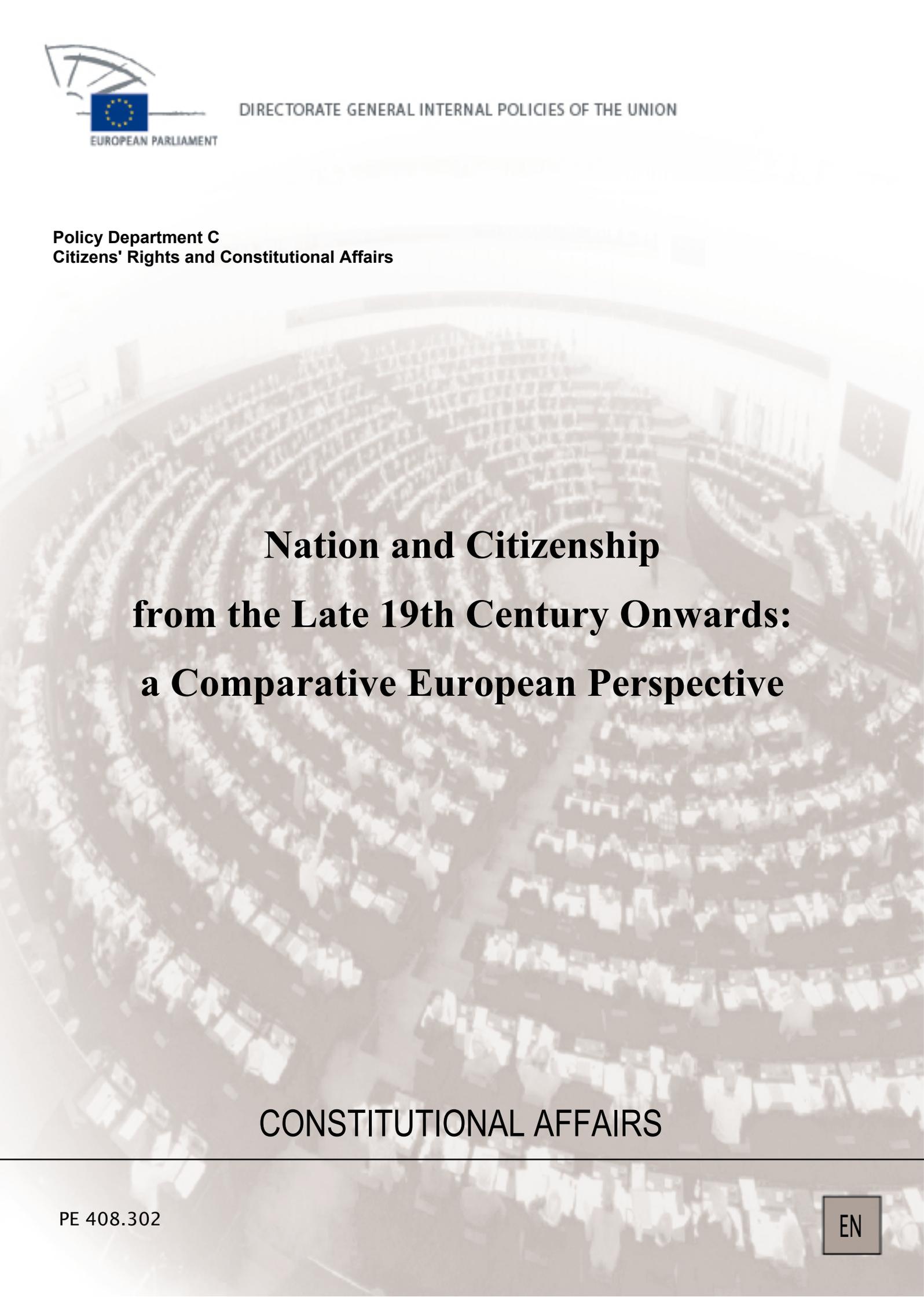


Policy Department C
Citizens' Rights and Constitutional Affairs



**Nation and Citizenship
from the Late 19th Century Onwards:
a Comparative European Perspective**

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**Directorate-General Internal Policies
Policy Department C
Citizens' Rights and Constitutional Affairs**

Nation and Citizenship from the Late Nineteenth Century Onwards: A Comparative European Perspective

Dieter Gosewinkel

Abstract:

This note was presented by the authors for a workshop organised by the Committee on Constitutional Affairs on 26/27 March 2008. Citizenship has been an element of the legal systems of all European states since the second half of the nineteenth century. In some of them it has existed for many centuries. As a legal institution, it thus originates with the modern state and has links with conceptions of the nation and with nationality. This paper focuses on the relationship between citizenship (which defines inclusion and exclusion) and the concept of the nation in recent European history.

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Citizenship (*Staatsangehörigkeit*) is a European legal institution. It has been an element of the legal systems of all the European states since the second half of the nineteenth century, and in several cases longer. As a legal institution, it originated with the modern state and found its clearest articulation in the nation state; it thus has links with conceptions of the nation and hence also with nationality (*Nationszugehörigkeit*). In consequence, it is not only a European-wide phenomenon—an integral institutional element of modern European history—but is also, in respect of its origins and influence, a particularist phenomenon, shaped by the distinctive political and national features of the individual state.¹

I Questions

The question which I wish to concentrate on here is that of the relationship between citizenship (which defines inclusion and exclusion) and the conception of the nation. This question is especially relevant for comparative purposes, as it involves looking, on the one hand, at the specific features of an institution as it is shaped by the character of the state in question and, on the other, at the spread and influence of the institution across the whole continent.

The key issues that arise are these. Is the legal institution of citizenship part of a *ius commune Europaeum*—is it a core feature of overall European development during the nineteenth and twentieth centuries? Assuming such a common European structure, can we distinguish between different paths of development? And if so, have these paths been based on geography—in other words, have there been separate western and eastern versions of the notions of citizenship and the nation?² Or has the process of inclusion and exclusion underlying the institution of citizenship been mediated, not through specific national and geographical factors, but through historical and political factors cutting across the

¹ This article updates the arguments in Dieter Gosewinkel, 'Staatsangehörigkeit und Nationszugehörigkeit in Europa während des 19. und 20. Jahrhunderts', in Andreas Gestrich and Lutz Raphael (eds), *Inklusion/Exklusion* (Frankfurt/Main etc., 2004), pp. 207–229. Also, this article is a short version of Dieter Gosewinkel, 'The Dominance of Nationality? Nation and Citizenship from the Late Nineteenth Century Onwards: A Comparative European Perspective', *German History* 26 (2008), pp. 92–108.

² See Larry Wolff, *Inventing Eastern Europe: The Map of Civilization on the Mind of the Enlightenment* (Stanford, 1994); Ivan Berend, *History Derailed: Central and Eastern Europe in the Long Nineteenth Century* (Berkeley, Los Angeles and London, 2003); Maria Todorova, *Die Erfindung des Balkan. Europas bequemes Vorurteil* (Darmstadt, 1993); Ulrike von Hirschhausen and Jörn Leonhard, 'Europäische Nationalismen im West-Ost-Vergleich: Von der Typologie zur Differenzbestimmung', in von Hirschhausen and Leonhard (eds), *Nationalismen in Europa. Nationalismen im Vergleich* (Göttingen, 2001), pp. 11–48; Dieter Gosewinkel, 'Europäische Konstruktionen der Staatsangehörigkeit. Gibt es einen west- und einen osteuropäischen Entwicklungspfad?', in Jens Alber and Wolfgang Merkel (eds), *Europas Osterweiterung: Das Ende der Vertiefung?* (Berlin, 2006), pp. 281–306.

geographical and national ones—in other words, through factors that have pervaded and shaped modern European history generally?

The only way we can hope to answer these questions is by making historical comparisons, and that is what I shall attempt to do here for the nineteenth and twentieth centuries. I propose to compare six European states, selected according to three criteria: first, their size and their political importance in the development of Europe; second, the connections between them, either as geographical neighbours or as states standing in relationships of hegemony or dependence; and third, their location in what have traditionally been regarded as eastern and as western Europe. Accordingly, I shall consider Germany and France, next-door neighbours closely linked by mutual surveillance and enmity; Great Britain and Russia (also the Soviet Union), both prime examples of imperial powers; and Poland and Czechoslovakia, each having borders with both Germany and the Soviet Union and each falling under the hegemonic influence of these larger states in the half-century between 1938 and 1989.

I shall examine each of these states in terms of my question concerning the historical origins and functions of the institution of citizenship. On the basis of my comparisons, I shall take issue with a thesis that has been widely held: namely, that there is a close and indeed specific connection between the principle governing the acquisition of citizenship that is operative in a state—the *ius sanguinis*, or the *ius soli*—and a particular conception of the nation or of the nation state.

This thesis has tended to go hand in hand with a neat—and, as I would maintain, too neat—dichotomy.³ It has been assumed that there is, on the one hand, a political conception of the nation, namely a conception defined in terms of common political values, centring on the state and assuming legal form in the shape of the *ius soli*, or territorial principle. The territorial principle is seen as an open and essentially assimilatory one, in which membership of the state community is associated with socialization on the state's soil and adherence to the state's core political values. Contrasted with this, it has been argued, is an ethnic and cultural conception of the nation, based on values that predate the state and on the idea that members of the nation are of common descent. This concept, it is claimed, is reflected in the legal principle of the *ius sanguinis*, the principle of descent (or 'blood'). The *ius sanguinis* is seen as intrinsically less open and assimilation-oriented than the *ius soli*: it is a more 'essentialist' principle, and more

³ See Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, 1992); also Wolfgang Mommsen, 'Nationalität im Zeichen offensiver Weltpolitik. Das Reichs- und Staatsangehörigkeitsgesetz vom 22. Juni 1913', in Manfred Hettling and Paul Nolte (eds), *Nation und Gesellschaft in Deutschland* (Munich, 1996), pp. 128–141; Wolfgang Wippermann, 'Das "ius sanguinis" und die Minderheiten im Deutschen Kaiserreich', in Hans Heinrich Hahn and Peter Kunze (eds), *Nationale Minderheiten und staatliche Minderheitenpolitik in Deutschland im 19. Jahrhundert* (Berlin, 1999), pp. 133–143.

inward-looking. For many writers, the dichotomy between the two principles—encapsulated in the phrase ‘ethnos versus demos’— has become a fundamental opposition, applicable across the whole world.

II Citizenship in Europe: Comparisons Since the Turn of the Twentieth-Century

II.1 The Standard Dichotomy: Germany and France

The classic example cited in support of the standard thesis of two opposing models of citizenship is the contrast between Germany and France, evidenced by the series of conflicts that marked the relationship between the two countries.⁴ It is on the strength of this example that the legal dichotomy between *ius soli* and *ius sanguinis* has gained currency as a general political principle. The dichotomy has become still more firmly entrenched in European historiography inasmuch as the *ius soli*, in tandem with the political conception of the nation, has been labelled a ‘western’ principle, in contrast to the ‘eastern’ principle whereby states either emerged late or were established by secession from predecessor states.⁵ Thus we have a west European model, based on assimilation, and, contrasting with it, a central and eastern European ethno-cultural European model based on unity and closedness⁶ or, in the extreme case, on ‘racial purity’.

This apparently clear-cut opposition has been a popular analytical tool for explaining important national differences between systems of citizenship, as well as their durability. It has seemed to offer a plausible way of accounting for the nature of the relationship between Germany and France during the nineteenth century.⁷ The difference between, on the one hand, a long-standing and territorially secure state within which the concept of the nation developed (through a revolution within the existing state) and, on the other, a loose alliance of separate states that came together, late in the day, on the basis of a pre-state conception of the nation—

⁴ A key text is Brubaker, *Citizenship*. For contrasting positions, see Andreas Fahrmeir, *Citizens and Aliens: Foreigners and the Law in Britain and the German States, 1789–1870* (New York, 2000); Dieter Gosewinkel, *Einbürgern und Ausschließen* (2nd edn, Göttingen, 2003); Patrick Weil, *Qu’est-ce qu’un Français? Histoire de la nationalité depuis la Révolution* (Paris, 2002); for a nuanced view, see also Eli Nathans, *The Politics of Citizenship in Germany* (Oxford, 2004).

⁵ Theodor Schieder, ‘Typologie und Erscheinungsformen des Nationalstaats in Europa’ (1966), in Schieder, *Nationalismus und Nationalstaat*, ed. Otto Dann and Hans-Ulrich Wehler (Göttingen, 1992), pp. 65–86.

⁶ For a general view of the central and eastern European model of the concept of the state as an ‘ethnocultural community’, see Rogers Brubaker, ‘Rethinking Nationhood: Nation as Institutionalized Form, Practical Category, Contingent Event’, in Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge, 1996), pp. 13–54 (esp. p. 34); on the Balkan states and the conception of citizenship based on an ethnic and cultural idea of the nation, see Holm Sundhaussen, ‘Unerwünschte Staatsbürger. Grundzüge des Staatsangehörigkeitsrechts in den Balkanländern und Bulgarien’, in Christoph Conrad and Jürgen Koeka (eds), *Staatsbürgerschaft in Europa* (Hamburg, 2001), pp. 193–215 (esp. pp. 204, 208); Dietmar Müller, *Staatsbürger auf Widerruf. Juden und Muslime als Alteritätspartner im rumänischen und serbischen Nationalcode. Ethnonationale Staatsbürgerschaftskonzeptionen* (Wiesbaden, 2005).

⁷ See Gosewinkel, *Einbürgern*, pp. 27–327; Weil, *Qu’est-ce qu’un Français?*, *passim*.

this difference, it is claimed, corresponded to differences regarding the acquisition of citizenship in the two countries' legal systems.

On closer inspection, however, this classic dichotomy turns out to be far from sharp. In France, the *ius soli* (for second-generation members of immigrant families, born within the country)⁸ did not gain acceptance until 1889, during the Third Republic. Before then, the dominant principle was not the (feudal) territorial principle but the 'modern' descent principle, enshrined in the Code Napoléon, under which subservience to the king had been replaced by paternal authority.⁹ The purpose of the introduction of the territorial principle in 1889 was partly to promote republican values, but also to increase the numbers of soldiers and workers at a time of falling population and industrial growth.¹⁰ In Germany, by contrast, there was an industrial boom and (relatively) rapid population growth, and the state was keen to restrict inward migration from the outset. At the same time, organized nationalist movements among Danish and Polish minorities were giving rise to separatist tendencies (to say nothing of the case of Alsace-Lorraine).¹¹ Thus, when economic and, especially, political motives and the particular interests at play in the two states are taken into account, we can see that the opposition between *ius soli* and *ius sanguinis* does not have such a close systematic and institutional link with a dominant conception of the nation. The legal principles functioned in a more instrumental way, in response to changing economic and demographic policy goals. As Patrick Weil has shown, the *ius sanguinis* spread across Europe in the course of the nineteenth century, first with the dissemination of the Code Napoléon following French conquests, and then through 'imitative codification' as almost all countries on the continent adopted it.¹² The motive forces behind its spread were, at least originally, neither ethnic nor nationalist. This was true, *inter alia*, in the case of Prussia, which in 1842 was the first—and politically the most influential—German state to abolish the territorial principle in favour of the descent principle, thereby setting an example within the German Confederation.¹³

With the founding of the second Reich, however, the citizenship principle began to lose its previously non-national (or pre-national) character and became increasingly coloured

⁸ Weil, 'Zugang zur Staatsbürgerschaft. Ein Vergleich von 25 Staatsangehörigkeitsgesetzen', in Conrad and Kocka, *Staatsbürgerschaft*, p. 103.

⁹ Weil, *Qu'est-ce qu'un Français?*, pp. 27ff., 35.

¹⁰ Patrick Weil, *La France et ses étrangers* (Paris, 1991), p. 471; Gérard Noiriel, *La tyrannie du National* (Paris, 1991), p. 88; Vincent Viet, *Histoire des Français venus d'ailleurs de 1850 à nos jours* (Paris, 2004), p. 64f.

¹¹ See Gosewinkel, *Einbürgern*, pp. 191ff.; Hans-Ulrich Wehler, *Deutsche Gesellschaftsgeschichte*, vol. 3: *Von der Deutschen Doppelrevolution bis zum Beginn des Ersten Weltkrieges, 1849–1914* (Munich, 1995), p. 961f.

¹² Weil, *Qu'est-ce qu'un Français?*, pp. 188ff., 195ff.; Weil, 'Zugang', p. 99.

¹³ For details, see Gosewinkel, *Einbürgern*, esp. ch. 4, pp. 136ff.; also Nathans, *Politics*, pp. 55–69.

by nationalist ideas, indeed became ‘saddled’ with them,¹⁴ as it gradually extended to the whole Reich. In the drive (often anti-Semitic and anti-Polish in character) against ‘non-Germans’, the *ius sanguinis* was used as a tool for preventing what were seen as ethnically and culturally alien groups from joining the ranks of German citizens. By the turn of the century the term ‘blood’, from the Roman-law term *ius sanguinis*, was being misinterpreted—typically for the time—as signifying a substantive biological quality. Likewise, people of any and every national or ethnic origin who had obtained German citizenship—whether through birth or through naturalization—could pass it on, through the *ius sanguinis*, to their descendants. In so far as there were German citizens who did not fulfil the narrow ethnic and national criteria of ‘German-ness’, then German citizenship would remain ethnically mixed. The new national Reich and state law governing citizenship that was passed in 1913 did nothing to alter this essentially open principle. It was not before 1935, that the racial laws introduced by the National Socialist regime ascribed biological-racial characteristics to the concept of ‘blood’, these characteristics supposedly being transmitted physically through descent. Now, for the first time, a person’s being of Jewish or Polish parentage, for example, constituted an absolute obstacle to his or her acquisition of the full rights of German citizenship—to being (in National Socialist legal terminology) a ‘*Reichsbürger*’.¹⁵

II.2 Citizenship in Newly Established Nation States: Czechoslovakia and Poland

The thesis, then, that there is a sharp dichotomy between the *ius soli* and the *ius sanguinis*, and between eastern and western (“modern”) paths of citizenship and that this dichotomy systematically corresponded to different conceptions of the nation does not hold for nineteenth century Germany and France. Neither does it hold for the next two cases under consideration. Poland and Czechoslovakia were established as new states in the aftermath of the First World War, their territories having previously been part of the Habsburg and Tsarist empires and of the German imperial Reich. After 1918 they not only found themselves with new territorial identities but also had to define their own principles of citizenship. In doing so, they were not entirely free agents, as they had been heavily affected by the war and its consequences. Then, under German occupation during the Second World War, both states were subjected to radical policies of Germanization and ethnic cleansing. Partly in reaction to this, they carried out their own forms of ethnic cleansing after 1945, although as members of

¹⁴ On the shift from naturalization as a ‘judgement of a person’s social respectability’ to a ‘decision about the desirability of a collective’, see Oliver Trevisiol, *Die Einbürgerungspraxis im Deutschen Reich 1871–1945* (Göttingen, 2006), pp. 97–142.

¹⁵ See Cornelia Essner, *Die “Nürnberger Gesetze” oder die Verwaltung des Rassenwahns* (Paderborn etc., 2002).

the Soviet bloc they were not fully sovereign nation states and were unable to pursue independent citizenship policies.

According to the thesis that there is a specifically central- and eastern-European version of ethnic and cultural nationality,¹⁶ one would expect that these two states would have made a pure *ius sanguinis* the basis of citizenship under the new dispensation. That did not happen, however; nor would it have been feasible.¹⁷ This was because both states were obliged, under the terms of the Versailles treaties, to accept the presence of the foreign-national minorities living within their territories, some of whom were inhabitants of long standing. Under the treaty of Saint-Germain-en-Laye of 1919, the Polish and Czechoslovak states committed themselves to ‘assure full and complete protection of life and liberty to all inhabitants without distinction of birth, nationality, language, race or religion’ and to recognize as citizens, among others, those former citizens of the German Reich and their descendants whose places of residence lay in areas that had previously belonged to the German Reich.¹⁸ Analogous commitments were made to the inhabitants of the formerly Russian and Austro-Hungarian territories. The fact that the new nation states, with their *de facto* multinational populations, were established on the basis of treaties rather than war precluded the introduction of a pure descent principle, despite the fact that such a principle would have tallied more closely with the fiction of ‘ethnic purity’ at the moment when the new nations were being created.¹⁹ It was only in the aftermath of the Second World War that the principle of ethnic purity (and with it the descent principle) came to play a decisive role in the reconstruction of the Polish and Czechoslovak states following the collapse of National Socialist occupation.²⁰ Henceforward, citizenship would be determined by descent from Polish or Czechoslovak citizens: birth within the country in question was no longer sufficient.

This subsequent shift might seem to indicate that a more solid link between an ethnic and cultural conception of the nation and the *ius sanguinis* became established in these two

¹⁶ See, for example, Brubaker, *Nationalism Reframed*, p. 35.

¹⁷ Although Article 4.1 of the Polish law of 20 January 1920 laid down the principle that Polish citizenship was transmitted by ‘birth’ (in the sense of descent), Article 2.1 defined a Pole as a person ‘resident’ in the territory of the Polish state: see Georg Geilke, *Das Staatsangehörigkeitsrecht von Polen* (Frankfurt/Main and Berlin, 1952), p. 52.

¹⁸ Treaty between the Allied and associated powers and Czechoslovakia, 10 Sept. 1919, Article 2 (in Erich Schmied, *Das Staatsangehörigkeitsrecht der Tschechoslowakei* (1st edn., Frankfurt/Main and Berlin, 1956), p. 53); constitutional law of 9 April 1920, §§1, 2 (with the basic rule of the territorial principle stipulating that persons born within the territory of the ČSR were to be deemed to be Czech citizens; cf. Schmied, *Staatsangehörigkeitsrecht*, p. 55); treaty of 28 June 1919, Article 2 (in Geilke, *Staatsangehörigkeitsrecht*, p. 51); law of 20 Jan. 1920 on Polish citizenship, Article 2.1.c. (Geilke, *Staatsangehörigkeitsrecht*, p. 52)—and see, indeed, the codification of the territorial principle in Article 2.2.

¹⁹ As was for example the case in the Balkan states, which were prevented, under the system of protection of minorities in the Versailles treaties, from introducing a rigid descent principle: see Sundhaussen, ‘Unerwünschte Staatsbürger’, p. 204. On commitment to the minority protection treaties, see Karin Schmid, *Staatsangehörigkeitsprobleme der Tschechoslowakei* (Berlin, 1979), pp. 11ff.

²⁰ Law of 13 July 1949, §1 (Schmied, *Staatsangehörigkeitsrecht*, p. 105); law of 8 Jan. 1951, Article 6 (in Geilke, *Staatsangehörigkeitsrecht*, p. 117).

latecomer nation states in central Europe. Such an explanation is inadequate in several respects, however. First, citizenship law in Poland and Czechoslovakia did not develop as part of an essentially free and sovereign process of state creation. Rather, the basing of citizenship on the principle of nationality was a reaction to uncertainty regarding the territorial boundaries²¹ of the two countries and to the radical policy of compulsory ethnicization that had been imposed during the period of National Socialist occupation: the policy of so-called ‘*Volkstumslisten*’ (national lists). The classification of the population on the basis of national characteristics and professed national identity—German on the one hand and Polish or Czech on the other—had been deeply divisive in both countries and had generated conflicts of loyalty. In now conducting a policy of ethnic cleansing in the name of citizenship, the two states were seeking to resolve these conflicts of loyalty to their own advantage. This explains the particular harshness that was shown by Poland and Czechoslovakia in revoking the citizenship of those who had voluntarily declared themselves German nationals under National Socialist rule.²² For both states, the ethnicization of citizenship had become an inescapable part of a process of ethnic cleansing that was the product of the interacting effects of wartime and post-war policy.

Second, any supposedly purely ethnic definition of nationality proved very fragile.²³ In practice, ethnic origin alone was not crucial: what was significant, and often decisive, was political behaviour, in the sense of active loyalty vis-à-vis a national group. Irrespective of whether they had or had not been classified as German nationals under National Socialist occupation,²⁴ former Polish or Czech citizens who through their behaviour had proved their ‘loyalty’²⁵ to the state did not have their citizenship revoked. Third, the ethnicization of Polish and Czechoslovak citizenship had a ‘passive’ aspect. Poland and Czechoslovakia were each forced to cede territories to the Soviet Union (Ukraine and Belorussia), and with these cessions went regulations concerning citizenship choice and population exchange that

²¹ On this factor, see Weil, ‘Zugang’, p. 109.

²² Constitutional decree of the President of the Republic, 2 Aug. 1945, §1, paras. 1 and 2 (in Schmied, *Staatsangehörigkeitsrecht*, p. 83), concerning Magyar as well as German nationality; law of 6 May 1945, on the exclusion of enemy elements from the Polish national community (Geilke, *Staatsangehörigkeitsrecht*, p. 83); decree of 13 Sept. 1946, concerning the exclusion of persons of German nationality from the Polish national community (*ibid.*, p. 106).

²³ Michael G. Esch, in ‘*Gesunde Verhältnisse*’. *Deutsche und polnische Bevölkerungspolitik in Ostmitteleuropa 1939–1950* (Marburg, 1998), pp. 324ff., emphasizes that despite many similarities between German policy towards Jews and Germans before 1945 and Polish policy towards Germans after 1945, a key difference was that Germans were never categorized as racially inferior, but instead classed as ‘dangerous’ and ‘aggressive’ in a political sense.

²⁴ On citizenship as a tool of National Socialist *Volkstum* policy, see Gosewinkel, *Einbürgern*, pp. 404ff.

²⁵ Law of 6 May 1945, Articles 1 and 2 (in Geilke, *Staatsangehörigkeitsrecht*, p. 83); order of 6 April 1946, §§4, 5 (*ibid.*, p. 83); constitutional decree of 2 Aug. 1945, §2 (in Schmied, *Staatsangehörigkeitsrecht*, p. 84); law of 13 July 1949, §7 (1) (*ibid.*, p. 107).

necessarily involved nationality as a definitional criterion.²⁶ My view is that the establishment, and re-establishment, of the Polish and Czechoslovak states in 1918–19 and 1945 took place in a context of constraints both of international law and of power politics which ruled out, from the start, any connection between a specific conception of the nation and the adoption of a corresponding principle of acquisition of citizenship.

II.3 Citizenship in a Multi-National Imperium: The Soviet Union

The thesis that there is a correlation between the conception of the nation and the principle of acquisition of citizenship appears less plausible still when we analyse the development of Russian, and then Soviet, citizenship law. In the Tsarist empire, citizenship was determined by the *ius sanguinis*.²⁷ Does this show that there was a well-established conception of the nation, based on the ethnic and cultural homogeneity of the people inhabiting the Russian state, and a desire to strengthen that homogeneity? The evidence strongly suggests otherwise. Russia occupied a very large quantity of territory and was the opposite of homogeneous in ethnic and cultural terms: indeed, in the diversity of its ethnic, cultural and religious make-up it outstripped every state in continental Europe, with the exception of the Habsburg monarchy. One of the central purposes of Russian citizenship law was to give some legal grip to a loose state structure within which the fact of ethnic and national heterogeneity was not suppressed but taken as read. In addition, the Russian state was a continental imperial power: the Tsarist empire had expanded into Asia, and after 1945 the Soviet empire extended its influence into eastern and central Europe. Although the Tsarist empire had felt the pressure of pan-Slavic and greater-Russian nationalism from the end of the nineteenth century onwards,²⁸ as an imperium incorporating such a wide range of ethnic and cultural elements it was not capable of being homogenized on ethnic and national lines through a citizenship system based on descent. Even the Stalinist Soviet state, which had the most sweeping powers at its disposal and used terror to enforce them, did not employ the descent principle (to the extent that it can be so described) as the instrument of a systematic policy of ethnic and national homogenization.²⁹ Rather, Stalinist policy between 1926 and the promulgation of the Soviet

²⁶ Agreement of 27 Feb. 1946 between the ČSR and Hungary on population exchange (*ibid.*, p. 90); constitutional law of 13 Sept. 1946 concerning the conferment of citizenship to compatriots from Hungary (*ibid.*, p. 95); treaty of 29 June 1945 between the ČSR and the USSR concerning Transcarpatho-Ukraine (*ibid.*, p. 96); law of 25 Oct. 1948 concerning the citizenship of persons of Magyar nationality (*ibid.*, p. 103); announcement of 6 July 1945 concerning the Soviet-Polish agreement on change of citizenship and on reparation (in Geilke, *Staatsangehörigkeitsrecht*, p. 88); treaty of 16 Aug. 1945 between the USSR and the Republic of Poland concerning the Soviet-Polish border (*ibid.*, p. 90).

²⁷ Reinhard Maurach, *Das Staatsangehörigkeitsrecht der Sowjetunion* (Königsberg and Berlin, 1942), p. 6.

²⁸ Andreas Kappeler, *Rußland als Vielvölkerreich* (2nd edn, Munich, 1993), pp. 198ff.

²⁹ This despite the switch, under Stalinism, from federalism to the policy and propaganda of pan-Russianism: see Manfred Hildermeier, *Die Sowjetunion 1917–1991* (Munich, 2001), pp. 61, 133.

constitution in 1936 was the harshest and most violent stage of a process of communist state-building. It is true that many of those who belonged to non-Russian ethnic minorities had their civic rights withdrawn.³⁰ In the final analysis, however, the key element in the policy regarding the granting and withdrawal of civic rights in the Stalin era—and hence in the division of the population into, on the one hand, Soviet citizens and, on the other, those who were deprived of rights and hence on the same footing as foreigners—was the criterion of ‘class membership’. For an individual to be entitled to the status of a Soviet citizen with full rights it was essential that he or she should have suffered from oppression and belong to the productive working class.³¹ A new ‘proletarian’ brand of citizenship was created, contrasting with the ‘bourgeois’ status of foreigners.³²

Although this proletarianized form of Soviet citizenship enshrined unitary criteria of communist nationhood, at the same time the federalization of citizenship that had taken place with the establishment of the Soviet Union as a federal state in 1922 remained intact. Right until the break-up of the Soviet Union,³³ and indeed in the Russian Federation that followed, citizenship of the constituent Soviet republics continued to coexist with unitary citizenship of the Soviet Union itself.³⁴ However, proletarian homogeneity, the key principle of Soviet citizenship, cut across each brand of homogeneity based on ethnic and national factors,³⁵ the diversity encompassed within the federal structure set limits to the principle of homogeneity *per se*. The citizenship law of the multi-national, multi-ethnic federal Soviet imperium owes far more, in fact, to Russia’s imperial tradition than to the ‘national’ primacy of the descent principle as such. This is evident from the reaffirmation of the descent principle in the first post-Soviet constitution of 1991, where it was confirmed, for example, that children born outside Russia but of Russian parentage—notably those born in the former Baltic provinces (or colonies)—would continue to enjoy the full diplomatic protection of Russia.³⁶ The Empire in retreat was still required to give guarantees to the minority nationals it had left behind. And there is a further point: the descent principle never operated in Russia to the exclusion of all

³⁰ Golfo Alexopoulos, *Stalin’s Outcasts* (Ithaca, 2003), pp. 46, 57–60.

³¹ *Ibid.*, pp. 186–187.

³² *Ibid.*, pp. 2, 6–7.

³³ Martin Fincke, ‘Verfassung der Union der Sozialistischen Sowjetrepubliken vom 7.10.1977’, *Jahrbuch für Ostrecht* 18 (1977), pp. 223–273.

³⁴ Maurach, *Staatsangehörigkeitsrecht*, p. 44; law of 28 Nov. 1991 concerning citizenship of the Russian Federation, Article 2, para. 2 (in Alexander Bergmann, Murad Ferid and Dieter Henrich, *Internationales Ehe- und Kindschaftsrecht*, instalment 149 (2002), pp. 15–26).

³⁵ Indeed, until 1936 the legal status of a proletarian foreigner was the same as that of a domestic one: cf. Maurach, *Staatsangehörigkeitsrecht*, p. 45. Article 3 of the citizenship law of 19 Aug. 1938 stated explicitly that foreigners could become members of the Soviet state ‘irrespective of their race or nationality’ (cf. *ibid.*, p. 74), the key factor being the foreigner’s class status (cf. *ibid.*, pp. 46, 60).

³⁶ On the question of the role of citizenship law in protecting ‘external’ national minorities, see Weil, ‘Zugang’, p. 109; Brubaker, *Nationalism Reframed*, pp. 48ff., ‘Russians as a national minority’.

else anyway. From the Tsarist empire to the Russian constitution of 1991, elements of the territorial principle³⁷—for example, the ability of long-resident foreigners to become naturalized—gave the Russian citizenship system a degree of flexibility that matched the state’s multi-ethnic character and its potential for expansion.

II.4 Citizenship in a Colonial Empire: the British Empire

Throughout the nineteenth and twentieth centuries Britain maintained the primacy of the *ius soli*. The effect was that British citizenship law differed in a number of ways from the systems that prevailed in continental Europe. The first such difference is a linguistic-conceptual one. Where Germany spoke of ‘*Staatsangehörige*’ (or ‘*Staatsbürger*’), and France of ‘*citoyens*’, the British empire referred to ‘British subjects’.³⁸ This feudal term ‘subject’ was only declared equivalent to the term ‘citizen’ with the British Nationality Act 1948,³⁹ while the specific expression ‘British citizen’ was first used in the British Nationality Act of 1981.⁴⁰ A second difference concerns the regulations governing citizenship. Whereas all continental sovereign nation states codified citizenship in systematic legal form, the first comprehensive codification in Britain,⁴¹ the British Nationality and Status of Aliens Act, dates only from 1914.⁴² A third difference, finally, is the remarkably pure expression that was given to the territorial principle in the British case, in terms of ‘personal allegiance’ to the British crown. The Nationality Act of 1914 defined a British subject as ‘any person born within His Majesty’s dominions and allegiance’. In the case of those born outside these territories, descent from a British subject—or more precisely, a British father—was not sufficient: the father, in turn, had to have been born or naturalized ‘within His Majesty’s allegiance’.⁴³ These

³⁷ Maurach, *Staatsangehörigkeitsrecht*, pp. 6, 21, 27.

³⁸ David Cesarani argues that this feudal concept survived because the English revolution had been only half-heartedly democratic: ‘The victory of Parliament over the Crown emphatically did not entail the recognition of popular sovereignty’ (David Cesarani, ‘The Changing Character of Citizenship and Nationality in Britain’, in Cesarani *et al.*, eds, *Citizenship, Nationality and Migration in Europe*, London and New York, 1996, pp. 57–73, esp. p. 59). Ann Dummett and Andrew Nicol maintain that this feudal estates tradition explains why there has been scope for British subjects to be treated unequally: see Ann Dummett and Andrew Nicol, *Subjects, Aliens, Citizens and Others: Nationality and Immigration Law* (London, 1990), p. 68.

³⁹ See the British Nationality Act, 1948, Part I, 1.-(2): ‘. . . the expression “British subject” and the expression “Commonwealth citizen” shall have the meaning’, in Laurie Fransman, *British Nationality Law* (London, 1989), p. 927.

⁴⁰ The British Nationality Act, 1981, Part I, ‘British Citizenship’, in *ibid.*, p. 959.

⁴¹ Following the first comprehensive legal regulation of naturalization in the Naturalisation Act of 1870: cf. Karl-Alexander Hampe, *Das Staatsangehörigkeitsrecht von Großbritannien* (Frankfurt/Main, 1951), pp. 52ff.

⁴² Until then the acquisition of citizenship by birth had been covered by the common law, while naturalization and the status of foreigners (or ‘aliens’) had been dealt with by separate scattered statutory regulations (including Aliens Acts). See the list in *ibid.*, p. 51. On the incoherence and confusion, sometimes considerable, in home and colonial legal regulations in this area, see Dummett and Nicol, *Subjects*, pp. 85, 134 and *passim*.

⁴³ The British Nationality and Status of Aliens Act, 1914, (1)(a) and (b)(I), with exceptions to this rule in (1)(b)(II to V): cf. Hampe, *Staatsangehörigkeitsrecht*, p. 60. On the gradual extension of this limited application of the *ius sanguinis* through amendments in 1918 and 1922, see *ibid.*, p. 18f.

distinctive features show that the British tradition was deeply rooted in the feudal *ius soli* and in the general notion of ‘allegiance’ within the common law.

The key purpose of the distinctively British version of the territorial principle, with its close link to the notion of ‘allegiance’ to the monarch, was an imperial one: the aim was to secure the bond between the home country and a colonial empire that was recognized, precisely, as being highly heterogeneous in territorial, ethnic and cultural terms.⁴⁴ This shared status made for a degree of civic equality resting on the subjects’ common duties of obedience and military service to the crown and, on their common right to the crown’s protection regardless of their country of origin or the colour of their skin. Nevertheless, ethnic discrimination on the freedom of movement and residence was in place against British subjects from the colonies.

The British Nationality Act of 1981⁴⁵ introduced the term ‘British citizen’ and, with it, brought a strong descent element into British citizenship law for the first time. The principal criterion for acquisition of the privileged status of ‘British citizen’ became not merely birth within the territory of the United Kingdom, but such birth in combination with British parentage.⁴⁶ Henceforward only a ‘British citizen’, so defined, could enjoy the unrestricted right of residence in the home country.⁴⁷ Thus the unitary status of British subjecthood was replaced by a finely graded system of categories of citizenship, with the ‘British citizen’ granted privileged status at its apex. The Act created a new territorial hierarchy and imposed an ethnic-based filter on immigration. According to one recent academic study, its purpose was to ‘whitewash’ Britain.

British citizenship law retained a strong territorial element, which set limits to any ‘whitewashing’.⁴⁸ The new citizenship legislation was not a move towards the ethnically closed model of the nation state prevalent in continental Europe. Rather, it was an attempt to come to terms with a new imperial—or rather, post-imperial—situation. In this way as in others, Great Britain remained more attached to the notion of a multinational empire than to that of the traditional nation state.

⁴⁴ See *ibid.*, pp. 5, 90, 124. Karatani points out that although the status of a British subject, or Commonwealth citizen, was given increasing emphasis as a constitutional device helping to hold the diverse empire together, it also became increasingly irrelevant in terms of citizenship law (Rieko Karatani, *Defining British Citizenship: Empire, Commonwealth and Modern Britain* (London, 2003); see also Dummett and Nicol, *Subjects*, p. 137f.).

⁴⁵ The Immigration Act of 1971 had defined differences of status with regard to rights of residence on the basis of a distinction between ‘patrials’ and ‘non-patrials’.

⁴⁶ A separate criterion was that of ‘settlement’, i.e. permanent, unconditional legal residence. See British Nationality Act, 1981, Part I, secs. 1(a), (b): cf. Fransman, *British Nationality Law*, p. 269f.

⁴⁷ *Ibid.*, p. 278.

⁴⁸ The government explicitly rejected a pure *ius sanguinis* system, on the grounds that it would ‘have a serious effect on racial harmony’: quotation in *ibid.*, p. 270, fn. 7.

III Summary: Beyond Nationality—Functions of Citizenship in the Twentieth Century

It is apparent from this examination of the systems of citizenship in six European states that the connection between conceptions of the nation and citizenship systems that had developed during the nineteenth century became looser in the course of the twentieth: indeed, the connection largely dissolved. The fact that citizenship was determined in a particular nation state by the *ius soli*, or by the *ius sanguinis*, was not a decisive indicator of the extent to which that state was open or closed, receptive to assimilation or hostile to it; it did not serve even simply to reinforce any such tendencies. The link between citizenship and nationality, which in the nineteenth century had been close, gradually gave way, in the twentieth century, to other pressures and constraints. After 1918, in an age of extremes and of escalating violence, citizenship became an instrument of state policies of territorial division and displacement that accompanied the establishment of new states and the protection of minorities. Between the two world wars the legal institution of citizenship was used as a weapon of demographic policy; during the Second World War and later, it became a tool of racist and nationalist homogenization, expulsion and ethnic cleansing. Violence-induced territorial changes and the creation of multinational and federative⁴⁹ domestic state structures had a profounder effect on the national make-up of states than did the principles governing the acquisition of citizenship. The survival, or collapse, of imperial traditions had more impact on the homogeneity of states than did the doctrines of *ius soli* or *ius sanguinis*. My view (which I shall be setting out in greater detail in future)⁵⁰ is that what determined the degree of inclusivity or exclusivity in citizenship systems in the twentieth century was not so much the relevant conception of the nation as totalistic and purificatory ideologies in particular, racism and communism, multinational and imperial structures resting on what were often pre-national traditions, and the contingent facts of violence, war and territorial changes.

This trend whereby the link between the *ius soli*, or the *ius sanguinis*, and the definition of nationality became looser in the course of the twentieth century is amply illustrated by the fact—noted by, among others, Patrick Weil—that since 1945, and a fortiori since 1989, the basic principles governing citizenship in Europe have steadily converged and no longer carry explanatory force in national terms. If, as historians, we want to get a clearer understanding of the degree to which a particular twentieth-century citizenship system was open or closed, we

⁴⁹ For an instructive comparison of federative systems, see Christoph Schönberger, *Unionsbürger. Europas föderales Bürgerrecht in vergleichender Sicht* (Tübingen, 2005).

⁵⁰ The present article is a preliminary treatment for a comparative study of ‘civil society in the twentieth century’, to appear within the series *Synthesen. Probleme europäischer Geschichte*, published by the Zentrum für vergleichende Geschichte Europas, Berlin.

shall have to alter our angle of vision: we must pay less heed to the principles governing the acquisition and revocation of citizenship and focus more closely on the actual, and multiply determined, practices of inclusion and exclusion that were at work. This will mean taking account of economic, military,⁵¹ cultural and political⁵² factors affecting particular countries' aspirations and their views on homogeneity, even though those ideas will not necessarily have been linked directly to a specific conception of the nation. We also need to recognize the role of sex discrimination—against married women—and the importance of immigration⁵³ as common themes in all the European states.⁵⁴ These are all new areas of research, which will take us well beyond the question of the significance of nation and nationality in the history of citizenship.

⁵¹ On the economic factors underlying the introduction of the double *ius soli* in France in 1889, see Noiriél, *La tyrannie*, p. 88; on the military and demographic factors, see Weil, *Qu'est-ce qu'un Français?*, pp. 54–57.

⁵² On the political factors governing revocation of citizenship in times of war and regime change, see Gosewinkel, *Einbürgern*, p. 372f.

⁵³ See Andreas Fahrmeir (ed.), *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period* (New York and London, 2003).

⁵⁴ For Germany, see Gosewinkel, *Einbürgern*, pp. 294, 308, 348–352; for France, see Weil, *Qu'est-ce qu'un Français?*, pp. 73f., 212–224; for the USA, see Candice L. Bredbenner, *A Nationality of Her Own* (Berkeley, 1998).