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Citizenship between De- and Re-Ethnicization (1)

"CITIZENSHIP" is one of the most ambivalent though busily utilized and expanded entries in the contemporary social science lexicon. Its ambivalence consists of its dual, and most often overlapping, function as analytical-normative concept to order multiple realities *and* empirical object of study itself, with a certain tendency of the first to eclipse the second. If a recent *Handbook of Citizenship Studies* (Isin and Turner 2002) identified a good number of hyphenated citizenships, from "cultural", "sexual", and "ecological" to "cosmopolitan", such "citizenship" is less a distinct and clearly demarcated object of study than a conceptual metaphor for a bewildering variety of rights-based claims in contemporary societies, particularly if raised by marginal groups.

This article turns the attention back to what citizenship, underneath its hyphenated forms, essentially is: membership in a state. Contemporary globalizing processes, most notably increased international migration in the context of a world-spanning human rights culture and the transnational linking of segments or subsystems of previously "national" societies with their counterparts abroad, are fundamentally transforming the meaning and regulation of citizenship as state membership. A prominent formula to capture this transformation is "postnational membership" (Soysal 1994). It depicts a decreasing relevance of state membership, because fundamental (civil, social, sometimes even political) rights are now invested outside a person's formal citizen status, and are instead tied to her abstract personhood or residence status. Two elements of this scenario stand out. First, its subject is not so much changes of the meaning and regulation of state membership, as of the "rights" that are contingently attached to (or decoupled from) this status. However, there have been important recent changes in how the

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status of state membership is determined and distributed, irrespectively of the rights attached to it. These changes of the status dimension of state membership are the subject of this article. Secondly, the trajectory of the postnational membership scenario is linear: "from" citizenship "to" its postnational alternative. Its plausibility rests on the assumption of a Golden Age of citizenship, which is empirically questionable—not *all* rights, not even some of the most important (civil and social) rights, had ever been dependent on formal state membership (see Ferrajoli 1994). There has been great historical and cross-national variation with respect to tying or separating rights from formal citizenship status, which is not captured in the linear "from-to" scenario. In addition, linear reasoning brackets the ambivalences, contradictions and multiple valences that are the mark of most social phenomena and change processes, the transformation of citizenship included (2).

In this article, I argue that international migration in the contemporary context of human rights and transnationalism is impinging on citizenship as state membership in two opposite directions. On the side of *immigration*, it forces the state to de-ethnicize citizenship, in the sense of grounding access to citizenship more on residence and birth on territory than on filiation. Failing to do so would violate fundamental liberal-democratic precepts that most contemporary states are notionally committed to. On the side of *emigration*, international migration tips the balance in the opposite direction, toward re-ethnicized citizenship, in the sense of providing incentives for states to retain links with their members abroad, particularly across generations. Failing to do so would not just violate the national vocation of the state, according to which the state is an intergenerational community with "a common ancestry and a common destiny" (Zolberg 1999, p. 84); there are also material interests in terms of remittances and influence abroad that move the state in this direction.

The opposition between "de-" and "re-ethnicizing" trends and forces is transverse to the "civic" versus "ethnic" distinction known in the nations and nationalism literature. I thus take issue with a second comprehensive account of citizenship in an age of globalization and migration, which appositely redirects the attention from the Marshallian "rights" to the Weberian "status" (or "closure") dimension of citizenship, but sees the relative openness or closure of citizenship to newcomers determined by inert cultural understandings of nationhood, "civic" or "ethnic" (Brubaker 1992). This scenario shares with the

(2) For a general assessment of the role of "ambivalence" in the social sciences, see Smelser (1998).

postnational membership alternative its linearity and de-politicized nature, though diagnosing a resilience rather than transformation of citizenship in light of contemporary challenges. Against this account, this article will show that a traditional "civic'' nation-state like France has been subject to significant re-ethnicizing pressures, whereas the traditionally "ethnic'' nation-state of Germany has recently moved toward de-ethnicized citizenship in a big way.

In fact, the tension between de- and re-ethnicization is inherent in what a state essentially is: a territorial unit, whose integrative measures in an age of universal human rights have to become increasingly abstract and procedural; and a membership unit, which one usually enters at birth and exits only at death, and the ties to which continue to exist irrespective of a member's contingent location and movements in space.

The novelty is that the de- and re-ethnicization imperatives impinge on an increasing number of (especially European) states simultaneously, rather than being neatly distributed across predominantly migrant-receiving or—sending states, respectively, as it used to be in the past. In the face of global mobility, "emigration'' is no longer the prerogative of traditionally poor or underdeveloped states. Two Council of Europe reports in the 1990s addressed the fact that tens of millions of Europeans were living abroad, while there was no "law of expariates'' in most European states to deal with the complications surrounding this phenomenon (from restrictions on the right to vote to the loss of citizenship) in a consistent way, not to mention the absence of a law of expatriates at international and European levels (Council of Europe 1994; 1999). This is not bound to last, because with increased emigration across all categories of states the latter (and not just migrants) become drawn into the maelstrom of the "deterritorialization of politics'' (Council of Europe 1999, p. 20) that is a mark of contemporary globalization. The burgeoning literature on transnationalism has largely focused on migrant ties and networks across borders, and ignored that states as membership units are actively (and not just passively) involved in this process (an exception is Glick Schiller 1999). As this article shall document, it is an increasingly topical question, differently answered by different states, at what point the ties of membership abroad are severed and whether (and by what means) they are recoverable.

While the de- versus re-ethnicization imperatives are structurally grounded in the *immigration* and *emigration* sides of contemporary international migration, there is a simple mechanism to bring them into the open. The political left, true to its universalist vocation, generally supports de-ethnicized citizenship rules, which lower the threshold of

citizenship acquisition for immigrants. By contrast, the political right, more on the side of "being" than of "becoming" (see Bartolini 2000, p. 9), generally supports re-ethnicized citizenship rules, strengthening the ties with members abroad even across foreign-born generations. Whether de- or re-ethnicized citizenship wins out is then a question of who has the political majority in a given moment and place. Theoretically, a citizenship law is possible that is both generous to newcomers and to long-settled members abroad (up to a certain limit explored below). In practice, however, recent episodes of citizenship reform have unfailingly been moments in which the forces of de- and re-ethnicization have split across party lines and thus come to a head. While after the demise of the communist alternative the distinction between "left" and "right" may have become meaningless in many other respects (see Giddens 1994), with respect to the conflict between the de- and re-ethnicization of citizenship, and thus of the state as such, it still works rather neatly.

Citizenship without Rights and Identity

Before mapping out the countervailing trends and forces of de- and re-ethnicization, it is important to clarify what citizenship as state membership in essence is: a status, not a set of rights or an identity (as it is commonly understood in contemporary citizenship studies). In German language this is expressed in the notion of *Staatsangehörigkeit* (state membership), which is separate from that of *Staatsbürgerschaft* (denoting "citizenship" as a set of rights and duties). A classic study defined citizenship as state membership as a "status", that is, "a condition to which certain rights and duties are connected" (Makarov 1947, p. 23). By implication, it is irrelevant *which* rights and duties are connected to that status. Makarov speaks of the "abstract character" of *Staatsangehörigkeit*, the concrete content of which may be variably and contingently defined by the lawmaker. Another way of explicating this "abstract character" of citizenship as state membership is by delimiting it externally from the "foreigner" or "alien", and internally from the holder of full citizenship rights, especially political rights. While the foreigner-citizen duality still stands, only recently has the holding of state membership come to coalesce with the enjoyment of full citizenship rights. Colonial, Third-Republican France (as most colonial, pre-universal-suffrage states), for instance, distinguished between

"*nationalité*" (in the sense of formal state membership) and "*citoyenneté*" (denoting full citizenship rights), the former including colonial subjects and women in the metropole, and the latter being reserved to male metropolitan French (3).

Building on Makarov (1947), de Groot (1989, p. 5) characterized citizenship as state membership as "legal-technical coupling notion *(Kopplungsbegriff)* without an essential content." The formerly communist states went further than this, equating the mere membership in a state with a certain mindset and behavior. This turned state membership into a concept of virtue-note that communist state membership could be lost "for gross violation of (someone's) citizenship *(Staatsbürgerliche)* duties" (Article 13 of the GDR Nationality Law, quoted in de Groot, 1989, p. 14). The impossibility of expelling citizens in today's non-totalitarian states proves the "abstract character" of state membership, which is notionally decoupled from rights and identity. As de Groot (*ibid*., p.15) correctly points out, it is therefore odd to conceive of formal state membership as a "human right", as does Article 15 of the UN Universal Human Rights Declaration of 1948. State membership is conceptually at a different level from the right to life or liberty, because the rights that are contingently tied to state membership (*e.g.*, the right to diplomatic protection) could also be granted in some other way, for instance, through someone's state of birth or residence. Strictly speaking, the right to a state membership is "the guarantee of a surprise package" *(ibid.)*, as this membership can take on many a content.

If state membership isn't a right, neither is it an identity. Building on Brubaker's seminal comparison of Germany and France (1992), the two principal mechanisms of ascribing state membership through filiation *(jus sanguinis)* or birth in the territory *(jus soli)* are sometimes construed as implying an "ethnic" or "civic" understanding of membership, as informed by different understandings of nationhood. While this association is empirically possible (and arguably has been made in crucial moments of citizenship reform in Germany and France alike), there is nothing necessary about it. Nationality law, as Patrick Weil has shown along the German and French examples in the early to mid-19th centuries, is carried out by jurists, who are more amenable to copy each other's inventions across states than to be under the sway of a particular "nationhood" tradition: "Nationality law is not the reflection of a

(3) There are multiple contemporary examples of a non-congruence of formal state membership and full citizenship rights. For instance, Puerto Ricans are U.S. "nationals", but not "citizens"; Mexico recently introduced a distinction between "nationality" and "citizenship" to retain ties with its emigrants abroad, and so on.

concept of nation'' (Weil 2002, p. 13). For instance, Prussia's adoption of *jus sanguinis* in 1842 and the parallel introduction of a "naturalization'' procedure were both borrowed from France, whose switch from *jus soli* to *jus sanguinis* in the 1803 Civil Code was emulated in the first half of the 19th century across continental Europe, Germany included (see Weil, *ibid*., ch. 7).

Half a century later, the rejection of modifying strict *jus sanguinis* by *jus soli* elements in the *Reichs-und Staatsangehörigkeitsgesetz* of 1913 was certainly in the explicit intention of keeping ethnically undesired eastern Jews and Poles out of the citizenry. In a pattern that shall be corroborated below, the Socialist opposition to the Conservative majority in the *Reichstag* held against the conservatives' notion of the state as a "family'' united by common "descent'' the contractual notion of a "work community'' *(Arbeitsgemeinschaft)* that commanded to bring all of its participants into the citizenry through eased naturalization and elements of *jus soli*. However, as Dieter Gosewinkel (2001, p. 326) argued concisely, the "'blood' in the principle of '*jus sanguinis*' was formal and instrumental, not substantial''—it did not prejudge a development toward an ethnic, or even a biological race identity, as some have argued.

Jus sanguinis is at heart a formal-legal concept, which is indifferent to the nature and quality of the "blood'' that is transmitted by it. Note that through naturalization the German citizenry always remained open to the outside, until the loss of the African colonies after World War I, even to colonial natives (Gosewinkel 2001, p 303-309). And, in an often overlooked rebuttal of *völkisch* forces on the extreme right, the 1913 law defined "German'' strictly formally through membership in a *Bundesstaat* or—this was a novelty—immediate *Reichsangehörigkeit*, thus excluding coethnic German-Austrians but potentially including Slavs through naturalization. Moreover, an interpretation of the 1913 citizenship law in terms of a pre-statal "ethnonational'' identity (Brubaker 1992, ch. 6) overlooks some state-national principles that are equally centrally built into it. While removing the automatic loss of citizenship after residing ten years abroad (which had been a uniquely harsh provision in Europe at the time and a major reason of the entire law project), the new law prescribed the general loss of German citizenship when naturalizing abroad, and even prescribed expatriation for *Auslandsdeutsche* in the case of draft dodging. "No *Volksgemeinschaft* without *Wehrbereitschaft* (willingness to be drafted)'' was the plainly nationalist slogan that accompanied the making of the Wilhelminian citizenship law, pointing to an important limitation of the ethnonational principle. In short, the *jus sanguinis* principle enshrined in the 1913 German citi-

zenship law did not per se express or prejudge the turn to an ethnic or even racial identity; on the contrary, the law left ample "spaces for a liberal citizenship policy" (Gosewinkel 2001, p. 327).

A state qua membership unit is fundamentally an ethnic institution, because membership is usually ascribed at birth. Contrary to the contractual fashioning of the modern state in the European enlightenment, the element of consent and choice touches the institution of citizenship only at the margins; at heart, one belongs to the state into which one is born, which makes it a relationship of origins and thus of ethnicity. The decisive moment in the development of state membership was the turn from "domicile" to "birth" as the main attributive mechanism. As the first modern law that exclusively dealt with state membership, the Prussian Subject Law *(Untertanengesetz)* of 1842, put it clearly, "domicile within our states shall no longer be sufficient alone to ground the status of 'Prussian'" (Groot 1989, p. 312). The distinction between *jus soli* and *jus sanguinis* is secondary to this fundamental transition from domicile to birth, because *jus soli* also makes "birth" the decisive element of citizenship attribution.

Interestingly, however, only *jus sanguinis* was originally the quintessentially modern membership principle, because it made nationality law a "right of the person", according to which nationality was transmitted like the name of the family, through filiation, and could not be lost by an individual's contingent movements in space (Weil 2002, p. 12). By contrast, *jus soli* was then tainted by its feudal origins, because it derived from the ownership of the land by the Lord, its human elements included, who owed the Lord their "allegiance". The reinterpretation of *jus soli* from feudal "allegiance" to democratic "socialization" in late 19th century France prepared the ground for the contemporary view of *jus soli* as the more modern citizenship principle, simply because it allows to better accommodate the consequences of massive cross-border mobility. Note, however, that *jus soli* alone, unmodified by *jus sanguinis* elements, may be equally seen at odds with cross-border mobility, because on its basis even short-term stays (like tourism or merely transiting) could yield the life-long good of membership. Accordingly, Britain and Portugal moved from unconditional *jus soli* (which had been exceptional in Europe) toward strengthening *jus sanguinis* elements in the early 1980s with the same justification of better accommodating international migration that also motivated some *jus sanguinis* states to move in the exact opposite direction in the same period.

Rather than reflecting particular visions of "nationhood", *jus soli* and *jus sanguinis* are flexible legal-technical mechanisms that allow multiple

interpretations and combinations, and states (or rather the dominant political forces in them) have generally not hesitated to modify these rules if they saw a concrete need or interest for it.

De-Ethnicization...

If citizenship as state membership is inherently ethnic, because it is a non-chosen origin construct that is generally acquired with a person's birth, the notion of "de-ethnicization" may appear paradoxical, if not non-sensical. I define "de-ethnicization" as the process of facilitating the access to citizenship, either through opening it at the margins in terms of liberalized naturalization procedures, or through adding *jus soli* elements to the modern mainroad of birth-attributed citizenship *jure sanguinis*. Through both measures the state opens up its membership to newcomers, and breaks through the closed circuit of exclusively filiation-based membership that constitutes "ethnic" citizenship in the narrow sense.

Whereas *jus soli* elements, as remnants of feudalism, had practically disappeared in continental Europe by 1900, they were successively reintroduced in the course of the 20th century, mostly driven by the democratic imperative of integrating long-settled migrant populations (see Groot 1989, p. 312-316). With a few exceptions, all European Union states today grant as-of-right citizenship to second-generation immigrants, either at birth or—in a kind of delayed *jus soli*—optionally at a later stage (see Weil 2001). What has caused this transition toward conditional *jus soli* citizenship across Europe? Not immigration per se, because at an earlier stage the latter had provoked the exact opposite response, as in the explicit discarding of *jus soli* elements in the 1913 German *Reichs—und Staatsangehörigkeitsgesetz*. Rather, it is immigration in a particular historical context that triggers an integrative (rather than exclusionary) response: the context of a global human rights culture. Discussing strong international opposition to disturbingly "ethnocultural" citizenship laws in some post-communist states in eastern Europe, Diane Orentlicher (1998, p. 312) has argued that "increasingly... international law has subtly reinforced territorial/civic conceptions of nationality". For an earlier period, one author had provocatively stated that international law had boiled down to enshrining the principle of state sovereignty and "deducing some of the consequences" (Herz 1957). Now human rights constraints have messed up

the sovereign order of things. As Orentlicher describes the simple cause of the revaluation of territorial over ethnic citizenship (in the narrow, filiation-based sense), "states owe human rights obligations to individuals who are vulnerable to their exercise of sovereign power" (Orentlicher 1998, p. 322, fn. 117).

Because the influence of international law on the domain of citizenship and immigration is neglegible to non-existing (4), two additional conditions at domestic level must be met for de-ethnicization to take place: first, the decoupling of the state from nation-building; secondly, the existence of a political force, usually on the left, to wage a reform that promises few if any votes. With respect to the first, de-ethnicization rests on a "self-limiting" understanding of nation-building in a liberal state (see Kymlicka 2002). What nation-building originally meant has been explicated in detail by James Scott (1998, p. 82): the creation of "a perfectly legible population with registered, unique names and addresses keyed to grid settlements; who pursue single, identifiable occupations; and all of whose transactions are documented according to the designated formula and in the official language". Ethnically selective immigration policies and ethnically closed citizenship laws, which predominated throughout Western states from the late 19th century into the early second half of the 20th century, were prime instruments of the "high modernist" state (Scott 1998, pp. 87-102) that sought to recruit and produce identical units in its serial nation-building exercise. The post-war era of universal human rights withdrew the high-modernist state's basis, which Scott characterized as a "prostrate civil society that lacks the capacity to resist (the state's) plans" (p. 89). Nation-building became self-limiting and liberal norms constrained what states could do in the domain of immigration and citizenship policy. However, the state must become decoupled from nation-building in yet another sense for de-ethnicized citizenship rules to be possible: the borders of the state must coincide with the boundaries of the nation. Only then can a profoundly illiberal sense that the state is "owned" by a particular nation recede into the background, and the liberal-democratic imperative of integrating foreign migrant populations becomes more urgently felt.

The combination of structural and agency factors in the de-ethnicization of citizenship may be well illustrated by the German case. Though one of the world's major immigrant-receiving states after World War II, by the early 1990s Germany was one of the few states in

(4) In the case of post-communist Eastern Europe, it is not international law but their interest in joining the European Union that has moved the states in the region to cut the roughest edges of their ethnically exclusive citizenship laws.

Europe that had resisted the trend toward accompanying *jus sanguinis* citizenship with *jus soli* elements to incorporate her huge migrant population. The structural reason for this was the non-congruence of state borders and national boundaries: an ethnically closed, exclusively filiation-based citizenship was seen as the bridge to national unity and expression of (West) Germany's homeland obligations toward the ethnic German diasporas in communist eastern Europe. Even under these structural conditions that favoured ethnic citizenship the democracy principle put pressure on this citizenship. In 1984, the conservative-liberal (CDU/FDP) government declared that "no state can lastingly tolerate that a numerically significant part of the population remains outside the political community for generations'' (quoted in Hailbronner and Renner 2001, p. 140). And in its rejection of granting local voting rights to foreigners in 1990, the Federal Constitutional Court encouraged the lawmaker to "facilitate the acquisition of German citizenship'' for the sake of the "democratic idea'' (quoted in *ibid*., p. 141). This was precisely the moment where the post-unification congruence of state and nation removed the structural barrier to a de-ethnicization of citizenship law. In 1990, the year of unification, the CDU/FDP government promptly ventured a first cautious liberalization of the naturalization procedure for long-settled foreigners and their offspring.

However, all furthergoing changes remained dependent on the political left. A crucial turning-point was the so-called Asylum Compromise of December 1992. This was the moment when the German state made a huge stride from defining itself as the ethnic homeland of all Germans in the world, Israeli-style, to the civic-territorial composite of those who resided in it, French-style. More concretely, the oppositional SPD, in a concession for agreeing on a restriction of the constitutional asylum right, achieved a phasing-out in principle of ethnic-German immigration *and* the introduction of as-of-right citizenship for long-settled foreigners and their offspring. By the same token, the conservative party in power (especially its Bavarian sister party, the Christlich-Soziale Union, CSU) blocked all further-going changes, most notably jus soli citizenship for second-generation immigrants. The latter was achieved only after a new Left-Green (SPD/Greens) government arrived in the fall of 1998, which had made the creation of a "modern citizenship law'' one of its earliest priorities (see Joppke 2000).

The German case not only shows us the structural and agency-based conditions for the arrival of de-ethnicized citizenship, but also some of its typical features. One element is straightforward: the birth attribution of citizenship *jure soli*. Note that this is not an unconditional *jus soli* rule

(as in the classic immigration countries) but always in combination with certain residence requirements of the parents. Interestingly, in tying *jus soli* citizenship to an eight-year legal residence of a parent, Germany's *jus soli* rule is more expansive than that currently in place in most West European states, which—like the Netherlands since 1953, Spain since 1954, or Belgium since 1985—require that one parent also be born in the country (the so-called "double *jus soli*", which was pioneered by France in 1889). However, the German *jus soli* citizenship is in another respect more restrictive than parallel provisions in Western Europe, because—in response to a massive conservative campaign against dual citizenship—at majority age a choice is required between one's German *jus soli* and one's additional *jus sanguinis* citizenship.

A second element of de-ethnicized citizenship, less visible but of no less importance, consists of a liberalization of naturalization, most notably the refusal to make cultural assimilation an individually tested prerequisite of citizenship acquisition. The latter had been a central element of the old German naturalization procedures, according to which the entry into the citizenry of newcomers was always the "exception" and could only occur if there was a "public interest" in this, and which required the "voluntary and permanent orientation to Germany" (which in effect was stating that one had to be ethnoculturally German before being granted German citizenship). With the introduction of as-of-right citizenship for second-generation and long-settled foreigners in 1992, a less demanding, liberal logic has been instituted: the lawmaker explicitly abstained from asking for the cultural "assimilation" of the citizenship applicant; all that was asked for was her "integration", which was generally presumed to have happened once a threshold of residence time and schooling occurred (Hailbronner and Renner 2001, p. 659). Interestingly, the throwing out of the cultural assimilation requirement was initially so radical that even applicants without any knowledge of the German language could in principle be naturalized. This led to the inconsistency that the conditions for being granted a permanent resident permit were more exacting than for the acquisition of citizenship, because the former (but not the latter) required sufficient German language competence. Accordingly, the grand reform of nationality law in 1999 re-tightened the integration requirements for as-of-right naturalization, in asking for "sufficient knowledge of German language", as well as for a written "commitment to the liberal democratic order" of the Federal Republic. This, however, was not a return to cultural assimilation. It incorporated the two basic integration requirements that all liberal states today impose on its new-

comers: language acquisition and a procedural commitment to liberal-democratic rules (see Joppke and Morawska 2003, pp. 3-8).

Abstaining from a cultural assimilation requirement in citizenship acquisition epitomizes a more general abstention of the contemporary liberal state from "high modernist" nation-building (à la Scott 1998). How typical is the German case? The post-birth acquisition differs from the birth-attribution of citizenship in being mostly at the discretion of the administrative state (5). In addition to imposing certain residence, economic and civic status requirements, the naturalization rules of most states make "societal integration" or an equivalent to it a precondition for being admitted into the citizenry. This criterion is mostly vague and indeterminate, leaving a maximum of discretion to the examining state officer. However, there is a certain trend toward curtailing this requirement. Since UNESCO recommended in 1959 the replacement of the tainted notion of "assimilation" with that of "integration", all Western states have notionally desisted from asking for the cultural assimilation of their immigrants. It would therefore be inconsistent to leave such a request in their citizenship laws. Germany, even in its re-tightened naturalization rules of 2000, has dropped the notion that a citizenship applicant had to show a "voluntary and permanent orientation to Germany", asking only for a nationally anonymous, procedural commmitment to the "liberal-democratic order" (see Hailbronner and Renner 2001, p. 439). Belgium, in its 1985 citizenship reform, reduced the societal integration requirement from being "suited" *(idoine)* to "*volonté d'intégration*" (Groot 1989, p. 251), that is, from integration as a result (which meant cultural assimilation) to integration as an intention. This weaker, processual notion of integration seems to be gaining ground. Only French nationality law still officially asks for the "assimilation" of her citizenship applicants. Article 31 of the implementing rules explicates this as "le degré de leur assimilation aux moeurs et aux usages de la France et leur connaissance de la langue française". In this respect, French nationality law lags behind official integration policy,

(5) With respect to citizenship law, one must distinguish between two types of state discretion: legislative and administrative discretion. Because at the international evel citizenship law falls under the *domaine reservé* of the sovereign state (see Makarov 1947, p. 70), the lawmaker is generally free to regulate citizenship as it sees fit. However, within citizenship law the naturalization procedure is "discretionary" in yet a more extreme sense, as even when certain minimal conditions are met on the part of the applicant the state may still refuse a request. By the same token, Brubaker's (1989, pp. 108-112) distinction between "as of right" naturalization (in the U.S. and Canada) and "discretionary" naturalization (in Europe) is overdrawn, because even on the "as of right" end there is still a considerable amount of state discretion (*e.g.*, through the inherently vague "good character" clause in the U.S.).

which abandoned the notion of assimilation in favour of integration in 1993 (Haut Conseil 1993, p. 8). However, the Conseil d'État, France's highest administrative court, has narrowly interpreted assimilation in terms of "sufficient knowledge" of the French language (whose definition further depends on the education and social station of the applicant), and it has repeatedly reined in on overshooting magistrates who refused citizenship requests by Muslim immigrants on capricious grounds, such as wearing a veil (see Lagarde 1997, p. 131).

Even if reduced to certain procedural commitments and proved language competence, the entire criterion of vaguely defined "societal integration" as a precondition of naturalization contradicts the "abstract character" of state membership (Makarov 1947, p. 32). Instead, it pushes the latter toward the virtuous citizenship that had been the mark of the former communist states. It is therefore apposite to argue with Gerard de Groot (1989, p. 258): "From the point of view of a modern citizenship conception it is not justified to ask new citizens to be better and more virtuous than many persons who have acquired their citizenship through birth".

Finally, a third element of de-ethnicized citizenship is an increasing toleration of dual citizenship. This development is intrinsically linked to the liberalization of access to citizenship, because many states no longer ask citizenship applicants to first divest themselves of their previous citizenship. Dual citizenship breaks with the segmentary logic of the classic nation-state, according to which one could belong to only one state at a time. Witness that the earlier repudiation of dual citizenship likened the latter to "bigamy". In U.S. Ambassador George Bancroft's 19th century words, one should "as soon tolerate a man with two wives as a man with two countries" (quoted in Koslowski 2000, p. 206). This has been enshrined in the 1930 Hague Convention's prescription that "every person should have a nationality and should have one nationality only". Conversely, the toleration of dual citizenship reflects an invasion into the segmentary nation-state domain of the logic of functional differentiation, which endorses and even requires multiple memberships and allegiances (6). This invasion of a functional logic is very visible in the Carnegie Endowment's case for tolerating dual citizenship: "Empirically, modern nations in overwhelming proportions tolerate or encourage a wide range of competing loyalties and affiliations in civil society—to family, business, local community, religious denominations, sports teams, nongovernmental organizations promoting both political

(6) For the distinction between segmentary and functional differentiation, see Luhmann (1982).

and nonpolitical causes—and do not treat such allegiances...as bigamous or as incompatible with... loyalty to the nation-state'' (Aleinikoff and Klusmeyer 2002, p. 29).

From the point of view of receiving states, the toleration of dual citizenship is part of the trend from ethnic toward territorial citizenship, which is driven by these states' need to integrate their growing immigrant populations. This linkage is explicit in the Council of Europe's new Nationality Convention of 1997, which justifies the departure from its 1963 predecessor's strict prohibition of dual nationality in reference to "labour migrations between European States leading to substantial immigrant populations (and) the need for the integration of permanent residents...'' (Council of Europe 1997, p. 23). However, not just immigrant integration but the demand for equality between the sexes has driven liberal states into this direction. To the degree that all postwar Western states have abolished patrilinear descent rules in response to feminist concerns, dual citizenship has become a sociological reality in them, even before this became linked to the immigration problem.

... and Re-Ethnicization of Citizenship

While it signifies a "de-ethnicization'' from the point of view of receiving states, dual citizenship entails a "re-ethnicization'' from the point of view of sending states. For instance, major migrant-sending states such as Turkey or Mexico have recently allowed their emigrants to keep their citizenship (or at least a reduced "nationality'' status) when they naturalize elsewhere, in the interest of retaining materially and politically valuable ties with their expatriates. Dual citizenship is thus a prime example of the same global process—increased personal mobility across borders—spurring the "de-'' and "re-ethnicization'' of involved states. This dynamic is particularly intricate in some European states that are simultaneously migrant-sending and migrant-receiving. Only a few of them have responded asymmetrically, either showing more lenience toward emigrant than immigrant dual citizenship (as in Germany) or—rather curiously—vice versa (as in Belgium). Instead, most European states have taken a symmetric stance, tolerating both emigrant and immigrant dual citizenship, which makes them subject to a simultaneous "de-'' and "re-ethnicization'' in this respect (7). As Groot

(7) This last group of states includes France, Britain, Italy, Greece, Ireland, the Netherlands and Portugal.

(1989, p. 285) noted the intrinsic connection between both, "(if) states tolerate dual citizenship for immigrants, it is unreasonable to make their own citizens lose their citizenship of origin when they voluntarily acquire another one''.

The potential of re-ethnicization is grounded in the fact that states are not just territorial but membership units. If borders become more permeable and mobility across them increases, this cuts both ways: non-members enter; members leave. While the entering of non-members, in the contemporary context of universal human rights, triggers the de-ethnicization of the liberal state, the leaving of members unleashes an opposite dynamic of re-ethnicization. Much as the de-ethnicization trend, which revolves around the territorial nature of the state, re-ethnicization cuts across the "ethnic'' versus "civic'' distinction known from the nations and nationalism literature, as it is grounded in the ascriptive membership component of the state. All states are "ethnic'' in the sense that birth is the usual way of becoming a member of a state: "states are primarily communities of descent'', concede two advocates of liberal citizenship policies for an "age of migration'' (Aleinikoff and Klusmeyer 2002, p. 14). There are two moments in which the descent-based, ethnic quality of the state becomes visible: when non-members enter, and when members leave. With regard to the first, non-members can never join the citizenry at their discretion, but have to undergo a "naturalization''; its Latin root word *nasci* (to be born) indicates the quasi-genealogical quality of all post-birth entries into the citizenry too. In turn, members who leave the territory of the state, even for extended periods, do not thereby lose their membership. The state moves with its members, and even beyond its territory it continues to exert a "personal sovereignty'' over its citizens (8). Moreover, the ethnic quality of the state qua membership unit is revealed in the fact that all states, even those that are most deeply committed to civic-territorial principles, allow their members to transmit the good of membership to their offspring born abroad, *jure sanguinis* (9).

There is nothing new about the re-ethnicizing thrust of retaining links with members abroad. To retain ties with the *Auslandsdeutsche*, which had previously lost their German citizenship after only ten years of living abroad, had been the impetus behind the archetype of an ethnic

(8) "Personal sovereignty'' in international law means that the state may unilaterally grant rights to and impose obligations to its members, even outside its territory (Hailbronner and Renner 2001, p. 83).

(9) But see Lagarde (1984) for important variations of the length and modalities of transmitting citizenship abroad.

citizenship law, the *Reichs-und Staatsangehörigkeitsgesetz* of 1913. What is distinct about the current situation is that there are simultaneously severe new constraints on how far states can go in this direction, while certain old constraints—most notably a rejection of dual citizenship—are crumbling, so that the revaluation of states as space-transcending membership units can take on a surprisingly contemporary note.

With respect to contemporary constraints on re-ethnicization, the state's parallel inclination to be inclusive to non-members on their territory and the liberal norms that frame this inclusion set limits to any desire to be ethnically inclusive with respect to members abroad. A little noticed but highly significant side-effect of the recent introduction of *jus soli* elements in German citizenship was to put limits on the possibility to transmit German citizenship outside the country, *jure sanguinis*. Previously, there was no generational stopping point whatsoever to this transmission abroad (10). The demand to "reduce the automatic inheritability of German citizenship in cases of a lacking relationship to the state territory'' (quoted in Hailbronner and Renner 2001, p. 357) was first raised by the SPD within the Asylum Compromise of 1992, underscoring the significance of the latter for reducing the ethnic while strengthening the civic-territorial contours of the German state. However, only the citizenship law of 1999 introduced such a stopping-point for extra-territorial citizenship transmission in terms of the second ("grandchild'') generation born abroad. Their German citizenship is no longer automatic, but conditional upon their parents' declaration of the fact of birth to a German consulate or embassy within a tight time limit. With this reform Germany adjusted to international standard practice, according to which citizenship should express a "genuine connection'' between an individual and her state (11). And, the state being fixed to a territory, a "genuine connection'' is obviously more likely to be established within than beyond the state's borders.

If one surveys the regulations of the loss of membership across contemporary states, one is struck by their huge variation, even among states that have taken similarly harsh lines on limiting the transmission of citizenship abroad. In the US, according to the 1952 McCarran-

(10) Except the prohibition of dual citizenship according to Article 25.1 of the old (and new) citizenship law, whose exceptions in Article 25.2 were tightly policed.

(11) "Genuine connection'' is the notion coined in the International Court of Justice's famous Nottebohm decision of 1955, according to which the absence of a "genuine connection'' forfeited a state's right of diplomatic protection. The notion has since been redeployed within a human rights context, referring to a state's duty to confer citizenship on people in their territory who have a "genuine connection'' to that state (see Orentlicher 1998, p. 320).

Walter Act, a foreign-born child can only be American when both parents are US citizens and at least one of them had habitually resided in the US since his or her birth. In the UK, according to the 1981 Nationality Act, a child born abroad can only be British when at least one parent derived her citizenship not by filiation alone (see Lagarde 1984, p. 483). In the Netherlands, Belgium, Switzerland and France, the first foreign-born emigrant generation can lose its filiation-based citizenship when continuing to stay abroad for a certain period (Groot 1989, pp. 290-295). No such rules for losing one's citizenship when residing abroad over long periods exist in other European states, Britain included. When acquiring another citizenship, Dutch law always requires the loss of one's Dutch citizenship; in Germany and Italy, the loss of one's citizenship of origin is contingent upon giving up one's domestic residence status, that is, domestic residents can acquire a second citizenship; in Spain, three years of residence abroad must lapse before one's citizenship of origin is withdrawn for naturalizing elsewhere. And so on. The cross-national variety of rules on the loss of citizenship abroad is astounding, and it defies easy categorization.

However, underneath a highly diverse treatment of the cutting, retaining or recovering of ties with expatriates, there seems to be an informal consensus among contemporary states that beyond the second foreign-born generation of expatriates the ties of membership should either cease to exist or, where they have been cut already, they should not be recoverable in a preferential way. Having said this, already the above cited examples suggest that the informal second-generation cap (12) on ties with members abroad is not fully exhausted in many contemporary states, not even in those with long-standing emigrant traditions. The reasons for this are manifold and often idiosyncratic. One generic brake though has been the traditional hostility toward dual citizenship in the international state system, which has only recently given away to its pragmatic toleration. One also has to see that the "emigrant" has always been a twisted figure in the nation-state imagination, and her image of carrying the national torch abroad has competed with that of traitor to the national cause—in major emigrant-sending, young nation-states such as Turkey or Mexico the negative view prevailed until most recently (13). To the degree that the withering of nationalist inter-state

(12) If one counts the actual emigrants as "first" generation, the informal cap in question is a "third"-generation cap. Here and in the following, the notion of "second" generation will refer to the second foreign-born generation.

(13) In pre-1989 Eurasia, a variant of this was to consider emigrants (as "exiles"), traitors to the communist cause.

rivalry has removed a lingering source of ambiguity surrounding the emigrant, one can observe a growing assertiveness with respect to the sustenance or recovery of ties with emigrant communities abroad. In this respect, the current situation has provided a new opening for re-ethnicization that did not exist in the past. As we shall see, the justification of re-ethnicized citizenship thus takes on a surprisingly contemporary note, invoking themes of the lesser importance of space, distance, and state borders in a global age of time-space compression and increased cross-border mobility.

This has set the scene for increasing clashes between the forces of de-and re-ethnicization, particularly in states that are marked by simultaneous immigration and emigration experiences and legacies. The following examples from France, Italy and Spain shall show (14) that in a number of European states recent episodes of citizenship reform have been moments in which the forces of de- and re-ethnicization have come to a head. While the affinity between de-ethnicization and the political left has already been demonstrated in the German case, the three cases discussed in the following show that re-ethnicization has unfailingly been the project of the political right.

The French reform of citizenship in 1993, passed under a Gaullist government, has become known for taking away automatic citizenship at majority age from the France-born children of foreign immigrants, making the award of citizenship contingent upon their expressed "*volonté*" to become French. This focus on *volonté* was a brilliant rhetorical move by the political right because it allowed an ethnic suspicion (*i.e.*, that North African migrants were not assimilating in the same way as the European immigrants of the past) to be dressed in unmistakeably non-ethnic Republican cloth, in invoking Renan's famous definition of citizenship as a "plebiscite of everyday" (15). A little-noticed but important side plot in this drama was the strengthening of *jus sanguinis* citizenship for French expatriates, which occurred entirely outside of any "Republican" discourse. The bashing of the immigrant and the embracing of the emigrant bears the signature of the political right.

(14) All of these countries are admittedly classified in a Council of Europe report on "Europeans Living Abroad" (1999, p. 8) as "proactively" courting their emigrant communities abroad, in contrast to the "laissez-faire" approach prevailing in northern Europe. However, the report also states that to the degree that there is movement across these categories, it moves from "laissez-faire" toward a more "proactive" approach.

(15) On the reverse, the left was now forced to define Republican citizenship in rather un-Renanian terms as "*appartenance*", sociological rather than will-based belonging that shared its objectivistic thrust with the abhorred ethnic citizenship on the other side of the Rhine (see Weil 1997 as the central document of grounding Republican citizenship in "*appartenance*" rather than "*volonté*").

On the part of French expatriates, who are formally represented by "Senators for the French abroad" in the upper house of Parliament *(Sénat)*, a long-standing bone of contention had been provisions in the nationality law that either took away (Article 95) or withheld (Article 144) descent-based citizenship from certain foreign-born children of French emigrants—the condition for this abrogation or denial of citizenship being that their parents had not resided in France for fifty years and that neither parents nor the offspring in question had a "*possession d'état de français*" (16). Though consistent with the statist-territorial conception of French citizenship, these were undeniably "odious" provisions, which had caused a good deal of individual hardship (17). On their basis, even someone born and raised in France could be stripped of her citizenship, if after emigrating she did not bother to make contact with a French consulate (no legal duty this) over a fifty-year stretch—not to mention that her offspring would thus forfeit her filiation-based citizenship too. The 1993 reform allowed these (first- or second-generation) offspring of French emigrants to reclaim French citizenship through simple declaration, yet with the proviso that they could demonstrate "manifest ties of a cultural, professional, economic, or familial order (with France)" (according to the new Article 21-14 of the Code Civil).

This was a smallish measure, of which under 100 French expatriates made use between 1995 and 1997 (Baudet-Caille 2000, p. 58). Yet the combination of strengthening *jus sanguinis* citizenship for expatriates with restricting *jus soli* citizenship for domestic immigrants made it a symbolically charged affair (18). In a Socialist critic's eye, this combination revealed the existence on the Gaullist side of "a certain conception of the ethnic nation, a conception that we condemn absolutely" (19). This was even admitted on the Gaullist side, in their loud and clear rejection of an amendment that would have treated immigrants and emigrants in a symmetric way. This amendment, proposed by a maverick Gaullist, Pierre Mazeaud, in the National Assembly (the lower house of Parliament), would have made citizenship for the second-

(16) The "*possession d'état de français*" is a sociological concept with juridicial consequences: someone is considered French by public authorities on the basis of a valid passport, electoral registration, inscription in a French consulate, or any other contact with French authorities. Conversely, a person living abroad who fails to renew his passport or make contact with French authorities in any other way over a period exceeding ten years loses his or her "*possession d'état de français*." See Lagarde (1997, p. 116).

(17) See the statement by Jacques Habert, Senator for the French Abroad, Senat, Seance du 16 Juin 1993, p. 1376.

(18) See Lagarde's (1993, p. 558) critique of the "totally exorbitant" preferencing of *jus sanguinis* over traditional *jus soli* in the 1993 reform of nationality law.

(19) Statement by Jean-Luc Melenchon, Senat, Seance du 15 Juin 1993, p. 1304.

generation descendants of French emigrants (more precisely, for the offspring of one French parent abroad who was him-or herself born abroad) (20) contingent upon their expressed "*volonté*" around majority age (21). Next to the different foreign(er)-born generations to which this measure was to apply ("first" in the case of immigrants; "second" in the case of emigrants), there was of course one decisive difference in the proposed treatment of both groups: the immigrant did not possess French citizenship before expressing her "*volonté*", whereas the emigrant was French at birth *jure sanguinis* yet risked losing her citizenship if she did not express her "*volonté*" between the age of 16 and 21. No wonder that this caused the united wrath of the Senators for the French Abroad, and under their pressure the amendment had to be withdrawn. Yet the more interesting matter was that the Senate commission that recommended the suppression of the amendment denied that both groups should be treated symmetrically: in its view, it was not "acceptable to submit young French born abroad to an obligatory formality... like the one that is asked of young foreigners who are born in France of foreign parents" (22). As a communist Senator remarked critically, this view established a "net difference" between both groups: a French by descent was "more French" than a young foreigner born in France and residing in France since her birth. To which the Gaullist side emphatically responded: "Mais oui !", "Par definition !" (23). In this small but noteworthy moment the rightist forces of re-ethnicization prevailed over the leftist forces of de-ethnicization (24).

In 1998, when under a Socialist prime minister the automaticity of *jus soli* for second-generation immigrants at majority age was reinstated (though in weakened form), in an equally little known backstage drama the ethnic emigrant lobby on the right tried to further strengthen the ties with later-generation expatriates abroad. According to their proposal, the "manifest ties" proviso as a condition for recovering French citizenship was to be dropped, while this recovery was to based on filiation alone, even into the second foreign-born generation, the only constraint being a "sufficient knowledge of the French language". Under the new left majority, catcalls drowned this amendment: "Ça, c'est vraiment

(20) Limiting this measure to children of *one* French parent betrays the intention to treat emigrants and immigrants symmetrically with respect to *volonté*—immigrant children with one French parent, after all, were French *jure sanguinis*.

(21) Assemblée Nationale, 2nd Session of 12 May 1993, p. 419. The Mazeaud amendment resembled closely a recommendation of the Long Commission (1988, pp. 178-180).

(22) Quoted *ibid.*, p. 1303.

(23) *Ibid.*

(24) Note that the Socialists and Communists also voted against the Mazeaud amendment, but with the broader intent of rejecting "elective" nationality for all groups, the immigrants included.

archaïque !'', exclaimed a socialist member of the National Assembly in the moment of the suppression of the amendment (25).

The 1992 reform of Italian citizenship law, passed under Christian-Democratic Prime Minister Giulio Andreotti, had a similar gist of embracing emigrants and bashing immigrants. In a striking difference, however, there was not even any verbal opposition by the left. Surely, in a country that had seen some 26 million of its inhabitants emigrating between 1876 and 1976, and whose ethnic-origin community abroad is estimated at 50 million, emigrant concerns had always been an important matter. Tellingly, the career of the 1992 Citizenship Law (Law n°91) began with a December 1988 draft bill by then-Minister of Foreign Affairs, Giulio Andreotti, who a few weeks earlier had chaired a national meeting of the Italian emigrant community in Rome (see Pastore 2001, p. 113, fn.26). As in all recent European attempts to bolster ties with emigrants abroad, the range of the respective provisions in the 1992 Italian citizenship law was inconspicuous, and taken alone they would have hardly raised an eyebrow. The law merely extended some emigrant-friendly measures that had already characterized its 1912 predecessor: the second-generation descendants of Italian expatriates were given the option of Italian citizenship "by choice'' (26), if certain conditions applied—such as service in the Italian army, employment by the state (even abroad), or a two-year residence in Italy at majority age. A probably wider circle of potential re-migrants was addressed in a parallel reduction of the minimum residence for discretionary naturalization from five to three years. At the same time, the de facto permission of dual citizenship under the 1912 law was upgraded into an explicit permission. This was not exactly a revolution: the recognition of dual citizenship corresponded to the international trend; the second-generation threshold of citizenship for the foreign-born was not transcended; and the potential of ethnic migration was further reduced by a prior residence requirement in most categories, which made would-be ethnic migrants subject to the normal immigration controls.

As in France, the particular venom of this measure consisted of a parallel tightening of immigrants' access to citizenship, which was a simple result of the conservative parties holding the political majority at the time. First, the minimum residence time for naturalization was

(25) M. Gérard Gouzes, in: Assemblée Nationale, 3ed session of 10 February 1998, p. 1438.

(26) Citizenship "by choice'' means as-of-right citizenship, without the need to naturalize, established by mere declaration of the entitled individual.

doubled, from five to a hefty ten years. Secondly, Italian-born children of immigrants were given the option of Italian citizenship only if they resided in Italy until the age of majority "without interruption" (27). Without bothering to justify why the immigrants had to suffer when the emigrants were handed out a benefit, a Christian-Democratic Senator flatly stated: "Then there is the problem of the immigrants. We have adopted a rather generous regime with respect to the *extracomunitari*... (B)ut it is clear that... we have to bestow on our co-citizens (*i nostri concittadini*) a favourable treatment. The ties with Italy by emigrants on all continents... are so strong that they maintain themselves across several generations" (28). When the bill was adopted in the *Camera dei Deputati* (the lower house of Parliament), the leader of the Socialist faction meekly gave in: "Surely, there are open questions (for example, the tenyear residence requirement for the *extracomunitari*), but we are altogether convinced that now is not the moment to start this type of discussion" (29). In fact, the bill passed its last hurdle in the lower house without a single 'no' vote, with even the Socialists and Communists voting in its favour.

If one peruses the justifications given for privileging *i nostri concittadini* abroad in the 1992 Citizenship Law, one is struck by their contemporary-sounding note, invoking themes of globalism and transnationalism, plus a quite ferocious anti-statism. According to Senator Mazzola (the Christian-Democratic *rapporteur* of the bill), this measure responded to a desire of "our foreign communities... to increase and strengthen their ties with the mother country within an international community of increasingly rapid, continuous, and dense communications, dialogue, and relationships" (30). The bill's Christian-Democratic supporters were anxious to stress that this was not a "politico-nationalist" projection of the Italian state abroad but instead a measure of purely "cultural recognition", driven by a "vision of the world that transcends the identity of nation-states" (31). In Italy, this was really an old theme because "in catholic political thinking the nation is prior to the State", as another Christian-Democratic Senator put it (32). Along more contemporary lines, the affirmation of dual citi-

(27) Previously no such continuous residence was required for second-generation immigrants born in Italy.

(28) Senator Toth, in: Senato della Repubblica, 10th Legislature, 524th Session, 23 May 1991, p. 524.

(29) Silvia Barbieri, Camera dei Deputati, 10th Legislature, First Commission, Meeting of 9 January 1992, p. 79.

(30) Senator Mazzola, Senato della Repubblica, 10th Legislature, Disegni di legge e relazioni, documenti 1460 e 1850-A, p. 41.

(31) Senator Mazzola, Senato della Repubblica, 10th Legislature, 524th Session, 23 May 1991, p. 15.

(32) Senator Toth *ibid*., p. 43.

zenship in this law was celebrated as "burying the idea of the State as the only God to whom one owes total and unconditional loyalty" (33). Indeed, the entire debate was permeated by an astonishing (though very Italian) amount of state-bashing by the legislative branch of this very state. Interestingly, the motif of an "ethical obligation" to those who had suffered hardship for helping to "keep up the name of Italy in the world", while not absent, was clearly secondary to the "interest of our national community... to retain the tie of citizenship that has an important sentimental and cultural value, beyond its juridical aspects" (34). In short, this was a measure to strengthen the sense of Italian nationness, separate from and beyond the state, in a world of increased mobility and movement across borders.

Epitomizing the left-right divide behind the de-versus re-ethnicization contest, leftist governments under Prodi and Amato in the late 1990s sought to undo the hard line on citizenship for foreigners. Prodi established a Commission for Integration Policy that recommended conditional *jus soli* citizenship for the children of immigrants and other measures to facilitate ordinary foreigners' access to citizenship (Pastore 2001, pp. 108-109). However, a first concrete reform proposal by the Minister for Social Solidarity in the Amato government, which was presented in December 2000 (35), was never carried any further, and it became irrelevant after the center-right's election victory in May 2001. Instead, under Berlusconi the concerns of *i nostri connazionali* gained new prominence. This is expressed in the addition to the plethora of Italian state ministries of a "Ministry for Italians Around the World", which is headed by a member of the post-fascist Alleanza Nazionale and ancient veteran of Mussolini's "Salo" government, Mirko Tremaglia. In addition to soliciting a law that allows Italian citizens abroad to vote in national elections, Tremaglia's major success so far lies in extending ethnic privileges from citizenship to immigration policy. Note that the ethnic privileges in the 1992 citizenship law were granted in a context of "reduced migratory flows" and the "stabilization of our communities abroad" (36); they were not meant to stir immigration. After the recent economic collapse of Argentina, which saw scores of ethnic Italians line-up for Italian citizenship, this has changed (37). At the behest of Tremaglia, the new immigration law of 2002, which is harsh on *extra-*

(33) Senator Strik Lievers *ibid*., p. 10.

(34) Senator Mazzola, Senato della Repubblica, 10th Legislature, Documents 1460 and 1850-A., 31 July 1989.

(35) "Piu facile diventare italiani," *la Repubblica*, 22 December 2000, p. 1.

(36) Senator Mazzola, Senato della Repubblica, 10th Legislature, desegni di legge e relazioni, documenti 1460 e 1850-A, p. 4.

(37) "Argentina, la fuga degli italiani", *la Repubblica*, 11 January 2002, p. 19.

comunitari in any other respect, promptly includes a quota for "workers of Italian origin" (38).

Spain is a third case in which recent citizenship reforms have been moments of contestation between the forces of de- and re-ethnicization on the left and right, respectively. Though with an interesting twist. For a country of emigration Spain has always been hostile to dual citizenship, as a result of which Spanish emigrants faced severe difficulties in retaining or transmitting their citizenship abroad (39). Only for a brief moment in the 1980s, and characteristically at the behest of a conservative government, Spanish emigrants were allowed to acquire a foreign citizenship without losing the Spanish one (40). This was rescinded by a Socialist government in 1990, whose less protective attitude toward Spaniards abroad was tellingly accompanied by a stronger emphasis on integrating immigrants at home. Throughout the 1990s the Socialists tightly policed the dual citizenship frontier for emigrants, and in turn they were attacked by the conservative Popular Party (PP) for "making the return of Spanish emigrants intentionally more difficult" (41). While the respective regulations have greatly fluctuated over two nationality reforms in 1990 and 1995, the Socialist government's line on the descendants of emigrants who had lost their citizenship was generally less than generous: the emigrants' "*hijos*" (children) were subject to a one-year residence requirement before they could recover Spanish citizenship, while their "*nietos*" (grandchildren) were even relegated to the same naturalization procedures as ordinary immigrants.

The newest reform of nationality law, passed by a conservative PP government in 2002, is all about remedying the emigrants' plight, which became a burning issue with the recent economic crisis in Latin America. The law waives the residence requirement for the *hijos*, reduces the residence period for the *nietos* to one year, and generally allows emigrants to hold two nationalities. Consonant with the typical left-right divide in the reform of citizenship law, the Socialist opposition entered the fray with a counter-proposal that would have eased domestic immigrants' access to citizenship, most notably through granting *jus soli* citi-

(38) "Italian origin" is defined in Article 17 of the new immigration law as having at least a "third-degree (Italian) ancestor in the direct line" (Senato della Repubblica, 14th Legislature, Disegno di legge N. 795-B).

(39) The only exceptions to this are the dual nationality regimes with Latin-American states.

(40) This was also an answer to the post-Francoist constitutional principles that Spaniards of origin could not be deprived of Spanish citizenship (Article 11.2) and that the state had to safeguard the rights of emigrants abroad and further their return (Article 42.3).

(41) Statement by Fraga Egusquiaguirre (PP) during the parliamentary debate surrounding the 1990 reform of nationality law (Diario de Sesiones del Senado, no.38, 17 October 1990, pp. 1949-1981).

zenship to the children of legal immigrants (42). This was easily rebuffed by the PP government, because a conditional form of *jus soli* for second-generation immigrants already existed in Spain (43).

More interesting than the predictable wrangle between emigrant and immigrant causes was the fact that the Socialists were in a double-bind: most second—and third-generation—emigrants who would profit from the new law were the descendants of Civil War exiles, whose citizenship had been taken away from them under General Franco. More than reaffirming the ethnic bonds of the nation in a global era, Italian-style, the 2002 reform of Spanish nationality law could thus be seen as a matter of correcting a historical injustice. This dimension of the law, which was entirely absent in the first Popular Party proposal presented in March 2001 (44), was pushed to the fore by the Mexican exile movement "Morados", which lobbied the Spanish King in a signature campaign. Given the age profile of the descendants of Civil War exiles, the Morados brought the "*nietos*" (grandchildren) into the debate, who had been absent from the original bill (45). The Socialists and the extreme Left (Izquierda Unida), political descendants of the losers of the Civil War, naturally joined the Morados' (in the end unsuccessful) quest for exempting the "*nietos*" also from any residence requirement (46). Curiously, if the left eventually rejected the 2002 law (47), they did so not only because of the law's blind eye on immigrants, but also because it was not deemed generous enough to emigrants.

Of all recent moves on European states' emigration frontier the Spanish one has the biggest migration potential: the Spanish Foreign Ministry estimates that the 2002 reform of nationality law has put about one million descendants of Spanish emigrants on a fast track to Spanish citizenship (48). This, however, reflects a unique political history and a prior overshooting zeal in cutting the citizenship ties of emigrants.

(42) "La reforma del Codigo Civil sobre nacionalidad se hara por consenso," *El Pais* 6 February 2002.

(43) "El PP rechaza que hijos de inmigrantes regulares sean espanoles al nacer," *El Pais* 24 May 2002.

(44) Boletin Oficial de las Cortes Generales, Congreso de los Diputados, VII Legislatura, Proposicion de Ley: Modification del Codigo Civil en materia de nacionalidad. N°122-1, Presentada por el Grupo Parlamentario Popular en el Congreso, 16 March 2001.

(45) "Hijos y nietos de emigrantes y exiliados podran pedir la nacionalidad sin ningun limite de edad", *El Pais* 18 May 2002.

(46) A further unsuccessful request was to grant to the descendants of emigrants the equivalent of an originally attributed (rather than later acquired) citizenship. This is an important distinction because Spaniards by birth enjoy certain immunities that naturalized Spaniards do not enjoy (such as the impossibility of being stripped of their citizenship).

(47) The PSOE abstained during the final vote; the IU voted against the law.

(48) 850.000 of those live in Latin America (400.000 in Argentina, 200.000 in Venezuela, 100.000 in Mexico, and 80.000 in Cuba). "Mehr Nachwuchs für Spanien", Neue Zuercher Zeitung, 28 January 2003.

Spain is no exemption from the informal consensus across contemporary states that the ties of membership should not stretch beyond the second generation of emigrants born abroad. In this one sees the workings of the international norm of citizenship as a territorial construct that should express a "genuine connection" between individual and state (see Orentlicher 1998). Only where the formal citizenship tie was prematurely cut do we see past emigration as a source of contemporary ethnic migration. This does not diminish the re-ethnicizing thrust of emigration: to the degree that dual citizenship restrictions are weakening around the world, and emigration is unambiguously valued as a political and economic asset by sending states, global mobility is bound to revalorize these states' non-territorial, ethnic dimension as membership units.

Conclusion

Tied to a territory and based on a personal infrastructure that reproduces itself intergenerationally, the modern state is a fundamentally dualistic institution, being territorial and ethnic at the same time. Contemporary globalizing processes impinge on both dimensions simultaneously and in different directions, creating possibilities for the de- and re-ethnicization of the state and its underlying notion of membership. It is this ambivalence and bi-directional possibility, as well as the different articulations according to who is in charge in a given time and place (the left or the right), which is missed by the linear and de-politicized accounts of the coming of postnational membership or of the resilience of national traditions of citizenship.

As a territorial unit, contemporary globalizing processes move the state to be more inclusive of the migrant populations residing on its territory, launching a trend toward de-ethnicized citizenship. As a membership unit, the same globalizing processes provide the state with a counter-narrative for being more inclusive of its members abroad, because space and territory are now considered less relevant for retaining a sense of belonging and for building community. This is the one insight of the "transnationalism" literature that has apparently been heeded by the institution that is often believed to be circumvented and weakened by this phenomenon, the state. If migrant transnationalism is indeed a leftist "globalization from below" (A. Portes), the state's incorporation of transnational rhetoric amounts to a piracy by the right,

considering that the emigrant cause is overwhelmingly carried by conservative parties and governments. Which trend prevails, the emigrant cause of the right or the immigrant cause of the left, is most often a simple function of who has the political majority.

However, there are severe limitations in how far a state can go in re-ethnicizing its membership, and these limitations are constituted by the irremediably territorial nature of the state. Since the famous Nottebohm case, the international system prescribes a citizenship that expresses a "genuine connection" between a person and a state, and short of actual residence such a connection is difficult to establish, especially across generations. And, this is the message of the German experience, the very incorporation of elements of territorial citizenship, which is commanded by the democracy principle and human rights considerations, has set limits to the possibility of transmitting citizenship abroad across the generations. All contemporary moves toward re-ethnicizing citizenship have thus remained within a second-generation-born-abroad maximum, as a result of which ethnic citizenship shades into a recognition of family ties that are the incontrovertible building block of all human societies.

The "de-" versus "re-ethnicization" contrast lacks the neat simplicity of the "national traditions of citizenship" or "postnational membership" formulas. Instead it demarcates the range of variation within which contemporary citizenship debates and transitions occur. This is not to say that all states are equally affected by the dynamic depicted here. The very notion of de-ethnicization presupposes an ethnic closure of the citizenry at an earlier point, which in terms of predominantly *jus sanguinis* citizenship never existed in the unconditional jus soli regimes of Canada or the United States (49). Conversely, the lack of an emigration legacy in settler states makes the latter immune to the temptations of re-ethnicization, and the very concept of a co-national without citizenship (a "patrial" in British parlance), which is central to all re-ethnicizing campaigns, is nonexistent in them. In the strict sense the de- versus re-ethnicization notion works best for European states, in which ethnic citizenship *jure sanguinis* had once been the norm, epitomizing modern nation-stateness, and in which the territorializing move away from it is counteracted by long-standing emigration legacies that are surprisingly compatible with the contemporary rhetoric of globalism and transnationalism. And even within Europe it is obvious that the de-ethnicization trend has been stronger in its north-western corner,

(49) However, all settler states had racially exclusive naturalization rules in the first half of the 20th century.

reflecting the stronger presence of long-established migrant populations there, while the re-ethnicization trend has been more marked in the south-west, due to its predominantly emigrant past and a much more recent transformation into an immigrant-receiving region (with the exception of France).

Important as they are, these cross-national variations cannot detract from the more general point about the transformation of citizenship as state membership that has been suggested here. Rather than prejudging national identities or reflecting traditions of nationhood, *jus sanguinis* and *jus soli* are flexible legal mechanisms that are grounded in the dual nature of the state as ethnic and territorial units, and political elites have not hesitated to manipulate these mechanisms if they saw a need or interest in doing so. Grosso modo, the political left has pushed toward de-ethnicization, whereas the right has pushed toward the re-ethnicization of citizenship. The fact that both projects are compatible with, and even reinforced by, contemporary globalizing and transnational processes and rhetoric guarantees that the de- versus re-ethnicizing dynamic will shape citizenship in the years to come, in Europe and beyond.

While they are opposite in terms of constituent groups and political thrust, de- and re-ethnicization have the joint effect of enlarging the circle of those who have access to citizenship. Contrary to Makarov's (1947) classic diction of the "abstract character" of state membership, we saw that the latter has increasingly been couched as a "right" itself, be it for immigrants or for (the descendants of) emigrants. Turning the access to citizenship into a "right", which is part and parcel of a rights revolution for aliens (see Soysal 1994; Joppke 2001), is intrinsically connected to the hollowing-out of the content of citizenship, particularly of its redistributive side, and of what "rights" in general are deemed to legitimately consist of (see Abraham 2002). The rights of citizens once were "positive" rights, conceded through the blood of war, the sweat of work, and the tears of reproduction (50). If everybody has rights, the content of rights is bound to become "negative" only. The nexus between inclusive citizenship and procedurally thinned rights for everyone is unsurpassedly expressed in the 14th Amendment of the American Constitution, which manages to pair a maximally inclusive *jus soli* definition of citizenship with a list of negative "due process" and "equal protection" rights for all "persons", independently of their citizenship status. This was a glimpse of the neoliberal future, marked by the decay of substantive citizen rights and the rise of constitutional

(50) For the distinction between "positive" and "negative" rights, see Berlin (1969).

rights for everyone. The noise of the de- versus re-ethnicizing contest masks the secular decline of the entire citizenship construct. But this is the subject of another, more important story.

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