3 The ‘Nature’ of Nationality

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‘Man was born free, but everywhere he is in chains.’
(J.J. Rousseau, 1762)

INTRODUCTION

Citizenship is the quintessence of the modern individual’s political emancipation and equality in the eyes of the law. Citizenship as the bundle of civil rights enjoyed by free and formally equal citizens became bounded, however, almost from the start in the emerging bourgeois world dividing into territorial nation-states which vied for dominance. The acquisition of citizenship rights became conditioned by specific legal rules, the so-called nationality laws, which codified the formal requirements which individuals must meet to be entitled to become citizens of concrete states. As a consequence, citizenship rights became the exclusive privilege of those who were recognized as nationals of a particular state to the exclusion of the nationals of any other state so constituted.

Of the three constitutive elements of the modern state, a territory, a government, a people, circumscribing the ‘people’ proved to be the most controversial issue (Lichter 1955). A territory without a people, a government without a clearly bounded community to be governed, makes no sense. Hence, bounding the citizenry, that is determining the conditions for becoming a member of a state, acquired a logic of its own as a fundamental constitutive political dilemma in the formative period of the modern territorial nation-states.

There are three analytically distinct dimensions to membership in a nation-state, one regarding an individual’s legal status within a polity which warrants the unqualified enjoyment of civil, political and social rights. Second, this political status is formally grounded in a prior legal relationship entered into by the individual and a state (Keller & Trautmann 1914: 32; Staatslexikon - Recht, Wirtschaft, Gesellschaft 1962: 570). And third, belonging to the nation-state has, moreover, often been taken to be ‘ascribed’ by an inner, subjective sense of shared national identity.
In this chapter I will retrace the manner in which nationality, understood as the possession of certain legally stipulated qualifications which make of individuals members of a nation-state and which, in turn condition citizenship, was conceptualized in the process of nineteenth-century nation-building in Germany, France and Britain.

Persistent economic crisis and deepening social exclusions recently have endowed citizenship with new political prominence. The uncertainties surrounding European political integration coupled with the alleged threat of so-called extra-communitarian immigration have provoked a heightened concern over national identity, unity and sovereignty. Citizenship and ‘national identity’ occupy a central place in contemporary political agendas, in academic debate and in research. The constitutive role nationality has played in modern nation-building has, however, received surprisingly little analytical attention in the social sciences (e.g. Hobsbawn 1990, Wallerstein & Balibar 1988, Finkelkraut 1987, Anderson 1983). This is so because, as I will argue, nationality became generally naturalized throughout the formative period of the modern nation-state. Citizenship and nationality became subsumed into one indistinct status inherent to rather then acquired by the modern individual thereby simultaneously becoming almost self-evident.

Illustrative of this taken-for-grantedness of nationality is the conceptual difficulty of separating out the formal legal requirements for acquiring citizenship from the substantive civil, political and social rights thereby obtained manifest in the semantic ambiguity that surrounds the two concepts. While Brubaker, for example, defines citizenship as "a legal institution regulating membership in the state, not a set of participatory practices or a set of specifically civic attitudes" (1992: 51) Silverman insists that "...nationality is essential for the acquisition of certain rights when citizenship is likened to nationality." (1992: 160-61). In most contemporary dictionaries the two terms connote indistinctly the conditions for and of membership in a nation-state. Nationality and citizenship are taken interchangeably to signify nominal and substantive membership in a state, often thought to be, moreover, grounded in some shared subjective ‘national-ethnic’ feeling of identity (e.g. Ritter 1986: 285).

Because it is self-evident, for the ordinary citizen nationality laws are not unlike the small print on the back of insurance policies, rarely read and largely ignored. The question why a person possesses French, British or German nationality usually elicits a blank look or, in the best of circumstances, a hesitant and vague allusion to the fact of the individual in question (or her/his parents) having been born in the respective country. Even among academics, safe experts in international private law or immigration policy this question usually prompts comments on nationalism and national identity.

The indistinct usage of the terms nationality and citizenship tends to disguise the constitutive role of nationality for citizenship and national identity. In actual fact, neither are these terms synonymous nor can they be conflated in the nation-state in a phenomenological sense even if all three phenomena are linked historically and ideologically.

In this chapter, instead of addressing the theme of citizenship or the dramatically fashionable topic of ‘nationalism’ in their immediacy, I will examine this more elusive aspect of both, namely nationality, at once more basic, in fact so basic to our conception of belonging and self that it has, as it were, become second nature so that we are often scarcely aware of it.

As Gellner wrote, in a world of nation-states, "a man (sic) must have a nationality as he must have a nose and two ears". If noses and ears like ‘nationality’ are intrinsic attributes of human beings they obviously need not be explained (Gellner 1983: 6, my emphasis). But Gellner here refers, of course, to national identity as a subjective sense of belonging rather than to nationality as the legal requisites for acquiring state membership. This is just one example of the conceptual slippage I referred to above. There is more to this than a mere game with words. The etymological and semantic confusions surrounding nationality, citizenship and national identity are but one manifestation of intersecting political imperatives and ideological assumptions that informed nineteenth-century endeavours to unequivocally circumscribe the citizenry of contending states in a divided though interdependent bourgeois world.

To capture the meaning of key political concepts they need to be situated in their historical contexts. Europe is the cradle of the democratic territorial nation-state. But some nation-states more than others set the rules of the modern nationality game. Throughout the nineteenth century access to membership in a state became defined in, moreover, apparently disparate ways. The conventional distinction drawn between the German model of the KulturNation and the French concept of the Staatsnation (Meinecke 1919), no less than the ideal type contrasts between the republican, the ethno-national and the liberal tradition need to be transcended, however, to rescue significant underlying historical commonalities in the manner in which the ‘people’ of the new nation-states became circumscribed legally as well as ideologically. Hence, rather than analysing demonstrable imperfections in the democratic implementation of nationality and citizenship, I will focus on the contradictions and ensuing limitations that were intrinsic to their very origins and marked their later development.

The ideological conflation of nationality, citizenship and national identity no less than the contemporary nationalist resurgence are rooted in a fundamental contradiction that dates back to the early phase in European
nation-building which the modern nationality laws were designed to overcome (Stolcke 1995, Bader 1995b).

The growth of capitalism and of competing national bourgeoisies, the dissolution of traditional bonds of political allegiance and the resulting freedom of movement of the populations endowed the question of national belonging with new urgency. The nineteenth century saw the emergence of a multiplicity of bounded territorial states contending for sovereignty and dominance. Traditional communities did not, however, necessarily coincide with the territorial states as modern politics. A clear regulation of membership in the emerging states, the focus of loyalty of its inhabitants and the source of expanding civil rights and duties but also of disdain of all strangers, became thus imperative.

An unqualified cosmopolitan spirit inspired the new republican order for which the French revolutionaries fought which was to become the model of the modern democratic nation-state. Democratic revolutionary thought advocated for a universalist, voluntarist idea of citizenship founded in consent born of free will. Yet, as Kamenka has rightly noted, "... in establishing the institutions of popular sovereignty, it is necessary to define what is the populace: self-government required a community that is the self." (Kamenka 1976:14; see also Cranston 1988:101, Hobbsbawm 1990: 19). Citizenship rights extolling individual freedom and hence choice, in theory also of nationality, replaced the old notion of the subject of the Ancien Régime founded on traditional vertical allegiances and primordial loyalties. The revolutionary cosmopolitan doctrine of the new territorial state peopled by free, self-determining citizens would have made any legal circumscription of 'the people' in the last instance superfluous.

Political reality was, however, another, namely the division of that new world into contending nation-states each claiming the right to control its own population and to exclude all others. Hence, one of the crucial functions of the modern state became the regulation of peoples' movement across frontiers. Modern nationality laws were intended to overcome the contradiction between this original cosmopolitan, democratic and voluntarist ideal of citizenship and the imperative boundness of the polity.

Nationality laws fulfill a bounding function not unlike that of kinship principles in so-called 'tribal' societies. Both sets of rules play the structural role of setting the personnel boundaries of meaningful socio-political groups, be it a 'tribe' or a modern nation-state. Both have in common that despite the often 'bloody' metaphors that are invoked which purvey an image of permanence of the social groups so constituted, these rules are nonetheless the outcome of positive historical conventions. But there is also a notable difference in this respect between 'tribal' societies and modern states. As anthropologists know only too well, in 'tribal' societies kinship principles define group membership with its attendant rights and duties unequivocally. In the modern world supposedly peopled by free and formally equal individuals, ascription of nationality and hence of the enjoyment of civil, political and social rights constitutes, by contrast, an evident paradox. In effect, while democratic liberalism was and is committed to individual freedom and equality so that the moral, political and legal claims of the individual transcend those of the community and the state (Goldberg 1993: 4-5), the emancipatory idea of citizenship was born, nevertheless, bounded by exclusive nationality laws which, moreover, became progressively naturalized throughout the nineteenth century. As Huxley and Haddon, referring to the principle of national self-determination, noted pointedly in the thirties "the desire for freedom from sovereign domination...is very far from the desire for freedom itself with which it is often confused..." (Huxley, Haddon and Carr-Saunders 1939: 18).

Aside from creating a formal legal bond between an individual and a concrete state at a given point in time, nationality laws also regulate the reproduction of a national community over time. Not only are nationality laws historical phenomena embedded in specific contexts and hence open to change. They also configure national reproduction, that is the manner in which membership in a state is ensured over time in often gendered ways. In addition to excluding foreigners from the community of nationals, as I will show, nationality laws also introduced formal inequalities among nationals which affected women in particular.

NATIONALITY AND FRENCH UNIVERSALIST REPUBLICANISM

Nationality referring to the conditions individuals have to fulfill in order to claim the status of citizenship dates back to the French Revolution and the ensuing struggle for popular sovereignty. According to Rousseau, since man (sic) is free and master of himself, nobody may, under whatever pretext, subject him without his consent. To safeguard individual freedom from subjection to others in society, the general will needed to be the collective expression of individual wills. Here are the first elements of the modern idea of democratic citizenship thereafter consecrated in the Déclaration des Droits de l'Homme et du Citoyen (1789), a declaration of the rights of men (sic) as citizens. Sovereignty resided in the 'nation' composed of freely consenting man.5 This universalist republican democratic ideal of the sovereign nation-state replaced the free and formally equal citizen for the subject of the Ancien Régime, though it shared with absolutism a belief in unified sovereignty. Political thinkers were well aware at the time of the difficulties involved in bounding the
community of sovereign individuals capable of entering into a social contract. They developed several compromise solutions ranging from the universalist republican, the liberal territorial, the organic communalist models of the state to the idea of a world state as, for example, Hegel and Kant proposed. All, except the last model, were beset by the same contradiction between an ideal of individual self-determination and the necessary boundedness of 'the people'.

Instead of allowing for progressively greater freedom of movement of individuals between states, emerging nation-states set about codifying nationality by legally drawing a boundary around the citizenry and thereby conditioning the acquisition of citizenship rights. Two contrasting nationality doctrines were drawn upon to bound the citizenry of particular states: the conservative, exclusive principle of *jus sanguinis* (the law of blood) which gave nationality an almost ontological quality since it made state membership dependent on a shared cultural heritage transmitted by descent typical of the *Kulturnation* conventionally associated with Germany and the more inclusive *jus soli* (the law of soil) which made nationality dependent on birth in the territory of a state, characteristic of the *Staatsnation* typical of France (Meinecke 1919, Kohn 1948). A comparative historical analysis of developing nationality laws will, nonetheless, reveal this disparity between the German and the French 'national' traditions more apparent than real.

France was the first modern state to codify nationality. Revolutionary cosmopolitanism conferred citizenship in the Republic on anyone who desired to become a citizen. In those politically turbulent times revolutionary constitutions aimed less at circumscribing the 'nation' than at ensuring citizenship rights to all inhabitants. The Constitution of 1791, those of 1789 and 1793, consecrated the pre-revolutionary principle of birth in the territory and secondarily naturalization (note the term!) as grounds for becoming *citoyens françaises* entitled to full civil rights. The Constitution of 1793 went even further by admitting *the will to become French*. In sharp contrast with early revolutionary cosmopolitanism in the context of the restoration, the Napoleonic Code of 1804 decreed *descend from a Frenchman* (sic) as the foremost nationality rule, children of foreigners born on French soil being entitled to French citizenship if they so willed. As the Napoleonic wars covered Europe, *jus sanguinis* was deemed fundamental to warrant loyalty on the part of the armed forces (Weiss 1907: 47 ff.).

With the articulation of a social ideology of freedom and equality and the dissolution of feudal structures which had defined women's roles, the Revolution also catalysed women's consciousness and activity. The most outspoken manifesto of feminist claims is Olympe de Gouges' *Déclaration des Droits des Femmes et des Citoyennes* of 1791, a radical critique of the limitations of revolutionary rhetoric, which while combating class oppression and claiming to represent universal principles in fact was oblivious of women's subordination. The new 'nation' excluded them from equal enjoyment of liberty and equality on the assumption that women by their nature belonged to the family which was a natural rather than social institution. Because they were therefore dependent on their menfolk, women could only be *citoyennes passives*. Olympe de Gouges' *paranoia reformatoria*, her vehement feminism: attacks on the revolutionaries and in particular on Robespierre, earned her the guillotine in 1793, shortly after all women's clubs and associations were declared illegal by the National Convention (Diamond 1990).

With the Napoleonic Code of 1804 women became more powerless than they had been before the Revolution. Aside from other disqualifications, henceforth a women's nationality was made dependent on that of her husband (Crozier 1934). Law reflects political-economic circumstances and interests overpinned by ideological meanings situated in contemporary contexts of knowledge. Under the second Republic French nationality law combined descent and territorial principles. In 1851, when demand for qualified labour became acute, a new law declared children of Frenchborn fathers French at a time when a first census was taken which distinguished *étrangers*, aliens, from nationals.

The concept *étranger* has been coined during the French Revolution to designate political enemies and traitors to the revolutionary cause - the French nobility plotting against the *patriotes* and the British suspected of conspiring to reimpose monarchical rule in Paris. The imputation to the *étranger* of disloyalty to the nation was to prove a powerful solvent in times of war (Wahnich 1966). In 1889, in the aftermath of the Franco-Prussian war and the foundation of the German Empire, the third French Republic enacted its first genuine, independent nationality code, the *Code de la Nationalité*. This Code drew a sharp line between nationals and *étrangers*. By contrast with Germany where immigrants had been extensively naturalized, foreigners of Belgian, Polish, Italian and Portuguese provenance had a large presence in France. This Code stipulated descent from a French father and, in the case of illegitimate children, from the mother, as the foremost condition conferring French nationality; in addition, individuals born and resident in France could become French through naturalization. Compulsory military service was introduced simultaneously.

The relative prominence given to *jus soli* in the French nationality code of 1889 has often been interpreted as a liberal inclusive solution though Noiriel has recently disagreed with this view (Brubaker 1992, Noiriel 1988: 83). In effect, this combination of descent and birth-place rules can
also be seen as a clever compromise struck for military and ideological reasons in the context of the confrontation with Germany over Alsace-Lorraine, which drew on both the original voluntarist and the later organicist conception of the Republic which, though contradictory, were intrinsic in the French notion of the nation-state almost from the start.

National identity is historical and relational (Sahlin 1989). Hence military confrontations between states have had a powerful effect in quickening sentiments of national belonging and boundedness among all sectors of the population. During the bombardment of Paris in the Franco-Prussian war, Haddon, the anthropologist, notes, the National History Museum suffered some damage through shells. Soon afterwards the director, the eminent conservative craniologist Quatrefages, published a pamphlet on _La Race Prussienne_ (1871) where he argued that Prussians were not Teutonic but mere Barbarians with a hatred for a culture they were incapable of appreciating. Being descended from the Finns who were classified with the Lapps, Prussians were in fact alien intruders into Europe. Professor Virchow of Berlin irritatedly countered this view (Haddon 1910: 27).

Renan's classical contemporary essay "Que'est-ce qu'une nation?" dates from the same period. This essay is emblematic of the intrinsic tension between democratic republican and communitarian views of the nation. Liberal advocates of an idea of the 'nation' suited to modern democratic individualism usually draw on Renan's celebrated metaphor, "The existence of a nation is a plebiscite of every day". They tend to overlook, however, that Renan simultaneously invoked another culturalist argument to resolve the problem of how to circumscribe the 'people' entitled to partake in this plebiscite, namely "the shared possession of a rich heritage of memories...The nation, the same as the individual, is the realization of an extended past of endeavors, of sacrifice and of devotion. The cult of the ancestors is among all the most legitimate, the ancestors have made us what we are..." (Renan 1992: 54).

In 1893, presumably under the impact of the Dreyfuss affair and spreading racist nationalism of which the trial was only one example, _jus sanguinis_ gained further ground in France, which had proved to be an especially fertile breeding ground of nineteenth-century scientific racism. But race and nation were by now used interchangeably all over the continent. This reform gave preference, as in 1889, to _jus sanguinis_ even in the case of children born of French fathers abroad, and restricted access to French nationality of children born to foreigners. As the French jurist Weiss declared in 1907, individuals need to belong "to a more or less tight group...like the family." Social relationships are necessary for social life, "and it is in nationality that they find their form and their natural regulation." Family, people and nation are thus organically linked by an 'essential' bond and this had particular consequences for women. This organicist conception also poses a new important question, namely why republican universalist mythology, despite the progressive naturalization of nationality proved nonetheless so resilient.

In the course of the nineteenth century then, as nationality became an independent object of legislation in France, regulation shifted from the birth-place principle to that of descent, women in the process being denied independent nationality.

**OF GERMAN BLOOD AND SOIL**

Let me now look at the German case. German states soon followed the French example by dissolving territorial bonds of allegiance. For the sake of brevity I will focus on Prussia though Prussia may be regarded as being representative of the other German states. The Prussian law 'On the acquisition and loss of the condition of Prussian subject and the admission to foreign civil service' of 1842 is usually taken to be the first genuine modern nationality law (Lichter 1955: 1 ff.). This law replaced the pre-constitutional _Untertanenrecht_ (the law of subjecthood) which defined the subjects' allegiance to the monarch or lord by domicile and limited personal movement and choice of occupation without, however, excluding aliens provided they complied with fiscal obligations. "A Prussian is anyone", Gaus wrote in 1832, "who has the desire to be Prussian" (quoted in Koselleck 1967: 60). The 1842 law, by contrast, made the status of Prussian subject dependent on descent from a Prussian father, on admission by legitimation, by naturalization and, in the case of women, on marriage to a Prussian subject. Subjects absent from Prussia for over ten years lost their nationality (Lichter 1955: 519-26). Finally, the foundation of the _Norddeutscher Bund_ produced the law on acquisition and loss of nationality of 1870 which became the first law of its kind of the German Empire and confirmed _jus sanguinis_ as the foremost principle conferring German nationality, now denominated _Staatsangehörigkeit_ (literally state membership).

In the dynamic interplay between nation-states during the formative period, economic-political and demographic practicalities compounded with ideological assumptions informing notions of national identity and belonging fashioned the conceptualization of nationality as the pre-requisite of citizenship. Primary criteria conferring nationality need, however, to be distinguished from subsidiary procedures so as to disentangle intersecting practical reasons from ideological logics.

By the eighties, similarities between French and German nationality law clearly outweighed differences. In both states _patrilineal jus sanguinis_ was the foremost rule conferring state membership. Subsidiary criteria
contrasted more markedly. In France birth place qualified the descent rule while the German Empire allowed for nationality by legitimization or naturalization by an act of state. Primary nationality rules reflect the more profound moral meanings with which the nation was endowed. Subsidiary criteria were typically more flexible, being the domain where demographic, economic and political reasons of state could be and were played out.

The priority given to the bond of blood stood in striking contradiction to modern individualism. Civil rights had been conquered by the French Revolution whereas political rights, that is, the right to participate in the exercise of political power as a member of the community or as a voter - though with the notable exception of women - were acquired in the course of the nineteenth century (Marshall 1965). Inevitable territorial conflicts made it imperative to firmly bond and bond the ‘community-nation’ but this occurred to the obvious detriment of revolutionary liberal democratic universalist ideals.14

THE BRITISH SUBJECT OF THE CROWN

If we now look across the Channel, in Britain, the cradle of modern individualism and liberalism, we cannot find any clear-cut nationality or citizenship at least until after WW II. Britain had no single document-constitution or basic law and its constitutional theory did not envisage some British nation, or a sovereign people (Dummett & Nichol 1990: 2). The United Kingdom’s ‘national’ history, instead, is that of a territory encompassing a diversity of peoples sharing a vertical bond of indelible allegiance to the Crown and its Parliament as natural-born British subjects who owed loyalty to the King and were entitled to his protection. The Naturalization Acts of 1844 and 1870 introduced a gender qualification of perpetual allegiance to the Crown when a woman’s nationality was made dependent on that of her husband, so that her bond of allegiance was automatically severed upon marriage to an alien. Unconditional jus soli was, however, maintained.15

So far I have shown that toward the end of the nineteenth century not only in Prussia and later in the German Empire but also in France, and contrary to the French cosmopolitan republican spirit of the revolution, nationality had progressively become ‘naturalized’, as the growing prominence attached to ascription of nationality demonstrates. In the light of this argument the British case poses special questions.

In the 1880s, French advocates of jus sanguinis had already rejected British unconditional jus soli because of its alleged feudal connotations and its inclusiveness which conflicted, so they thought - as it turned out rightly - with the more exclusive concept of citizenship as a substantial, enduring rather than accidental bond with France (Brubaker 1992: 90).16 Nevertheless, Colley has recently shown that though Britain may have lacked a constitutionally enshrined notion of popular sovereignty in the French sense, during the eighteenth century a British nationalism developed, forged mainly by a succession of wars with France, even though Great Britain never experienced a major invasion from without (Colley 1994: 1-7). And there is an added peculiarity. By contrast with the substantial migrations between continental states, the British Isles had exchanged hardly any migrants with the continent since the seventeenth century (Page Moch 1997).

Indelible allegiance to the King was clearly at odds with the modern liberal ideal of the free and equal individual in yet another sense. Indissoluble subjecthood contradicted adhesion based on free consent. Dummett and Nicol attribute this British peculiarity to the English revolution stopping short of individuals’ consent and active political participation (Dummett & Nichol 1990: 88). In 1870 the Crown abolished, however, indelible allegiance in the case of British men abroad and wives of aliens, allowing them to renounce British subjecthood. The Commission’s argument was revealingly that indelible allegiance “conflicted with liberalism and individualism, the freedom of action which is now recognized as the most conducive to the general good as well as individual happiness and prosperity.” Thereafter, freedom of action was to be restricted only in the case of “persons having a disability, namely infants, lunatics, idiots or married women” (Dummett & Nichol 1990: 88). And in 1886 a court ruled that allegiance was to the Crown, not to the person of the monarch but it maintained the jus soli rule.17 Only the Conservatives’ British Nationality Act of 1981, at last, severely curtailed unconditional jus soli to deal with the ‘colonial vengeance’ transforming Commonwealth immigrants into aliens. As Europe is at pains to become a supra-national polity, a European continental style nation-state paradoxically rises out of the ashes of the British Empire.

The prominence of jus sanguinis on the continent became exclusive in an instrumental no less than an ideological sense. Though decried as feudal, British jus soli created a people open to newcomers provided immigrants had children born on British soil. As the anatomist Sir Arthur Keith, however, argued in the immediate aftermath of the First World War, “In the course of centuries statesmanship has succeeded in raising up in the minds of all the inhabitants of the British Isles - all save in the greater part of Ireland - a new and wider sense of nationality, a spirit of British nationality” because, contrary to “ancient belief”, in “physical type (that is, race) the inhabitants of the British Isles are the most uniform of all the large nationalities of Europe.” (Keith 1919: 22).
A MAN AND HIS WIFE ARE ONE, AND HE IS THE ONE

There is, however, yet another at least equally far-reaching contradiction embedded in the modern nation-state, namely women’s dependent nationality. Not only did nationality and with it citizenship acquire an exclusive reality of its own but both became properly the domain of men. In spite of the universalist claims of citizenship, women were not incorporated in the modern state as citizens in their own right like most men, but on account of a social bond they entertained with a man as head of household who was thus constituted into her representative (Pateman 1986). When in 1797 Kant distinguished between active and passive citizens, he also assigned women to the latter category. For “It is only the ability to give consent which qualifies the citizen; yet, the former presupposes the individual’s independence among his people [Volk], forming not merely part of the community but being a member of it, that is, that out of his free will he desire in community with others to be an active part of it. But this latter quality requires that the active citizen be distinguished from the passive citizen, even though the latter concept may appear to contradict the very definition of the citizen. The following examples may serve to overcome this difficulty: the apprentice of a merchant, or of an artisan, the servant..., the minor...all women and in general everybody who is obliged to earn his living (food and protection) not by his own enterprise but under the orders of others (except the state), lacks the personality of a citizen [bürgerliche Persönlichkeit] and his existence is as it were only inherent.” (Kant 1777: 432-3, my translation and emphasis). Women’s exclusion from the exercise of purportedly universal civil and political rights is amply documented (Vogel 1991). The suffragettes’ struggle for women’s franchise partly ‘corrected’ this inequity. Aside from disenfranchisement, all three countries contemplated in this chapter in the nineteenth century also denied women independent nationality. Because of the conventional subsumption of nationality into citizenship, the gendered ‘nature’ of nationality has passed largely unnoticed.19

France and Germany no less than Britain in the nineteenth century became ‘fatherlands’ in the most literal sense. A woman’s nationality was submerged into that of her father or husband by a double patrilineal ‘matrix’. Married women took their husband’s nationality and it was, therefore, the latter who transmitted his nationality to a woman’s children, save when these were illegitimate, that is when no man as legal father could or would lay claim to them so that they received their mother’s nationality as it were, by default.20

The underlying philosophy of family unity and the presumption that upon marriage a woman transferred her rights to her husband as household head, was, of course, not new (Vogel 1991). In preconstitutional
German law women came under the tutelage of their husbands as regarded community membership. As a German jurist explained the Geschlechtsvormundschaft (the tutelage of women by fathers or husbands), "The special character of the rights of parents and children, of the power of the father, of conjugal relationships and of the husband’s dominance in the household in contemporary law still rests largely on that more profound concept of the family and that special moral force which the spirit of the German people attribute to this natural bond." (Quoted in Gerhard-Teuscher 1986: 117). In nineteenth-century Britain the wife’s legal individuality was ‘submerged into that of the husband in accordance with the so-called ‘principle of identical nationality’ which followed the English common law norm that "A man and his wife are one, and he is the one" (Bhabha, Klug & Shutter 1985: 10-14). In France, married women’s earlier dependent community membership was incorporated into the Napoleonic Code and thence into the Civil Code.

Women’s dependent nationality should come as no surprise. If membership in the modern nation-state became an almost ‘natural’ quality of the person in a world of bounded territorial states, the nation, its boundaries and loyalties needed to be guarded. This could be achieved by denying women as the ‘bearers of the nation’ independent capacity to decide upon their own and their offspring’s belonging. Yet, it needs stressing that nationality, be it dependent or independent, always imposes constraints on choice of belonging. While independent nationality for married women may liberate them from their conjugal bond in this respect, not so from the bond with a concrete fatherland. A Nazi woman lawyer therefore insisted in 1934, “We national-socialist women wage the same struggle (for independent nationality) but for other reasons; being German by blood we do not want to lose of necessity our belonging to the fatherland through marriage to a foreigner.” (Ehndemann 1934: 331-2).21

A brief comparison of the manner in which married women’s nationality developed in the Americas by contrast with Europe is enlightening in this respect. In the second half of the nineteenth century the women’s movement in Britain began challenging their dependent nationality as they mobilized for the right to vote, though initially with little success (Dummett and Nichol 1992: 8990). Early in this century international women organizations campaigned more forcefully for married women’s independent nationality. At the International Women Congress held in Paris in 1900 participants formally demanded a revision of nationality law in this respect. In 1923 the International Women’s Suffrage Alliance submitted a draft convention demanding independent nationality. In the aftermath of the First World War the campaign received a new impulse when the Council of the League of Nations set up a special experts’ commission whose agenda gave first priority to the codification of nationality. For women the outcome was nonetheless disheartening. Concerned primarily with statelessness and double nationality, a problem which acquired particular urgency with shifting state frontiers produced by the war, the Commission merely issued a provision designed to prevent women’s statelessness or double nationality in the case of the husband’s naturalization in another state or marriage and its later dissolution. The broader claim of nationality independent of the husband’s and the right of women to transmit their own nationality was not contemplated.

This unresponsiveness to women’s political claims foreshadowed later developments. At the World Conference for the Codification of International Law of 1930 held in The Hague women’s nationality again occupied a central place on the Nationality Committees’ agenda. Chile’s delegation had submitted a far-reaching draft convention which had been approved at the earlier Havana meeting of the Inter-American Commission of Women. International women’s organizations had simultaneously submitted a Memorandum demanding equal nationality rights for women. Nonetheless, the Convention voted by the Conference’s Plenary solely contemplated cases of legal conflict over nationality caused by marriage between nationals of different states but relegated women’s claims for equal treatment to a lukewarm recommendation of no practical consequence. And the following year the Conference’s member states decided by majority vote that no further changes in nationality law were feasible at that stage (Bhabha, Klug and Shutter 1985, Société des Nations 1932).

European women, in effect, conquered independent nationality only in the sixties (United Nations 1950, United Nations 1962). In the Americas women’s nationality rights from the thirties onward developed, however, quite differently.

The Panamerican Union at its seventh conference held in Montevideo in 1933, ruled that “There will be no distinction based on sex as regards nationality, in legislation or in practice.” (Brown Scott 1934: 219). Thereafter, women in the American republics progressively acquired the right to gain, hold and transmit nationality to their children equal to that of men (Shapiro 1984).

European countries have conventionally styled themselves as emigration countries despite evidence to the contrary. The Americas as the classical haven of European immigration are familiar. For exclusivist European states women’s independent nationality would have meant that, should they marry a foreigner, they would have brought undesirable alien bastards into the ‘national family’ or lose their own ‘blood’. In the young American republics nationality was from the beginning based on unconditional jus soli, immigrants being traditionally regarded as potential citizens. This responded to the dominant ideal of peopling and thereby ‘whitening’ their vast, allegedly empty territories to the obvious detri-
ment of the 'first nations' who were contradictorily transformed into second-rate citizens or entirely deprived of citizenship rights. In this ideological environment, women's independence nationalité had the advantage that children born not only of male but also of female immigrants, ideally of European procedence, became an unequivocal part of the new nation by severing bonds with their countries of origin.

In their widely publicized condemnation of Nazi racist thought of the thirties, \textit{We Europeans}, the distinguished physical anthropologist Haddon and the biologist Huxley, had emphasized "the contrast between family and nation, since", as they argued, "the family is an ancient biological factor, while the nation-state is a modern conception and product, the result of peculiar social and economic circumstances." (Huxley, Haddon, Carr-Saunders 1939: 15). They were only partly right. Notions of family relatedness are, of course, no less historically and culturally construed than the nation-state. Nonetheless, once the nation-state became 'naturalised' its linkage with the similarly biologized family indeed became 'exclusively' crucial.

\textbf{CONCLUSION}

When the French Revolution of 1789 overthrew the Ancien Régime and asserted the principle of popular sovereignty as the basis for the new political order in Europe it was ushering in a radically new world. The fiercely anti-Jacobin French priest Barruel, author of the term nationalism, lucidly foreshadowed subsequent national developments. "At the moment in which men combined in nations", Barruel wrote in 1798, "they ceased to recognize one another under a common name. Nationalism, or the love of nation [l'amour national], took the place of the love of mankind in general [l'amour général]...It became a virtue to extend one's territories at the expense of those who did not belong to one's empire. It became permissible, in order to achieve this, to despise strangers, to deceive them, to injure them. This virtue was called Patriotism...and if this is so, why not define this love yet more narrowly?...Thus, one saw Patriotism giving birth to Localism (Particularism) or the spirit of family, and finally to Egoism." (Quoted in Kamenka 1976: 8). As the presumption gained ground "of the nation and the nation-state as the ideal, natural or normal form of international political organization, as the focus of men's (sic) loyalties and indispensable framework for all social, cultural and economic activities...", (Kamenka 1976: 6) nationality simultaneously became generally naturalized on the Continent. Britain, so as to protect its newfound national identity and unity from immigration from the Commonwealth followed suit more recently.

A brief reference to recent 'national' events in France may serve to illustrate the resilience of the paradoxical 'nature' of nationalité I have examined above. As may be recalled, in September of 1991 Giscard D'Estaing expressed profound alarm over France's 'invasion by immigrants', calling for the return to the traditional concept of the 'droit de sang'. A public outcry and a heated controversy followed between advocates of \textit{jus sanguinis} as the foremost principle of access to French nationality and universalist republicans who attempted to disguise this juridical reality by exalting the subsidiary criterion of \textit{jus soli}.22 The latter lost. In 1993 the new conservative government's reform of the Code de la Nationalité once more curtailed the \textit{jus soli} rule thereby endowing \textit{jus sanguinis} with added prominence.

I guess it is for all the above reasons - boundaries, exclusions and deadly wars - that between the two great European wars Virginia Woolf proclaimed: "As a woman I have no country, as a woman I cannot be called to bear the sword in behalf of my country..." This, of course, an impossible cosmopolitan dream in these times. Although it is nowadays commonplace to prophesy the end of the nation-state, the powerful ideological logic of the nation-state in reality appears to be far from fading away. Instead, progressively tighter nationality laws control the freedom of movement in particular of certain peoples despite or precisely because of ever more intense globalized economic competition.

\textbf{Notes}

1 Modern legal theory conceives of nationality as a legal bond: "on the one side of this bond (there is one single, concrete subject, the individual state, and on the other each individual Staatsangehörige, i.e. an individual whose condition as member of the state must be determined)." (Makarov 1947: 22).

2 The analysis of nationality laws has been the special province of students of immigration.

3 Ritter defines 'nation' and 'nationality' as "related terms of group classification and identity. 'Nationality', usually the narrower and less ambiguous of the two, refers to group consciousness based on a variable range of shared cultural traits - for example, language, historic traditions, social conventions, or values." (Ritter 1986: 285).

4 I want to thank Rainer Bauböck and Hans Ulrich Jessurun d'Oliveira in particular for their useful and challenging comments on my original paper which have helped me to, I hope, make my own ideas clearer. This chapter is a shortened version of that paper.

5 The \textit{Déclaration des Droits de l'Homme et du Citoyen} of 1789 proclaimed that 'Each people have the right to organise and to change the forms of their government. A people does not have the right to interfere in the government of others. Underlings fight against the freedom of a people are attacks against all peoples.' Nowhere is there a definition of who the 'people' are.

6 Kohn aptly described the voluntarist spirit which inspired the struggle for popular sovereignty in revolutionary France. Aside from some objective factors (a common language, a territory) "the most essential element is a living and corporate will. Na-
tionality is formed by the decision to form a nationality. Thus the French nationality was born of the enthusiastic manifestation of will in 1789." (Kohn 1948: 15). Brukaker is an adherent of Meisecke's classical distinction (Brukaker 1992).

These laws explicitly identified nationality as the pre-condition for acquiring citizenship rights. The constitution of 1791 distinguished, however, the 'citoyen actif' who enjoys full civic and political rights from the 'citoyen passif' whose rights were subsumed under those of a 'citoyen actif' (Makarov 1947: 107, Weiss 1907: 45).

D. Louchak argued at the time that under prevailing demographic circumstances France could well forego those citizens who would have been French had jus soli prevailed (Weiss 1907: 80).

The Napoleonic Code contained two articles on married women's nationality. Article 12 established that an alien woman who married a French citizen must thereby acquire French nationality. Article 19 required a French woman who married an alien to give up her French nationality (Crozzer 1934: 129).

Since "Each people do and must enjoy the sovereignty of their territory; this is one of the principles of the rights of people which may be considered beyond dispute. From this derive two terms: patrie and étranger where one is the cause and the other the effect" (Block, 1863, vol. 1:920).

As Weiss elaborated, "If society, to constitute itself and function normally, needs the contribution of all individuals, man himself needs the help of his fellow men to fully satisfy his appetites and desires. He must thus, and this is a law of nature, belong to a more or less tight group within which he can exercise his faculties. His inherent weakness forces him to attach himself to a superior and collective social force which will serve as support and refuge...like the family. Social relationships are necessary for social life, and it is in nationality that they find their form and their natural regulation." (Weiss 1907: 20-21 and 54 ff.).

By contrast with the notion of subjecthood which prevailed in Prussia, Saxony, Baden and the Great Duchies of Mecklenburg-Strelitz and Saxen Weimar, Bavarian law spoke of Indigene (the status of being indigenous).

This is the Gesetz über die Erwerbung und den Verlust der Bundes- und Staatsangehörigkeit; this law confirmed the nationality rules in effect in the German states. According to jus sanguinis German nationality was acquired by descent from a German father, by legitimation, by marriage to a German national or by state concession (Keller and Trautmann 1914: 4-5). It is worth noting that German political language distinguishes neatly nationality (Staatsangehörigkeit) from citizenship (Staatsbürgerschaft).

The intense political debate between French and German political historians over the principle of national self-determination following the Franco-Prussian war of 1870 highlights once again the difficulties of reconciling the democratic right to self-determination of all peoples with a world of competing nation-states. The exchange between the German historian Theodor Mommsen and the French legal historian Pasteur de Coulange is often cited as further evidence of contrast between the French and the German 'national' traditions. Pasteur de Coulange's reply to Mommsen's claim regarding Alsace-Lorraine is worth quoting: "We want not conquest but revindication; we want what is ours, neither more, nor less." Pasteur de Coulange replied, "You invoke the principle of nationality but you understand it differently from all the rest of Europe. According to you that principle authorizes a powerful state to appropriate a province by force under the sole condition of declaring that that province is inhabited by the same race as that state. According to Europe and common sense, this merely authorizes a province or a population to not obey a foreign master in spite of itself...I am astonished that a historian like you pretends to ignore that it is neither race, nor language which are the foundations of nationality... Men feel in their hearts that they are one people because they constitute a community of ideas of interest, of interests, of affections, of memories and hopes. It is this which makes a fatherland [patrie]. This is what makes people want to march together, to work together, to fight together, to live and die for each other. It is the French word which we love. Alsace may be German by race or by language; but nationality and the sentiment of patriotism make it French. And do you know what makes it French? It is not Louis XIV, it is our revolution of 1789. Since that moment Alsace has shared our destiny; she has lived our life. All what we think, she thinks; all what we feel, she feels. She has shared our victories and our adversities, our glories and our faults, all our joys and our pains." (Quoted in Weil 1938: 20-21). Pasteur de Coulange's, like Renan's cultural nationalism, was certainly anathema to contemporary race theorists, but it equally contradicted universalist republican voluntarism.

In response to nationality and loyalty disputes provoked by the independence of the United States, jus sanguinis had been adopted in the special case of children born of British fathers abroad and was later extended to second generation descendants without, however, becoming hereditary in perpetuity.

The distinguished Dutch jurist François Laurent in 1880 wrote similarly "That the Anglo-Americans should maintain their common law, well, that is their problem; nobody will envy them a law that is uncertain, indigestible and impregnated with feudalism. It is not to the Middle Ages that modern peoples should look for their ideal of liberty and equality." (Quoted in Jessurun d'Oliveira 1989: 826).

At issue in the late nineteenth century was the question whether a common nationality should be shared indistinctly by all inhabitants of the British Empire rather than the rule conferring nationality itself. The Nationality and Status of Aliens Act of 1914, in effect, extended allegiance to the Crown to the entire Empire (Hampe 1951: 9ff, Bhudda, Klug, and Shutter 1985, chap. 1).

"Let it be granted", Solovyev wrote, "that the immediate object of the moral relation is the individual person. But one of the essential peculiarities of that person - the direct continuation and expansion of his individual character - is his nationality (in the positive sense of character, type and creative power). This is not merely a physical, but also a psychological and moral fact." (Quoted in Kamenka 1976: 9).

Jessurun d'Oliveira (1996) objected that independent nationality as a connecting factor for women's rights as citizens was of little practical relevance for them. Women were not subject to obligatory military service; they shared with other social groups the exclusion from voting rights and an even larger proportion of men and women than nowadays were not married in the nineteenth century in view of widespread 'free marriage' among the poor. Independent nationality constraints, as I have argued, unqualified choice of belonging and formal legal equality is, of course, no guarantee of de facto equality. Yet, the point here is that women's dependent nationality contradicted universalist claims in an additional way which not only needs to be made visible but requires an explanation.

Social reproduction has been analysed from a variety of perspectives. Attention focused mainly on gender hierarchy structuring family relations in connection with the economy and the polity. Most studies examine women's specific exclusions in labour market and family law in the Welfare State. Citizenship has been subjected to feminist scrutiny but the regulation and codification of 'national reproduction' has scarcely been addressed. For women's nationality see (Bhudda, Klug and Shutter 1985, Shapiro 1984, Yuval Davis 1980, Cohen 1985, MacKinnon 1982). For historical sources see Nickel 1915, Endemann 1934, Beck 1933, Aubertin 1939, Collard 1935, Louyens Jr. 1924, Crozier 1934, Maugir 1920, Delitz 1924, Rauchberg 1969.

In 1939 Aubertin argued similarly that "The state, especially the one which attaches importance to the racial unity and spiritual community of its people [volkische..."
4 Segmented Macrosystems, Networking Individuals, Cultural Change: Balancing Processes and Interactive Change in Migration*

Dirk Hoerder

Until a decade ago, scholarship has dealt with migration in terms of disruption (Vecoli 1964). Under present-day immigration pressures on countries in the Atlantic economies, politicians and conservative voters demand restrictionist policies. Continuities of culture and migration flows, however, characterize intra-European migrations as Moch (1992) has emphasized and Nugent (1992) has pointed to the continuity in the demographic transition.

I will first argue that migration is a balancing process, a process of redistribution of human resources according to the interests of those involved, whether migrants or persisters, and according to the interests of the sending and receiving societies. Since forced migrations, whether slave transports or streams of refugees, are not in the interests of the migrants, the question of the scope of the argument has to be raised. Taking Italian and Chinese worldwide migrations as examples, Gabaccia (forthcoming) suggests intermediate, semi-voluntary stages. The concept of balancing processes may be extended by taking uneven power relationships into account: Slave and forced labour balance supply with demand in the interest of the stronger side only. Similarly, present-day migrations from poverty areas attempt to balance unequal distribution of goods and economic power, but are stopped by entry barriers of powerful states. Only

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