A new strategic link between the Nation-State and the Citizen / A multidimensional citizenship in a globalized world

Patrick Weil

Citizenship can have different definitions. Most often, three of them are distinguished. The first is legal and links an individual to a nation state. This implies both rights and duties of membership. The second is political and civic. In a democracy, adult citizens are the 'sovereign' and elect their representatives while foreign residents also participate in other ways to the civil and political society. Finally there is the psychological dimension, "the feeling that one's belongs, is connected through one's sense of emotional attachment, identification and loyalty" (Carens, 2000, 166). In nation states, this feeling is created by membership in an 'imagined community', constructed from official cultural frames of social belonging within a national state" (Anderson, 1983). The three dimensions do not always correspond or coincide, but the legal one, symbolized by passports and national IDs give a legal status to almost 99% of the human beings, independently of their feeling or degree of participation. It is this dimension of citizenship that I will treat in this paper, the one that is synonymous of nationality in international law. It is the right whose absence means the status of statelessness as evoked by the U.S. Supreme Court: 'the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in development.'[1]

In the last twenty five years, nationality laws have been the arena of polarizing debates. The first set of debates was on the content of these laws. Through historical (Schuck and Smith) and comparative (Brubaker) studies, scholars have emphasized some 'structural' oppositions (ascription vs. consent, *jus soli* vs. *jus sanguinis*) that reflect different national identities or meanings of citizenship.

[1] Trop v. Dulles, 356 US 86, 101 n.33 (1958).

The second set of debates, the more recent, have been related to a crisis of legitimacy of nationality, due to external competition from other affiliations (sub, trans or supranational, ethnic, religious, gender related etc..) or its inegalitarian dimension.

I have already emphasized how the old debates over the different content of nationality laws have become irrelevant. Nationality laws based on Jus sanguinis (a French invention) or on Jus Soli (a maintained British tradition) have been able to converge and to develop rather independently from the conception of nations of national identity. In addition, I argue that the second set of debates have exaggerated the crisis for nationality and citizenship. Furthermore, far from been *dépassé*, National State citizenship has developped a new vitality, through a strategic collaboration between the individual citizen and the state whose interests have recently, in the context of globalization, converged.

When the structure of nationality was at stake

a) The false opposition *jus solil jus sanguinis*

As *jus soli* and *jus sanguinis* are the main tools of attribution of citizenship at birth[2], divergences between the nationality laws based on these two different tools have for a long time been presented as reflecting varying essential or dominant conceptions of the nation.

In a seminal but misleading work, Rogers Brubaker (1992) has associated the French *jus soli* with a more open and inclusive conception of the nation and contrasted it with the German *jus sanguinis*, blood-based descent as related to a closed, ethnic conception. “Existing definitions of citizenry – expansively combining *jus soli* and *jus sanguinis* in France, restrictively reflecting pure *jus sanguinis* in Germany – embody and express deeply rooted national self-understandings, more state-centered and assimilationnist in France, more ethno-cultural in Germany” concluding : “The politics of citizenship vis à vis immigrants pivots on national self-understanding, not on state or group interests” (Brubaker, 1992, 184). In a book, published recently in English (Weil, 2009), I have demonstrated that Brubaker is entirely mistaken. The principle of *jus sanguinis* was not created in Germany but in France: the French civil code of 1803,

[2] Other secondary tools are residence, marriage and military service.

against Napoleon Bonaparte's wish, broke with *jus soli* dominant in eighteenth-century Europe. *Jus soli* was perceived as a legacy of *feudalism* by the last remaining French Revolutionaries: human beings were linked to the lord who held the land where they were born. In their opposition to *jus soli*, they were joined by more traditional legal scholars – like François Tronchet - who defended the reintroduction and the adaptation of Roman law into modern nationality law. The grant of French nationality at birth only to a child born to a French father, either in France or abroad was not ethnically motivated. It was the creation of a modern independent citizen not anymore linked to the soil of the Sovereign as a permanent allegiance but a subject of rights. The citizens were not anymore property of the King and nationality would be transmitted like the family name by the *pater familias* (Weil, 2008, chap.1).

This French innovation, through constraints and imitation, progressively became the law of continental Europe (Weil, 2008, chap.7). The following countries adopted *jus sanguinis* in their civil code: Austria (1811), Belgium (1831), Spain (1837), Italy (1865), Russia (1864), Netherlands (1888), Norway (1892) and Sweden (1894). Prussia (1842) also borrowed from the French civil code its first legislation on nationality. Having nationality laws structured on the same basis - *jus sanguinis*, France and Germany would nevertheless defend, in the aftermath of the 1870-71 Franco-Prussian war, two very different conceptions of nations (cf. Renan vs. David Strauss). In parallel, the British tradition of *jus soli* was transplanted unbroken to its colonies in North America (the US and Canada), Europe (Ireland), Africa (South Africa), and Australia. [3] As much as these legal traditions kept fulfilling states' interests in terms of migration, or at least did not oppose it, the core of the national legislation was maintained. In countries of immigrants such as United States, Canada or Australia, *jus soli* allows immigrants' children to automatically acquire American, Canadian and Australian citizenship. For continental European countries that were countries of emigration, *jus sanguinis* allowed the maintenance of links with citizens abroad until their descendants lost touch. Yet at the end of the 19th century, when France felt itself becoming a country of massive European immigration, in its metropolitan territory and in colonial Algeria, it reintroduced *jus soli*,

[3] It also influenced Portugal and Denmark, until the Nordic countries decided to adopt a common nationality regime in the 1920's.

resuming a phenomenon that would concern the majority of *jus sanguinis* West European countries when they too would become countries of immigration in the second half of the 20th century. It took only ten years for a reunified Germany –whose national self-understanding has often been depicted as almost paradigmatically ethnic in character – to introduce it in 2000, a move almost impossible to make before 1989, as millions of compatriots were living outside the border of the federal republic of Germany.

Of course differences remain: the majority of Asian countries define nationality through *jus sanguinis*[4], under an original influence of French or German codes like Japan or for the state interest to keep control on nationals abroad like China [5] And countries that don't perceive themselves as countries of immigration or countries with unstable borders (like Israel in both cases[6]) have an interest to conserve *jus sanguinis.* But what is important is that the Western experience has demonstrated that nationality laws can change under different circumstances. They are not carved in stone. In the Western world, they have not been the reflection of a conception of nation or national identity but mainly the product of legal traditions or transplants, state interests, relation between subject of law and the state, immigration.

b) Can opposition between consent and ascription permit us to differentiate citizenship laws?

Peter Schuck and Rogers Smith have criticized in a controversial but important book ascriptive, automatic *jus soli* that attributes citizenship at birth without consent, and its relation to *feudalism* and its regime of perpetual allegiance. They pleaded for a new interpretation of the 14th amendment to the US Constitution, adopted in 1868 in the aftermath of the Civil War and which states in its Section 1." All persons born or

[4] It is the case in China, Indonesia, Japan, Philippines, Singapore, south-Korea. Exceptions are Malaysia and Thailand.

[5] In November, 1908, the representative of Chinese in Southeast Asia requested the promulgation of a Chinese Nationality Law in reaction to the threat of Netherlands who wanted to treat all Chinese immigrants in Java and "Southern Ocean" as colonial citizens. After the consultation of 11 nationality laws including those of UK, US, Germany, Austria, France, Spain, Romania, Portugal and Italy, on February 7, 1909, the Chinese *Nationality Law* based on jus sanguinis was promulgated. Li Guilian, "Wanqing Guoji Fa yu Guoji Tiaoli" [The Nationality Ordinance and the Nationality Law in Late Qing], in 7 *Zhanguo Fazhishi Kaozheng* [*Textual Research on Chinese Legal History*] (Yang Yifan ed.) 591 (2003).

[6] Israel with its law of return has the structure of a traditional country of emigration. Cf. Weil (2001).

naturalized in the United States, *and subject to the jurisdiction thereof*, are citizens of the United States and of the State wherein they reside". Having studied the debates around its adoption, they considered that "its drafters… intended the clause to institutionalize a requirement of mutual consent by both the individual and the polity" (Schuck, 2009). Therefore the clause should not apply to the children of illegal aliens born on the US territory.

Gerald Neuman has replied that:

> The meaning of the phrase "subject to the jurisdiction" has been well established for a century. It means actual subjection to the lawmaking power of the United States. It echoes the English common law notion of the King's "protection." United States v. Wong Kim Ark, 169 U.S. 649, 682 (1898). The common law exceptions included children of foreign diplomats, who were legally immune from domestic law, and children born to women accompanying invading armies, who were practically immune from domestic law. The original United States interpretation also included children born as members of Indian tribes, which were separate self-governing societies over which Congress did not exercise direct lawmaking authority.[7]

Beyond the historical interpretation of the debates, Schuck and Smith base their consent argument on some philosophers especially John Locke but also Harrington, Montesquieu or Rousseau (Schuck and Smith, 22-35) who had emphasized collective will and freedom of consent as a mean and a need to reshape modern polities. It seems to me that there is here confusion between the original content of the nationality link and its means of transmission.

From wherein comes this idea of consent? 'The word "nation" itself has a long lineage, as does the idea that the human race is naturally divided into nations. Until the eighteen-century age of revolutions, the idea of actively *constructing* a nation through political action lay beyond the mental horizons of Western Europeans. In European usage, nations were facts of nature: they signified basic divisions of the human species, not products of human will. From 1140, when a Norman bishop described the Welsh *natio* to the pope as a group distinct in" language, laws, habits, modes of judgment and customs," to 1694 when the first dictionary of the Académie Française defined *nation* a

[7] COMMITTEE ON THE JUDICIARY, TESTIMONY OF PROFESSOR GERALD L. NEUMAN, SUBCOMMITTEE ON IMMIGRATION AND CLAIMS AND SUBCOMMITTEE ON THE CONSTITUTION U.S. HOUSE OF REPRESENTATIVES, DECEMBER 13, 1995. Cf. also Neuman, 1996, ch.9.

"the inhabitants of a common country, who live under the same laws and use the same language", the meaning change relatively little.' David Bell, 2001, 5-6). The eighteenth-century is a break: philosophers who emphasize the right of citizens of each nation to define their rights freely symbolize a social evolution that will give birth to the American and the French Revolution. The 'principle of nationalities' develops in the 19th century. From the end of the eighteen century to the middle of the twentieth century, it is at the same time the transformation of the subjecthood to sovereignty of the people and the birth of nation states. These transformations occurred often through revolution or separation/independence or through explicit and formal expression of collective consent like referenda: numerous referenda and plebiscites (Savoy and Nice 1860, Saar 1924) took place to insure the independence of some nations or the attachment of some provinces to others.

When the French intellectual Ernest Renan defined in 1882 a "nation's existence" as "a daily plebiscite, just as an individual's existence is a perpetual affirmation of life" (Renan, 1882), it was, after the defeat of France against Prussia in 1870-1871, an invocation of the right of the Alsatiens-Lorrains, attached without consultation to the new German Empire, to choose their destinies through the expression of a collective will. At the same time of history, the French Parliament through the voice of a personal friend of Renan, Antonin Dubost, passed a law of 1889 that imposed French nationality at birth on many foreigners who did not want it (Weil, 2009, chapter 7)[8].

In fact, the transformation of the content of the link of nationality - the sovereign is not any more a king or an external power but an association of citizens - did not say

[8] In the revolutionary France, the 1790 law and the 1793 Constitution naturalized foreigners without their express formal consent. "Was naturalization not a contract between a government that adopts a foreigner and the foreigner himself"? This question was raised in 1806 in the French Supreme Court by Philippe-Antoine Merlin, the state Solicitor General, when that court had to rule on the case of Terence Mac-Mahon, an Irishman who had arrived in France in 1781 and married a Frenchwoman on 16 November 1789. Merlin's answer was clear: naturalization could undoubtedly "be established by a contract that results from a request by the foreigner for this favor, . . . but it may also be established by the sole power of the law, and without the foreigner's consent. The sovereign, by virtue of the simple fact that he is sovereign, may say: *I want all those who live in my states to be citizens*; and once he has said this, no one has the right to respond: *I do not want to be a citizen even though I live in your states.*" "If sire Mac-Mahon had not wanted to be French, what would he have said, what would he have done, in view of the law that declared him such? No doubt he would have said: Since they want me to be French because I have my home in France, I withdraw, I leave the service and I abandon the territory of a government by which I do not care to be adopted; and, not content to say it, he would have done it.(Weil, 2008, chapter1). Many German States would do the same until the creation of the German Empire which followed the Prussian law of 1842 for its citizenship rules (Fahmeir, 2000).

anything about the techniques of transmission of this link. Since human beings have a limited existence, states, in order to ensure their own continuity, have to find legal tools that not only attribute nationality but also transmit it from generation to generation (Niboyet, 1938, 110). These tools are mainly ascriptive *jus soli* or *jus sanguinis*.

The fact that the confusion could be made in a US context is understandable. In its first decades of existence, the U.S. was an addition of people who had successfully expressed their general revolutionary will to become an independent nation and of naturalized immigrants who had to express their will to become American. This special context contributed to the idea that citizenship was based on consent. But this trend has created confusion between the nature of the link and its mode of transmission which remained based on the British tradition of *jus soli* and applied to the following generations of Americans who did not have to fight for their independence or to naturalize.

Yet the feudal dimension of British *jus soli* - allegiance- was able to disappear in the US when the right of expatriation was recognized all along the 19th century (Martin, 195).

Attribution of nationality at birth through *jus sanguinis* and/or *jus soli* remains the best predictor that, through a family and/or a social education, the child will acquire "a social fact of attachment, a genuine connection of existence, interest and sentiments together with reciprocal rights and duties" which is the definition of nationality by the International Court of Justice since 1955. [9]

In addition, consent has developed as a technic permitted citizens at the border of different citizenries – long term foreign residents, mixed couples, dual citizen children- the ones really interested of expressing their will, to access or to leave a citizenship on their own will and not by discretionary law or decision of the state. ,The rights of not been automatically naturalized (foreign residents in 19th century German states or Revolutionary France, married women) or denaturalized, the right of been naturalized,

[9] Nottebohm case (Liechtenstein v.Guatemala), 1955 I.C.J. 4, 23 (Judgment of April 6, 1955). Notice here the evolution since the US Supreme Court in *Luria v. US* would in 1913 defined citizenship as followed: *Citizenship is membership in a political society, and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other.*

right of expatriation and, finally, right of acquisition of multiple citizenships have expanded.

The legitimacy of nationality

A decline of nation-state affiliation?

This expansion of rights of the individual at the border of multiple citizenships has led Yasemine Soysal, (Soysal, 1994) in a much remarked upon essay, to envision the emergence of rights beside or beyond citizenship, "based on universal personhood rather than national belonging" developed in western Europe, in favor or foreign residents. These new individual or collective rights and recognition would be exercised in a post national frame either at the local level where immigrants could more easily become citizens or at the European level that would guarantee him or her - against or beyond the state - some universal rights would lead to the weakening of the Nation State. It would also mean a new international legal framework based on human rights and personhood (Baubock, 1994, *Transnational citizenship)*. The European Union was the experimental ground for these new institutional affiliations. Right to vote at local elections for non EU citizens expanded, European courts were condemning nation states in cases related to immigration, deportation of foreigners and so on. Seilah Benhabib could write in 2006: 'we are facing today the 'disaggregation of citizenship'...Within the European Union, in which this disaggregation effect has proceeded most intensively, the privileges of political membership now accrue to all citizens of member countries of the Union who may be residing in territories other than those of their nationalities. It is no longer nationality of origin but EU citizenship that entitles one to these rights" (Benhabib 2006, 45-46).

It is true that, in the European Union, immigration rules have been more and more Europeanized, sometimes by Courts and in the name of treaties that are difficult for nation-states to abrogate (for example the European Convention of Human rights), more recently - and often not in favour of immigrants - by restrictive coordination between nation-states. But that Europeanization has been recently trumped by the re-nationalization of citizenship. Far from declining, that nationalization has been reinforced in the recent treaties of Amsterdam and Lisbon. Adopted with much difficulty

and through numerous obstacles, the European Constitutional Treaty will not be modified for some time. And its Article 20 states: "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship."[10] For the time being, national citizenship remains strong. It remains the sole basis for certain rights – international protection, right of repatriation, political participation, protection against expulsion without which the individual would be denuded of fundamental entitlements (Hansen, 2008) or for some basic other rights from which foreign residents can be excluded even after having been able to benefit from them as it happened in the US in 1996 with the social rights of foreign residents.

And it is a sign of its continuing necessity that the most recent debate raises the issue of demands for more justice not through the *dépassement* of citizenship, or even within citizenship, but *between* maintained national citizenships.

An unfair status?

In 1987, Joseph Carens wrote that citizenship is “the modern equivalent of feudal privilege – an inherited status that greatly enhances one’s life chance » (1987:252). Following his path twenty years later, Ayelet Shachar has cleverly contested the inequalitarian dimension of the generational transmission of an ascriptive citizenship (Shachar, 2007). Comparing birthright citizenship to automatically inherited property, she points out the unfairness of being born in Bangladesh to Bangladeshi parents compared to the same situation in Switzerland.

Citizenship and property have had old and evolving links. In medieval England, the capacity to possess land was reserved to the King’s subject (Smith, 1997, 44). In Ancien Regime France, transmission of properties was forbidden to a foreigner. Citizenship was defined negatively as the right to be able to inherit private property and the boundary between French people and aliens (*aubains*), was in fact defined, in legal

[10] This is actually the current wording of Article 17 of the EC-Treaty, as amended by the Treaty of Nice in 2001. When introduced with the 1992 Maastricht Treaty, the provision (then Art. 8 of the EC Treaty) read slightly different: "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union." The sentence pointing out that this is additional and not to replace national citizenship was added in 1997 only, with the Treaty of Amsterdam.

contests that arose over problems of inheritance and succession [11](Sahlins, 2004). Since, rights of inheritance and of property have been disconnected and citizenship created an independent and explicit status based on public and private rights. Yet there is a big difference: property can be sold, not citizenship, which can only be transmitted or attributed.

To criticize the institution of automatic citizenship, Shachar compares it with a *fee tail*, the inheritance regime of property that dates to medieval England; in order to keep the lands in the same hands it involved a land estate automatically transmitted from A to B and the heirs of his body (Shachar, 2007, 385). It is difficult to compare the fee tail system created to make certain that the land remained in a family to *jus soli* that permits children or grand children of foreigners born on the territory of a state to gets its nationality and not that of their parents. Within limits, fee tail system could be compared with jus sanguinis, the transmission of nationality by descent. But the fee tail system was often unegalitarian for example between male and females heirs, contrary to *jus sanguinis*. Ayelet Shachar could have more advantageously compare the latter to the mechanism, common in countries of civil law that impose automatic and egalitarian transmission of property to all heirs (males and females), not to preserve it, but to insure a principle of justice, independently of the will of the parents. The status comes from beyond the direct family or market through a mechanism that possesses an automatic and imposing dimension. Tocqueville was "surprised that ancient and modern writers have not attributed greater importance to the laws of inheritance and their effect on the progress of human affairs. They are, it is true, civil laws but they should head the list of all political institutions, for they have an unbelievable influence on the social state of peoples, and political laws are no more than the expression of that state. Moreover, their way of influencing society is both sure and uniform; in some sense they lay hands on each generation before it is born. And Tocqueville praised that instrument[12] when guided by the principles of equality, "it divides, shares, and spread property and power;..

[11] On the one hand, the royal right of escheat (*droit d'aubaine*) allowed the king to appropriate the possessions of any foreigner who died without a French heir. On the other hand, the child of a Frenchman could not inherit from their parents if they were deemed aubains, that is, if they had been born abroad.

[12] Ayelet Shahar quotes another excerpt of Tocqueville comments on on inheritance law and, in my view, inverts what he wanted to mean.

it grinds up or smashes everything that stands in its way; with the continual rise and fall of its hammer strokes, everything is reduced to a fine, impalpable dust, and that dust is the foundation for democracy."(Tocqueville, 1966, 44-45). Following that path, one could say that citizenship which was a right originally practiced by a minority of propriety owners extended as a status attributed automatically at birth independently of the will or the wealth of the parents and guaranteeing all newborn equal rights. It has also expanded outside parenthood or birth on the territory to foreign residents or spouses, soldiers etc. To what limit?

In his most recent book, the anthropologist Maurice Godelier, having studied the Melanesian tribes, has come to some conclusions that also speak to our modern societies (Godelier, 2007). These traditional societies divide all things between three categories: gift objects, tradable objects, and inalienable objects. The latter, that are forbidden to be sold or given because they have to be transmitted, constitute the core identity of the society. Automatic citizenship might be this kind of inalienable object which neither a generation nor a government can dispense with them without risking the destruction of the society itself. It therefore cannot be sold or too largely given.

This was not always the case. It was a time - quite recent - when democratic states stripped citizenship quite easily. At the beginning of the 20th century citizenship has become what I call "conditional" (Weil, 2010) for some increasing categories of citizens: women marrying foreigners, naturalized citizen in addition to those recruited in foreign armies or civil service or voting in foreign elections.

And the most famous American victim in 1909 (Weil, 2010) of denaturalization Emma Goldman, wrote in 1933:

> To have a country implies, first of all, the possession of a certain guarantee of security, the assurance of having some spot you can call your own and that no one can alienate from you. That is the essential significance of the idea of country, of citizenship. Divested of that, it becomes sheer mockery.
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> Up to the World War citizenship actually did stand for such a guarantee. . . . But the War has entirely changed the situation. . . . Citizenship has become bankrupt: it has lost its essential meaning, it s one-time guarantee. Deprivation of citizenship of citizenship, exile and deportation are practiced by every government; they have been established and accepted methods. Yet, for all their "legality,"

> denaturalization and expatriation are of the most primitive and cruel inhumanity.[13]

And it is true that following the United States, the United Kingdom instituted denaturalization proceedings it in 1914 and reinforced it in 1918. France created in 1915 for the duration of the War and installed it permanently in its legislation in 1927, not to speak about authoritarian regimes (Soviet Union, Fascist Italy and Nazi Germany).

However, from the Second World War, courts and democratic governments started to restrict the power of the state to denaturalize or expatriate. And in 1967, in a keystone decision, *Afroyim v. Rusk*[14] the U.S. Supreme Court reestablished in its status of citizen a naturalized American who had been deprived of it, for having voted in an Israeli election.

Justice Black wrote for the majority:

> In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country of the world – as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship.[15]

Citizenship is not anymore only a means of insuring the continuing existence of the state, it is modern sovereignty. This citizenship/sovereignty is indivisible and permanent. It cannot be stripped away by a government “a group of citizens temporarily in office.”

But it is also a personal identity right. There are other personal rights whose recognition contributes to the Constitution of the personality: names are given or transmitted, or religions. In a stimulating recent book, Peter Spiro (2008) describes accurately the rise of other affiliations (gender, sexual orientation, relation to God) among Americans acquiring nationality randomly by jus soli and enjoying more and

[13] A first version of "A Woman Without A Country" was published in the May 1909 edition of "Mother Earth". The version I am quoting was published in the magazine "Free Vistas"(ed. Joseph Ishill) in 1933. It was reprinted as a standalone pamphlet, under Goldman's name, by Cienfuegos Press in 1979.

[14] 387 U.S. 253 (1967).

[15] 387 U.S. 267 (1967).

more dual citizenship. But he doesn't convincingly demonstrate that people would be ready to abandon nationality for these new but not always so flexible affiliations. He himself does not envisage their substitution of classic conceptions of citizenship without a certain degree of reserve if not anxiety because of their lack of flexibility or openness. Emma Goldman spoke about "the assurance of having some spot you can call your own". Alexander Aleinikoff has expressed it in his way: "when a State strips an individual of her citizenship, it may be tearing the self apart.. you feel violated, naked. You ask, how can I be not an American? What am I, then? A part of oneself is gone" (Aleinikoff, 1986, 1495). The big advantage of state citizenship as managed by community of nations, it has succeeded in embracing 99% of human beings and ensuring them security of status and rights without which violence, anarchy, civil wars, the loss of basic rights and dissolution of modern societies would be at risk. Distributed on the basis of a potential and probable feeling of affiliation, is that it permits the most free circulation across different affiliations without a loss of rights or status.

Ayelet Shachar doesn't propose either the replacement of national citizenry or the creation of a market or a lottery of citizenship. Together with Ran Hirshl she suggests a sort of general world compensation based on taxes on the wealthiest polities which would be redistributed to the poorest (Shachar and Hirshl, 2007). As a principle it is an interesting proposal. Yet practically, this proposal would need a general agreement between all nations – at least all wealthy ones – to be achieved.[16]

Ayelet Shachar proposes also to move from an ascriptive *jus soli* or *jus sanguinis* to a system she names *jus nexi* that would recognize the link of real socialization as to progressively include in citizenry the long term foreign residents or exclude the

[16] Needless to say, it will be difficult to justify it towards citizens when inequalities within nations have increased and when inequalities between nations could be explained by dissymmetry in economic power. Would it not also not also appear as an unhealthy or perverse compensation for unjust Immigration Policies? How is it possible to justify, in terms of world justice policies the increasing number of national Immigration Policies which target the highest skill citizens of the developing countries? It deprives countries of origin of its potential elites that no money (procured through a kind of tax) can replace. If one country recruited the highest skill and pay a tax of wealth nation isn't practicing the most hypocrite and destructive policy. It is a much more unjust policy than the one Christian Joppke has described (2005): the new expansion of some nationality abroad by Italy, Spain, in favor of descendants of their passed emigrants: its benefits are after all distributed on an automatic basis and not on the personal selection of the foreign skilled worker. If Europe, the US or Canada are concerned with global justice, instead of favoring high skilled migrants' selection, shouldn't they reverse their policy and recruit lower skilled workers: it would thereby give opportunities to them and their heirs to benefit from the distribution of wealth and social capital. It would keep the elite of the country of origin at home.

descendants of expatriate citizens (Shachar, 2009, 178-182). In term of clarity, accessibility and security, Jus nexi would not be able to replace by any means *jus soli* or *jus sanguinis*; the process of inclusion of foreign residents exists[17], and surely it could be developed when it doesn't exist. But the desire to exclude descendants of expatriates contradicts a new trend: a new Alliance between the individual and the nation state.

Conclusion: the new Alliance between the individual and the nation state.

Let's recapitulate. Originally nationality was not always defined explicitly. It was imposed on individuals who did not have the right to leave their country without losing their nationality or to expatriate. Its access could be limited on racist or ethnic exclusion. Men and women were often unequal. The holding of multiple citizenships was forbidden. Forced denaturalization or expatriation existed.

When nationality became explicitly defined, it was also a time when the content of the link between the state and the individual was transformed. From personal allegiance to a King in exchange for his protection, nationality became the basis of civil and political rights in exchange for the respect of laws.

Techniques for attribution of nationality changed less than the content of the link. After all, *jus sanguinis*, *jus soli*, naturalization, right based on residence all existed before the 18th century. Techniques to ensure the legal reproduction of a state while ensuring every individual in the world a secure and permanent status are not numerous. But changes at the margins can have a big impact. Ascription was total and permanent. Not anymore total and permanent, it has become a system that guarantees to almost all human beings a link with a state while permitting them to shift citizenship or to cumulate them. Equality of men and women, a ban on racist and ethnic selection and on forced expatriation; extension of *jus soli* that has expanded the principle of equality among all the individuals living on the territories of the states; and finally acceptation of multiple citizenship have contributed to the diversification of the citizenry while reinforcing the legitimacy of nationality as the dominant mean of affiliation in the future, by satisfying all the individuals at the borders of numerous nationalities. .

[17] In Germany or in the Nordic Countries.

Sometimes, the liberal changes have not operated through a strategic decision of the state. Dual citizenship for example has developed mainly as the consequence of equality between men and women in the transmission of citizenship to their children. Second nationality is often 'dormant' - not practiced. Sometimes, it acts like a 'wild card' just in case of necessity. Such is the case, to take a different example, with Jews of the Diaspora and their potential Israeli citizenship or for the descendant of some French, Irish, Italian and Spanish emigrants living abroad (Joppke, 2005).

But recently, these unwished changes perceived as instruments of freedom or equality for some and few individuals, have become strategic instruments of states.

In fact, states have, moreover, moved from distrusting this sort of dual citizenship status, suspecting those who hold it of a kind of double game, to forging an alliance with its bearers. Italy, Spain and Ireland have attributed their citizenship to descendants of emigrants. Between 1998 and 2007, 786 000 descendants of Italians abroad (66% in Brazil and Argentina) have obtained an Italian passport(Tintori, 2009, 37). Italy again and France, following Spain and Portugal have created MPs seats for citizens abroad, single or multiple citizen equals. China, after a long period of break with foreign citizens of Chinese descent, welcomes a 'returned diaspora". After been vilified, they are now embodied with traditional Chinese values and traditions of "amilialism, business acumen and talent for wealth making". (Ong, 1999, 44). Naturalized Chinese abroad who should be expatriated, if Chinese Law would be followed, are not anymore, sometimes at their own expenses (NYT,). India have created in 2005 two statutes (Persons of Indian Origin 'PIO' and Overseas citizens of India OCI). The OCI status most advantageous permits persons of foreign nationality[18] but of Indian origin until the grandparents, to get the benefit of a lifetime visa, of permanent residence status in India and of the right to participate to Indian Business except for the buying of agricultural properties.

What started with Lafayette and his American honorary citizenship and the great foreign figures that were given the same status in the French Convention have now expanded to a mass of real or potential multiple citizens.

The dual citizens have become an instrument of the strategy of nation states in a globalized world: they are perceived by states as potential contributors to the

[18] Exception is made for citizens of Pakistan and Bangla-Desh.

transmission of values and interest abroad. In a globalized world, they can become agents of the influence of the state abroad, diffusers of the national culture or interest.

This cooperation has outmoded the opposition between the power of the State and the development of individual rights. It has decreased the attraction of other forms of affiliation (local, religious, ethnic etc.). Paradoxically, the development of accepted multiple nationality has reinforced the legitimacy of the citizenship link in the eyes of his/her bearers. Who would want more than few nationalities? For those who find nationality too restrictive (the wealthy jet set, for example, who seek freedom to move their money from place to place), what better than an extra nationality accepted by their state of origin, with all the guarantees or rights and protections it preserves? And for the immigrants and their families who want to naturalize in their country of residence, while keeping a real or symbolic affiliation with their country of origin, is there a better status? The new citizenry has therefore become multidimensional, still mainly territorially based but not anymore exclusively.

In the future, the citizenship of the nation state invested in globalization will have a territorial basis with permanent and transmissible ramifications abroad. It will include and resume a Roman tradition that permitted transmission of citizenship generation after generation independently of the descendants' presence on the territory of the Roman city (Thomas, 1995 & 1996, X). These bearers of two or more citizenship are a growing minority. The large majority of citizens who have and will keep one and only a sole citizenship have sometime the feeling of an unjust discrimination. [19] But they will keep the power to design laws and to select the rulers. And in daily life, unique or multiple – but independently of these differences – citizens contribute to different degrees to the functioning, legitimacy, influence and the reproduction of their nation state. These concrete degrees of implication are not new. They already existed in the 18th century (Sahlins, 1997). Rogers Smith has demonstrated how in the US, citizenship laws "usually result from compromises among rival views of civic identity "assumed in normal times with different levels of strength. Yet all these citizens with a common core status gather in exceptional times when the *enforcement* (Derrida, 1994) of one of the

[19] Among the people with one and only one citizenship, there is sometimes a feeling of inequality and of risk for the cohesion of nation state. Dual citizenship does not always give more rights to its holder. In fact, it can be the contrary; a Pakistanis' American is less protected in Pakistan where he or she cannot invoke any US protection than a solely American Citizen.

partners' (the individual or the state) right is not only necessary but required, when they are in need of protection.

It does not mean that everything is perfect in the best of all possible worlds of nationalities. In many countries of the world this new alliance between the state and the individual, based on the security of the status and a freedom of movement within and across nation state borders does not exists. Many states of the world still remain closed to any inclusion of immigrants and their children in the citizenry or to dual citizenship. In too many of them, proof of citizenship is difficult to make and passports difficult to obtain. The question of statelessness, an all too forgotten issue, should remain on the top of the world community agenda[20]. However, in the last decades, in many countries, nationality has succeeded, through flexibility and adaptation, in resuming a legitimacy of affiliation that is and will be in the future difficult to contest.

[20] According to Refugees International, an estimated 12 million people in the world are considered stateless. http://www.refugeesinternational.org/who-we-are/our-issues/statelessness

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