



CUTTING THE TIES? GENERATIONAL LIMITATIONS IN CANADA'S AND GERMANY'S CITIZENSHIP LAWS

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Abstract

This paper² compares Canada's and Germany's citizenship laws with regard to regulations that delimit the acquisition of citizenship abroad. It finds that the respective regulations are designed similarly, but differ in some details. The Canadian regulation, for instance, prevents citizenship from being passed on to the second generation born abroad, whereas the German rule offers an opportunity to retain citizenship without seriously giving proof of a link to the country. From a normative point of view, there are good reasons to delimit the acquisition of citizenship abroad, but also for an opportunity to retain citizenship if people have a genuine link to the state and its political system. The regulations of each country show deficits in this respect. Thus, this paper suggests introducing requirements for an entitlement to regain citizenship for second or subsequent generations born abroad which could be designed similarly to the requirements for immigrants who want to naturalize.

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Introduction

In the “age of migration” (Castles and Miller 1993) the membership to a polity loses its dependency on fate (Masing 2001). It is increasingly influenced by globalization and international mobility. Thus, the importance of residence for people’s political localization is rising. This development has led to important implications for nation states and democratic systems as well as the institution of citizenship: International migration led to “significant limitations in representative democracy” (Hammar 1990, 2), because the basic principle of representative government (universal suffrage in political elections) and the nation state principle (only citizens are full members and therefore can take part in political elections) came into conflict. Regarding the limitations in representative democracy caused by international migration as well as the consequences for concepts of citizenship, scholars in receiving countries mostly focus on the implications for democratic processes caused by immigration. This is reasonable since they are mainly immigration countries. However, many of these countries also have to deal with emigration and have implemented policies focused on emigration and external citizens (e.g. Collyer 2016; Dumbrava 2014). Even if there is still a “lack of comparative and normative studies on external citizenship rights” in these countries (Bauböck 2006, 27), these policies have come under increasing investigation in recent years (Collyer 2016). This paper aims to making a small contribution to this research by comparing the external citizenship policies of two countries, i.e. the generational limitation of external citizenship acquisition in the Canadian and German Citizenship Acts respectively.

Comparisons of Canada’s and Germany’s immigration and citizenship policies have become of increasing interest within the last decade.³ Since the late 1980s, scholars mainly emphasized the differences between the two countries (e.g. Brubaker 1989; Bauder 2011; 2014). However in recent years, the focus has shifted towards highlighting their similarities. This also applies to the intergenerational limitation of the transmission of Canadian and German citizenship by expatriates residing abroad (e.g. SVR 2015, 129–31). Nonetheless, a further and deeper comparison of the respective regulations has not yet been undertaken. This paper aims to fill this gap by concentrating on German and Canadian policies which delimit the transmission of citizenship by expatriates residing abroad. For the sake of clarity, other elements of citizenship policy such as citizenship acquisition, as well as rights and duties, will not be discussed herein. Situated between a factual contextualization and an initial normative assessment, this paper offers a description of both countries’ policies as a starting point for future “comparative studies that aspire to higher levels of explanation” (Landman 2008, 5). This approach also “provide[s] initial hunches about which topics of research may be of interest and which factors may be important to explain observed phenomena” related to the respective policies (Landman 2008, 5).

In the following sections, I will first assess normative arguments of why the transmission of citizenship abroad should be limited from a certain emigrant generation onwards. This is thought to be needed as a problematization and analytical framework. Next, I will give an overview of the historic and legislative contexts of the respective regulations. This is necessary to assess the development of the present regulations against the background of both countries’ migration and citizenship systems. Third, I will describe the core elements of the policies to delimit the

³ See for example Reitz et al. 1999; Geißler 2003; Triadafilopoulos 2006; 2012; Winter 2007; Bauder 2008; 2011; Bendel and Kreienbrink 2008; Bauder, Lenard, and Straehle 2014; SVR 2015.

transmission of citizenship abroad and will compare similarities and differences. Against this background, I will conclude with a discussion of whether the German generational limitation and the Canadian First Generation Limitation meet the normative requirements discussed before and provide a brief outlook on alternative possibilities where appropriate.

Definition of the problem: Should a country delimit citizenship acquisition abroad?

With regard to the limitations of representative democracy caused by international migration as well as the consequences for concepts of citizenship, implications caused by immigration as well as implications caused by emigration should be considered. An important implication caused by immigration is the fact that immigrants are usually excluded from the active and passive voting right unless they acquire the country's citizenship. Even though many receiving countries also have to deal with emigration, the limitations of representative democracy through the acquisition of citizenship abroad are frequently neglected. However, the implications on the principle of self-determination caused by immigration and emigration have more in common as one might initially expect. The freedom of self-determination (or citizen self-government) is one of the most important democratic principles. According to Robert A. Dahl (1989, 107–8), self-government means that “[b]inding decisions are to be made only by persons who are subject to the decisions, that is, by members of the association, not by persons outside the association”. Further, the “criterion of inclusion” requires that the demos should include all adults subject to the binding collective decisions except transients (see Dahl 1989, 120–29). This criterion is not fulfilled, if a large share of permanent residents are non-citizens and thus do not have full political rights. This can be described as *under-inclusiveness*, because a significant share of a country's residents are excluded from political decisions even if they are subjected to these decisions. The criterion is not met either if a large share of citizens without genuine ties with the state is living abroad and keeps full political rights. This can be described as *over-inclusiveness*, because a significant share of people are included in political decisions even if they are not subject to these decisions (e.g. Shachar 2003, 29).

Representative democracies must have an interest in delimiting the external acquisition of citizenship to reduce *over-inclusiveness*. Thus, it has to be discussed whether the transmission of citizenship abroad by descent (*ius sanguinis*) should be limited from a certain emigrant generation onwards or not (see e.g. Bauböck 2006). States may have an interest in retaining citizens abroad, or have a legitimate interest in granting access to citizenship as compensation to individuals who unjustly lost citizenship or have been deprived of their status in the past due to political despotism (e.g. former political enemies) (Dumbrava, 2014). Apart from this, trying to recover a national community by allowing former citizens or their descendants living abroad to acquire citizenship without taking up residence in the country, might seem reasonable from an ethno-nationalist point of view. However this is highly problematic on the basis of normative considerations, especially with regard to the freedom of self-determination: If a growing number of non-residents who are not equally subjected to the decisions taken as residents acquire citizenship rights, the “future of those whose fates are permanently tied to the polity” might one day be determined by outsiders (Bauböck 2009, 493; see also Dumbrava 2014). Moreover, it is sometimes argued that the intergenerational acquisition of citizenship abroad would secure continuity of democratic community since a self-governing polity needs a stable core of citizens.

Yet this is a weak argument for *ius sanguinis* acquisition abroad over an infinite time period: It is not convincing that granting citizenship to grandchildren of expatriates who have never resided in the country would strengthen democratic continuity (Bauböck 2009, 487; Dumbrava 2014, 2353–54).

A stronger argument against unlimited *ius sanguinis* acquisition abroad is the legitimization of democratic decisions. One could argue that citizens living abroad are also subject to binding decisions, e.g. because they own property, have business relations, invest in the country, want to return or perhaps have to pay taxes or have to serve in military service (Spiro 2003). Alternatively, it is hard to see why citizens living abroad should be equally subjected to the decisions taken as residents. Even if they may be affected by some decisions in their country of origin (e.g. decisions concerning nationality or military service laws), they “are not directly and comprehensively affected by the decisions and policies” (Rubio-Marín 2006, 129) as residents (e.g. decisions concerning the education system or working conditions).

Furthermore, citizens who are permanently living abroad “do not share in the politically determined life of the country; they are not subject to its working conditions and practices, they do not in general pay taxes, their children are not brought up in its education system, and so on” (Honohan 2011, 548). Understanding citizenship as “membership, rights and participation in a polity” (Bauböck 2006, 15) one could argue that first or second generation expatriates should keep citizenship, because they might be affected by the decisions taken in this country in some way or another. This is especially true as long as they have a right to return and therefore should also keep political rights (Bauböck 2009, 482–85). In this understanding of citizenship (i.e. participation in a polity) the importance of residence for people’s membership in a polity is rising – especially if migration decisions solidify across generations. It is therefore questionable if there are sufficient reasons why subsequent expatriate generations should be able to pass on citizenship unrestrictedly and over an infinite time period since their births abroad solidify their parent’s or grandparent’s migration decision. However, it could also be argued that people should be able to retain citizenship as long as they have a genuine connection to the state and its political system (Shachar 2003).

Citizenship in Germany and Canada: historic and legislative contexts

Since the late 1980s Canada and Germany were seen more or less as being opposites in terms of migration and citizenship policies (e.g. Brubaker 1989; Bauder 2011; 2014) which come from “different historic starting points and conditions” (Winter 2014b, 48). Germany has been described as an *ethnic nation* where citizenship and belonging were solely based on descent or a shared bloodline (Brubaker 1990; 1992). Contrary to this, Canada has been identified as being the prototype of a *multicultural nation* (Kymlicka 1995) built or shaped by immigration where “immigrants are a constituent part of the nation that citizens feel pride in” (Kymlicka 2010, 9). However, in recent years scholars have noted a convergence between certain aspects of Canadian and German migration policies and are increasingly focused on studying their similarities (Triadafilopoulos 2012; Kolb 2014; SVR 2015). This also applies to citizenship policies (SVR 2015, 126–31).

German citizenship: increasing importance of territorial elements

German citizenship has traditionally been based on ethnicity. For a long time “the automatic transformation of immigrants into citizens [...] [was] unthinkable” (Brubaker 1992, 185). The principle of descent (*ius sanguinis*) has been the decisive criterion for citizenship acquisition since the 1913 Nationality Act (*Reichs- und Staatsangehörigkeitsgesetz*). Although immigrants had the opportunity to acquire citizenship through naturalization on discretionary decisions (Section 8 of the Nationality Act), they did not have any legal claim up to the early 1990s (Green 2001; Wiedemann 2005). Only *Statusdeutsche*, mostly refugees and displaced persons of German ethnicity (*Volkszugehörigkeit*), were entitled to acquire German citizenship.⁴ Other immigrants were excluded from this right. Most of them were so-called ‘guest workers’ (*Gastarbeiter*) who had immigrated to Germany mainly during the 1960s seeking opportunity. They were invited to come to Germany by the German government to fill the demand for cheap labor in the country’s booming post-war economy.⁵ Initially permanent immigration was not envisaged and ‘guest workers’ were expected to go back to their countries of origin after a limited period of stay (so called rotation model). But after the labour recruitment agreements with their countries of origin were cancelled in 1973 (*Anwerbestopp*), readmission to Germany’s and other Western European countries’ labour markets had become impossible. Against this background, many ‘guest workers’ decided to stay, brought over their families and became permanent residents. Due to Germany’s self-image of being a non-immigration country it was expected that these foreigners (*Ausländer*) and their families would eventually return to their countries of origin. In reality, by 1990 nearly 7 % of the population (5.6 million people) did not have German citizenship (Statistisches Bundesamt 2014).

In light of this statistical reality, Germany slowly began to reform its citizenship regulations in the early 1990s. Special rules for the naturalization of long-term residents and their family members were introduced by a revision of the Foreigners Act (*Ausländergesetz*) in 1990: Immigrants between the ages of 16 and 23, as well as immigrants of 15 or more years of residence were now entitled to be naturalized. Foreigners who wanted to acquire German citizenship had to give up their foreign citizenship (Sections 85, 86 of the former Foreigners Act). Dual citizenship was only possible under certain conditions, e.g. if it was not possible to give up citizenship (Section 87 of the former Foreigners Act). In contrast to the naturalization rules of the Nationality Act of 1913, which included only discretionary circumstances, the new Foreigners Act now included a compulsory claim to naturalization. Nonetheless, children of immigrants still did not acquire German citizenship automatically even if they were born on German soil. The possibility of acquisition of German citizenship through birth on territory (*ius soli*) was firstly introduced within a fundamental reform in 1999 (Faist and Triadafilopoulos 2006; Howard 2008). Since then, a child of parents without German citizenship automatically acquires German citizenship if he/she is born in Germany and if at least one parent had been a legal resident for a period of eight years and has held an unlimited right of residence (Section 4(3) of the German Citizenship Act). However, until the end of 2014 these children had to decide by the age of 23

⁴ Art. 116 Abs. 1 Grundgesetz [German Constitution] and § 6 Gesetz zur Regelung von Fragen der Staatsangehörigkeit [Law on the Regulation of Citizenship Questions].

⁵ In order to cover the rising labour demand, the Federal Republic of Germany concluded bilateral agreements on labour recruitment (so called *Anwerbeabkommen*) with Italy (1955), Spain (1960), Greece (1960), Turkey (1961), Morocco (1963), South Korea (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968).

between their German citizenship or the citizenship passed down to them by their parents (Section 29 of the German Citizenship Act, also known as *Optionspflicht*, the ‘duty to choose’) (Winter 2014b.). This requirement was widely abolished within the second reform of the German Citizenship Act by the end of 2014. The majority of the young people affected by the regulation are now allowed to keep both citizenships indefinitely.⁶ Other changes of the 1999 Citizenship Act reform are a significant reduction of the mandatory residence period required for the acquisition of German citizenship by naturalization from 15 to 8 years as well as the acceptance of dual citizenship in some cases (e.g. if it is impossible to give up the country of origin’s citizenship). Amendments in the aftermath of the 1999 Citizenship reform led to a general acceptance of dual citizenship for naturalized EU citizens and a specification of the language requirement for naturalization⁷ in 2007, as well as the implementation of a standardised citizenship test⁸ in 2008. Less attention has been paid to another important change of the 1999 Citizenship Act: the introduction of the German generational limitation (Section 4(4) of the German Citizenship Act). The introduction states that a foreign-born child with at least one German parent does not automatically inherit German citizenship if the parent concerned was born himself/herself abroad after 31 December 1999 and does not have his/her residence in Germany.

Canada: traditionally mixing elements of territory and descent

In contrast to Germany, Canadian citizenship is traditionally based on a combination of *ius soli* and *ius sanguinis*. Canadian citizenship was established through the Canadian Citizenship Act in 1947. Individuals born or naturalized in Canada were previously considered British subjects. With the entering into force of the Act they were conferred Canadian citizenship (e.g. Citizenship and Immigration Canada 2015b). Furthermore, the 1947 Act established rules of acquisition and loss of citizenship. Canadian citizenship now was acquired through birth on Canadian territory (*ius soli*). Children born abroad of Canadian descent (*ius sanguinis*) acquired Canadian citizenship if their father was Canadian. Children born abroad to a Canadian mother and a foreign father acquired citizenship only if they were born out of wedlock. Immigrants had the right to naturalize after five years of residence in Canada. Canadian citizens who acquired citizenship of another country automatically lost Canadian citizenship since dual citizenship was restricted. Contrary to this, immigrants who naturalized did not have to give proof that they gave up their former citizenship (Galloway 2000).

Dual citizenship without restrictions was firstly recognized within the 1977 Citizenship Act which replaced the 1947 Act. Canadian citizenship was not lost automatically any longer if a citizen voluntarily acquired a foreign citizenship (Galloway 2000). Due to an increasing number

⁶ For a further discussion see Winter, Diehl, and Patzelt 2015.

⁷ Level B1 of the Common European Framework of Reference for Languages (CEFR).

⁸ According to § 10 of the Citizenship Act, foreign nationals living in Germany today have an entitlement to naturalization if they (1) have eight years’ legal and permanent residence in Germany, (2) have an unlimited right of residence, (3) avow themselves to the “free democratic basic order” of the German constitution, (4) are able to make a living for themselves and their family without claiming social benefits, (5) give up their foreign nationality, (6) have adequate German language skills (B1), (7) have knowledge of the German legal and social order proved in a citizenship test and (8) have not been sentenced for committing an unlawful act.

of non-British immigrants in the 1950s and 1960s the Act provided equal rights and duties for naturalized and native born Canadians and abolished special treatment for British subjects. A few years before in 1971, the government under Prime Minister Pierre Trudeau had adopted a policy that has often been described as multiculturalism within a bilingual framework (Knowles 2000; Hague 2012).⁹ Further, the 1977 Citizenship Act reduced the residence requirement for naturalization from five to three years and introduced an entitlement for naturalization for qualified applicants. Additionally, children of Canadian descent born abroad from then on acquired Canadian citizenship automatically regardless of their parents' gender (Knowles 2000; Citizenship and Immigration Canada 2015b; Grey and Gill 2015). The only provision for automatic loss of Citizenship in the 1977 Act concerned birth abroad. Individuals who were born in a foreign country in the second or subsequent generation automatically lost Canadian citizenship unless they applied for its retention by their 28th birthday (Young 1998; Winter 2015).

With the exception of minor reforms, Canadian citizenship remained unchanged until 2009 (Winter 2014a). When Bill C-37 came into effect on April 17, 2009, Canadian citizenship legislation was extensively reformed, notably by the Repatriation Clause and the First Generation Limitation Clause. The Repatriation Clause enables so-called Lost Canadians to re-acquire citizenship. These individuals were never granted Canadian citizenship, or ceased to be citizens due to stipulations in the country's 1947 Citizenship Act which are nowadays considered discriminatory and incompatible with the Canadian Charter of Rights and Freedoms (Winter 2014a; 2014b). For example, this concerns second—and subsequent—generation Canadians born abroad since 1977 who failed to apply for the retention of Canadian citizenship by their 28th birthday (e.g. Becklumb 2014, 1–4).¹⁰ On the contrary, the First Generation Limitation prevents the passing on of Canadian citizenship through the children of Canadian emigrants. A foreign-born child of Canadian parents who emigrated still acquires Canadian citizenship through descent, but does not pass Canadian citizenship on to his/her own children if they are also born abroad. This amendment finds expression in Section 3(3) of the Canadian Citizenship Act (Becklumb 2014).¹¹

Finally, on June 19, 2014, an important amendment to the Citizenship Act, the Strengthening Canadian Citizenship Act (Bill C-24), received royal assent.¹² It contains different amendments which made it harder to become a Canadian citizen and easier to lose citizenship. For example, the amendment increased the residence requirement for naturalization from three (out of the four previous) years to four (out of the six previous) years (Grey and Gill 2015; Béchar, Becklumb,

⁹ Multiculturalism was recognized in the Canadian Charter of Rights and Freedoms in 1982. It became law through the 1988 Multiculturalism Act.

¹⁰ Other groups concerned are: individuals who voluntarily acquired another country's citizenship before dual citizenship was recognized in the 1977 Act or individuals who did not acquire Canadian citizenship because they were born abroad in wedlock by a Canadian mother and a foreign father.

¹¹ If the Canadian Government wants to create a new law it first introduces a bill in either the House of Commons or the Senate (mostly the House of Commons). In order to become law the bill has to pass various stages in both chambers. If it passes these steps it is given Royal Assent and is given a chapter number for the Statutes of Canada, a compilation of all the federal laws of Canada (e.g. British Columbia Courthouse Library Society 2002). Clause 2(2) of Bill C-37 added the new Sections 3(3) to 3(5) to the Citizenship Act; the preexisting Section 8 has been repealed by clause 6 (Becklumb 2014, 10).

¹² For an overview see Winter (2015, 18–29).

and Elgersma 2014; Citizenship and Immigration Canada 014a).¹³ Concerning the loss of citizenship, the amendment also allows the revoking of Canadian citizenship based on sentences for activities like organized crime or terrorism as well as violation of human rights, war crimes or fighting against Canada in an armed conflict (Béchar, Becklumb, and Elgersma 2014). Regarding the issues discussed above, the 2014 amendment extended citizenship to more Lost Canadians. These are, for instance, people born or naturalized in Canada or British subjects residing in Canada before the first Canadian Citizenship Act took effect and who were not eligible for Canadian citizenship due to this act as well as their children born abroad in the first generation (Béchar, Becklumb, and Elgersma 2014; Citizenship and Immigration Canada 2014b).¹⁴ Furthermore, there have been some minor adjustments concerning the First Generation Limitation. The changes clarify to whom the rule applies and define certain groups for whom the rule does not apply. These include children born abroad to a Canadian parent who was a (foreign born) adoptee (Canadian Bar Association 2014; Béchar, Becklumb, and Elgersma 2014). However overall, the mechanism of delimiting the intergenerational transition of citizenship abroad remained largely unaffected.

Comparison of the Generational Limitations in Canada and Germany

There are two clauses relevant for the issues discussed in this paper related to the acquisition of citizenship abroad by *ius sanguinis*. For Canada, it is Section 3(3) added to the Canadian Citizenship Act through Bill C-37 in 2009. This amendment is the Canadian equivalent to Section 4(4) of the German Citizenship Act, which has been in force since January 2000. Since April 17, 2009, section 3(3) of the Canadian Citizenship Act prevents the passing on of Canadian citizenship through the children of Canadian emigrants. A foreign-born child of Canadian parents who emigrated still acquires Canadian citizenship through descent. However, he/she does not pass on Canadian citizenship to his/her own children if they are also born abroad. Said differently, every child of an emigrant born outside of Canada is still a Canadian citizen by descent, while his/her children born abroad are not. Similarly, section 4(4) of the German Citizenship Act states that a foreign-born child with at least one German parent does not automatically inherit German citizenship, if the parent concerned was born abroad after December 31, 1999 and does not have his/her home (i.e. habitual place of residence) in Germany. So far, the two regulations are alike: The First Generation Limitation as well as section 4(4) preclude Canadian as well as German citizens from passing on citizenship to their children born abroad after one generation. Thus, both countries combine elements of *ius soli* and *ius sanguinis* and provide an *ius connexio* for citizenship acquisition abroad. This additional principle

¹³ Besides that, citizenship applicants have to prove physical presence in the country for at least 183 days per year. Furthermore, time spent in Canada before getting permanent resident status no longer counts toward the residence requirement. Other important changes include for example stricter language rules.

¹⁴ The current Liberal Government is planning to repeal some of these changes (Bill C-6). The proposed amendments provide for example a reduction of the residence requirement for naturalization from four out of six years to three out five years. Moreover, the bill would repeal the provision that allows for the revocation of citizenship which was introduced in 2014. In June 2016 Bill C-6 passed the Canadian House of Commons. The bill was referred to the Standing Senate Committee on Social Affairs, Science and Technology after the second reading in the Senate in December 2016 (Citizenship and Immigration Canada 2016; Parliament of Canada 2016).

“considers membership on the basis of a tangible connection between the individual and the state (as established by proof of residency, for example)” (Shachar 2003, 29).

Preventing or limiting citizenship from being passed on

However, the two regulations differ in some details. The Canadian regulation no longer provides a mechanism for Canadians who are the second (or subsequent) generation born abroad to retain citizenship. In contrast, the German section 4(4) allows children born in the second generation abroad to acquire citizenship. They are subsequently granted German citizenship in addition to their other citizenship(s) if their parents apply within twelve months for registering the birth in the German birth register. The application can be made at the diplomatic representation in the country of residence (Oberhäuser 2016). No evidence for a serious connection to Germany needs to be provided. Accordingly, the Berlin registry office No. I, that is responsible for the registration of the majority of foreign births, reports that not all applicants have adequate language skills in German (Weinmann 2016). In summary, the German stipulations are less stringent than those employed in Canada. Section 4(4) of the German Citizenship Act merely limits the transmission of citizenship from the second to the third (or subsequent) generation(s). The First Generation Limitation completely prevents Canadian citizenship from being passed on from the second to the third emigrant generation.¹⁵ This irrevocably cuts the ties between Canada and its emigrants’ descendants (Winter 2014a). Before 2009 it was also possible for subsequent generations born abroad to maintain Canadian citizenship. With the 2009 amendment “the pre-existing mechanism for Canadians who are the second or subsequent generation born abroad to register and retain citizenship by age 28 [has been] repealed” (Becklumb 2014, 10; Winter 2014b). There is in fact no way to retain Canadian citizenship, even if these children or their parents have a genuine link to Canada.

Current or prospective legal significance

Another difference between the two clauses is the current legal significance. The First Generation Limitation already has legal significance for children born since April 17, 2009 to a Canadian parent born abroad. A child born abroad after April 17, 2009, to a Canadian also born abroad would no longer acquire Canadian citizenship. In contrast, the German Section 4(4) only gradually becomes legally significant, because it is only relevant for children born abroad whose parents were also born abroad after December 31, 1999.¹⁶ Grandchildren of German emigrants whose parents were born abroad themselves up to December 31, 1999, still acquired German citizenship automatically. But grandchildren of German emigrants whose parents are born abroad themselves since January 1, 2000 no longer acquire German citizenship automatically.

¹⁵ There are certain groups for whom the rule does not apply. These are for example children born abroad to a Canadian parent working in or with Canadian Armed Forces, federal public administration or the public service of a province or children born abroad to a Canadian parent who was a (foreign born) adoptee (for exceptions see e.g. Canadian Bar Association 2014, 28; Béchard, Becklumb, and Elgersma 2014, 4–6; Government of Canada 2009).

¹⁶ Against this background, Section 4(4) has not yet been commented in the 2008 edition of a legal commentary on the German Citizenship Act (Oberhäuser 2008, 1988).

There is virtually no knowledge about the number of people who are actually or will be prospectively affected by both regulations, because statistical information on emigrants is “notoriously unreliable” (Collyer 2016, 6) and children born abroad to citizens are not registered in national statistics if they do not automatically acquire citizenship. For Germany, the only source of information is the Berlin registry office No. I, that is responsible for the registration of the majority of foreign births. Although the German regulation becomes legally relevant, just recently, the Berlin registry office No. I already records an increase in the number of applications within the last years. Even though the office cannot provide exact data on the increase as well as the applicants’ year of birth (born before or after 2000), it refers to the fact that 21,000 applications had been unprocessed in May 2017.¹⁷

Causing statelessness or restricting an intergenerational accumulation of citizenships

The absoluteness of the Canadian rule – which becomes visible in completely preventing Canadian citizenship from being passed on after the first generation born abroad – “will result in some offspring of Canadians born abroad in the future being stateless” (Becklumb 2014, 10; Winter 2014b, 41). The Canadian Citizenship Act still provides a mandatory grant of citizenship to avoid statelessness in some cases (Section 5 of the Canadian Citizenship Act). A person will be granted citizenship on application if they were born abroad after the limitation came into force, is less than 23 years of age by the time of the application, has resided in Canada for at least three years (during the four years immediately before the application), has always been stateless *and* has not been convicted of various listed national security offences (e.g. terrorism). Nevertheless, statelessness is not avoided automatically if the child born abroad does not acquire citizenship in his/her country of birth by *ius soli*. This situation will become more frequent in the future since “[o]nly 30 of the world’s 194 countries practice jus soli” (Feere 2010, 5).¹⁸ To acquire Canadian citizenship, an individual must live in Canada for at least three years in Canada, and must first enter Canada as a stateless person – which would probably be difficult. Against this background, the mandatory grant of Canadian citizenship to avoid statelessness hardly seems to be an ‘emergency parachute’ for children becoming stateless due to the First Generation Limitation. This might be one reason why the First Generation Limitation is considered to be “only minimally” compliant with the United Nation’s Convention on the Reduction of Statelessness (Becklumb 2014, 14). In derogation thereof, the generational limitation in the German case does not apply for children who thereby would become stateless (Oberhäuser 2016). A descendant of German parents does not acquire German citizenship anymore if they as well as their parents are born abroad *and* has another citizenship. Having another citizenship seems to be just one of the conditions, but it is actually the decisive factor. The German generational limitation is only takes effect if the child acquires another citizenship. Thus, it restricts an intergenerational accumulation of multiple citizenships, but does not cause statelessness.

¹⁷ Information received via e-mail from the Berlin registry office No. I on 9 May 2017; in August 2016 18,000 applications had been unprocessed (Weinmann 2016).

¹⁸ Moreover, statelessness is not avoided automatically if the child born abroad does not acquire another citizenship by *ius sanguinis*. This would be the case if e.g. one parent would have dual nationality or the parents have different citizenships.

Historic and legislative context

The generational limitations in Canada and Germany must be seen in light of the legislative context of their introduction as described above. In Germany, the introduction of the generational limitation must be seen in the context of the Citizenship Act reform in 1999. Reducing the automatic inheritance of German citizenship abroad was first demanded by the German Social Democratic Party (SPD) within the so-called Asylum Compromise in 1992.¹⁹ However, it was not implemented until the reform of the German Citizenship Act in 1999.²⁰ Thus, the legislative context of the German generational limitation is the introduction of *ius soli* for children of foreigners born inland (Section 4(3) of the German Citizenship Act) as well as the substantial relief of the acquisition of citizenship through naturalisation which also lead to exceptions of the rule of rejecting dual citizenship. At first glance, Section 4(4) seems to be just an appendage of this reform. Yet in reality, the combination of the introduction of an element of *ius soli* and the limitation of *ius sanguinis* acquisition abroad makes the 1999 citizenship reform stringent: Section 4(4) was meant to be “the counterpart to the introduction of the *ius soli*”,²¹ as stated in the official justification of the Citizenship Act. The introduction of the generational limitation was mainly justified with a missing link to the state’s territory.²² By combining the introduction of *ius soli* and the generational limitation the principle of descent was seriously questioned for the first time; it has been the decisive criterion for citizenship acquisition since 1913. Accordingly, the generational limitation is seen as giving proof that the introduction of *ius soli* “was intended to be a real paradigm shift” (Masing 2001, 7, author’s translation; Renner 2002, 266). Being a German citizen is not exclusively determined through fate and ethnicity anymore, but also through a spatial connection. This has led to a “decoupling of ethnicity and citizenship” in Germany (Joppke 2005, 234). Thus, the changes of the citizenship reform of 1999 can be interpreted as *de-ethnicization* of German citizenship, “in the sense of grounding access to citizenship more on residence and birth on territory than on filiation” (Joppke 2003, 430).

The legislative context of the Canadian First Generation Limitation is Bill C-37, an amendment to the Canadian Citizenship Act, which took effect on April 17, 2009. The bill consists of two important clauses: the First Generation Limitation and the Repatriation Clause. The First Generation Limitation restricts the inheritance of Canadian citizenship to the first generation of children born abroad. Similarly to the introduction of the generational limitation in Germany, the Canadian First Generation Limitation “limit[s] citizenship by descent” (Citizenship and Immigration Canada 2015a) and was officially justified as “protecting the value of citizenship by ensuring that future Canadians have a real connection with Canada”.²³ Yet in contrast to the German case, it was – even before the introduction of the First Generation Limitation – not possible to pass on citizenship to children born abroad unrestrictedly and over an infinite time

¹⁹ See Entwurf eines Gesetzes zur Reform des Staatsangehörigkeitsrechts, Bundestagsdrucksache 14/533 vom 16. März 1999, p. 14 [Draft Law on the Reform of the Citizenship Act, Bundestag Printed Matter from 16 March 1999].

²⁰ See Gesetz zur Reform des Staatsangehörigkeitsrechts vom 15. Juli 1999, Bundesgesetzblatt Jahrgang 1999 Teil I Nr. 38, ausgegeben zu Bonn am 23. Juli 1999, pp. 1618–1623 [Law on the Reform of the Citizenship Act from 15 July 1999, Federal Law Gazette Volume 1999 part I No. 38, published in Bonn on 23 July 1999].

²¹ Author’s translation.

²² See Entwurf eines Gesetzes zur Reform des Staatsangehörigkeitsrechts, Bundestagsdrucksache 14/533 vom 16. März 1999, pp. 13–14 [Draft Law on the Reform of the Citizenship Act, Bundestag Printed Matter from 16 March 1999].

²³ See Canada Gazette Part I, December 13, 2008, Vol. 142, No. 50, p. 3156.

period. Individuals born outside of Canada in the second or subsequent generation had to apply for the retention of their Canadian citizenship by their 28th birthday. The First Generation Limitation replaced this regulation and made it – with few exceptions – impossible for subsequent generations born abroad to retain Canadian citizenship. In contrast, the Repatriation Clause made it possible that individuals (born abroad to Canadians) who formerly had failed to apply for the retention of Canadian citizenship by their 28th birthday could retroactively (re)gain Canadian citizenship (so-called Lost Canadians) – even if they do not “reside in, or relocate to Canada” (Winter 2015, 14). Against this background, Bill C-37 is seen as consisting of “two seemingly contradictory amendments” (Winter 2014a, 47): On the one hand, descendants of Canadians formerly born abroad became enabled to regain citizenship, even if they have never resided or never will reside in Canada. On the other hand, descendants of Canadians born abroad in the future in a similar situation are restricted to retain citizenship. While Lost Canadians do not need to prove a real connection to Canada to (re)acquire Canadian citizenship, prospective emigrants’ grandchildren do not even have an opportunity to give proof of a real connection if they would like to acquire citizenship. The possibility to retain citizenship by discretion existed under Canada’s previous generational limitation. The current rule, by contrast, practices a very strict and definite cut off instead of the possibility to decide for Canadian citizenship (Winter 2015).

Discussion

By comparing the two regulations, it has been demonstrated that the Canadian First Generation Limitation is more stringent than the German Section 4(4). In contrast to the German regulation, the First Generation Limitation completely prevents Canadian citizenship from being passed from the second to the third emigrant generation. Thus, the Canadian rule is not only stricter than the German rule but also stricter than other generational limitations in European countries. In the European Union, 14 out of 28 countries “apply the rule of *ius sanguinis* in a qualified manner” for citizens born abroad (Dumbrava 2014, 2344), but also provide an opportunity to retain citizenship. Another important difference is that the First Generation Limitation may cause statelessness, while the German rule does not. In the German case the generational limitation does not apply for children who would thereby become stateless.

For democratic reasons it is questionable if the limited transmission of citizenship via *ius sanguinis* practiced by the two countries and thus the stronger linking of citizenship to the place of residence is reasonable and appropriate. As already mentioned, in the common understanding of citizenship as political membership the importance of residence for people’s membership in a polity is rising – especially if migration decisions solidify across generations. In the German case the introduction of the generational limitation as well as *ius soli* within the 1999 citizenship reform have to be seen as an instrument of guaranteeing a serious possibility of political participation (or influence on decisions) of those who are subjected to the decisions taken: Both regulations try to trace an effective change in people’s life circumstances caused by international migration and mobility (see also Renner 2002). The introduction of the generational limitation in Germany’s citizenship legislation has been mainly justified with emigrant’s descendants fading connections to the state’s territory. The introduction of Canada’s First Generation Limitation has also been justified by ensuring that future citizens have a real connection with the country.

However, this was already guaranteed by the previous rule, which demanded a mandatory application for citizenship retention. Moreover, it is not comprehensible why the Repatriation Clause enabled descendants of Canadians formerly born abroad to regain citizenship, even if they never resided or will reside in Canada while its sister clause, the First Generation Limitation, prevents descendants of Canadians in a similar situation and born abroad in the future to retain citizenship.

Generational limitations always aim at preventing an unlimited acquisition of citizenship by descent to people who no longer have a connection to the country or rather to the state's territory. Thereby citizenship laws become extended through an *ius connexio*. This is reasonable from a normative perspective. Through generational limitations political affiliation becomes related to the prospective spatial affiliation, i.e. the "expectation of future residence in a country is interpreted as a major indicator of a genuine link between individuals and the state" (Dumbrava 2014, 2343). This is understandable since the "criterion of territorial contact" (Masing 2001, 28, author's translation) is also practiced in the minimum resident requirement for naturalization of immigrants. Nonetheless, individuals should be able to retain citizenship if they can prove a genuine connection to the state and its political system (Shachar 2003). Due to the absoluteness of the Canadian First Generation Limitation the only possibility for citizens born abroad to retain citizenship for their children is to choose Canada as place of birth for their offspring. Against this background the question is, which connection is missing – the expatriate's connection to their country of origin or the country's to its expatriates? As it stands, it is not the expatriates who fail to maintain a link to Canada, but rather Canada seems to be cutting the ties with its citizens abroad.

The strictness of the one rule is the weakness of the other. Although there is a "tight time limit" (Joppke 2003, 444) of only one year for birth registration, it is comparatively easy to retain German citizenship for children born abroad. This possibility weakens the rigidity of the rule. Under the condition of birth registration German citizenship could (theoretically) be passed on infinitely. For that reason Meireis (2000, 70, author's translation) assesses the German generational limitation as a "blunt sword". Yet there is also a normative problem: The preclusive period for registration of one year after birth is meant to ensure that an application is made only if there is a serious connection to the country. This seems to be legitimate because people who do not have any connection might not even know about the requirement of registering. However conversely, legal knowledge or "administrative skills" (Masing 2001, 7, author's translation) of the parents seem not to be an appropriate indicator for a serious connection.

In the Canadian case "place of one's birth is being used as a proxy for one's attachment" to the country (Winter 2014b, 49). In the German case it is legal and administrative knowledge. This raises the question of what is the best criteria to determine proof of a genuine link to the country of origin? One possibility would be to introduce requirements for an entitlement to retain citizenship for second or subsequent generations born abroad. These requirements could be designed similarly to the requirements for immigrants who want to naturalize. Another possibility could be the introduction of citizenship and language tests for the parents which secure a minimal knowledge of the country, its language and its political system. Furthermore, the country could delimit an entitlement of retaining citizenship up to a defined generation born abroad. Another option would be to apply graduated criteria for subsequent generations. For

further research it may be of interest to examine why countries develop policies with varying degrees of stringency to pursue the same objective.

The two examples, the Canadian First Generation Limitation and the German Section 4(4), show that generational limitations can be designed differently, although they may pursue similar objectives. From a normative point of view there are good reasons to delimit the acquisition of citizenship abroad, but in order to justify generational limitations within democratic theory there must be an opportunity to retain citizenship by giving proof of a genuine link to the state and its political system.

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