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European University Institute, Florence
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France[1]

Christophe Bertossi and Abdellali Hajjat

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, revolutionaries didn't use the legal concept of 'nationality'. The term and legal concept of nationality as the formal link between the individual and the state was developed later on over the course the 19th century. In the French context, nationality and citizenship are two distinct notions. On the one hand, citizenship encompasses the political rights and duties of the members of the national polity. During the French Revolution, many male foreigners were naturalised (the 1790 'Target' decree and 1791 Constitution) and half a dozen were elected to the Constituent Assembly (1792). But foreigners did not have the right to vote. Historically, one of the most universal definitions of citizenship was established by article 4 of the 1793 Constitution, which considers every foreign male over 21 who has been resident in France for a year to be a French citizen. However, this clause was never implemented and the Revolution revealed an ambivalent universalism since French women were excluded from citizenship. On the other hand, nationality signifies the legal relation between the State and the national individual. Nationality is the result of the 'statisation' (*étatisation*) of modern France as a nation state during the nineteenth century (Noiriel 2001). It defines membership of the French nation and the modes of incorporation of individuals in the 'community of the citizens' (Schnapper 1994).

The connection between citizenship and nationality is not univocal and has known many evolutions in the history of modern France. For example, French women were nationals but not complete citizens until 1944, since they couldn't vote and be eligible for political assemblies. In the Algerian colonial context, certain categories of people were also nationals but didn't have the same political and social rights as the French colonizers: the Jews from 1830 to 1870 Crémieux decree and the 'Muslim French' up to decolonisation. Until the Revolution of 1848, working-class men were French nationals but, since they didn't pay a certain amount of property tax (*cens*), they didn't have the right to vote. During certain periods of French history (Ancien Régime, 1814-1848, 1852-1870, 1889-1978), the law institutionalised discrimination between citizens by birth and naturalised people. For instance, from 1889 to 1978, foreigners who became French citizens by naturalisation couldn't vote for five years and, up to 1983, couldn't be eligible for political assemblies and become a civil servant for ten years (Weil 1995b, Slama 2003). So the dissociation between citizenship and nationality existed in the history of French national law and was synonymous of sexist or racial discrimination within the national community.

Nonetheless, the dissociation between nationality and citizenship didn't apply to foreigners living in France since nationality is the prerequisite of citizenship. With the limited exception of EU nationals after the Maastricht Treaty, a foreigner has to be a national if he wants to be an EU citizen. The strong connection between the idea of citizenship and the

[1] A first report on citizenship in France written by Patrick Weil and Alexis Spire was published in Rainer Bauböck, Eva Ersbøll, Kees Groenendijk & Harald Waldrauch (2006). The present report incorporates text from this earlier report, but Christophe Bertossi and Abdellali Hajjat are the only authors responsible 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.

Jacobin conception of an indivisible national sovereignty has made the dissociation between citizenship and nationality impossible for foreigners. Though both the former president François Mitterrand and François Hollande, the Socialist candidate for the presidency, promised respectively in 1981 and 2012 to give foreigners the right to vote at local elections, this hasn't happened yet[2]. Therefore, nationality is still the only path to entitlement to the complete rights of the citizen.

It was the 1889 law that essentially established French nationality law, as it currently exists. Since then, French nationality legislation has been a mixture of *ius soli*, *ius sanguinis* and state-controlled access to citizenship (e.g. naturalisation and marriage). *Ius sanguinis* was invented by the French Civil Code (1804) and 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. The capacity for these children to decline French nationality was abandoned in 1889 ('double *ius soli'*) and 1927 (*ius soli*). 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 (the latter situation corresponds to the principle of double *ius soli* adopted in 1851 and reinforced in 1889). 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 and have to fulfil some requirements: five years of residence, a permanent employment contract, being 'assimilated', etc. Furthermore, from 1961 to 2006, the majority of immigrants had no required period of residence if they came from a former colony or a francophone country: theoretically, they just had to be resident in France at the time of application. However, the naturalisation service did not encourage access to citizenship by decree and faces a backlog of applications. The rate of naturalisation nowadays is approximately 5 per cent of the foreign population in France.

The process of naturalisation in France is facilitated by a very tolerant position towards dual citizenship. Formally, France signed the 1963 Council of Europe Convention[3], 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 has also been 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 occur at the demand of the individual, who must reside in a foreign country and be a dual national for it to be granted, or of the State, which can use,

[2] One can note that, on 8 December 2011, the new left-wing majority of the Senate adopted at first reading the bill passed by the National Assembly on 3 May 2000 under the term of office of the leftist government.

[3] However, France denounced on 5 March 2009 the very binding Chapter I of that Convention. Thus, the wife of the Head of State, Carla Bruni-Sarkozy, has retained Italian citizenship when she acquired voluntarily, by naturalisation, French nationality.

under very strict legal conditions, the exceptional procedure of withdrawal (*déchéance*) of nationality.

At the same time, French nationality illustrates a tension between colour-blind principles of inclusiveness – an inclusiveness that 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 (e.g. Islam)[4], perceived as a threat to 'traditional' republican integration. Such tensions between a colour-blind approach and a politics of ethnicity were 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, new restrictive reforms occurred in 2003 and 2011. The right-wing government hardened the requirement of 'assimilation' and 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. Moreover, the process of decision changed completely in 2008 since the administration in charge of naturalisations moved from the ministry of Social Affairs to the ministry of Immigration and National Identity (2007) and the ministry of Interior (2010), and because of a general reform of public policy. Until 2008, there were two levels of decision: the *prefecture* processed the case and gave its opinion on the application, but it was the national administration in charge of naturalisations (*sous-direction de la nationalité*) that made the final decision. Since 2009, every *prefecture* is able to make a decision alone and the national level intervenes only in negative decisions. The hardening of naturalisation requirements and the reform of decision-making contributed to diminish dramatically the number of naturalisations in France.

2 Historical background and change

Contrary to what many historical accounts assert, *ius soli* wasn't the dominant criterion of citizenship law in France in the eighteenth century (Sahlins 2004). Both *ius soli* and *ius sanguinis* were criteria of citizenship and one can note that Ancien Régime lawyers tended to promote the latter (Slama 2003). So the French revolution didn't break from the so-called *ius soli* tradition. From 1790, the Revolution promoted *ius soli*, *ius sanguinis* and access to citizenship after a certain time of living and working in France.

Because *ius soli* connoted feudal allegiance, it was decided, against Napoleon Bonaparte's wishes (Weil 2002), that the new Civil Code – that passed in 1803 and came into force in 1804 – would grant French nationality at birth only to a child born to a French father,

[4] The same kind of debate took place in the 1890s regarding Italians and in the 1930s regarding Jewish refugees from Eastern countries.

either in France or abroad[5]. 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), even if in certain circumstances the government decided to accept exceptional naturalisations (28 March 1848 decree, 3 December 1849 law, 28 June 1867, 19 November 1870).

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. Some politicians considered the legal situation of these children as a 'privilege' since the 'price' of the draft was high (many years in the army) and because they were supposedly advantaged in the labour and matrimonial markets. 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 didn't achieve its goal since many young foreigners refused citizenship 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. After seven years of parliamentary debates, the law of 1889 was passed to resolve that 'problem' and proposed a legal 'solution': third and second-generation immigrants were automatically granted French citizenship and drafted (Brubaker 1992). On the one hand, the law removed the possibility of repudiation of French citizenship for the children of foreigners born in France (double *ius soli*; that possibility was restored by the law of 22 July 1893 in the case of a mother born in France). On the other, the law transformed, for children born in France of foreigners born abroad, the *option of choosing* to the *possibility of repudiation* by the majority (*ius soli*). Finally, the law encouraged the naturalisation of the foreign spouse of a French woman and their children and reduced, in some cases, the required period of ten years of residence. However, the law included a temporary (ten years) inability for naturalised citizens to be eligible for the National Assembly. Since then, *ius soli* has been at the heart of French nationality law. It is both a mechanism for granting French nationality automatically to second-generation 'immigrants' born in France and the simplest means by which French citizens can prove their nationality.[6]

[5] *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. Napoléon Bonaparte managed to impose this partial *ius soli* in the Constitution of the Year VIII, against the will of the State Council and of the Tribunat.

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

2.2 A century of legislative reforms

Since 1889, nationality legislation has been reformed more than a dozen times (1893, 1909, 1914, 1917, 1923, 1924, 1925, 1927, 1937, 1938, 1941, 1945, 1961, 1973, etc.), but it was the 1889 and 1927 laws that established the principles of French modern nationality law. After 1889, one of the most important nationality reforms 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 Delbruck Law of 22 July 1913, which allowed Germans who were naturalised abroad to retain their original citizenship, France instituted formal procedures for denaturalisation (*déchéance*) with the laws of 7 April 1915 and 18 June 1917. The procedure was initially overseen by the State Council, 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 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 a liberal citizenship legislation (Weil 2002) – the most liberal legislation the French Republic has ever known was the 1790 'Target' decree and the 1793 Constitution. In 1927, a new Code of Nationality was created since the articles related to nationality were no longer part of the Civil Code (Slama 2003).

The major goals of the 1927 law were to increase the number of naturalisations, to reverse a provision by which a wife took her husband's nationality, and to extend *ius sanguinis* to female lineage and to 'natural' children – the double *ius soli* is automatic for male lineage but not for female lineage, the latter including the possibility of repudiation. This law 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. But the legislator also established two ways to reject 'un-desirable' foreigners: the withdrawal of nationality after naturalisation (the principle of *déchéance* proposed in 1915 and confirmed in 1927) and the requirement of 'assimilation' to be evaluated by local civil servants (Hajjat 2012).

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 and anti-Semitism. 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, several laws between 1933 and 1935 delayed their entry to certain professions[7].

According to a new decree-law passed on 12 November 1938, naturalised citizens could not vote or be elected to public office for five years, could not be employed in public service and other state-related professions, 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 decided to revise 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

During the period of Liberation, the Vichy legislation was not immediately repealed (ordinance of 24 May 1944) because of the influence of Louis Chevalier and Georges Mauco on François de Menthon, Minister of Justice in the provisional government. However, the denaturalisations were revised and Algerian Jews had their citizenship restored after the abolition of the Crémieux decree by Vichy. Moreover, a number of procedures of denaturalisation (*déchéance*) were taken against active 'collaborators' and some '*insoumis*'.

After the war, in a speech to the Consultative Assembly on 3 March 1945, General de Gaulle suggested that 'the lack of population and the lack of births are the principle cause of French unhappiness and the main obstacles which prevent French recovery ... to secure the twelve million children that France will need in the next ten years, to reduce our absurd child

[7] The law of 19 July 1934 extended the ten-years exclusion of the newly naturalised from public service, ministerial offices and the legal profession; the laws of 21 April 1933 and 26 July 1935 excluded them temporarily from medical professions.

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 – Raymond Boulbès prepared it under the influence of Jacques Maury (professor of Law in Toulouse). 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 repeated most of the pre-war legislation and 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.

So the Ordinance of 1945 established a new Code of Nationality based on the main principles of pre-war republican legislations and clarified the distinction between the acquisition of nationality by lineage (*ius sanguinis*), by declaration (marriage or *ius soli*) and by decree (naturalisation). The government still had the right to reject 'undesirable' applicants and to denaturalise (*déchéance*) for some serious reasons. The system of temporary disability for the naturalised was still maintained and extended to all state-related professions, but some exceptions were accepted, for instance when the naturalised performed their military service or served France.

2.4 Naturalisation policy from 1945 to 1973

The new French people were mostly European

In the years immediately following 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'.

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 with a reputation for conservativism. In April 1952 he circulated a confidential memo that proposed reinstating 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. In 1946, the population called 'Armenians and Turks' were 7.1 per cent of those nationalised 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 shift 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 rate[8] fluctuated between 60 and 65 per cent while in previous years it had always been higher than 75 per cent. 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 keep the French nationality 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 helped to equalise 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). Moreover, the law put an end to the temporary disability for naturalised people who didn't have the right to vote and become civil servants for five to ten years – the laws of 1978 and 1982 repealed all discriminations against the naturalised. Nonetheless, since the law of 1973, the government can reject the acquisition of nationality by marriage on the motive of 'lack of assimilation'

[8] 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.

(*défaut d'assimilation*): the acquisition is no more automatic; the government has more power to reject applications.

This liberal legislation was applied in a political context in which the statute of immigration was being called into question. In 1974, the French government halted the immigration of new workers and families (Laurens 2009); 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 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 *départements* (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

The French government still 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 even if, since 1973, there is a procedure for certifying the loss of French nationality for descendants of French long-established in a foreign country (article 23-6 of the Civil Code). 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 for the contrary. 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 a procedure for certifying the loss of French nationality exists for descendants of French citizens long-established in a foreign country (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 five modifications of French nationality law (in 1993, 1998, 2003, 2006 and 2011), 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. It rather considered non-European foreigners and former colonial subjects as a 'problem' that could be solved in hardening the immigration policy and compromising their access to citizenship.

This right-wing initiative emerged from the politicisation of immigration, focused on 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, people from Maghreb countries 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 harden the 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, left-wing parties as well as various churches actively contested this proposal (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 State Council) 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 decrease the importance of *ius soli* 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* was devised.

Most importantly, the Law of 1993 removed the application of double *ius soli* to children born in France after 1st January 1994 to at least one parent born in a French territory that had become independent.[9] For example: a child born in France to parents from Senegal, Ivory Coast, or Madagascar who was 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 16 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 even if the government can reject it on grounds of 'lack of assimilation'. 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. Moreover, the law removed the residence requirement for the applicant who 'belongs to the French cultural and linguistic entity, when he/she is a national from territories or States whose official language or one of official languages is French, when French is his/her mother-tongue, or when he/she

[9] Although double *ius soli* is a principle that has been consistently applied by the republican regimes since 1851 and confirmed in all republican laws on naturalisation (1874, 1889, 1927, 1945), the Constitutional Council has not established this rule as a fundamental principle recognised by the laws of the Republic because it estimated, wrongly, that it was only applied 'in 1889 to meet particular requirements of conscription.' Yet it appears from the debates of the 1851 act, as those of 1889 and 1927, that the Republicans have also established this principle in a perspective of integration into the French nation of immigrants of the third generation (Resolution No. 93-321 DC on 20 July 1993, law amending the Code of nationality, cons. 18). One member of the Constitutional Council, the Dean Georges Vedel, later confessed that it was a mistake (Weil 2002).

justifies a minimum of five years in a French-teaching school' (article 21-20 of the Civil Code).

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 refused applications in 1996. After leaving school at the age of 16, 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 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 new laws (2003, 2006 and 2011)

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 existed since 1973 for the foreign spouse (modification of the article 39 of the Code of Nationality, then article 21-4 of the Civil Code after 1993), but 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. In recent 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[10].

[10] Since the law of 24 July 2006, children affiliated with ASE *before* their sixteenth birthday may obtain a

Moreover, as already mentioned, the law of 2006 suppress the exemption of the delay of residence (five years) for foreigners from ex-colonies and francophone countries. The hardening in the access to citizenship is also revealed by the governmental focus on the 'degree of assimilation'. As early as 1927, assimilation became a requirement for naturalisation, as the foreigner had to prove that he or she was sufficiently fluent in the French language and 'culturally assimilated' (Hajjat 2012). The 2003 law reinforced this condition and added the requirement of proving sufficient knowledge about the 'rights and duties' 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 'rights and duties' of 2003 became the 'essential principles and values of the Republic' in the 2011 law, which also introduced a test on the history and 'culture' of France. Between 1927 and 2011, 'linguistic assimilation' was judged in a 5 to 20 minutes interview by a civil servant who fulfils a '*procès-verbal d'assimilation*'[11]. But since 1st January 2012, 'linguistic assimilation' is no longer assessed by a civil servant: applicants must present a linguistic diploma, awarded by an institution accredited by the French State that certifies the B1 level of the Common European Framework of Reference for Languages[12].

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. The main explanation is that 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 *ius sanguinis* to individuals who are born to at least one French national (art. 18 and 18-1 of the Civil Code), or *ius 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

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temporary residence permit ('private and family life') under certain conditions regarding the seriousness of their studies, the nature of their links with the family in the country of origin and the (good) opinion of the ASE about their integration into French society. Nonetheless, no specific procedure was adopted for children affiliated with ASE *after* their sixteenth birthday. In both cases, the three-year delay is maintained if they want to subscribe to a declaration of French nationality.

[11] For more details on the assessment of 'degree of assimilation', see Hajjat (2012: 121-233).

[12] Decree n°2011-1265, 11 October 2011.

virtue of double *ius 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[13].

The acquisition of French nationality after birth

The three main modes of acquisition after birth concern automatic *ius soli* after birth (16.1 per cent of all acquisitions in 2010), acquisition by marriage (15.3 per cent), and acquisition by discretionary naturalisation (66 per cent).

Over the last decade, figures show a constant increase in 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).

[13] Nontheless, it remains some discriminations in the transitory regime (Slama 2011; Mulon 2011).

Table 1: Acquisitions of nationality in France broken down by mode of acquisition (1995-2010)

		Acquisitions by decree			Acquisition by declaration		
	Total	Naturalisa-tions	Reinte-grations	by marriage (including collective effects)	Anticipated declaration	Manifesta-tion of will	Other decla-rations
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	-	1,280
2007	132,002	64,046	6,049	30,989	26,945	-	1,397
2008	137,452	84,323	7,595	16,213	25,639	-	1,347
2009	135,842	84,730	7,218	16,355	23,771	-	1,405
2010	143,275	88,509	6,064	21,923	23,086	-	1,238

Sources: *Secrétariat général à l'immigration et à l'intégration — Ministère de l'Intérieur*.

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 (10 per cent) or Asians (17 per cent). Since 2006, the proportion of people from Maghreb countries has decreased (down to 40 per cent in 2010) whereas the proportion of Sub-Saharans increased to 17 per cent in 2010.

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 *ius soli* was finally restored by the 1998 Law: foreigners born in France to foreign parents become French nationals at the age of 18, if they live in France and can prove they have had their residence in France (continuously or not) for five years since the age of 11 (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), these figures are only estimates.[14] 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 13 (art. 21- 11). Most applicants who anticipate are between the ages of 13 and 15 years old (70 per cent). Since the creation of this mode of acquisition in 1999, the figure has constantly decreased (see table 1; Regnard 2006b: 140). But, since 2006, it's difficult to have an accurate vision of the repartition by nationality. Whereas the proportion of Sub-Saharans (around 10-13 per cent) and Asians (around 16 per cent) was stable, the proportion of people from Maghreb countries decreased dramatically: only 31 per cent in 2009 and 22 per cent in 2010. At the same time, the proportion of statistical category of '*Non ventilés & apatrides*' increased from 0.5 per cent in 2005 to 9 per cent in 2009, and even 35 per cent in 2010! There is thus a real problem with the data provided by the administration.[15]

French by declaration: marriage

French nationality can also be acquired by declaration after marriage. This mode concerns various populations,[16] 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 of a French national can claim French nationality after four years[17] 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 (since 2007, the Ministry of Immigration and since 2010, the Ministry of Interior). The candidate must demonstrate knowledge of the French language and of the responsibilities attached to French citizenship. The government can oppose the acquisition by declaration within two years of the marriage being solemnised.

Official figures show the effect of the 2003 Law (see table 1): the number of new French nationals by acquisition after marriage decreased because of the more restrictive conditions (from one to two years of marriage). A further restriction adopted with the 2006 Law (from two to four years) had a similar impact: the number shrank from 30,989 in 2007 to

[14] After turning 18, 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.
[15] The administration didn't explain the unexpected increase of the 'Non ventilés & apatrides' among the new French nationals by acquisition after birth. See the figures on the website: http://www.immigration.gouv.fr/IMG/xls/7_stats_naturalisations_anticip13-17ans_2010_corr.xls
[16] With the acquisition by marriage, declarations also include children under the age of 18 who are adopted by a French national or taken care by social services, and persons enjoying the possession of the '*état de Francais'* (actual belonging to French society) for a period of 10 years.
[17] The delay rises up to five years if, at the time of the declaration, the foreign spouse does not justify either an uninterrupted and regular residence for at least three years in France after the marriage, or is not able to prove that, when the couple lived together abroad, his/her French spouse was officialy registered as a French national settled outside France.

16,213 in 2008 (50 per cent less). Thus, the number of acquisitions by marriage increased by more than 60 per cent from 1995 to 2003, and then decreased dramatically after 2008.

The distribution by origin of people acquiring French nationality by marriage remained the same over the last 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 citizens by marriage originating from an African country has doubled, mainly because of an increase of Northern Africans. These figures of acquisition by marriage are of tremendous political sensitivity, within the '*immigration choisie'* rationale and reflect 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 18; proving five years of permanent residence in France; not having been convicted and condemned; being in good health; showing a satisfying degree of 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 18 must also demonstrate a permanent residence in France. Otherwise, naturalisation is refused by the administration. The rate of positive decisions by the administration amounted to 75 per cent for first-time applications but since 2011, the number of naturalisations decreased 30 per cent, from 94,500 in 2010 to 66,000 in 2011.[18]

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.[19] 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 for 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).

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[18] Public speech of Claude Guéant, Ministre of the Interior, *Les résultats de la politique migratoire* [The results of migration policy], Paris, 10 January 2012.

[19] 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 for 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).

Most of the new French citizens by discretionary naturalisation originate from Northern African countries (46 per cent of all acquisitions by decree in 2010). Moroccans constitute the first nationality of origin (13,915 in 2010), followed by Algerians (11,974). 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 rate of positive decisions by the administration amounted to 75 per cent for first-time applications but since 2011 the number of naturalisations decreased by 30 per cent, from 94,573 in 2010 to 66,273 in 2011 (see table 1). Thus, the rate of negative decisions has risen from 32,4 per cent in 2009 to 53,2 per cent in 2011 (and 55,3 per cent for the first 2012 semester). In other words, since 2011 around half of the applications have been rejected.[20]

That situation can be explained by the combination of the reform of the naturalisation procedure decided in 2008 and implemented in 2010 (see below) and of an unprecedented restrictive policy driven by the right-wing government. Indeed, the government sent confidential instructions to local civil servants so that some requirements – such as "professional integration", no "illegal staying" (even if it occurred more than ten years before the date of application) and "loyalty" – became more difficult to fulfil. For example, 78 per cent of the rise in negative decisions recorded in 2011 is due to the lack of "professional integration": applicants who did not have an permanent job contract were systematically rejected. The government newly elected in 2012 decided to denounce this restrictive policy: the circular of 16 October 2012 has softened the job contract requirement.

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 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.[21] 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[22].

In other cases, nationality can be lost by decree—mainly for those who do not meet the conditions of a loss by declaration. In 2010, the ministry in charge of naturalisations published 42 such decrees[23]. Eventually, the loss of French nationality can be stated by the judge when strict conditions are met: being a French national *ius sanguinis* but having a permanent residence abroad, or born to parents who have not lived in France for at least 50 years.

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[20] Patrick Mennucci, « Immigration, asile et intégration », avis n°258, Assemblée nationale, 10 October 2012.
[21] 'Un Français déchu de sa nationalité après s'être marié à un Néerlandais', in *Libération* [daily newspaper], 1 May 2008.
[22] Since 2009, Chapter I of the Convention has been denounced by the French government.
[23] On the presumption of fraud hanging over mixed couples for breach of common life under the law of 1993 and the jurisprudence of the Court of Cassation, see QPC No. 2012-227 on articles 21-1 and 26 of the Civil Code which will be judged by the Constitutional Council in March 2012.

Finally, the government administration has always been able to revoke French citizenship, under the authority of the State Council, if a newly naturalised citizen commits very serious crimes (terrorism, espionage, etc.) 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 *déchéance* 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 (such as terrorism). Five decrees of denaturalisation were published in 2006, and none since then.

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 administrating 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. The process of decision changed completely in 2008. Until 2008, there were two levels of decision: the *prefecture* processed the case and gave its opinion on the application, but it was the national administration in charge of naturalisations (*sous-direction de la nationalité*) that made the final decision. Since 2010 every *prefecture* is able to take a decision alone and the national level intervenes only in positive decisions. So the *prefecture* must verify that the foreigner has the right to become French. In the application the candidate has to provide paperwork proving his or her residence in France. The candidate is then subject to an investigation by the gendarmes, the police, and intelligence services, before verification that the applicant is eligible is given (decree of 30 December 1993 modified by the decree of 29 June 2010).

Investigations into eligibility have always had lots of room for ambiguity and personal interpretation as to how much rigour is required. For example, starting in the mid-1970s the applications of foreign students were very often 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 a discretionary 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 an 'assimilation exam'. Finally, the prefect writes a report on the political, demographic, and professional characteristics of the applicant, so as to make the decision. Before 2009, the application was then transmitted to the Under Secretary of Naturalisations who is in charge of processing all applications. But since 2009, the prefect has the power to naturalise and if he rejects the application, the file is transmitted to the Under Secretary.

Treatment of the applications

Before 2010 each application was examined at the national level by a member of staff who reported, on an 'instruction page', the most important aspects of the file likely to be analysed during the deliberations. For example, they highlighted the length of residence in France, the opinion of *prefecture* agents, 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 were 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 delays without hiring additional staff. In 2002, the average waiting period for having an application reviewed by the Under Secretary of Naturalisations was 16 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 was examined by the head of the office, and if necessary, by the Under Secretary of Naturalisations (Weil 2005). Only in rare cases was the final decision the product of two or three successive opinions. But this process at the national level was reformed in 2009 so that it examines the application only if the prefect rejects the application.

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' (art. 21-24 of the Civil Code). 40 per cent of the applications deemed 'unacceptable' are because they fail these criteria. During the 1950s, when most applicants were European, the criterion of 'assimilation' was rarely used and mainly signified linguistic competence.[24] When the applicants increasingly came from sub-Saharan Africa in 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 approaches.[25] 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

[24] In a decision of 12 March 1953 ('The Spouse Bazso'), the State Council overruled a judgement of the administration that had considered an applicant insufficiently assimilated because of ongoing ties with a foreign country.

[25] 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'. For more details on the issues of hijab and polygamy, see Hajjat (2012: 235-294)

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 State Council

Since the beginning of the 1980s the number of appeals brought before the Administrative Court, the Court of Appeal (both at Nantes) and the State Council 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.[26]

The rise of appeals and consequently the development of State Council jurisprudence have restricted 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 required written justifications of all refusals of nationality. Bureaucrats who examine and decide on the naturalisation files must present hard grounds for supporting their decisions, knowing that the grounds 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).[27] 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 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, in reality 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). The 2008 confirmation by the State Council of a refusal of nationality (by marriage) for a Moroccan woman married to a French national illustrates this issue.[28]

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

[26] Decision of the State Council of 27 May 1983.
[27] According to the 2006 annual report of the Direction de la Population et des Migrations, quoted in 'Contentieux administratif des refus d'acquisition de la nationalité', in *Plein Droit,* n°79, December 2008, p. 1.
[28] Conseil d'Etat, 27 June 2008, *Mrs. F. Machbour* (decision n°286798, *AJDA* 2008, étude H. Zeghbib , note P. Chrestia ; D. 2009. 345 , note C. Vallar).

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'[29].

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 for 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 French society on the other, more vividly perceived after the urban riots that have occurred sporadically since the 1980s.

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. Nationality as a guarantee of equality for all French citizens was contradicted by racial discrimination in this perspective (Conseil d'État 1997; HCI 1998).

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,[30] 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 debate 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 for French nationals), a claim made in 2000 by GELD[31] and repeated by HALDE in March 2009[32].[33]

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[29] 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).

[30] Haute Autorité de Lutte contre les Discriminations et pour l'Egalité – High Authority of the Fight Against Discrimination and for Equality, created by the Law of 30 December 2004.

[31] Groupe d'Etudes et de Lutte contre les Discriminations – Group for the Study and the Fight against Discrimination, created in 1999, in anticipation of HALDE.

[32] HALDE was merged into a global institution called the 'Défenseur des droits' in 2011.

However, if this new anti-discrimination agenda contributed to stemming the politicisation of nationality and integration issues, it 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 Islam under the auspices of the Minister of the Interior Nicolas Sarkozy in 2003 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 prefect' 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 major 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, 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 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 in two ways during 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

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

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)*. The Law of 24 July 2006 aimed to promote 'a chosen immigration and a successful integration'.[34]

The rationale behind this new policy is supported by several claims. First, the former 'zero immigration' policies have been unable to properly channel the flows of immigrants to France over the last three decades. Second, the problem of integration is arguably caused by the fact that most migrants are 'family migrants' and not 'labour migrants'. France needs migrant workers, mainly due to labour shortages. Family migrants are seen as an 'obstacle' 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, low-skilled), their motivation to come to France (relatives 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).[35] These different categorisations of migrants are rooted in a culturalised reading of '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'integration'* 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 must show a satisfactory knowledge of the French language[36] 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.

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[34] 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. 223e séance de la session ordinaire 2005-2006,* 17 May 2006 (our translation).

[35] The Mazeaud Commission blocked in July 2008 the project of ethnic quotas to select immigration and the draft of constitutional reform was abandoned by the President Nicolas Sarkozy.

[36] 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.

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 identified during 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'.[37]

Since 2003, every new immigration law has affected nationality rules. With the objective of balance between 'family' and 'labour' migration to France, the first targets of the 2006 Law have been the foreign spouses of French nationals.[38] 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'.[39]

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 condemnation for the mutilation of a child under the age of fifteen (i.e. genital mutilation) constitute a 'lack 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 committing them'.[40] 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 aimed to give systematic and formal legal grounds 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 was the fact that some categories of foreign nationals would lose those privileges, which they had gained after decolonisation. 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

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

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

[39] Nicolas Sarkozy, 'Immigration et Intégration : Discussion d'un projet de loi déclare 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, 107e jour de séance de la session,* JORF, 7 June 2006, p. 4317 (our translation).

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

possibility was repealed (art. 82 of the law) and a five-year condition applied 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 part, 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'.[41] Even though the legislative report recalls that administrative jurisprudence recognised the benefit of this exemption,[42] it concludes nevertheless: 'this exemption cannot guarantee the proper integration of the foreign national into French society'.[43]

Other categories of foreign nationals are affected by 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. Exemption from the residence requirement remains for three categories only: those who served in the French military or, those 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 18 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.[44]

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).

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[41] *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).

[42] Conseil d'Etat : CE 1er avr. 1988: *Rec. Lebon 135; JCP 1988. IV. 203.*

[43] *Idem* (our translation).

[44] This clearly discriminatory article was nonetheless declared constitutional by the Constitutional Council, but France will surely be condemned by the European Court on Human Rights (see CEDH, 13 July 2010, Kurić c. Slovénie; 11 October 2011, Genovese c. Malte).

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 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 *prefectures* to organise ceremonies where decrees of naturalisation were formally given to the new citizens.[45] These ceremonies remained, however, non compulsory and experimental.

The 24 July 2006 Law goes beyond 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 *prefect* in each *département* (in Paris, by the police *prefect)* or the city mayor with the authorisation of the *prefect.*[46] The explicit rationale behind this ceremony concerns the symbolic 'defence' of 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'.[47] 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 in the Paris region have reported 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 2012: 211). When made aware of one 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.[48] The circular of 18 May 2004 for the application of the 15 March 2004 Law on

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[45] 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.

[46] 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.

[47] Jean-Philippe Moinet, *Célébrer la bienvenue dans la République française. Etude 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.).

[48] HALDE, 'Délibération relative au refus d'accès à la cérémonie de remise des décrets de naturalisation dans

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 *prefect* 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 *prefectures* or local administration, revived after the 2002-2004 debates on *laïcité.*[49]

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'.[50] 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'.[51]

In 2008, a decision of the State Council attracted huge media coverage.[52] 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. Mabchour, married to a French citizen, and mother of two French children. Though the claimant did demonstrate proper fluency in French, however, the State Council 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'.[53]

This argument was based on the fact that Mrs. Mabchour had attended her 'assimilation interview' in the prefecture service wearing a *niqab,* and recognised that she and her husband were practicing 'salafi 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 State Council also argued that the decree that refused to give her French nationality 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.[54] When connected to Islam, the main fault of assimilation recognised by the judge used to be limited to proselytising practices.[55] Legal commentators have discussed whether the Mabchour case could be

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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

[49] This issue is also at stake in other institutional fields: exclusion of female parents wearing the headscarf from extracurricular activities or school councils, from marriage ceremonies in city councils, or from the job of nurse financed by the public funds (see Hajjat & Mohammed 2011).

[50] 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).

[51] 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).

[52] Conseil d'Etat, 2ème et 7ème 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.

[53] *Idem*.

[54] 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).

[55] 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).

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 2008

Today, nationality does not appear on the centre stage of the debates on the future of French citizenship and national identity. After the 2003, 2006 and 2011 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. However, since 2008 there has been debate over 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 *prefecture* 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 came into force in 2009, and suppressed this centralised decision-making process. Instead of the central administration, the *prefectures* take the decision whether to accept a request for naturalisation. If they refuse, the file is transmitted to the national administration. 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 do not guarantee the principle of equality before the law to the applicants for naturalisation. The approval rates will strikingly differ depending on which *prefecture* receives 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]'.[56]

Following the 'great debate' on 'national identity' (2009-2010), which quickly turned into a fiasco, and the Grenoble speech of President Sarkozy (summer of 2010), who condemned the alleged delinquency of recently naturalized French, the 'Besson' bill was drafted. The latter proposed to add, among cases of deprivation of nationality according to article 21-5 of the Civil Code, the case of the naturalised for less than ten years convicted of murder or violence causing the death of a person holding public authority. This reform was aborted because it stigmatized without reason a category of French citizens. However, the law of 16 June 2011 extended the repression of 'white' marriages to 'gray' marriages (marriage contracted by a foreigner who hides 'his intentions to his French spouse' – Immigration Code, art. L. 623-1, 1st al.). It also requires new French citizens to indicate the nationalities 'that he already has, (...) that he keeps in addition to the French nationality [or] (...) which he wishes to abandon' (Civil Code, art. 21-27-1).

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

5 Conclusions

The full history of French nationality law cannot be understood without 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 1803, just 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 were also 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 the political perception of migration flows. Of course, nationality law has several layers, and we must analyse access for immigrants and their children, 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 five legislative changes (1993, 1998, 2003, 2006 and 2011), 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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