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'Terrorist' citizens and the human right to nationality

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ABSTRACT

Citizenship deprivation – the power of the state to take away citizenship against the wishes of the individual concerned – is gaining momentum among policy-makers and scholars. This interest is linked with changes introduced by a number of European states with a view to make it easier to take away citizenship from persons engaged in terrorist activities (Austria, Belgium, Denmark, France, the Netherlands, and the United Kingdom). This article focuses on two such countries, the United Kingdom and France, which have changed their nationality legislations to make it easier to take away citizenship because it is deemed conducive to the public good (UK) or because the person concerned was convicted of a terrorist offence (France). Changes to citizenship deprivation powers were justified by national security concerns involving citizens engaged in terrorist activities at home and, increasingly, abroad. While home-grown terrorists and foreign 'terrorist' fighters pose a threat to national security, the use of nationality legislation to deal with them as security threats encroaches upon their human right to nationality. The British and French cases illustrate how far states can go in the exercise of citizenship deprivation powers, and to what extent human rights standards limit state powers of deprivation.

KEYWORDS

France; United Kingdom; national security; criminal; public good; statelessness; arbitrary

Introduction

Citizenship scholars have rediscovered citizenship deprivation after a relatively long period during which nationality acquisition and dual nationality have dominated research and public agendas. This interest is driven by legislative changes introduced by European states (Austria, Belgium, Denmark, France, the Netherlands, and UK), and has led to normative debates on the legitimacy and compatibility of citizenship deprivation powers with the principles that underpin liberal democracies (Bauböck and Paskalev 2015; Gibney 2012). Examining citizenship deprivation from the perspective of liberalism as the underlying political ideology of European states, Gibney (2012) argues that it highlights profound tensions between the values held by liberals and the individual's right to citizenship somewhere. The resurgence of citizenship deprivation powers has been interpreted as the downside of liberal citizenship policies enacted by European states in the twentieth and twenty-first centuries

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to incorporate large numbers of migrants present on their territories (Howard 2010; Joppke 2010). British and French political and parliamentary debates concerning citizenship deprivation highlight fears that by making citizenship acquisition easier and relaxing dual nationality rules, national citizenship becomes lighter and loses its exceptionality. In these cases, making it easier to lose citizenship becomes the reverse side of 'citizenship-light' as a way to reassure native populations of citizenship's worth (Home Office 2002; Mantu 2015, 182; 249). Focusing on France, Kingston (2005, 24) argues that we are witnessing a new way of conceptualizing state power since depriving individuals of their citizenship status is a form of penal sanction to be applied to citizens in response to perceived crimes against public security by act or association. The symbolic deployment of citizenship deprivation powers to deal with dangerous citizens and police the boundaries of the nation can also be discussed in light of their historical use to question the citizenly credentials of naturalized citizens and of citizens with a foreign background during politically or economically unstable times (Mantu 2015, 339). This allows for a discussion of such powers as part of the design of modern nationality legislations and embedded in the configuration of citizenship (as both legal status and belonging) in relation to an inclusion/exclusion binary. Their analysis suggests a complex picture in which citizenship deprivation targeting dual nationals and citizens with an immigrant background points toward interlinkages between migration, asylum, and notions of (in)security, which should help us examine critically the claim that citizenship deprivation is primarily linked to counter-terrorism strategies.

This article moves away from normative discussions concerning the legitimacy of citizenship deprivation in liberal democracies. Instead, the focus is on the legal configuration of the human right to nationality and its impact on attempts to change nationality laws in the UK and France to make it easier for the executive to deprive of citizenship on national security grounds. The argument it puts forwards is that 'terrorist' citizens enjoy the right to a nationality and that state measures stripping them of their status must comply with legal standards developed to protect this right. Although nationality is seen as part and parcel of state sovereignty, states do not enjoy unrestricted powers when it comes to the regulation of their nationality laws. As members of the international community of states, the UK and France are bound by *jus cogens* norms applicable in the field of nationality and by any other multilateral or bilateral agreements they have entered into addressing nationality and human rights issues. The interplay between international legal standards concerning nationality and the national practice of citizenship deprivation powers in France and the UK shows both the limits and success of regulating nationality issues at supranational levels.

The human right to nationality

The power of the state to take away nationality needs to be examined in light of the human right to nationality. Since a state's nationality decisions will produce legal effects within its own internal order as well as at the international level, states have acknowledged the need to agree on a modicum of nationality standards that shape their powers to act in this field (Kesby 2012; Spiro 2011). In the current state of development of international law, citizenship deprivation is not *per se* arbitrary since states are entitled to withdraw nationality against the wishes of the person concerned, provided that certain legal safeguards are respected. These safeguards stem from a variety of sources adopted at international, regional and national levels. They include human rights obligations, such as the prohibition of arbitrary deprivation

of nationality, the creation of statelessness and respect for private life, and, for France and the UK, obligations stemming from EU membership. These obligations are relevant for legislators, authorities taking nationality decisions, and courts or bodies reviewing such decisions. The central point of the legal framework protecting the right to nationality is Article 15 of the Universal Declaration of Human Rights (UDHR) stating that everyone has the right to a nationality, and prohibiting arbitrary deprivation of nationality. The term 'arbitrary' is understood to mean more than illegal since 'deprivation can be arbitrary when it is discriminatory, it results in statelessness or it is carried out in order to avoid conferral of rights which according to international human rights law are enjoyed only by citizens' (Batchelor 2006, 10; Blitz 2009; Zilbershats 2002, 20). UN bodies state that a measure of citizenship deprivation needs to meet standards of necessity, proportionality, and reasonableness in order to not be seen as arbitrary (UN Human Rights Council 2013, 2011). Thus, it must be provided by law, serve a legitimate purpose, be proportionate, be the least intrusive measure possible to achieve their legitimate aim, and respect procedural standards of justice that allow for it to be challenged. While there is no specialized UN convention addressing the right to nationality, the main UN human rights instruments contain provisions concerning the nationality of specific groups (e.g. children, women). Moreover, Article 13 UDHR and Article 12(2) of the International Covenant on Civil and Political Rights (ICCPR) proclaim the right to enter and leave one's own country and prohibit arbitrary deprivation thereof. The UN Human Rights Committee defines the concept of 'own country' broadly and going beyond nationality in a formal sense. Persons deprived of nationality in violation of international law are seen as covered by the scope of Article 12(4) ICCPR (General Comment 27:para 20). The Committee views state actions as arbitrary where they strip a person of nationality or expel him/her to another country with a view to prevent that person from entering his/her own country (General Comment 27:para 21; International Law Commission 2014, 32). These findings should be binding for both France and the UK as part of their human rights obligations.

The 1961 UN Convention on the Reduction of Statelessness prohibits the creation of statelessness and constitutes another legal source affecting state power in the field of nationality law. Its standards are relevant for the UK and France and its aims are to reduce statelessness by creating positive obligations for states to eliminate and prevent statelessness in their nationality legislations. Citizenship deprivation leading to statelessness is not *per se* arbitrary and contrary to international law and *jus cogens* norms (see *Eritrea v. Ethiopia*). Exceptionally, Article 8 of the 1961 UN Convention allows for loss of citizenship followed by statelessness, among others, in situations where the citizen has shown allegiance toward another state or cases where he conducted himself in a manner seriously prejudicial to the vital interests of the state. UNHCR guidelines on the interpretation of the 1961 Convention define behavior that is seriously prejudicial to the vital interests of the state as threatening 'the foundations and organization of the state' in question (UNHCR 2014: para 67). While crimes of a general nature are not seen as covered by this ground of loss, acts of treason, espionage, or terrorism may be covered, as what is sanctioned is behavior inconsistent with the duty of loyalty. Thus, 'terrorist' citizens can be deprived of nationality and made stateless, but only if the legislation of their state of nationality contained such a ground of loss upon becoming a state party to the 1961 UN Convention, as is the case with the UK.

Besides the UN standards discussed above, regional human rights treaties, such as the European Convention on Human Rights (ECHR) and the European Convention on Nationality (1997) also impose obligations concerning nationality. While both France and the UK are

parties to the ECHR, only France has signed the ECN. The ECN goes furthest in limiting state power to deprive of citizenship: conduct that is seriously prejudicial can lead to loss of citizenship but, unlike the 1961 UN Convention, the person concerned cannot be made stateless. CoE experts were less convinced that terrorism falls under this specific ground of loss of nationality suggesting divergent standards in relation to national security and loss of nationality (Mantu 2015, 79; 87). Although the ECHR does not contain a human right to a nationality, the European Court of Human Rights (ECtHR) has recognized that nationality is part of one's social identity and as such protected under Article 8 ECHR (*Karrashev v. Finland*, *Genovese v. Malta*). Most ECHR cases have dealt with state refusals to grant nationality, and, in one case, the ECtHR found such refusals to be discriminatory as children born out of wedlock could not obtain nationality (*Genovese v. Malta*). *Ramadan v. Malta* is one of the few cases where loss of nationality has been tested against Article 8 ECHR protection. The applicant acquired nationality via naturalization based on his marriage. Once that marriage was annulled as a marriage of convenience, the applicant's naturalization was withdrawn on fraud grounds. The ECtHR found that 'a loss of citizenship already acquired or born into can have the same (and possibly a bigger) impact on a person's private and family life' (*Ramadan*, para 85) but did not consider the state measure arbitrary. Its decision was based on three elements that resemble the interpretation given to the notion of arbitrary deprivation by UN bodies: the measure had a legal basis, it respected procedural grounds, and the effects of the revocation for the applicant's right to private and family life were not deemed serious enough to justify a violation of Article 8 ECHR since the applicant was not expelled and continued his life in Malta despite losing nationality. When exercising their nationality powers, as EU member states, France and the UK are obliged to have due regard to EU law (*Micheletti*), even if the EU has no competences in the field of nationality law. In *Rottmann*, the European Court of Justice acknowledged the legitimate interests of a state to withdraw fraudulent naturalizations, but identified the EU principle of proportionality as a limit to state power because losing national citizenship leads to loss of EU citizenship. A citizenship deprivation order needs to examine the effects of that measure in relation to loss of both national and EU citizenship by performing a proportionality check that scrutinizes the consequences for the person concerned and his family members of losing the rights enjoyed by every citizen of the Union; the gravity of the offence committed; the lapse of time between naturalization and withdrawal; and the possibility of recovering the original nationality.

Based on the above discussion, it is possible to speak of a convergent trend in international, human rights and EU law toward establishing obligations for states not to arbitrarily deprive of nationality and to prevent statelessness. Yet, the legal framework designed around the right to nationality reflects the tension between nationality as a corollary of state sovereignty and the far-reaching effects that state nationality decisions can have for the person concerned and for the international community (Kesby 2012) since citizenship deprivation is not outlawed entirely. As the next sections will illustrate, the limits of the current framework of protection become clearer at the national level when international legal standards intersect with political considerations around national security, immigration, and terrorism.

UK citizenship: a privilege that can be revoked

Under Section 40 of the British Nationality Act (BNA), the Home Secretary can make a citizenship deprivation order if satisfied that it would be conducive to the public good and to

do so would not render the person stateless. If citizenship status was obtained through naturalization and the person engaged in conduct 'seriously prejudicial' to UK's vital interests, citizenship deprivation can proceed even if it leads to statelessness. This formulation is the end result of changes made between 2002 and 2015, which expanded the power of the Secretary of State for the Home Department (SSHD) to deprive of citizenship in order to fight terrorists 'disguised' as UK citizens. The overhaul of the citizenship deprivation rules started after 2000 and can be described as part of a wider process of redesigning nationality laws with a view to restrict immigration and respond to concerns about national security. Public and political debates stressing the need to rediscover the meaning of Britishness and citizenship have fueled legislative changes. Citizenship was portrayed as a status that needed to be earned in a context dominated by discussions around multiculturalism and (failed) integration and the occurrence of race riots in 2001 (Bosworth and Guild 2008; Tyler 2010). The rethinking of belonging and membership took place while immigration and asylum were being rephrased as security issues, processes that have impacted heavily on Muslims (Choudhury 2017). Initially, governmental discourse presented the need to redesign the rules of nationality attribution as linked to two different goals. Firstly, the need to align UK legislation to international standards (the ECN and the 1961 UN Convention on the Reduction of Statelessness). Secondly, nationality law was meant to express better the executive's goals concerning migration and the need to develop a stronger understanding of what citizenship really means (Home Office 2002, 9, 10). Updating the rules on loss of nationality was seen as an important way to boost the value of UK citizenship. 9/11 and UK's involvement in the 'war on terror' shifted executive focus toward security and terrorism, as shown by arguments that the old citizenship deprivation powers did not reflect accurately 'the types of activity that might threaten our democratic institutions and ways of life' (Home Office 2002, 9, 10).

The *Nationality, Immigration and Asylum Act 2002* amended Section 40 of BNA 1981 to allow the SSHD to deprive a British citizen of citizenship status if satisfied that the person had done anything seriously prejudicial to the vital interests of the UK or a British Overseas territory. The term 'vital interests' was constructed broadly as covering threats to national and economic security and public safety, but excluding actions of a more general criminal nature (HL Committee 08.07.02 col 537). For the first time in the history of UK nationality legislation, this power was to apply to citizens by birth or descent and was motivated by a desire to end discrimination depending on how nationality had been acquired (by birth, registration, or naturalization), which was in line with ECN provisions on non-discrimination. One of the most important safeguards of the 2002 Act was that citizenship deprivation could not lead to statelessness, except for loss on fraud grounds. The effect was that only dual citizens could be deprived of citizenship, otherwise loss would contravene the prohibition of statelessness. One of the specificities of the UK system is that citizenship deprivation can occur in the absence of criminal conviction, thus giving the executive leeway in deciding what sorts of actions can be sanctioned with deprivation. Curbing such leeway through judicial scrutiny should function as a guarantee that deprivation is not arbitrary. Because the UK Government wanted to ratify the ECN, the 2002 Act introduced appeal rights with suspensive effects and procedural safeguards. Appeals involving national security concerns are decided by a special court (Special Immigration Appeals Commission) and involve a partially secret procedure, whereby the executive's evidence of terrorist involvement remains undisclosed to the party concerned. Coupled with the ambiguity of the notion of 'seriously prejudicial to the vital interests of the UK', this led to statelessness being the main appeal ground against a citizenship deprivation order.

The British executive was dissatisfied with its 2002 powers due to failures to deprive in certain cases. The Muslim cleric Abu Hamza was issued with a citizenship deprivation order in 2003 due to radical preaching but SIAC decided that Hamza could be not deprived of citizenship since he would be made stateless as Egypt, his country of original nationality, had probably withdrawn it (*Abu Hamza v. SSHD, SIAC, SC/23/2003*). Another case concerns David Hicks, an Australian national converted to Islam who was held in Guantanamo. In 2005, he applied for registration as an UK national with the hope that the UK Government would negotiate his release from prison, as it had done with other British citizens held there. The SSHD announced the intention to deprive Hicks of citizenship since he had engaged in behavior seriously prejudicial to the interests of the UK while receiving terrorist training. The order was blocked in court on grounds that conduct prior to the acquisition of citizenship was not enough to show current disaffection or disloyalty (*SSHD v. David Hicks [2006] EWCA Civ 400*). These failures led to procedural changes that removed the suspensive effects of appeals: as of 2004, citizenship deprivation orders have immediate effects, the deprived citizen becomes a foreigner subject to immigration control and expulsion from the moment the order is made (Mantu 2015, 220–224). If outside the UK when deprived of citizenship (*G1 v. SSHD [2010] EWCA Civ 867*), an exclusion order can be made preventing the person from entering the UK, leading to an out of country appeal. In those cases where the aim is to remove citizenship to be able to expel the person concerned or prevent him from returning to the UK, such practices can be seen as violating the prohibition of arbitrary deprivation of nationality and the right to enter one's own country.

Wider citizenship deprivation powers were introduced by the *Immigration, Asylum and Nationality Act 2006*. The Act was proposed prior to the 2005 London attacks perpetrated by 'home grown' terrorists but its negotiation in Parliament was influenced by these events and the need to deal with 'terrorist' citizens. The 2006 Act allowed the SSHD to issue a citizenship deprivation order if satisfied that the measure was 'conducive to the public good'. Parliamentary debates portray citizenship deprivation as a counter-terrorism measure linked to national security, which in itself was broadly constructed to include also 'threats to individual citizens and to our way of life' (Mantu 2015, 196). The Secretary of State explained that 'the whole point of the measure is to be able to remove certain people from the United Kingdom, which currently we are unable to do' (HC 2014, col 1043), as it would contravene legal standards that prevent states from expelling own nationals. Conduciveness to the public good is a test applicable to the expulsion of foreigners, which points toward a process of legal fuzziness whereby protections generally associated with the legal status of citizenship are reformulated, while citizens and foreigners are seen as part of the same security continuum (Bigo 2002). By relying on conduciveness to the public good to deprive of citizenship British dual nationals, the UK Government effectively equates them with foreigners in as far as protection against deprivation is concerned. For the purposes of citizenship deprivation, 'conducive to the public good' is not defined by law but the executive explained its reach as including 'involvement in terrorism, espionage, serious organized crime, war crimes or unacceptable behaviors' (Gower 2015). When tested in court, 'conducive to the public good' was clarified only to the extent that it involves cases where deprivation is deemed to be in the interests of national security. *Al-Jedda* is one of the few cases in which British courts reviewed the limits of the SSHD to deprive on conducive to the public good grounds. Mr. *Al-Jedda* entered the UK as an asylum seeker and later acquired UK citizenship. In 2004, he was retained by coalition forces in Baghdad and detained without charges in

Basra until 2007. He was released after a successful ECHR challenge to his detention but the SSHD issued almost concomitantly a citizenship deprivation order on conducive to the public good grounds linked to his involvement with terrorist groups. SIAC confirmed that it had the power to review the decision of the executive to deprive of citizenship, even if it had to give great weight to the SSHD's assessment of conduciveness to the public good arguments. Suspicion of involvement in terrorism or acts threatening national security is not enough to justify a citizenship deprivation order, but past events could be taken into consideration to assess the threat posed by the citizen, which signals a departure from the Hicks case. The standard of review is that of 'balance of probabilities', which is lower than in criminal cases. Relying on this test, SIAC found the deprivation order conducive and based on the openly accessible part of the judgment, the applicant's (lack of) credibility played an important role in its decision (*Al-Jedda v. SSHD*, SC/66/2008).

Although a threat to national security, Mr. Al-Jedda could not be deprived of citizenship since he would have been made stateless (*Al-Jedda v. SSHD* [2010] EWCA Civ 358) prompting the executive to seek new amendments to its powers to deprive. While defending the introduction of the 2014 Act in Parliament, the SSHD cited *Al-Jedda* as a reason for removing protection against statelessness (HC 2014, col 1040). The *Immigration Act* 2014 removed partly the guarantees introduced in 2002 concerning the prohibition of statelessness, making it clear that the UK was not going to ratify the ECN. Where a person acts in a manner seriously prejudicial to the vital interests of the UK, the SSHD can deprive of citizenship even if the person becomes stateless, provided that nationality was obtained through naturalization. The Home Secretary must have reasonable grounds to believe that the person can acquire a new nationality when making the order but there is no guidance on what such grounds entail. There is no guarantee that the person will not remain stateless (Harvey 2014) since the UK Government does not have the power to interfere with the nationality decisions of other states, and international standards do not guarantee reacquisition of a previously held nationality. Similar to the 2002 and 2006 amendments, the 2014 powers have been questioned in relation to equality of treatment between naturalized citizens and citizens by birth, procedural aspects, and the ineffectiveness of citizenship deprivation in countering terrorism and fundamentalism (House of Commons Debates 30 January 2014, cols 1039-1052 and 1104). A recurrent concern is that the executive prefers to use its administrative power to deprive suspected terrorists of their citizenship, which makes it easier to expel them, rather than subject them to the purview of criminal law with its higher procedural standards, a practice that is problematic in light of UK's human rights obligations. These arguments were overshadowed by the executive's claim that citizenship deprivation was necessary in relation to national security, and the threat posed by radicalized UK citizens travelling to join the civil war in Syria.

After three changes to citizenship deprivation powers, the number of persons deprived remains low. In 2015, the Bureau of Investigative Journalism stated that since 2010, when the Conservatives came to power, 33 dual nationals have been deprived of their UK citizenship, and most of them were abroad when the order was made (Parson 2016). The 2014 powers have never been used in respect of naturalized citizens, which can be seen as encouraging, but also highlighting their symbolic nature. Despite assurances to the contrary (Home Office 2014), the UK executive relies on deprivation powers against citizens who are outside of the UK and against who return orders are issued preventing them from returning to the UK to launch appeal procedures in person (Woods, Ross, and Wright 2013). Appeals to

citizenship deprivation orders show that most of those deprived of citizenship are Muslim men; some of them had lived in the UK from an early age; most of them entered the UK as asylum seekers, and later on naturalized. Although most cases relate to national security, only a fraction of them have been prosecuted for criminal terrorist acts. Statelessness has been the most effective shield against citizenship deprivation, while Article 8 ECHR or EU citizenship arguments was not successful (Mantu 2015, 226), which explains the political insistence on reversing the protection against statelessness introduced in 2002 to align UK law with international standards.

Citizenship deprivation in France: republican principles and (dis)loyal citizens

French nationality law allows for loss of nationality where the loyalty and allegiance of the person concerned are disputed. The law distinguishes between loss that is applicable to all French nationals (Article 23 Civil Code), and deprivation – applicable only in respect of naturalized citizens (Article 25 Civil Code). All the changes adopted or discussed in the past 20 years or so concern Article 25 Civil Code, which aims to sanction a lack of allegiance and can be applied only in the following circumstances: (1) conviction for acts against the fundamental interests of the nation; (2) conviction for crime or offence constituting acts of terrorism; (3) conviction for crimes considered to be crimes against the public administration (crimes committed by persons holding a public office); (4) acts of insubordination; and (5) engaging, for the benefit of a foreign state, in acts that are incompatible with the quality of French national and commission of acts that are prejudicial to the interests of France. In the last case, deprivation can occur in the absence of a conviction. The requirement to first be convicted of a specific crime (4 out of 5 situations) before being deprived of citizenship functions as an extra safeguard, especially when considering the UK situation where a criminal conviction is not essential for a citizenship deprivation order. Similar to the UK, citizenship deprivation entails an administrative procedure that gives the executive the power to decide whether to pursue citizenship deprivation. The person concerned needs to be notified of the government's intention to deprive, and be given the opportunity to make observations and mount an appeal (Decree no 93-1362). The order to deprive has to be motivated stating the legal and factual grounds upon which the measure is taken; the authorities can proceed with deprivation only after the favorable opinion of the Council of State¹.

The changes underwent by French nationality legislation can be situated in the context of several national debates addressing the links between citizenship, integration, the importance of French values, and the need to uphold the Republican notion of citizenship (Fulchiron 2017; Roques 2008). According to Bertossi and Hajjat (2012) since 2003 every new immigration law has also affected nationality law, leading to the rather paradoxical situation where nationality as a concept is no longer at the heart of debates on the future of French citizenship. The notion of *laïcité* and the conflict between French republican values and Islam drive debates on French citizenship, in which the allegiance of dual French–Algerian citizens figures strongly (Nicholls 2012; Weil 2008). French anti-terrorism legislation reflects an increasing nexus between security and immigration, while riots and violent clashes with the police in France's poor immigrant neighborhoods start to be addressed as security threats. Some of the changes operated by the French Government are better understood as having the dual purpose of fighting terrorism and lack of integration, an issue strongly associated

with immigration. Prior to the 2015 Charlie Hebdo attacks, France witnessed relatively minor terrorist attacks on its soil perpetrated by various political groups. This was attributed to France's developed and centralized counter-terrorist policy dating from the end of the 1990s, when citizenship deprivation provisions started to be amended, too. In 1996 after a series of bombings at the Paris Metro operated by an organization linked with the Algerian Civil War, a new law was adopted to give French authorities enhanced legal means to combat terrorism (Loi 96-647). Section 12 introduced the possibility that citizens who acquire French nationality may be deprived of that nationality, if convicted of a crime or offence that constitutes an act of terrorism. French law offers a broad definition to the notion of a terrorist act. In 1996, Article 25 of the French Civil Code already allowed for deprivation of nationality where a citizen committed within 10 years following acquisition of French nationality acts which were considered a crime by French law and which attracted a condemnation of at least five years imprisonment. In 1998, in order to comply with ECN standards, '*Law Guigou*' (Loi 98-170) revoked loss of nationality due to the commission of a general crime and introduced safeguards against statelessness. Consequently, only dual nationals can be deprived of nationality based on Article 25. However, citizenship deprivation on terrorism-related grounds survived the 1998 amendments and two constitutionality challenges before the French Constitutional Council, in 1996 and 2015. The Constitutional Council stated that although naturalized citizens and citizens by birth enjoy a similar position in respect of nationality law, differential treatment between the two categories in the context of the fight against terrorism is justified by the objective of combating terrorism and as long as citizenship deprivation is limited in time (Decision 96-377 of 16 July 1996). In 2015, the Council acknowledged that citizenship deprivation establishes a sanction whose punitive character is not disproportionate in light of the specific seriousness inherent within acts of terrorism, the existence of a conviction, and the protection against statelessness (Decision 2014-439 of 23 January 2015).

The decisions of the Constitutional Council concerning temporal limits set to the power to deprive are important because these limits have expanded over time. Since 2003, citizenship deprivation can occur for acts committed prior to the acquisition of French nationality (Loi 2003-1119). In 2006, the 10-year limit during which deprivation could occur was increased to 15 years when the imputable acts are acts of terrorism or acts against the fundamental interests of the nation. The new limit applies only if nationality was acquired via naturalization, marriage to a French national, or reintegration in the French nationality. These changes were introduced by a new law on the fight against terrorism (Loi 2006-64), which was justified by the need to strengthen French counter-terrorism powers in light of the London and Madrid attacks. Although France had not been targeted, 2005 saw riots in several suburbs. Opposition members pointed out the danger that the population would associate counter-terrorism measures with violence in the suburbs and their destructive effects (Mantu 2015, 215, 216). Members of the then ruling party (UMP) had publicly requested that participants in the 2005 riots be deprived of French nationality, suggesting that terrorism and failed integration went hand in hand in justifying the extension of executive powers. Moreover, the French executive argued that citizenship deprivation was necessary as it allowed them to expel persons condemned of terrorist crimes or crimes against the fundamental interests of the nation (Mantu 2015, 217). As in the UK, the aim is not simply to deprive of citizenship, but to physically remove the 'terrorist' citizen from state territory. In the *Tebourski* case, the applicant challenged his expulsion to Tunisia following his citizenship

deprivation before the Committee supervising the implementation of the UN Convention against Torture. The Committee found the applicant to have been deprived of nationality with a view to make him an irregular immigrant liable to expulsion. It is worth stressing that French courts have refused to acknowledge any links between citizenship deprivation orders and expulsion (Mantu 2015, 277). Arguments that a citizenship deprivation order leading to expulsion violates Article 8 ECHR were dismissed on the argumentation that the citizenship deprivation order does not force one to leave France; it is rather the separate expulsion order that has that effect. In light of how the French executive has justified the need to amend citizenship deprivation powers, politically (at least) the link between deprivation and expulsion is clearly there.

Despite the change operated in 2006, the French executive has not used citizenship deprivation extensively: since 1973 there are 13 reported cases of citizenship deprivation for acts of terrorism and acts against the fundamental interest of the nation. Yet, several proposals were made to make it easier to deprive of citizenship, not all connected with the fight against terrorism *per se*. 2010 saw two failed proposals aimed at amending the rules to allow citizenship deprivation as sanction for polygamy, and to punish citizens of foreign origin condemned for the murder of a person holding public authority if they had been citizens for less than 10 years. The second proposal was linked to violent clashes between the police and inhabitants of the 'banlieues' and was eventually abandoned in order to reach cross-party support for the adoption of a new security law (Mantu 2015, 267). Since 2012, France experienced terrorist attacks committed by French citizens and their timeline coincides with proposals put forward to amend the citizenship deprivation provisions and the French Constitution. These proposals aimed to make it easier to deprive of citizenship French citizens who have committed attacks in France or travelled abroad to fight in Syria or Mali. Most of them are French-born dual nationals whose citizenship cannot be taken away since it was acquired at birth. Historically, French citizens by birth have never been covered by the scope of legal provisions on citizenship deprivation and there is an ongoing discussion as to whether one can speak of a constitutional and Republican principle preventing such Frenchmen from losing their nationality (Finchelstein 2017, 106–108). In 2014, the UMP made fresh proposals to deprive of citizenship all French dual nationals if arrested, caught, or identified fighting against the French armed forces, their allies, or the French police forces. The proposal aimed to remove the time limit within which citizenship deprivation can occur and allow the executive to deprive of citizenship in the absence of the approval of the Council of State. It was rejected by the Constitutional Law Commission of the French Parliament and failed to reach enough votes during the debates in the National Assembly.

After the November 2015 Paris attacks, French President Hollande announced his intention to change the law in order to allow French citizens irrespective of how they had acquired it to be deprived of their status where they had been condemned for a crime or offence that constitutes a serious violation of the Nation's life or an act of terrorism. Citizenship deprivation was intended to operate as a complementary sanction and applicable in cases of direct financing of terrorism, individual acts of terrorism, and participation in a criminal group or constitution of a criminal group that intends to commit terrorist acts. After much trepidation on whether such changes could be introduced via ordinary legislation (Finchelstein 2017, 102), the Council of State recommended that they be operated via an amendment to the French Constitution. The changes were included in a bill aiming to introduce new emergency powers in the French Constitution as a result of the 2015 attacks. Because the prohibition

of creating statelessness remains intact, the new provisions would have affected primarily French citizens who hold another nationality, thus alluding to their or their parents' immigrant background. The initiators of the citizenship deprivation reform and the Council of State stressed the limited and primarily symbolic effect of the proposed changes. Moreover, since France is bound by several human rights conventions, concerns were expressed that citizenship deprivation may lead to the creation of *de facto* stateless persons: persons deprived of French citizenship who cannot be expelled because their country of nationality does not recognize them as nationals or refuses to take them back. In the end, the Constitutional Bill was withdrawn on 30 March 2016 by President Hollande after the failure of the two houses of Parliament to agree on a similar text (Finchelstein 2017, 105). Politically, citizenship deprivation seems to have reached a dead end.

Concluding remarks

Usually, citizenship deprivation powers are presented as administrative measures, part of counter-terrorism strategies allowing the state to effectively fight terrorist threats (Van Ginkel and Entenmann 2016, 5; 58). At the international and EU levels, there is a trend toward inscribing citizenship deprivation powers within frameworks designed to counter terrorism, including preventing the movement of foreign fighters who pose threats to their home states upon return (Kraehenmann 2014, 55). The two national cases examined in this article suggest that the depiction of citizenship deprivation as a deterrent measure undertaken by states to stop terrorist citizens is to a certain extent reductionist, as it obscures the fact that the transformation of state power to deprive of citizenship started before 9/11 and can be inscribed within a nationality–immigration–security nexus. Terrorism has been credited with starting a process of renegotiation of the social pact that led to the transformation of the very model of citizenry (Salerno 2017, 82). The remaking of the citizenry is not only a social and political process, but also a legal one as it relies on law to impose ideas of how citizens should behave and what happens to them when they misbehave. In line with Salerno's (2017, 89) observation that 'the politics of identity and belonging are preliminary to any security action', it is not so surprising that nationality law due to its strong links with identity (Volpp 2002, 580) becomes one of the sites in which the citizenry is remodeled by making it possible to oust out of its midst 'terrorist' citizens. The two cases examined illustrate how citizenship deprivation powers have been amended to this end, as political considerations concerning national security have taken center stage in this process rather than human rights and international nationality obligations.

Generally, we can speak of the convergence of legal standards that states must take into account when trying to deprive of citizenship due to the anchoring of nationality issues to human rights. Arbitrary deprivation of nationality is prohibited and understood to include cases where the person is deprived with a view to make expulsion or deportation possible. The prohibition of statelessness should function as a pillar of protection but the existence of divergent legal standards concerning citizenship deprivation on terrorism grounds leading to statelessness (UN v. ECN) complicates matters. It also leads to a variable geometry of protection linked to the different international agreements to which states are bound. The French and the British cases show that, even within Europe, states have not ratified the exact same instruments and that national preferences and national expressions of sovereignty continue to play a role in shaping the protection that citizens can expect

against loss of citizenship status. States still enjoy room to pursue national interests that reflect their state-building and state-preserving trajectories as well as different understandings of the fundamentals of the relationship between state and citizen. Despite the inconsistencies and shortcomings of the existing legal framework designed to protect the human right to nationality, the possibility to challenge citizenship deprivation orders and the need to respect procedural standards as part of the prohibition of arbitrary deprivation of nationality have been important in ensuring that state power to deprive on national security grounds is kept in check. Judicialization could encourage state authorities and national courts to take internationally agreed nationality standards more seriously at a time when citizenship deprivation powers are inscribed within national security and counter-terrorism policies, thus undermining their anchoring to the human rights paradigm. The development of counter-terrorism policies has unfolded without a clear human rights dimension, a criticism made in respect of both international, EU, and national policies in this field. States are increasingly introducing wide definitions of what constitutes a terrorist act, thus enlarging the type of behaviors that may lead to loss of nationality. The national cases examined here highlight the need to remind states of their obligations in respect of nationality and statelessness as the outer limits of their powers to undo citizenship, irrespective of how disloyal some citizens behave. Equally, international and European human rights bodies should play a more active role in securing the protection of the human right to nationality, and challenge state practices that deviate from these standards even if the actual number of persons affected by such measures is small. Despite the symbolic nature of citizenship deprivation powers, the attempt to dilute and circumvent existing legal standards concerning nationality deserves a more robust engagement from the international community.

By removing the protection against statelessness for naturalized citizens, the UK has gone furthest in using nationality law to deal with citizens engaging in behaviors deemed not conducive to the public good, while remaining within its international obligations stemming from the 1961 UN Statelessness Convention. The French case shows that the ECN coupled with strong constitutional arrangements offers higher standards of protection: French citizens by birth cannot lose that status and statelessness is prohibited; in contrast, British citizens by birth, if dual nationals, can lose their British citizenship. The examined national practices diverge from what are supposed to be universal standards as one of the main motivations for changing existing legal rules on citizenship deprivation is to be able to expel and remove the 'terrorist citizen' from state territory or if abroad prevent him from returning. In both countries, the need to deal with radicalized citizens who pose a threat to national security and develop legal avenues to secure the national community are superimposed upon older debates about who deserves to be a citizen. The legal rules devised to embody this answer focus on dual nationality and naturalization as markers of foreignness, suggesting the development of citizenship hierarchies whereby deprive-able citizens seem to occupy an intermediate position between 'real citizens' and foreigners (Choudhury 2017; Mantu 2015). Citizenship deprivation is part of a wider context in which nationality, immigration, and security are fused with the effect that citizenship ceases to be a secure legal status for those who are deemed dangerous or unworthy.

Note

1. The Council of State is a body of the French Government and has a dual function: it is both a legal adviser of the executive branch on state issues and legislation, and the Supreme Court for administrative justice. The concurring opinion issued by the Council of State is part of its consultative function.

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