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COUNTRY REPORT: FRANCE

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EUDO Citizenship Observatory

Report on France

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France

Christophe Bertossi¹

1 Introduction

France is frequently portrayed as having a strongly integrative national identity forged through its revolutionary experience.

If the idea of citizenship was born during the French revolution, French nationality was actually formalised as such only one century later, with the Third Republic. In the French context, nationality and citizenship are two distinct notions. On the one hand, citizenship encompasses the rights and duties of the members of the national polity. Historically, the Revolution attempted to define a ‘universal citizen’, and the 1793 Constitution made no distinction between foreigners and French nationals. However, this clause was never implemented. By contrast, nationality is the result of the modernisation of France as a nation state during the nineteenth century. It defines membership to the French nation and the modes of incorporation of individuals in the ‘community of the citizens’ (Schnapper 1994). The strong connection between the idea of citizenship and the Jacobin conception of an indivisible national sovereignty has made dissociation between citizenship and nationality impossible, with the limited exception of EU nationals after the Maastricht Treaty. Though François Mitterrand promised in 1981 to give migrants the right to vote at local elections, this never happened. Nationality is therefore the only path to entitlement to the rights of the citizen.

French nationality law as it currently exists was essentially established by the 1889 law. Since then, French legislation has been a mixture of *ius soli* and *ius sanguinis*. *Ius sanguinis* was a modern tradition invented by France, and it diffused across continental Europe during the nineteenth century. Despite this strong tradition of *ius sanguinis*, however, France was also the first country of immigration in Europe, which led to the reincorporation of *ius soli* in order to attribute nationality to children of immigrants, even against their will. Today French nationality is attributed at birth if one of the child’s parents is French (regardless of place of birth), or if the child is born in France and has one parent also born in France. A person born in France whose parents are neither French nor born in France will automatically become French at age eighteen if he or she still resides in France and does not refuse the citizenship. Immigrants (i.e. foreign residents of France born in a foreign country) may apply for naturalisation. Formally, the barriers are very low for ordinary naturalisation: five years of residence is the normal requirement. Furthermore, due to a little-known law of 1961, the majority of immigrants have no required period of residence if they come from a former colony or a francophone country: theoretically, they just have to be resident in France at the time of application. However, the naturalisation service does not encourage naturalisation and faces a backlog of applications. The rate of naturalisation nowadays is approximately 5 per cent of the foreign population in France.

¹ A first report on citizenship in France written by Patrick Weil and Alexis Spire was published in the book *Acquisition and Loss of Nationality. Vol. 2, Country Analyses*, edited by Rainer Bauböck, Eva Ersboll, Kees Groenendijk and Harald Waldrauch, Amsterdam University Press, 2006, available at www.imiscoe.org/natac. The present report incorporates text from this earlier report, but Christophe Bertossi is the only responsible author for the present version. This applies also to an earlier version of this report published on EUDO CITIZENSHIP on which Patrick Weil and Alexis Spire appeared as co-authors.

The ease of naturalisation in France is facilitated by a very tolerant position towards dual citizenship. Formally, France signed the 1963 Council of Europe Convention, which attempts to reduce cases of dual citizenship. In practice, however—except for the nationals directly concerned by the 1963 Convention—France has always allowed newly-naturalised citizens to retain their previous citizenship.

In fact, since the First World War, France has always tolerated dual citizenship, but for some extreme cases a provision permits revocation of citizenship for dual citizens (primarily for those who become an enemy of the French state).

Since 1973, French nationals living abroad can transmit their French nationality through an infinite number of generations, as long as the French descendant applies and registers with a French authority. Foreign spouses can acquire French citizenship through marriage and after two or three years of marriage receive citizenship by a declaration that takes effect one year later if the state has not opposed it for some legal reason. Since 1973, there is also total gender equality: both spouses of different nationalities transmit their citizenships to their children and have access to French citizenship under the same conditions. Finally, loss of French nationality can only occur at the demand of the individual, who must reside in a foreign country and be a dual national for it to be granted.

At the same time, French nationality illustrates a tension between colour-blind principles of inclusiveness—an inclusiveness which ought not to take account of different origins, in particular ethnic origins—and a culturalised conception of French integration. Since the end of the nineteenth century, French nationality has been grounded on the principle of progressive integration of immigrants and their descendants: the longer the link with French society, the fewer the foreign nationals who may remain outside the ‘community of the citizens’. Nationality reflects this conception of an inclusive republican citizenship, coupled with a strong conception of national identity, allegiance, and cultural integration. In the 1980s, when postcolonial migrants settled permanently, the French politics of citizenship re-emphasised this integrative dimension as the cornerstone of the Republican colour-blind France. On the other hand, however, the public and political debates intensely focused on the ethno-cultural and religious characteristics of postcolonial migrants (i.e. Islam), perceived as a threat to ‘traditional’ republican integration. Such tensions between a colour-blind approach and a sharp politics of ethnicity have been further reinforced after the November 2005 riots in the French suburbs, when the diagnosis of a so-called ‘failure’ of the French model was made. The French case also demonstrates the interplay between the objectives of immigration policies and the evolution of the nationality law. While the founding principles of French nationality have not changed, restrictive new reforms in 2003 and 2006 have targeted foreign spouses of French citizens, following the political claim that ‘family migrants’ would represent a ‘burden’ to the French society in terms of their socio-cultural integration and economic participation.

2 Historical background and change

Ius soli was the dominant criterion of nationality law in France in the eighteenth century (Sahlins 2004). The French revolution broke from this tradition. Because ius soli connoted feudal allegiance, it was decided, against Napoleon Bonaparte's wishes (Weil 2002), that the new Civil Code of 1803 would grant French nationality at birth only to a child born to a French father, either in France or abroad.² This principle of ius sanguinis was not ethnically motivated but meant that family links transmitted by the *paterfamilias* had become more important than subjecthood, and that nationality would be transmitted, like family names, through the father. This approach dominated French nationality legislation throughout most of the nineteenth century (1803–1889).

2.1 Double ius soli: the heart of French nationality law

At the end of the nineteenth century, France faced a contradiction between the legal tradition of the Civil Code and the evolution of migration. The majority of individuals born on French territory to foreign parents were not becoming French citizens, even though they belonged to families who had lived on French territory for extended periods of time. The main reason these foreigners were not becoming French was to escape the military draft that accompanied citizenship. Therefore, on 7 February 1851, a law introduced optional 'double ius soli': an individual born in France to an alien father born in France was a French citizen at the age of majority except if he or she refused citizenship.

This law was not very successful and was therefore repealed by the changes in the 1889 law, which more comprehensively addressed the new reality of France as a country of immigrants. To fulfil the principle of equality of public charges and duties, third-generation 'immigrants' were automatically granted French citizenship and drafted (Brubaker 1992). Since then, ius soli has been at the heart of French nationality law. It is both a mechanism for granting French nationality automatically to third-generation 'immigrants' born in France and the simplest means by which French citizens can prove their nationality.³

2.2 A century of legislative stability

For nationality legislation, the 100 years that followed 1889 were a period of legislative stability. After 1889, the most important nationality reform concerned the withdrawal of colonial privileges or inequalities and the equalisation of men and women.

Throughout the First World War, France was highly concerned with newly naturalised people from enemy nations and the difficulty of controlling their mixed loyalties. In response to Germany's Delbrück Law of 22 July 1913, which allowed Germans who were naturalised abroad to retain their original citizenship, France instituted formal procedures for denaturalisation with the laws of 7 April 1915 and 18 June 1917. The procedure was initially overseen by the Conseil d'État, and then by the Judicial Court System. The government's suspicion of naturalised citizens from enemy nations also led to the formation of an agency

² Ius soli was partially maintained, mainly as a result of a constitutional constraint: a child born in France to foreign parents could claim French nationality at the age of majority if he was resident in French territory.

³ For that purpose they just need to produce their own birth certificate and that of one of their parents.

dedicated to the surveillance of newly naturalised citizens (Weil 2002). This agency was created in April 1918, and operated under the authority of the Interior Ministry but was quickly disbanded after the armistice of 11 November 1918. As the war ended, the political priority also shifted to demographic concerns and to the increase of naturalisations.

With the casualties of the First World War, France was sorely in need of new citizens and therefore encouraged immigration. However, despite population increases throughout the 1920s, not enough people were becoming citizens, so in 1927 Parliament took matters into its own hands and adopted the most liberal citizenship legislation the French Republic has ever known (Weil 2002).

One of the major goals was to reverse a provision by which a wife took her husband's nationality. This law had resulted in the net loss of 60,000 French women between 1914 and 1927: 120,000 French women had become foreigners through marriage and 60,000 foreign women had become French by marrying a French man. So, starting in 1927, policymakers permitted a French woman marrying a foreigner to keep her nationality and transfer it to her children. Also, under a new naturalisation policy, the residence period imposed on immigrants was reduced from ten years to three.

The effect was immediate: between 1927 and 1930, 170,000 foreigners acquired French nationality through naturalisation compared with 45,000 in the preceding five years. Yet this expansion of French nationality occurred at the same time as the financial crash of 1929, and as the economic crisis worsened, so did the expression of xenophobia. In the 1930s, violent debates erupted between guardians of 'nationality by origin' and those who defended the '*français de papier*' ('paper Frenchmen', foreigners granted citizenship). To placate those who doubted the loyalty of the newly naturalised citizens, a law of 1934 delayed their entry to certain professions.

According to a new law passed on 12 November 1938, naturalised citizens could not vote or be elected to public office for five years, and the denaturalisation provisions were strengthened. The latter were activated if a foreigner knowingly made a false declaration, presented a document containing a lie or misinformation or used fraudulent means to obtain naturalisation. Nationality through marriage was limited: foreigners could not marry until they obtained a visa for more than one year. A foreign woman wishing to marry a French man had to submit an application before the marriage, and this application would not be considered if she had received an expulsion order or had had a request for naturalisation rejected.

Some experts proposed adding to these individual or professional restrictions a citizenship criterion that would be based either on ethnic origin or degree of assimilation. George Mauco (who, since 1932, when he published his doctorate on the subject (Mauco 1932), was considered the leading immigration expert) was one of the principal defenders of this approach.

At the beginning of the Second World War, there were three million foreigners in France, of whom 950,000 were Italian, 600,000 Spanish, 515,000 Polish and 2,450,000 Belgian. In order to make them participate in the war, the government accelerated the process of naturalisation: 73,000 foreigners were naturalised or reintegrated in 1939 and 43,000 in the first six months of 1940.

Mauco had proposed in 1939, on the eve of the war, a review of all naturalisations, and between 1940 and 1944 the Vichy Regime, incorporating a Nazi law, revised the naturalisations that had taken place since the passing of the 1927 law, resulting in 15,154 French citizens becoming foreigners. The procedure was aimed at Jews, 6,000 of whom were denaturalised and many of whom were deported to Germany (Weil 2002). However, it is

important to note that technically the imposition of collective discrimination based on origin, which often meant the deportation to Germany and extermination of French Jews or those of Jewish origin, was effected without modification of French nationality law.

2.3 Nationality after the Second World War

After the war, in a speech to the Consultative Assembly on 3 March 1945, General de Gaulle suggested: ‘the lack of population and the lack of births are the principle cause of French unhappiness and the main obstacles which prevent French recovery’. He continued: ‘to secure the twelve million children that France will need in the next ten years, to reduce our absurd child mortality rate, to secure over the next years, with rigour and intelligence, desirable immigration for the French nation, a great plan is outlined’.

With this goal in mind, the Ordinance of 19 October 1945 established a new nationality code. It confirmed an open approach to the integration of immigrants and their children regardless of their country of origin, contrary to the wishes of the proponents of the ethnic approach, led by Georges Mauco, general secretary of the High Committee of Population. However, the duration of required residence was raised from three years to five, and the rights of married women were slightly reduced. The system adopted in 1945 tried to maximise the number of women who remained French by restricting the ability of women to choose their nationality after marriage. Foreign women who married French men were automatically French unless they expressed their will not to become so before the marriage, and French women marrying foreigners remained French, unless they declared prior to the marriage that they wished to adopt the husband’s nationality.

2.4 Naturalisation policy from 1945 to 1973

In the years immediately following the Liberation, the French administration gave priority to citizenship cases that had been ignored during the Vichy regime, as part of a public push to increase naturalisations and pursue a ‘population growth policy’. However, the rhetoric of aggressively seeking larger population numbers coexisted with a selective preference for foreigners who were considered ‘easier to assimilate’.

The new French people are mostly European

From 1945 to 1963, over 90 per cent of the naturalised French population came from other European countries, reflecting the large European population living in France at the time. In 1946, 39,000 foreigners acquired French citizenship, of which 15,000 were Italian, 6,000 Polish, and 6,400 Spanish. In 1947, the number jumped to 112,000, of which 44,000 (40 per cent) were Italian, 19,000 Polish, and 13,000 Spanish. Naturalisations then began to decline in 1948, going down from 71,000 to 25,000 in 1952. This drop was largely due to a policy of choosing foreigners who would be easiest to ‘assimilate’.

This new policy was the idea of Paul Ribeyre, a Christian Democrat known for conservative positions, who in April 1952 distributed a confidential memo that reinstated selection based on ethnic criteria: ‘We must avoid naturalising people who will be difficult to assimilate or who will alter the ethnic and spiritual character of the French nation’.

As a result of Ribeyre's instructions, the composition of naturalised citizens changed significantly over the years. For example: in 1946, the population called 'Armenians and Turks' were 7.1 per cent of those naturalised by decree, but in 1953, they were only 5.3 per cent, compared to Polish people, who were 15.9 per cent of those naturalised in 1946 and 26.5 per cent in 1953 (Spire 2005). Naturally this evolution reflected changing demands for naturalisation, but at the same time it would not have been possible without strict selection among the applications: between 1951 and 1953 the naturalisation approval rate⁴ fluctuated between 60 and 65 per cent while in previous years it had always been higher than 75 per cent. And these selections were clearly made to favour certain nationalities that were considered 'easier to assimilate' (Weil 1995). By the middle of the 1950s, these restrictions had started to calm down as the economy picked up steam and new staff controlled the Population Ministry. The new direction was evident in the instructions of 22 November 1953 which encouraged 'liberal application of the naturalisation laws' and after about one year this new direction had an impact on the naturalisation statistics. Up until the end of the 1960s, Italians, Poles, and Spanish people were over 70 per cent of the newly naturalised French, but they became increasingly outnumbered by migrants from former French colonies.

The impact of decolonisation

The Law of 22 December 1961 modified the 1945 Ordinance that governed the conditions under which former colonial subjects could enter France, which became increasingly relevant as the majority of colonies had achieved independence by 1960. The new law no longer required good health and legal residence. In addition, the law of 1961 increased the possibilities for naturalisation without residence requirements, which benefited migrants from former French colonies or territories. Thus the former colonial population became an increasingly important part of the newly naturalised French population.

After the signing of the 1962 Evian Accords, Algerians who wanted to become French were subjected to a unique statute in which they could automatically become French if they lived in France, were over eighteen years old and performed a 'declaration of acceptance' of the French republic. However, in the years following independence the former 'French Muslims' who enacted this procedure to become French were very few in number (between 1962 and 1967 the total number of applications was no more than 60,000) because to them it represented a betrayal of Algeria (Sayad 1999: 335–336). So, in 1967, the 'declaration of acceptance' was no longer required and Algerians who wished to become French followed a procedure of 'reintegration by decree' which required residence in France of five years.

2.5 The law of 1973

The law of 1973 completely equalised the nationality rights for men, women and legitimate children. Specific rights were also granted to citizens from former French colonies: nationality was automatically given at birth to children born in France of parents who had been born in the former colonies or overseas territories (Lagarde 1997).

This liberal legislation was applied in a political context in which the statute of

⁴ The naturalisation approval rate is the percentage of positively decided cases against the total number of decisions on naturalisation and reintegration applications made during that period by the administration.

immigration was being called into question. In 1974, confronted with a significant increase in unemployment, the French government halted the immigration of new workers; and in 1984 parliament passed a law creating a ten year residence permit (*titre unique*), which guaranteed the personal security of legal foreign residents whatever their nationality or origin. In the meantime, there was an unsuccessful attempt led by President Giscard d'Estaing to forcefully repatriate 500,000 Algerian immigrants (Weil 1995).

Nationality became a divisive issue in the mid 1980s as young people who had been born in France and had been made automatically French by law were increasingly seen as a problematic 'unassimilated' population. They were 'French without being aware of it or wanting it' (*français sans le savoir et sans le vouloir*). It was true that since 1981 several hundred children who had been born in France to Algerian parents had expressed their desire to renounce their allegiance to France (Brubaker 1992). They had often been made French at birth due to double *ius soli*: they had been born in France to a parent born in Algeria before 1962, at the time when Algeria was still an integral part of French territory divided into three regions (the same was not true, for instance, of Moroccans). For these children, some of whose parents had fought for the independence of Algeria, and above all for the Algerian state, being made French at birth without the possibility of renouncing their French citizenship (a situation different from that of children born to Moroccan or Portuguese parents) posed a problem. In 1982, Gaston Defferre, socialist Minister of the Interior, attempted to revise the double *ius soli* rule, in order to respond to the Algerians' demands, but failed (Weil 1995: 164–167).

On the other side of the political spectrum, *ius soli*, both simple and double, was fundamentally questioned. Some on the right favoured the establishment of strict *ius sanguinis* accompanied by a process of naturalisation, which would allow new French citizens to be 'selected' according to their capacity for assimilation. On the extreme right, the National Front had been proposing a re-examination of naturalisation since 1974.

2.6 Preserving ties of nationality with French emigrants

Today the French government allows citizens who reside abroad to acquire a second nationality while retaining their French citizenship. In addition, French citizens living abroad can pass citizenship across generations to their offspring, indefinitely. However, historically, French nationality law has not always been this liberal and in the past was much more restrictive for citizens living abroad.

The 1803 Civil Code allowed French citizens to move abroad and acquire foreign nationality, but in doing so they would lose their French nationality. However, just before the war with Austria, Napoleon rescinded this entitlement and required all French people, even those who had since acquired foreign nationality, to return home. On 26 August 1811 the government then made it illegal for French people to acquire foreign nationality without the permission of the Emperor (Fahrmeir 2000).

The law of 1889 once again allowed French people to take foreign citizenship, but in doing so they would lose French citizenship. The only exception was for men eligible for military service, who were required to seek government permission. The goal was to discourage people from changing citizenship in order to escape military service. The law of 9 April 1954 stated again that all men younger than 50 years old who acquired foreign citizenship would remain French unless they specifically requested permission from the French government. But while the goal of the 1889 law had been to prevent people from

avoiding military service, the logic of the 1954 law was different (Weil 2002). It was ‘essential to allow French people living abroad to retain their French citizenship while in the process of extending French culture and economic strength’. However, there was a troubling inequality in the citizenship law. Legally, a French man who became a citizen of another country would remain French unless he specifically requested the forfeiture of his French citizenship. Women however, would lose their French nationality if they became citizens of another country. The law of 1973 assured absolute equality between men and women and therefore abolished this discrimination.

Starting in 1973, the acquisition of foreign citizenship did not affect French nationality for both men and women. The only way to lose French citizenship was through an explicit request, as dual nationality is officially recognised by the French state. French people living abroad can transmit French nationality to their children for an infinite number of generations, although the government retains the right to contest citizenship if the person in question has left France for over 50 years (Lagarde 1997).

2.7 The politicisation of nationality and immigration control: 1985–2003

Nationality law becomes a political issue (1985–1993)

The economic crisis, rising unemployment, and increasing success of the National Front during the early 1980s made immigration and nationality law reform a major political issue. These debates led to three modifications of French nationality (in 1993, 1998, and 2003), as well as a large national debate on the role of immigration in French society.

Starting in 1985, the extreme right (and shortly thereafter the mainstream right) began publicly attacking the ease with which foreigners became French. As opposed to the 1927 debates, which focused on naturalisation requirements, the 1980s debate centred on the concept of *ius soli*. Right-wing rhetoric argued that automatic attribution of nationality to foreigners was unfair to the foreigners, but their real motivation was not to help foreigners, but rather to purge France of non-European foreigners and former colonial subjects, who were the majority of new French citizens, and whom the right considered undesirable.

This right-wing initiative emerged from the fact that France experienced a rapid increase in requests for naturalisation across all categories at the end of the 1980s. This increase is most likely due to changing attitudes among foreigners who were long term residents in France. The increasingly strict laws on temporary stays and return visits to home countries gave long term residents the incentive to become French, secure the right to travel as much as possible, and improve their position in an economic marketplace increasingly marked by recession. Thus, regardless of national and social class background, more long-term residents sought French nationality during the period of suspended immigration and economic crisis than during the period of economic growth (Spire 2005). We can therefore understand foreigners’ motivations for acquiring French citizenship as a function of the job market and access to travel mobility.

The growing number of foreigners demanding French citizenship during the 1980s and 1990s went hand in hand with an increase in the diversity of national origins, reflecting the various new migration waves that had developed since the early 1970s.

While Europeans were 95 per cent of the new French during the years immediately

following the Second World War, they were only 20 per cent of the new citizens in 1993. The new French citizens came from further and further away, led by the Maghreb (Algeria, Morocco, and Tunisia), followed by Southeast Asia, and Portugal. Since 1992, Maghrebians represent more than 40 per cent of the new French citizens, which has been of crucial importance in the ongoing debates about access to French nationality.

As the numbers of French citizens with non-European origins increased during a left-wing presidency, the right-wing had ammunition to attack the nationality law and the left-wing politicians.

After the legislative elections of March 1986 the right returned to power, and the newly-appointed Minister of the Interior quickly announced a series of immigration-related priorities: restriction of migrant flows, intensification of repatriations of illegal immigrants, and the reform of the nationality code.

On 12 November 1986, the right-wing government of Jacques Chirac proposed a bill that would remove the automatic attribution of citizenship by marriage, and continued the right to citizenship for children born in France with one parent born in France (double *ius soli*) but made it no longer automatic, instead requiring a declaration of will to become French. However, this proposal was actively contested by left-wing parties as well as various churches (Wayland 1993). The political scene was further complicated by the highly publicised student protests that forced the government to back off from its intended university reform plans. So, fearing even larger mobilisations by the pro-immigrant-rights constituency, Prime Minister Chirac scrapped the plans for reforming the nationality code. To avoid the appearance of having given in to the left, the government decided to appoint a commission of experts headed by Marceau Long (vice-president of the Conseil d'État) to study various ways of reforming the nationality code. The commission was formed in June 1987 and in 1988 presented a report entitled 'What it means to be French now and in the future' (Long 1988) which would become the basis for the law of 1993.

2.8 Nationality rights become a form of immigration control (1993)

The Law of 22 July 1993 was ostensibly a reform of French nationality Law, but was also part of a broader immigration control agenda. At the same time, two other laws were adopted, one that facilitated increased surveillance (the Law of 10 August 1993), and another that restricted the conditions of entry into the country (the Law of 24 August 1993). The goal was to restrict access to French nationality and to increase the importance of *ius sanguinis* for foreigners (Lagarde 1993: 556). The Law of 1993 was also important because it reintegrated nationality rules into the Civil Code, where they used to be—formally—from 1803 until 1927. In fact, for a century, the location of nationality rules was strongly debated by courts and by scholars: was it part of public or private law? To resolve the problem, starting in 1927, an autonomous *Code de la Nationalité* existed.

Most importantly, the Law of 1993 removed the application of double *ius soli* to children born in France to at least one parent born in a French territory that had become independent. For example: a child born in France to parents from Senegal, Ivory Coast, or Madagascar who were born before 1960 would have been considered French at birth before 1994, but after the new law this child had the same status as anyone born in France to foreign parents.

The second change was that children born in France to parents born in Algeria before

independence (1962) could only take advantage of double *ius soli* if — at the moment of their birth — one of their parents had lived in metropolitan France for five years, despite the fact that before 1962, Algeria was neither a colony nor a territory, but fully part of France and divided into three French *départements*. This change was hotly contested, and would provoke serious problems of proof for children born after 1 January 1994 when they became adults and applied for a French passport. It therefore seemed to violate the principles of double *ius soli*.

The most contested part of the Law of 22 July 1993 was the reform of simple *ius soli*. Prior to 1889, a child born in France to foreign parents would become French without any formalities, at age eighteen, if he or she had lived in France for the previous five years. The child also had the right to claim French citizenship, declared by his or her parents, between his or her birth and age eighteen. But, in 1993 these two options were abolished.

Instead, one single option was introduced: children born in France to foreign parents could declare their will to become French between sixteen and 21 years of age and have their declaration registered either by a judge, a mayor or a local police officer.

The law of 1993 also shows suspicion of mixed marriages. The Law of 9 January 1973 had made men and women equal concerning the effects of marriage on nationality: a foreign spouse, either male or female, could become French with a simple declaration. This provided easy access to French nationality, so the Law of 7 May 1984 imposed a six month delay after marriage before the spouse could be naturalised by declaration. Under the pretext of fighting ‘marriages of convenience’ the Law of 22 July 1993 increased the delay to two years. Two new conditions were added: the couple must have been living together continuously during those two years, and the French partner must retain his or her nationality.

The Law of 1993 was therefore a serious attempt to restrict access to French nationality from several angles. Nevertheless, it did liberalise access to nationality in one small respect (Lagarde 1993: 559). Whereas previously the administration could reject citizenship applications without justification, it was required to justify its decisions from 1 January 1994 onwards. Therefore government bureaucrats could no longer reject people based on unsubstantiated ‘suspicions’ and needed to document their decisions.

2.9 A compromise between two principles (1998)

Policymakers on the left expressed their wish to return to the former legislation in the electoral campaigns of 1995 and 1997. After the left’s victory in the 1997 elections, a report was commissioned on ‘the conditions of the application of the principle of *ius soli* for the attribution of French nationality’ (Weil 1997). The report aimed to find a compromise between the wishes of those politicians who wanted to return to the previous legislation and the jurists, who had reservations about the impact of repeated modifications of the nationality law on the personal status of many second generation immigrants.

The law adopted on 16 March 1998 introduced several significant modifications:

—It re-established the principle that children born in France to foreign parents would be deemed French if they still lived in France at the age of eighteen and had remained in France throughout their adolescence.

—It upheld the need for children between sixteen and eighteen to openly declare their desire to become French, but for children between the ages of thirteen and sixteen the

parents could make this declaration, with the child's consent, if the child had lived in France since the age of eight.

—The requirement of five years' residence at the moment of acquisition would no longer have to be necessarily continuous.

—The 'double *ius soli*' rule for children of Algerian parents (but not for children of parents born in Overseas Territories) was re-established.

—The delay for obtaining citizenship by marriage was reduced to one year.

The Law of 16 March 1998 thus reformed the most controversial aspects of the 1993 reforms and added a few innovations. Moreover, it intended to overcome several additional shortcomings of the previous legislation:

—Certain young people had difficulties in understanding what was required of them. In addition, they often faced parental constraints; in particular, boys were encouraged to apply while girls were not (Weil 1997).

—Adolescents born in France to foreign parents could experience difficulty in proving that they had continuously resided in France for five years before the date of their application to become French citizens. Failure to prove this constituted the main reason for refusal: 42 per cent of all applicants in 1996. After leaving school at the age of sixteen, young people were often unemployed and therefore unable to prove their link with an institution during that time.

—The tribunals in charge of registering declarations employed different practices in this regard. The refusal rate at the national level had remained stable for two years at 2.6 per cent. Yet, without any coherent explanation, significant differences existed between regions. Three regions had a particularly high refusal rate: Lower Normandy (7 per cent), Lorraine (5.3 per cent) and Brittany (6 per cent). In 1996, seven *départements* had a refusal rate of over 10 per cent: Morbihan (41.2 per cent), Gers (24.3 per cent), Alpes de Haute Provence (20 per cent) Dordogne (17.5 per cent), Meurthe et Moselle (10.9 per cent), Lot (10.4 per cent). As a result, some tribunals gained a reputation for being restrictive, others for being more liberal.

—The most serious situation resulted from individuals not applying because they believed that they were already French. One study undertaken in Alsace spells this out (Weil 1997). Some young people who had been born in France felt French, and not having been properly informed of their status as a foreigner missed the deadline of 21 years of age without realising it. Information was circulated irregularly, which might explain the significant variations in the rates of nationalisation requests in the same region, for example in Alsace, 68 per cent in Mulhouse as opposed to 42 per cent in Strasbourg. Unequal access to information almost certainly disproportionately affected young people from underprivileged immigrant backgrounds.

The new legislation adopted in 1998 therefore states that children born in France of two foreign-born parents are French if they live in France and have done so throughout their adolescence. Proof of integration is established by non-continuous residence of five years after the age of eleven, and proof of residence is furnished by school certificates.

The new legislation built on a positive aspect of the 1993 law by putting greater emphasis on the autonomy of the child, as the power of parents to declare their child French without the latter's agreement was no longer possible. Between the ages of thirteen and sixteen (with their parent's authorisation) and between the ages of sixteen and eighteen (without such authorisation) young people could express their wish to become French and

acquire French nationality before the age of eighteen. In the six months before their eighteenth birthday, and above all during the following year when they became adults, they could declare that they wanted to remain foreign and decline French nationality.

The new legislation also made it easier to prove French nationality. Nationality was now listed on the birth certificates and in the family booklets. Those who wished to become French now had greater resources to support their claim.

2.10 New restrictions introduced by the 2003 Law

When the right wing returned to power in 2002, it attempted to restrict foreigners' access to French visas, as well as their access to French nationality. Whereas prior to the end of the 1980s, these two issues had been separated, they were once again combined politically.

While claiming to fight against supposed 'marriages of convenience' the new government tightened access to French nationality for foreign spouses. While the Law of 1998 reduced the delay for access to French citizenship to one year, the new Law of 2003 re-established a delay of two years. While the delay was previously waived if the couple had children, this exception was no longer valid. In addition, the delay could be increased to three years, mainly for foreign spouses living abroad, if at the moment of declaration the spouse could not prove that he or she had lived in France continuously for the past year. A French language test was also added for the foreign spouse, and the prefecture was encouraged to investigate if the couple had truly lived together as a married couple.

Access to nationality for unaccompanied foreign minors has been delayed. Over the years more and more youths have been arriving in France without their parents, and in principle are supposed to be affiliated with the Youth Social Assistance Service (ASE), which caters to their administrative needs during their stay. Previously, these minors, who were often asylum seekers, had access to French nationality upon declaration and without delay. However, the 2003 law imposed a three-year delay and required ASE to document the time period, which has greatly reduced the number of youths eligible for French citizenship. Only minors who arrive before the age of fifteen and who are affiliated with ASE can qualify, which is less than one quarter of those who arrive in France without parents. The rest of these youths face considerable difficulties for integration and often float between illegal status and general social exclusion.

As early as 1945, assimilation became a condition for naturalisation, as the foreigner had to prove that he or she was sufficiently fluent in the French language. The 2003 law reinforced this condition and added the requirement of proving sufficient knowledge about the rights and responsibilities of French citizenship. The deputies who drafted this amendment stated that it was to ensure that newly naturalised citizens understood the significance of 'becoming a citizen'. The Decision of 22 February 2005⁵ goes further and proposes formal procedures for evaluating the 'linguistic assimilation of candidates for French citizenship'. Language competency is now judged in a 20 to 30 minute interview in an office specifically designated as an 'Assimilation Evaluation Office'. It is however still unclear how this new condition is interpreted and applied by the prefectures and consular services.

⁵ Published as: Decree NOR/SOCN/05/10327/A regarding the individual interview in accordance of article 15 of the 30 December 1993 Decree no. 93-1362 on declarations of nationality, naturalisation, reintegration, loss, forfeit and withdrawal of French nationality, in *Official Journal of French Republic*, n°67, 20 March 2005, p. 4735.

These recent modifications to the regulations for access to citizenship have not led to a huge public debate like when the 1993 and 1998 changes were proposed. There are two main explanations for this relative silence. First, the Law of November 2003 requires knowledge of the rights and responsibilities of French citizens but did not add much to the existing clause about assimilation. In addition, the Law of 2003 has aspects that are much more restrictive than the requirements for access to citizenship. For example, it extends the minimum waiting period for getting a Permanent Residence Permit from three to five years, and measures of that kind have received more attention from NGOs, left wing activists or political parties.

3 The current French regime

The French official terms for acquisition at birth and acquisition after birth are respectively *attribution* and *acquisition*. Both modes immediately confer all the rights to active citizenship. As already mentioned, the Nationality Code was integrated into the Civil Code in 1993. The following section presents the main current modes of acquisition and loss of French nationality.

3.1 Acquisition and loss of French nationality

The acquisition of French nationality at birth

The acquisition of French nationality at birth is possible through different channels. It applies *iure sanguinis* to individuals who are born to at least one French national (art. 18 and 18-1 of the Civil Code), or *iure soli* in certain cases: foundlings (art. 19) or to people born to persons of unclear nationality or who would be stateless otherwise (art. 19-1). Finally, it also applies by virtue of double *iure soli* (art. 19-3) to children born in France to Algerians who themselves were born in Algeria before independence (2 July 1962).

Acquisition at birth occurs either if the person is born in France or abroad. The 1973 Law established gender equality for the transmission of French nationality at birth. Parentage has an effect on the transmission of nationality if it is established before the age of 18. The Ordinance of 4 July 2005 repeals the distinction between ‘natural’ and ‘legitimate’ parentage.

The acquisition of French nationality after birth

The three main modes of acquisition after birth concern automatic *iure soli* after birth (20 per cent of all acquisitions in 2006), acquisition by marriage (20 per cent), and acquisition by discretionary naturalisation (60 per cent).

Over the last decade, figures show a constant increase of the acquisitions after birth, despite variations in time. A strong increase occurred between 2002 and 2004, which the administration explained by a new and accelerated procedure (Regnard 2006a: 104). In 2005, the number of new French nationals by acquisition after birth decreased in the aftermath of the 2003 Law, mostly because of the more restrictive conditions for the acquisition by marriage (from one to two years). Despite these new restrictions, there were as many French by acquisition after birth in 2006 as in 1999.

Table 1: Acquisitions of nationality in France broken down by mode of acquisition (1995-2006)

	Total	Acquisitions by decree			Acquisition by declaration		
		Naturalisations	Reintegrations	by marriage (including collective effects)	Anticipated declaration	Manifestation of will	Other declarations
1995	92,410	36,280	4,587	18,121	-	30,526	2,896
1996	109,823	50,730	7,368	19,381	-	29,845	2,499
1997	116,194	53,189	7,296	20,969	-	32,518	2,222
1998	123,761	51,303	6,820	22,145	12,300	25,549	1,644
1999	147,522	59,836	7,733	24,091	42,433	-	2,342
2000	150,026	68,750	8,728	26,057	35,883	-	2,038
2001	127,548	57,627	6,968	23,994	31,071	-	1,971
2002	128,092	56,942	7,139	26,351	30,282	-	2,120
2003	144,640	67,326	9,776	30,922	29,419	-	2,487
2004	168,826	87,497	11,871	34,440	29,872	-	1,441
2005	154,827	89,100	12,685	21,527	27,258	-	1,291
2006	147,868	77,655	10,223	29,276	26,881	-	1,2802

Sources: *Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire—Ministère de la justice.*

Since 1990, the composition of the population concerned with acquisition after birth has been marked by a constant increase in the proportion of people from African (and mostly North African) origins. In 2005, the population originating from Northern African countries (Morocco, Algeria, Tunisia) represented 49 per cent of all new French nationals by acquisition after birth, ahead of the Sub-Saharan population (15 per cent) or Asians (17 per cent) (Regnard 2006b: 9).

Automatic acquisition by ius soli after birth ('acquisitions de plein droit')

After the 1993 reform of the Nationality Code and the creation of a 'manifestation of will', the automatic acquisition of French nationality *iure soli* was finally restored by the 1998 Law: foreigners born in France to foreign parents become French nationals at the age of eighteen, if

they live in France and prove they have had their residence in France (continuously or not) for five years since the age of eleven (art. 21-7 of the Civil Code).

On average, this mode of acquisition concerns about 30,000 individuals a year. After the repeal of the ‘manifestation of will’, the number has increased to 53,520 in 1999. As they do not result from any registration by the administration (as opposed to other modes of acquisition which imply a declaration to a tribunal or to the central administration), figures are only estimates.⁶ Only between 1993 and 1998, because of the implementation of ‘the manifestation of will’, was this population counted.

By virtue of the 1998 Law, this mode of acquisition can be anticipated by declaration to a *Tribunal d’instance* at the age of 16. Also, when a young foreign national was born in France and has lived in France since the age of eight, his or her parents can claim French nationality on his or her behalf and with his or her consent after the age of thirteen (art. 21-11). Most applicants who anticipate are between the ages of thirteen and fifteen years old (70 per cent). Since the creation of this mode of acquisition in 1999, the figure has constantly decreased (Regnard 2006b: 140).

French by declaration: marriage

French nationality can also be acquired by declaration. This mode concerns various populations,⁷ but mainly foreign spouses of French nationals.

The Civil Code states that a marriage does not entitle a spouse to the acquisition of French nationality (art. 21-1). Following the 2006 reform, a foreign spouse to a French national can claim French nationality after four years of ‘common and affective life’ after the date of the marriage. If celebrated abroad, the marriage must be transposed into the French civil register. The declaration is made at the *tribunal d’instance* (when the marriage is celebrated in France) or French consulates (when celebrated abroad), and registered by the ministry in charge of naturalisations (i.e. since 2007, the Ministry of immigration, integration, national identity and solidarity development). Knowledge of the French language and of the responsibilities attached to French citizenship must be demonstrated by the candidate. The government can oppose the acquisition by declaration within two years of the marriage being solemnised.

Figures show the effect of the 2003 Law. A further restriction adopted with the 2006 Law will certainly have a similar impact in the next few years. Yet, despite these fluctuations, the number of acquisitions by marriage has increased by more than 60 per cent since 1995.

The distribution by origin of people acquiring French nationality by marriage remained the same over a decade, but the gap between the different groups keeps increasing. Africa (mostly Northern Africa) represents 60 per cent of all regions of origin in 2006. In ten years, the number of New French by marriage originating from an African country has doubled, mainly because of an increase of Northern Africans. These figures of acquisition by

⁶ After turning eighteen, these new nationals normally ask for a ‘certificate of nationality’. The estimates hence are based on the number of ‘certificates of nationality’ delivered each year.

⁷ With the acquisition by marriage, declarations also include children under the age of eighteen who are adopted by a French national or taken care by social services, and persons enjoying the possession of the ‘*état de Français*’ (actual belonging to French society) for a period of ten years.

marriage are of tremendous political sensitivity, within the '*immigration choisie*' rationale and the politics of integration since 2005 (see Section 4).

French by discretionary naturalisation and reintegration

Acquisitions by a discretionary decision of the public authorities amounted to 60 per cent of all acquisitions after birth in 2006. Articles 21-14-1 to 21-25-1 of the Civil Code define the conditions that apply: being over the age of eighteen; proving five years of permanent residence in France; showing a satisfying assimilation to the 'French community' (including skills in French and a knowledge of the values of the Republic). With the applicant, the spouse and any children under the age of eighteen must also demonstrate a permanent residence in France. Otherwise, naturalisation is refused by the administration. The rate of positive decisions by the administration amounts to 75 per cent for first-time applications.

Acquisition by a discretionary decision concerns either naturalisation or reintegration. The latter is possible for persons who have been French nationals (at birth or after birth) and who have lost their nationality.⁸ Conditions of reintegration by decree are similar to the conditions applying to naturalisation (including the control of 'assimilation' defined by art. 21-24).

Naturalisation can be facilitated, notably with the lift of the five-year residence condition, in cases of service-based acquisition. For example, the Minister of Defence can propose the naturalisation of a foreigner who volunteered into the French armed forces and who was injured in a military operation, if the latter applies to it (art. 21-14-1, after a 1999 Law). The Minister of Foreign Affairs can also propose the naturalisation of any person who belongs 'to the cultural and linguistic French entity' (art. 21-20), or who has contributed to the international influence of France and to 'the prosperity of its international economic relations' (art. 21-21.).

Most of the new French by discretionary naturalisation originate from Northern African countries (50 per cent of all acquisitions by decree in 2006). Moroccans constitute the first nationality of origin (50 per cent of all the new French by decree originating from Northern Africa in 2006), followed by Algerians. Naturalised French nationals of Sub-Saharan origins have doubled in number over the last decade, increasing from 5,729 in 1995 to 11,297 in 2006.

The loss of French nationality

The loss of French nationality is mainly governed by the objective of limiting the number of cases of dual nationality. Under certain circumstances, French nationality can be lost by

⁸ Reintegration into French nationality can be also made by declaration, but the scope of the conditions by which a former French national can be reintegrated by declaration is more limited than for a reintegration by decree. Excluded from reintegration by declaration are: former French nationals who acquired another nationality after the independence of their country, after a decree of '*liberation of the relations of allegiance*', or those who lost their French nationality by a declaration of loss submitted after their marriage to a foreigner (see art. 24-2 Civil Code.). A declaration of reintegration into French nationality is consequently reserved to persons who married a foreigner (most of the applicants are women) or after the voluntary acquisition of a foreign nationality, and only if this acquisition is voluntary and explicitly declared to the administration (art. 23), within the frame of the Strasbourg Convention on the limitation of dual citizenship, which France has ratified (art. 1-1 of the Convention).

declaration. Conditions of age (generally over eighteen), nationality (not to be stateless) and residence (in the country of this other nationality) must be met. However, the loss of nationality can also be unintended. In 2007, a male French national who settled in the Netherlands in 2002 lost his nationality after he married a male Dutch national in 2003. When he asked to be registered at the French consulate in Amsterdam in order to vote at the 2007 French presidential election, the consulate informed the French Justice Ministry about the case.⁹ As France does not recognise marriage between persons of the same sex, the Ministry of Justice concluded that the acquisition of Dutch nationality should result in the loss of French nationality, in application of the 1963 Strasbourg Convention.

In other cases, nationality can be lost by decree—mainly for those who do not meet the conditions of a loss by declaration. In 2007, 44 such decrees were published by the ministry in charge of naturalisations. Eventually, the loss of French nationality can be stated by the judge when strict conditions are met: being a French national *iure sanguinis* but having a permanent residence abroad, born to parents who have not lived in France for at least 50 years.

Finally, the government administration has always been able to revoke French citizenship, under the authority of the Conseil d'État, if a newly naturalised citizen commits certain crimes during the first ten years of citizenship. Now the government has the power to revoke citizenship for crimes that were committed before the person became a French citizen, but were only recently discovered. This should not however affect many people, as revoking citizenship is rare and occurs only in specific and complicated cases. These days denaturalisation is used on average less than once a year, and only for people sentenced to prison terms of five years or more. However, denaturalisation is still a privilege that the government retains the right to exercise in exceptional circumstances.

3.2 Institutional arrangements

Barriers to the acquisition of French nationality: the long road to naturalisation

In addition to legal obstacles to naturalisation, there are also practical barriers in getting past the numerous bureaucrats charged with administering the naturalisation process. Generally speaking the naturalisation process can be broken into two main bureaucratic hurdles: first the local bureaucrats at the prefecture and then the central administration charged with applying the rules equally across the country.

Starting with the prefectures

The first step is for naturalisation applications to be submitted to the prefecture office. While this step is often considered a mere technicality it is in fact a crucial stage, because the prefecture must verify that the foreigner has the right to become French. In the application the candidate must provide paperwork proving his or her residence in France. The candidate is then subject to an investigation by the gendarmes, the police, and finally the mayor's office,

⁹ 'Un Français déchu de sa nationalité après s'être marié à un Néerlandais', in *Libération* [daily newspaper], 1 May 2008.

before verification that the applicant is eligible is given (Spire 2005).

The investigations into eligibility have always had lots of room for ambiguity and personal interpretation as to how much rigour is required. At times the staff in the prefecture can judge that the applicant is ineligible and immediately refuse the applicant. For example, starting in the mid-1970s the applications of foreign students were systematically refused because their residence in France was not considered sufficiently 'stable'. To avoid overtaxing the naturalisation staff with too many applications the prefectures were encouraged to immediately reject students. This type of behaviour represents an arbitrary power that is difficult to measure but nevertheless very important. Furthermore, this behaviour is far from evenly applied as the judgment as to which applications are 'suitable' changes according to the individual staff at the prefecture.

The importance of civil servants in the process does not stop at determining who is eligible to apply at the prefecture, and there are numerous civil servants who investigate the application and then render their verdict, each constituting a potential veto. For example, the Departmental Office of Social Affairs is often contacted depending on the family situation. A doctor is needed for the medical certificate. There are also forms relating to the professional status of the applicant, and there is the verbal assimilation exam. Finally, the prefect must attach a report on the political, demographic, and professional characteristics of the applicant. The application is then transmitted to the Under Secretary of Naturalisations for the Ministry of Immigration who is in charge of processing all applications.

Treatment of the applications

Each application is examined by a staff person who reports, on an 'instruction page', on the most important aspects of the file likely to be analysed during the deliberations. For example, the staff person might highlight the length of residence in France, the opinion of the prefecture, the age of the applicant, his or her profession, his or her family situation. After 1945, this process of highlighting important aspects was performed by an additional agent specifically designated for the task, but, since the 2003 reforms, the applications are only viewed by one person, except in the most difficult of cases where a second agent is required. This change allowed the Under Secretary of Naturalisations to shorten the delays without hiring additional staff. In 2002, the average waiting period for having an application reviewed by the Under Secretary of Naturalisations was sixteen months, and by the end of 2004 this period had fallen to three months (not counting the review time for each prefecture). In difficult cases the application is examined by the head of the office, and if necessary, by the Under Secretary of Naturalisations (Weil 2005). Only in rare cases is the final decision the product of two or three successive opinions.

For an application to be considered 'acceptable' the first criterion is residence in France, i.e. the candidate must have his or her current primary residence in France. The applicant must also justify his or her 'assimilation into the French community, primarily by sufficient knowledge of the French language' (art. 21-24 of the Civil Code). 40 per cent of the applications deemed 'unacceptable' are because of these criteria. During the 1950s when most applicants were European, the criterion of 'assimilation' was rarely used and mainly signified linguistic competence.¹⁰ When the applicants increasingly came from sub-Saharan Africa in

¹⁰ In a decision of 12 March 1953 ('The Spouse Bazso'), the Conseil d'Etat overruled a judgement of the administration that had considered an applicant insufficiently assimilated because of ongoing ties with a foreign country.

the 1970s, this criterion of assimilation became much more important. More than just speaking the language, assimilation also became defined as accepting French values, especially when candidates practiced polygamy or wore Islamic headscarves, despite the fact that administrative tribunals discouraged such approaches¹¹. The naturalisation candidate may also have to prove that he or she is a member of society ‘in good standing’ and without conflicts in the community, although this is rarely pursued.

As soon as the application is considered acceptable, the agents of the Under Secretary of Naturalisation must judge the actual content. These decisions often reflect the broader government policy of the time, but such policies are not publicised and therefore nearly impossible for the applicant to address. These orientations are communicated confidentially within the administration, and are not subject to public scrutiny. Priority is always given to refugees and stateless persons, legionaries, or members of communities that have special relations with France (Christians from Lebanon, Syria, and Egypt, Jewish people from Northern Africa). For each case, the administration examines the stability of residence, the amount of connections in France, the individual character, and the degree of assimilation into the French community. Each decision has certain legal constraints, but there is also plenty of room for individual discretion in applying the legal principles.

Increasing importance of appeals and the role of the Conseil d’État

Since the beginning of the 1980s the number of appeals brought before the Conseil d’État has consistently risen. When an appeal is brought, the judge must confirm that a factual error, an incorrect application of the law, an incorrect interpretation of the law, or an abuse of legal powers did not take place.¹²

The rise of appeals and consequently the development of the Conseil d’État jurisprudence have restricted the room for discretionary decisions on the part of the naturalisation service, framing more and more of its decisions. A circular from 1981 insisted that people be informed of their various rights and options for appeals, and as such more people have dared to appeal each year: 50 in 1981, 550 in 1982, and 650 in 1983.

Recently, the Law of 22 July 1993 further restricted the discretionary powers of the administration by requiring written justifications of all refusals of nationality. Bureaucrats who examine and decide on the naturalisation files can no longer merely rely on a hunch. They must present hard evidence to support their decisions, knowing that the evidence may be presented later during an official appeal procedure.

In 2006, 6.62 per cent of refusals of nationality were brought to court (5.3 in 2005). On these cases, the courts cancelled 41 decisions out of a total of 1,206 (i.e. 3.31 per cent).¹³ Appeals from refusals of nationality mostly concern acquisition by marriage and by discretionary naturalisation.

The appeals from decisions concerning marriage have become more sensitive in recent years, after the 2003 and 2006 reforms. The main problem concerns the appreciation by the

¹¹ On 9 November 2000 the administrative tribunal of Nantes stated that ‘while the headscarf is considered a requirement that expresses religious convictions, it shall not be considered an ostentatious or proselytising symbol’ (Morillon 2003: 284).

¹² Decision of the Conseil d’Etat of 27 May 1983.

¹³ According to the 2006 annual report of the Direction de la Population et des Migrations, quoted in ‘Contentieux administrative des refus d’acquisition de la nationalité’, in *Plein Droit*, n°79, December 2008, p. 1.

administration of the ‘level of assimilation’ of the applicant. Though criteria for assessing the level of ‘linguistic assimilation’ have been made explicit by two texts in 2005, reality shows that bureaucrats have contrasted liberal or restrictive practices. ‘Non linguistic assimilation’ must also be assessed since the 2003 Law, including membership of religious groups and the importance of Islam in general and the Muslim headscarf in particular (see Section 4). In 2008, the confirmation by the Conseil d’État of a refusal of nationality (by marriage) for a Moroccan woman married to a French national illustrates this issue.¹⁴

The judicial review of administrative decisions also concerns naturalisation. Discretionary by definition, naturalisation can be refused by the ministry in charge of naturalisation on the basis of the administration’s assessment of the opportunity of each case. The ministry can also decide the adjournment of the decision, and impose a period of time, or even new conditions before the applicant can apply for naturalisation or reintegration a second time. These conditions concern ‘linguistic assimilation’ or ‘membership in a Muslim radical group’¹⁵.

4 Current debates: nationality after 2003, and the reformulation of French republicanism

In 2006, a new law on immigration and citizenship reformed several provisions concerning nationality: the period of time before a foreign spouse to a French national can acquire French citizenship was increased from three to four years; nationals from former French colonies lost some privileged residence conditions when applying to naturalisation; citizenship ceremonies were systematised.

Beyond this formal reform, the politics of citizenship have been framed by a perceived conflict between the founding values of French citizenship on the one hand, and a would be ethnicisation of the French society on the other hand, more vividly perceived after the 2005 urban riots.

4.1 Nationality and the issue of discrimination

The repeal of the ‘manifestation of will’ in 1998 paralleled a new policy approach to migrants’ integration, emphasising the need to fight against racial discrimination. This anti-discrimination agenda introduced a rupture in the public conception of the ‘problem of integration’ in France (Fassin 2002). The ‘problem’ could not be explained anymore as a deficit of allegiance or as a kind of cultural disloyalty vis-à-vis the so-called ‘French republican’ traditional values. The causal story was reversed and rather focused on the problems of the French society to provide equal treatment, membership, and opportunities to its ‘new citizens’. Logically, this new narrative left nationality with little political relevance. A very formal agenda, nationality as a guarantee of equality for all French citizens was contradicted by racial discrimination in this perspective (Conseil d’État 1997; HCI 1998).

¹⁴ Conseil d’État, 27 June 2008, *Mrs. F. Machbour* (decision n° 286798).

¹⁵ On the cancellation of an adjournment decision: Tribunal administratif in Nantes, 15 June 2008, *M.N. Madzarevic* (n°0500012); 4 July 2007, *M.E. Zinga* (n°052561); Cour d’appel administrative in Nantes, 8 February 2008, *M.A. Guiea spouse Logon* (n°07NT01261). On the confirmation of adjournment: Tribunal administratif in Nantes, 19 January 2006, *M.R. Gaci* (n°051658).

With the implementation of several anti-discrimination laws in the aftermath of the 1997 Amsterdam Treaty, France set up institutions, such as HALDE in 2004,¹⁶ in charge of this new agenda. Integration consequently appeared less of an issue of cultural assimilation than a matter of socio-economic participation of migrants and their French descendants to the dominant society. Concerning nationality, one line of the debates concerned the lifting of nationality conditions for certain professions, in the public as well as in the private sector (it is estimated that one third of the labour market is reserved to French nationals), a claim made in 2000 by GELD¹⁷ and formulated by HALDE in March 2009.¹⁸

However, if this new anti-discrimination agenda contributed to stemming the politicisation of nationality and integration issues, this did not last for long.

By the end of 2002, a new politicisation occurred, and developed through highly paradoxical lines: the candidacy of the leader of the extreme right-wing Front National Jean-Marie Le Pen in the second round of the presidential election in May 2002; the institutionalisation of the Muslim religion under the auspices of the Minister of the Interior Nicolas Sarkozy in December 2002 and the creation of a Muslim representative body; the claims by the same Minister of the Interior about the need to introduce affirmative action (*discrimination positive*) in law that would value ‘cultural and religious diversity’; the nomination of a so-called ‘first Muslim Préfet’ at the end of 2003; a new debate about threats to the French Republic by cultural and religious groups, and the adoption of the 15 March 2004 Law forbidding ‘ostentatious religious signs’ in public schools, which specifically targeted Muslim schoolgirls wearing headscarves; the passing of the 23 February 2005 Law celebrating the positive impact of French colonialism, and the withdrawal of an disputed article of this law by the President of the Republic shortly afterwards.

The public debate was intensely focused on the perceived threat of a multiculturally fragmented society when riots erupted in the suburbs of most French cities in November and December 2005. Although the riots occurred only after these debates, the politics of ‘republican citizenship’ had already imposed a new causal story about the ‘problem of integration’ (see HCI 2006), overtly explained in terms of race and ethnicity (Fassin & Fassin 2006). A few months later, the 2007 presidential election led to the creation of a new Ministry of Immigration, Integration, National Identity and Co-Development — the conclusion of four years of re-politicisation of the debate about the French republic and national identity (Bertossi 2009).

Interestingly enough, this re-politicisation of citizenship in a wider sense did not focus on access to nationality, by contrast with what happened in the 1980s. Instead, *laïcité* and an alleged conflict between Islam and republican values became the main proxy of the debates about French citizenship. That is, the debate was no longer about the entry of diversity through French nationality, but about perceived cultural and religious deviance among groups who were already formal members of the ‘national community of citizens’. Access to nationality as such was therefore not politically salient in this debate. Only the Front National tried to focus on nationality and dual citizenship, in vain, as the debate was monopolised by the new right-wing government elected in 2007 and the creation of the new Ministry of immigration and national identity. The proposed solution to the ‘problem of integration’ shifted from nationality to new politics of national identity, a wider agenda in which

¹⁶ Haute Autorité de Lutte contre les Discriminations et pour l’Égalité—High Authority of the Fight Against Discrimination and for Equality, created by the Law of 30 December 2004.

¹⁷ Groupe d’Etudes et de Lutte contre les Discriminations—Group for the Study and the Fight against Discrimination, created in 1999 as an anticipation of HALDE.

¹⁸ Halde: Deliberation n°2009-139, 30 March 2009 (see: www.halde.fr/IMG/pdf/Deliberation_2009-139-2.pdf)

regulating the legal status of nationality was not a key policy anymore. Access to nationality is one dimension among many others in these debates, which was emphasized, for example, when in 2010 a Parliamentary Commission recommended a ban on the burqa in public spaces and some politicians called for refusing nationality to women wearing the burqa.

4.2 Nationality and the ‘chosen immigration’ policy

After 2005, the crisis of the French ‘model’ of integration was explained by two reasons in the public debates. First, the very ethnic identities of French citizens from post-colonial origins were argued to be the reason for their supposed failed integration (while evidence still shows that discrimination is the main problem faced by this population of migrant origin). Second, this ‘failure’ of integration was described as the failure of past immigration and integration policies. Both reasons converged into the formulation of a new approach, the so-called ‘chosen immigration policy’ (*politique d’immigration choisie*), with the Law of 24 July 2006 aimed at ‘promoting a chosen immigration and a successful integration’¹⁹

The rationale behind this new policy is supported by several claims. First, the former ‘zero immigration’ policies are seen as having been unable to properly channel the flows of immigrants to France over the last three decades. Second, the problem with integration is seen to be caused by the fact that most migrants are ‘family migrants’ and not ‘labour migrants’. France needs migrant workers, mainly due to labour shortages on the French labour market. Family migrants are seen as a ‘burden’ to ‘national cohesion’, and difficult to integrate. Therefore, a proper immigration policy should aim at ‘selecting’ migrants on the basis of their profile (highly-skilled, lowly-skilled), their motivation to come to France (‘family’ vs. workers and students), their origin (traditional North African and Sub-Saharan postcolonial migrants vs. more diversified immigration flows) and their adaptation to French society’s culture and identity (‘assimilable’ vs. ‘non-assimilable’ migrants).

These different categorisations of migrants are rooted in a culturalised reading of the ‘the problem of integration’ of French citizens of migrant origins. They determine new explicit orientations of the immigration policy and its interplay with the rules of French nationality.

In the 1990s, the citizenship policy was supported by restrictive immigration policies as a pre-condition for an effective integration policy. In the 2000s, the emphasis shifted to the selection of migrants who would be compatible *a priori* with French society. Conditions that were traditionally part of the process of acquisition of nationality are now directly part of the new ‘*immigration choisie*’ policy. Proposed in 2002, and generalised with the Law of July 2006, a new ‘*Contrat d’accueil et d’intégration*’ has been made compulsory after 1 January 2007 for foreign nationals who, admitted for the first time to France, wish to settle permanently in France and prepare their republican integration into French society. Migrants

¹⁹ As Nicolas Sarkozy, Minister of the Interior, argued at the Assemblée Nationale (Parliament) before the vote on the 24 July 2006 Law: ‘before this debate, the motto that has prevented any thinking on immigration was “zero immigration”, promoted by [the leader of the Front National] Jean-Marie Le Pen. On a topic of such importance, since it has been an issue of the identity of France for thirty years, it was absolutely abnormal that the extreme-right leader could define the orientation [...]. We do not start from the positions of the extreme-right because we refuse them! We start from a concept that can be challenged, debated, but which does cause no problem from a republican perspective: chosen immigration. We can disagree with this concept but by no means can we dispute its conformity to the republican ideal’. Assemblée Nationale, *Compte rendu intégral, Première séance du mercredi 17 mai 2006. 223^e séance de la session ordinaire 2005-2006*, 17 May 2006: (our translation).

must show a satisfactory knowledge of the French language²⁰ and the responsibilities of the French republic.

On the basis of the November 2007 Law, a Decree of 20 October 2008 implements an even more externalised evaluation of the ability of migrants to integrate: migrants' knowledge of the French language and the republican values is assessed by consulate services when a foreign national applies for a visa to come to France. Since the 2006 and 2007 reforms to the immigration law, the progressive integration to French society is evaluated before this integration process begins.

4.3 The 24 July 2006 Law on immigration and integration: selective restrictions on nationality

The rationale behind the new '*immigration choisie*' policy is also relevant for the recent evolution of French nationality. Integration is less of a condition for acquiring nationality than a pre-condition that the legislator wants to impose on certain groups of foreign nationals who, if admitted to the French territory, would eventually claim access to French nationality.

This pre-condition targets former colonial subjects and family migrants. Both groups have been designated by the public debates as the roots of the 'crisis of the French model of integration' since 2002 and, more dramatically, after the 2005 riots. As the former chief editor of the weekly magazine *Le Point*, Claude Imbert, put it in January 2007: this 'uncontrolled immigration, so much alien to our beliefs, our customs and our laws [...] breached the long-run work of social biology which is needed for a happy integration [...]. The flows—mostly from Black Africa—endlessly increased by family reunion—or even polygamy, far from quietly irrigating the nation, created these stagnant pockets swarming with bad fever'.²¹

Since 2003, every new immigration law has affected nationality rules. With an objective of an exact balance between 'family' and 'labour' migration to France, the first targets of the 2006 Law have been the foreign spouses of French nationals.²² As Nicolas Sarkozy, then the Minister of the Interior, argued, the objective is to 'better fight against marriages of convenience, the only objective of which is to provide a residence permit and, at the end of the day, French nationality to the spouse of a French national'.²³

In addition to the increase of the duration of the "material and affective communality of life" before a foreign spouse to a French national can acquire French nationality, the 24 July 2006 Law also states that polygamy or a condemnation for the mutilation of a child under the age of fifteen (i.e. genital mutilation) constitute a 'fault of assimilation' (*défaut d'assimilation*). These dispositions were introduced by an amendment of Thierry Mariani, reporter of the 2006 law-project, who argued that 'these acts of dramatic seriousness, that will not be justified on the French soil in the name of traditions existing in some regions of the world, are indeed incompatible with the objective of assimilation to French society of those

²⁰ In 2007, the vast majority of foreigners who were compelled to sign this contract were actually French-speakers. Only 25.8 per cent were proposed a course of training in French: see CICI 2008: 156.

²¹ Claude Imbert, 'Le bûcher d'une politique', *Le Point* [weekly newspaper], no. 1730, 17 January 2007 (our translation); see Fassin & Fassin (2006), p. 6-7.

²² The largest migratory flow to France is composed by foreign family members of French nationals (i.e. 54,695 in 2006: see CICI 2007: 93).

²³ Nicolas Sarkozy, 'Immigration et Intégration : Discussion d'un projet de loi déclaré d'urgence', *Sénat, Journal Officiel de la République Française, compte rendu intégral de la session ordinaire de 2005-2006, séance du mardi 6 juin 2006, 107^e jour de séance de la session*, JORF, 7 June 2006, p. 4317 (our translation).

committing them'.²⁴ Polygamy was one main causal story that had been used in the public discourse, a few months before, for explaining the roots of the November 2005 riots (see Fassin & Fassin 2006). The new Law aims to give a systematic and formal legal ground to the action of the state in nationality matters, in the aftermath of the intensive debate on *laïcité* and gender equality which started in 2003.

Part of a similar 'selective' rationale is the fact that some categories of foreign nationals lose those privileges which they had gained after decolonisation. The lifting of the consequences of decolonisation on nationality rules had already started with the 1993 Law (i.e. the application of double *ius soli*). In 2006, the conditions of residence for being entitled to naturalisation were modified. Before the July 2006 Law, foreign nationals of a country that was a former French colonial territory had the possibility to apply for naturalisation without any condition of residence in France. This possibility is repealed (art. 82 of the law) and a five-year condition applies to them as to every other foreign national (art. 21-19 of the Civil Code).

This lift of the exemption of residence condition was justified by concerns about the 'effective integration' of these people. As the reporter of the 2006 Law argued: 'today, the persons acquiring French nationality by decree are, for the most, under the age of 50. This implies that, in most cases, they grew up in their country after independence, without any direct connection to France. It seems useful to establish for them an obligation of five years of residence on French soil'.²⁵ Even though the legislative report recalls that administrative jurisprudence recognised the benefit of this exemption,²⁶ it concludes nevertheless: 'this exemption cannot guarantee the proper integration of the foreign national into French society'.²⁷

Other categories of foreign nationals are concerned by this article 82 and lose the benefit of this exemption: foreign children of at least one French national parent who were not mentioned by the naturalisation decree and the spouse and the children (over eighteen) of a person who acquires or has acquired French nationality. The exemption from the residence requirement remains for three categories only: those who served in the French military or, who, during wartime, volunteered in a French or allied armed force; Convention refugees; and foreigners whose contribution to France has been exceptional, and of whom naturalisation would be of striking interest to the nation. Finally, a shorter residence condition of two years applies to other foreign nationals, when they obviously offer remarkable 'skills and talent' to France. Finally, students who graduated from a French academic institution can apply for naturalisation after two years, a disposition of the 1993 Law that was not repealed in 2006 (art. 21-18 of the Civil Code).

The Law of 24 July 2006 also deals with the reform of parentage following the Ordinance of 4 July 2005 that suppresses the distinction between 'natural' and 'legitimate' parentage. According to article 91 of the 2006 Law, this reform of parentage has no effect on the nationality of persons over the age of eighteen at the date of entry into force of the Ordinance (1 July 2006). With this article, the legislator aims to still refuse to children born before 30 June 1988, the recognition of their parentage on the mere basis of their being born.

²⁴ Amendment n°99, 21 April 2006: <http://www.assemblee-nationale.fr/12/pdf/amendements/2986/298600099.pdf> (our translation).

²⁵ *Rapport fait au nom de la commission des Lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale sur le projet de loi, adopté par l'Assemblée Nationale, après déclaration d'urgence, relatif à l'immigration et à l'intégration*, Rapport no.371, Sénat, Session ordinaire de 2005-2006, 31 May 2006, tome 1: 206 (our translation).

²⁶ Conseil d'Etat : CE 1^{er} avr. 1988: *Rec. Lebon 135; JCP 1988. IV. 203*.

²⁷ *Idem* (our translation).

A decision of the Court of Appeal in Caen considered that the act of birth of a girl born in 1981 in Niger to a French mother was not sufficient to establish her natural parentage and, hence, her French nationality. On 25 April 2006, the Cour de Cassation broke with this decision, on the basis of the European Convention of Human Rights, which guarantees respect for private and family life, including parentage (Roque 2008: 4–5). Another decision confirmed this jurisprudence on 13 March 2007. The Cour de Cassation based this decision not on the new article 311-25 of the Civil Code (as reformed by the July 2006 Law) but on the European Convention's provisions (Lagarde 2008, quoted in Roque 2008).

4.3 Citizenship ceremonies, Muslim veils, and the judge

If the rules that govern French nationality have not dramatically changed, the rationale behind the notion of progressive integration has transformed, and the role played by nationality in this integrative process has evolved. Without being a rupture in the history of French nationality, this evolution illustrates a rather culturalised conception of nationality in the context of a perceived crisis of the French republican model (Bertossi & Duyvendak 2009). This illustrates a growing concern about a perceived conflict between the values of French citizenship and Islam.

Firstly, access to French citizenship has progressively been sacralised as one of the key moments where the new citizens must be aware of the consequences of becoming French. The idea of a ceremony for the new French nationals was initially proposed in 1988 by the report of the Commission on Nationality (Long 1988). In 1993, an inter-ministerial circular allowed the *préfectures* to organise ceremonies where decrees of naturalisation were formally given to the new citizens.²⁸ These ceremonies remained, however, experimental.

The 24 July 2006 Law goes beyond these mere experiments, and creates a new chapter in the Civil Code, entitled 'On the ceremony of reception to citizenship' (art. 21-28 and 21-29). In the six months that follow their acquisition of French nationality, 'new citizens' are invited to this ceremony: that is, those who became French by decree, reintegration, declaration after marriage, or those who were born in France to foreign parents.

The ceremony is organised by the *préfet* in each *département* (in Paris, by the police *préfet*) or the city mayor with the authorisation of the *préfet*.²⁹ The explicit rationale behind this ceremony concerns the symbolic 'defense' of the republican principles against a perceived ethnic threat: 'in the course of communitarianism, xenophobia, various forms of violence, narrowing of identity fragmentation of the society, and the risks of diverse extremist agitation, the Republic is a vast room that does not always know, in terms of social communication, to claim its place and actual relevance, its legitimacy, and generosity'.³⁰ Interestingly, the assessment for the first year of implementation of these ceremonies by the Ministry of Immigration states that 96 per cent of all the ceremonies conducted in 77 departments of metropolitan France went 'without any incident', and 'only three prefectures

²⁸ Art. 146 of the Law of 13 August 2004 on the responsibilities of local authorities provides a legal incentive to mayors to organise a ceremony with persons who were recently naturalised and reside in the city.

²⁹ According to a survey conducted by the Ministry of Immigration, Integration, National Identity, and Solidarity Development, in March 2008, 22 per cent of the ceremonies were organised by cities (CICI 2008: 167). For a sociological evaluation of these ceremonies, see Mazouz 2007.

³⁰ Jean-Philippe Moinet, *Célébrer la bienvenue dans la République française. Étude sur les cérémonies célébrant l'acquisition de la nationalité française. Rapport à Madame la Ministre déléguée à la Cohésion sociale et à la parité, Madame Catherine Vautrin*, Paris, 18 April 2006 (35 p).

in the Paris region have stated problems caused by veiled women (ostentatious wear)' (CICI 2008: 167).

This focus on Muslim 'veiled women' is not incidental. In a few cases, women wearing a Muslim headscarf have not been admitted to the ceremony (Hajjat 2008: 10). When made aware of one of these cases, HALDE held this exclusion from the citizenship ceremony to be discriminatory. In its deliberation of June 2006, HALDE recalls that the obligation of religious neutrality only concerns civil servants and not the users of public services.³¹ The circular of 18 May 2004 for the application of the 15 March 2004 Law on *laïcité* had insisted on the strict perimeter of the law, that is, public schools. A letter from the Minister of the Interior, Nicolas Sarkozy, to the *préfet* asked not to ground the exclusion of anyone from the citizenship ceremonies on religious signs. Yet, the headscarf remains an element of tension for some personnel of the *préfectures* or local administration, revived after the 2002–2004 debates on *laïcité*.³²

More generally, this also concerns the importance of the Muslim headscarf as a sign of (defective) 'assimilation' of female applicants to French nationality. A 2000 circular emphasises a distinction between 'traditional headscarf' on the one hand, perceived as a 'normal' cultural practice, and, on the other hand, the *hijab* and the *chador*, read as proof of one's membership of 'fundamentalist Islam'.³³ This cardinal distinction proposed by the French state on the meaning of cultural vs. religious, traditional vs. fundamentalist behaviours is implemented by prefecture personnel during the naturalisation interview with female candidates (Hajjat 2008: 10). Another text of July 2005 states that the acquisition of French nationality by marriage can be refused in the case of family or personal behaviours that would contradict the 'values of French society', e.g. the 'choice of a lifestyle that imposes to the woman a subaltern and discriminatory social status'.³⁴

In 2008, a decision of the Conseil d'État attracted huge media coverage.³⁵ It confirmed the opposition of the government (on the ground of art. 21-4 of the Civil Code) to the acquisition by marriage of French nationality by a Moroccan woman, Mrs. Machbour, married to a French citizen, and mother of two French children. Though the claimant did demonstrate proper fluency in French, however, the Conseil d'État argued she 'adopted a radical practice of her religion, incompatible with the essential values of the French community, notably with the principle of gender equality'.³⁶

This argument was based on the fact that Mrs. Machbour had attended her 'assimilation interview' in the prefecture service wearing a *niqab*, and recognised that she and her husband were practicing salafist Islam. A police and social service inquiry highlighted that she had no social life on her own, and seemed to be submitted to her husband's authority. The Conseil d'État also argued that the decree that refused to give her French nationality

³¹ HALDE, 'Délibération relative au refus d'accès à la cérémonie de remise des décrets de naturalisation dans l'enceinte d'une Préfecture en raison du port du voile n°2006-131 du 05/06/2006': www.halde.fr/spip.php?page=art.&id_art=11664.

³² This issue is also at stake in other institutional fields: exclusion of female parents wearing the headscarf from extracurricular activities or school councils, or from marriage ceremonies in city councils.

³³ Circular DPM n° 2000-254 of 12 May 2000 on naturalisations, reintegrations in French nationality and loss of nationality, of the Ministry of Employment and Solidarity (Direction of population and migrations), the Ministry of Interior (Direction of public liberties and judicial affairs), not published in the Official Journal of the French Republic (NOR : MESN0030272C) (our translation).

³⁴ Interministerial Circular DPM/N 2 n° 2005-358 of 27 July 2005 on the procedure of acquisition of French nationality by declaration in case of marriage (NOR: SANN0530343C).

³⁵ Conseil d'État, 2^{ème} et 7^{ème} sous-sections, 'Refusal of French nationality to a person who shows a religious practice incompatible with the essential values of the French community', 27 June 2008, n° 286798.

³⁶ *Idem*.

because of a fault of assimilation (*défaut d'assimilation*) is not aimed and does not lead to a breach of her religious freedom. So far, the jurisprudence had assessed that wearing a Muslim headscarf could not be considered proof of defective assimilation.³⁷ When connected to Islam, the main fault of assimilation recognised by the judge used to be limited to proselytising practices.³⁸ Legal commentators have discussed whether the Mabchour case could be understood as an increasingly restrictive jurisprudence on these matters, in the aftermath of the 2004 Law on 'laïcité in public schools' and the recent French politics of Islam.

4.4 Reform plans: a transformation of the naturalisation procedure in 2010

Today, nationality does not appear on the centre stage of the debates on the future of French citizenship and national identity. After the 2003 and 2006 Laws on immigration and integration, there is no sign of any plans by the government to further reform the conditions of acquisition or loss of French nationality. In 2008, a debate has started, however, on the project to reform the procedure of naturalisation.

So far, naturalisation has been a two-step procedure, starting in each *département*, where the prefectures receive and evaluate the applications, and send them to the Under-Secretary of Naturalisations in Nantes. The *préfecture* bureaucrats pronounce either a favourable or an unfavourable opinion about naturalisation in each case, but the decision is taken in Nantes by experts of the central administration in charge of naturalisations.

A reform of the naturalisation procedure will come into force in 2010, and will suppress this centralised decision-making process. Instead of the central administration, the *préfectures* will take the decisions whether to accept or refuse a naturalisation. This reform was decided as part of the 'modernisation of public policies', the aim of which is to shorten the time needed for an application to be processed by the administration.

However, opponents to the reform clearly show that this transformation of the procedure will not result in its acceleration. Instead, they point to the risks that prefecture personnel will not guarantee the principle of equality before the law to the applicants for naturalisation. The approval rates will strikingly differ depending on which *préfecture* will receive the application. As Patrick Weil put it: 'this reform is aimed at selecting those [which the government] wants to naturalise or not, on the basis of criteria that none dare to mention today, such as the national origin [of the applicants]'.³⁹

5 Conclusions

The full history of French nationality law cannot be understood without also studying developments in other modern states. Nineteenth century European lawyers in charge of creating citizenship laws all read the same texts and adapted them to their individual countries as they saw fit (Weil 2002: 194). For example, after the Civil Code was adopted, in 1809, just

³⁷ Conseil d'État: 23 March 1994, *Kharsenas Najaf Abadi* (n°116144) ; 3 February 1999, *Mme El Yahyaoui* (n°161251) ; 19 November 1997, *Ben Halima* (n°169368).

³⁸ Conseil d'État: 29 July 2002, *Bouaffad* (n°224538); 9 June 1999, *Bendjama* (n°184713). Cour d'appel administrative in Nantes: 29 February 2000, *Azrak* (n°99NT01248).

³⁹ 'Réforme de la naturalisation: "une atteinte au principe d'égalité"', in *Libération* [daily newspaper], 20 April 2009.

before the war with Austria, Napoleon ordered the repatriation of all French people, even those who had acquired the nationality of countries at war with France. This clause was inspired by an English law concerning sailors who had become members of foreign navies (Weil 2002: 196). In addition, France's Civil Code influenced European approaches to nationality, most notably the notion of *ius sanguinis* that became the hallmark of modern nationality law in the majority of European states.

Relative to the rest of Europe, France was the first country to adopt *ius sanguinis* (in 1803) and was followed by most of the other countries in Europe. As France emerged as the only European country of immigration in Europe at the end of the nineteenth century, France was the first state to opt for *ius sanguinis*, only to reintroduce *ius soli* in 1889. The latter was then founded on socialisation rather than on the former principle of feudal allegiance. In the latter half of the twentieth century, most of the European countries became, willingly or not, countries of immigration and often followed the path taken by France. And, when European countries that followed the French tradition of *ius sanguinis* perceived themselves as countries of immigration, important legal changes were soon to follow. Laws that used *ius soli* to automatically attribute citizenship to grandchildren of immigrants were adopted by the Netherlands in 1953, Spain in 1982, and Belgium in 1992 (Weil & Hansen 1999). Across Europe various other measures have also been taken to ease access to citizenship for children of immigrants. With the exception of Denmark, Greece and Luxembourg, all of the EU-15 Member States allow children of immigrants born or raised on their soil to access citizenship without imposing on them all the requirements of the regular naturalisation procedure. So, as more and more countries receive large numbers of immigrants, and in turn switch to more liberal nationality laws, it seems that the borders of nationality law are directly linked with migration flows. Of course, nationality law has several layers, and we must analyse the access for immigrants and their children, the access for spouses, the rules governing denaturalisation, and the rules governing the change from one nationality to another.

The real tensions between ethnicity and universal principles attached to French nationality have fluctuated throughout the twentieth century. In recent years, nationality has increasingly been connected to notions of secularism and national identity defined as a 'civilization project' by the French president in his speech of 12 November 2009. Though it is too early to draw conclusions about this new politics of French national identity and its future impact on access to nationality, we find that, after fifteen years of debate and four legislative changes (1993, 1998, 2003, and 2006), the logic of the progressive integration of immigrants and their descendants that was adopted in 1889 does not seem to be in question.

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