident population and the voting population. Second, German unification in 1990 did away with the argument that reform of the citizenship law could not be undertaken because it would not include the "other half" of the divided nation. Third, in the wake of severe anti-immigrant violence, culminating in deadly arson attacks, in the early 1990s, in the cities of Mölln, Rostock and Hoyerswerda, civil society organizations responded with massive candlelight vigils and renewed calls to change membership laws. As well, international condemnation of these acts was overwhelming.

Despite growing agreement among politicians from the governing and opposition parties in the early and mid-1990s, only minor reforms took place. With regard to citizenship acquisition, partial reforms were enacted in 1990 and 1993. The introduction of as-of-right naturalization for young foreigners after eight years of legal residence and for immigrants of the first generation after 15 years of legal residence under certain conditions was the outcome of a compromise between the Christian Democrats in power and the Social Democrats in opposition. This was part of a broader agreement to reach a two-thirds majority for a constitutional amendment to reform asylum law in 1992.

When the Red-Green coalition (the SPD and the Greens) took power in 1998, Chancellor Gerhard Schröder, pressured by the Greens, announced an ambitious "modern" and "European" citizenship law. The government coalition proposed, first, to introduce the *jus soli* principle

for foreign children born in Germany if one of the parents was born in Germany or had entered the territory before the age of 14 and had a residence permit. Second, renunciation of previous citizenship would no longer be required in all cases of as-of-right naturalizations. The CDU/CSU quickly picked up the issue as its first main theme in opposition and organized a petition campaign immediately before the first regional state elections were held in Hesse after the national elections. The heated campaign concentrated on the introduction of dual citizenship "as a rule" and, in particular, against the "double passport," which was portrayed to be unfair to mono-citizens. Again, meta-politics had a field day. Membership issues became connected to the rise of Islamic parties that were represented in the German Bundestag and eased access by terrorists to German territory. After losing the elections in Hesse and the majority in the *Bundesrat*, the SPD and the Greens arrived at a compromise with the Liberal Party in the form of the so-called option model, which came into effect in early 2000. As a result, *jus soli* was more liberal than intended but came with no general tolerance towards dual citizenship.

And so, although a majority of legislators were able to arrive at a consensus in the 1990s, meta-politics was an obstacle for *jus soli* until 1998 and still is for dual citizenship.

Why are there no more ethno-nationalists?

In the meta-politics and politics of membership, belief systems and ideologies mattered indeed. As the short history above suggests, a shift towards more liberal access to citizenship has occurred. The introduction of *jus soli* can be interpreted as a congruence of "ideas" that are prevalent in the general political culture and in more specific citizenship laws. Yet it is too facile to describe the change in underlying "ideas" as connected to distinct conceptions of nationhood, which emphasize a dichotomy of state and nation. The permission of dual citizenship "as a rule" was rejected by politicians using "republican" or "civic" arguments. In order to understand change, we should not – as the tradition of nationhood approach suggests – focus on national political cultures as a whole but inquire into the contested concepts of citizenship. In short, belief systems have mattered; but rather than the belief system of the nationhood, it has been the belief system of integration that has counted: the overall integration of society and the integration of individual immigrants.

A change towards more liberal access to citizenship has occurred in Germany. The introduction of *jus soli* can be interpreted as a congruence of "ideas" prevalent in the general political culture and in more specific citizenship laws.

Thus, the politics of citizenship in Germany in the 1990s is essentially framed by two conflicting views of integration. On the one hand, the proponents of *jus soli* and tolerance towards dual citizenship and naturalization see them as necessary elements of immigrant integration and as matters of equal individual rights. On the other hand, the opponents of dual citizenship see renunciation of former citizenship as a precondition of naturalization that is to be evaluated from a state-communitarian standpoint. In the end, the two contradictory dimensions of the enacted citizenship law reform reflect a compromise of the two political camps and their very different belief systems about integration.

This hunch is borne out by an empirical analysis of the debates on dual citizenship. It was not the *jus soli* component of the reform but the proposition of dual citizenship in general, and the renunciation requirement in particular, that was contentious in public debate.

The reconfiguration of German nationhood after 1945

The absence of ethnocultural arguments in the late 1990s becomes comprehensible from the following three dimensions of public debate: a) the changing political culture in Germany since 1945; b) the justification of privileged immigration and access to full membership by *(Spät) Aussiedler* from Eastern Europe (ethnic Germans); and c) party ideologies and programmatic statements.

a) Since World War II, the German concept of nation has undergone considerable change. First, German nationalism, and thus the concept of nationhood, has been identified as one of several factors contributing to Nazi rule and the Holocaust. The denationalization that followed was deeper than in other states of Europe. Second, the politics of integration and West Germany's strong pro-European orientation have significantly transformed the national self-understanding in Germany (Winkler 1991). Since the late 1970s, calls for constitutional patriotism (Sternberger 1979) have played an integral part of public debates. Third, economic prosperity and the growth of the welfare state in the *Wirtschaftswunderland* (land of economic miracle) created an alternative basis of identity from the 1950s until at least the 1970s (Greiffenhagen 1986). Fourth, after the student revolts in 1968, a fundamental change in the political culture led to a heightened sensitivity to all issues relating to the Holocaust, anti-Semitism and totalitarianism (Wirsching 2004).

b) Even citizenship policies in the early period after World War II are not firm proof of an ethnocultural concept of nationhood. Article 116 of the German *Basic Law* states that former expatriates under Nazi rule and refugees, displaced persons of German nationality (*Volkszugehörigkeit*) and their descendants who lived within the territorial borders of 1937, have privileged access to immigration and citizenship. Such persons were granted privileged access to entry and citizenship not simply because they were of German ethnic origin but also because it was assumed that they were victims of persecution and expulsion during and after World War II because of their German origin. After German reunification, however, re-settlers of German ethnic origin were treated as other immigrants and expected to integrate. In 1993, the Christian Union government introduced a new law (*Kriegsfolgenbereinigungsgesetz*)

Table 1
Access to citizenship in Germany since 2000

Second generation and those socialized in Germany	• *jus sanguinis* • *jus soli*, provided that one parent has lived for eight years in Germany or holds a permanent residence permit for at least three years (since 2000) • *"jus socialisationis"*: educated in Germany for eight years for second generation (since 1993)
As-of-right naturalization	• after eight years of residence; conditions attached: no welfare dependency; language test: evidence of sufficient knowledge of German
Dual citizenship	• accepted for ethnic Germans • accepted in specific circumstances, such as economic loss involved or when country of origin does not allow expatriation • "optional principle" if the child obtains the parents' nationalities, she must give up one nationality before reaching the age of 23

Table 2
Belief systems of political parties in Germany: "Integration"

	Immigrants	Society	State
Christian Democrats (Free Democrats)	**a)** loyalty **b)** socio-economic-cultural integration (subsidiarity)	concept of societal solidarity ("communitarian")	**a)** focus on core state functions **b)** concept of effective legitimacy
Social Democrats, Greens (PDS) (Free Democrats)	**a)** equal rights **b)** political integration	concept of political solidarity	**a)** concept of effective and procedural legitimacy

requiring that those wishing to immigrate to Germany from countries other than the former Soviet Union had to provide proof of individual discrimination. Thus, the assumption of collective persecution and discrimination because of ethnicity was abandoned at the time when authoritarian regimes were transformed to democratic rule.

c) Party platforms are another indicator for unearthing concepts of nationhood. The Greens, Social Democrats and Free Democrats display a straightforward republican understanding of nation, as evidenced by their contributions to citizenship debates since the 1980s. Therefore, if the claim that the restrictive aspects of German citizenship law and the delay to reform is due to an ethnic concept of nation, the relevant bearer of it could only be the Christian Union parties. However, the Christian Democrats strongly emphasize the subjective will of the immigrant as a potential applicant to citizenship. Further, their objection to *jus soli*, and dual citizenship in particular, is not based on descent but on the idea that renunciation of citizenship serves as an oath of loyalty reflecting the willingness of an immigrant to be part of the political community. In sum, Christian Union parties espouse a republican ideology. Therefore, what needs to be explained is the use of ethno-cultural arguments until the mid-1990s, which represents an anomaly in light of declared party ideologies and is, in part, traceable to meta-politics.

New trench lines of debate: Liberal Democrats vs. Statist Communitarians

The final debate in parliament in May 1999 about the citizenship law reform is particularly striking. Professor of law Rupert Scholz (CDU) confirmed a republican understanding of nation as a "daily plebiscite," which was invoked by Minister of Interior Otto Schily as justification for the new citizenship law. While Scholz defined nations as communities of both shared experience and shared will, he framed the agreement to the respective law reform as an essentially democratic question. A shared will would mean a clearly articulated desire to continue a common life. But it would be doubtful whether dual loyalties would make possible such a common life.

If the claim that "we are all 'republican' now" is to have any purchase, the ideological dividing lines have to be sought in concepts other than nationhood. An empirical analysis of the parliamentary debates of 1998-1999 indicates that the guiding belief system can be labelled "integration." Overall, integration refers to the impact of dual citizenship on the political community as a whole, a notion that was visible in the opponents' argument that overlapping formal memberships violate the principle of "one person, one vote." In contrast, proponents of dual citizenship emphasized the integration of immigrants as citizens on the basis of equal rights.

To capture the conflicting belief systems on integration, a threefold distinction at the individual, civil society and state levels is useful (Table 2). The opponents' notion of integration is guided by the Catholic social doctrine of subsidiarity, which says that the smallest social unit should fulfill the duties. In this case, individuals should prove that they have made efforts to integrate before naturalization "crowns" the integration process. Moreover, renouncing one's original citizenship is an oath of loyalty. The proponents focus in a social democratic manner on the enabling function of the state, which is supposed to provide equal rights to all permanent residents. At the civil society level, the opponents emphasize that trust and reciprocity among citizens are resources that cannot be created by the

state. Laws and rights should not interfere with social solidarity. However, infringing on the vital feedback loops between the governing and the governed would finally result in decreasing levels of trust among citizens, which could lead to an undermining of welfare state solidarity and reciprocity. The proponents of dual citizenship emphasize political solidarity, which does not accord a high premium on the right of a political community to defend its boundaries if equal rights are violated. This belief relies on the formative role of political institutions and does not value pre-political requirements of political integration.

In terms of role of the state, opponents focus upon the core function of providing security and thus privilege law and order. In addition, a clear focus is on effective legitimacy through empirical consent of the established citizenry. The proponents, however, point to principles such as democratic congruence, constitutional patriotism and equal political rights of participation as the very basis of legitimacy, thus geared more towards a procedural understanding. In sum, while the opponents of further boundary blurring refer to a more "communitarian" concept of the interrelationship between individual, civil society and the state, its proponents take a liberal equal rights perspective.

It is certainly not clear which of these "republican" understandings of integration will guide policy making on citizenship. Nonetheless, liberal democracies like Germany have been compelled to accept dual citizenship upon naturalization in cases where the other state makes renouncing nationality impossible or imposes unreasonable demands. Also, German authorities accept dual citizenship in the name of gender equity in bi-national marriages when nationality is acquired by birth. Furthermore, Germany is inclined to grant dual citizenship within regional governance systems such as the EU, based on the principle of reciprocity. However, new interpretations of individual rights and new claims of other categories of persons combined with court cases could easily lead to a further increase in exceptions. Currently, 40% of all naturalizations in Germany were done without the new citizen renouncing his or her old citizenship (30% among citizens from Turkey, 90% from former Yugoslavia and 95% from Iran). The more exceptions there are, and thus the more potential claimant groups there would be, the greater the likelihood that questions of legitimizing different treatment arise because each exemption has to be justified on reasonable grounds. In the long run, problems of justification and rising administrative costs may lead to a general tolerance of dual citizenship. In Germany, it is not unlikely that unequal treatment as a consequence of the so-called option model (Table 1) would result in increased tolerance. After all, the Federal Constitutional Court will be hard pressed to justify why children of immigrant parents must choose one nationality while those of bi-national marriages are not forced to choose an "option." The Court will most likely have to decide very soon whether this clause can be upheld.

References

Brubaker, R. W. 1992. *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press.

Greiffenhagen, M. 1986. *Von Potsdam nach Bonn. Zehn Kapitel zur politischen Kultur Deutschlands*. Muenchen: Piper.

Kymlicka, W., and W. Norman. 1994. "Return of the Citizen. A Survey of Recent Work on Citizenship Theory." *Ethics* 104, p. 352-381.

Mann, T. 1956 (1919). *Betrachtungen eines Unpolitischen*. Frankfurt a.M.: Fischer.

Sternberger, D. 1982. *Verfassungspatriotismus*. Hannover: Niedersächsische Landeszentrale für politische Bildung.

Winkler, H. A. 1991. "Nationalismus, Nationalstaat und nationale Frage in Deutschland seit 1945." *Aus Politik und Zeitgeschehen* 41, p. 12-24.

Wirsching, A. 2004. "8. Mai und 27. Januar 1945 – Zwei Tage der Befreiung?" In *Tage deutscher Geschichte*. Edited by E. Conze and T. Nicklas. München.

Notes

* A detailed empirical analysis, with references to literature and including comparisons with other countries in Europe and throughout the world, can be found in the following three publications: T. Faist (Ed). 2007. *Dual Citizenship in Europe: From Nationhood to Societal Integration*. Aldershot, UK: Avebury; T. Faist and P. Kivisto (Eds). 2007. *Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship*. Houndmills, UK: Palgrave Macmillan; and P. Kivisto and T. Faist. 2007. *Citizenship: Discourse, Theory and Transnational Prospects*. Oxford: Blackwell.

[1] "Republican" in this context does not necessarily mean the conception of Aristotle's zoon politikon, namely citizens as creatures with an inherent proclivity to find ultimate fulfillment in public life and public service. Rather, the term is nowadays connected to some sort of "active" citizenship, which seems to describe opportunities with high levels of potential participation for the common good (cf. Kymlicka and Norman 1994).