

5 France

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5.1 Introduction

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

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

The ease of naturalisation in France is facilitated by a very tolerant position towards dual citizenship. Formally, France signed the 1963 Council of Europe Convention, which attempts to reduce cases of dual citizenship. However, in practice – 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 for one reason or another).

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

5.2 Historical development

Ius soli was the dominant criterion of nationality law in France in the eighteenth century (Sahlins 2004). The French revolution broke from this tradition. Because *ius soli* connoted feudal allegiance, it was decided, against Napoleon Bonaparte's wishes (Weil 2002), that the new civil Code of 1803 would grant French nationality at birth only to a child born to a French father, either in France or abroad.¹ This principle of *ius sanguinis* was not ethnically motivated but meant that family links transmitted by the *pater familias* had become more important than subjecthood and that nationality would be transmitted like family names through the father. This approach dominated French national legislation throughout most of the nineteenth century (1803-1889).

5.2.1 *Double ius soli: the heart of French nationality law*

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

This law was not very successful and therefore repealed by the changes in the 1889 law, that more comprehensively addressed the new reality of France as a country of immigrants. To fulfil the principle of equality of public charges and duties, third generation ‘immigrants’ were automatically granted French citizenship and drafted (Brubaker 1992). Since then, *ius soli* has been the heart of French nationality law. It is both a mechanism for granting French nationality automatically to third generation ‘immigrants’ born in France and the simplest means by which French citizens prove their nationality.²

5.2.2 A century of legislative stability

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

Throughout the First World War, France was highly concerned with newly naturalised people from enemy nations and the difficulty of controlling their mixed loyalties. In response to Germany’s Delbruck Law of 22 July 1913 that allowed Germans who were naturalised abroad to retain their original citizenship, France instituted formal procedures for denaturalisation with the laws of 7 April 1915 and 18 June 1917. The procedure was overseen by the *Conseil d’Etat* 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

Table 5.1: Composition of the population in France 1901-1990

Year	French by birth		French by acquisition		Foreigners		Total In thousands
	In thousands	%	In thousands	%	In thousands	%	
1901	37,200	96.7	220	0.6	1,030	2.7	38,450
1906	37,600	96.7	220	0.6	1,050	2.7	38,840
1911	37,800	96.4	250	0.6	1,160	3.0	39,190
1921	37,800	95.4	250	0.6	1,530	4.0	38,800
1926	37,600	93.4	250	0.6	2,410	6.0	40,230
1931	38,200	92.5	360	0.9	2,710	6.6	41,220
1936	36,500	93.4	520	1.3	2,200	5.3	41,180
1946	37,250	93.5	850	2.1	1,740	4.4	39,850
1954	39,900	93.4	1,070	2.5	1,760	4.1	42,780
1962	43,000	92.5	1,283	2.8	2,170	4.7	46,460
1968	45,710	92.0	1,320	2.7	2,620	5.3	49,650
1975	47,760	90.8	1,390	2.7	3,440	6.5	52,600
1982	49,170	90.6	1,430	2.6	3,680	6.8	54,280
1990	51,280	90.6	1,770	3.1	3,580	6.3	56,620

Source: French Census

under the authority of the Interior Ministry and created in April 1918, but was quickly disbanded after the armistice of 11 November 1918. As the war ended the political priority also shifted to demographic concerns and to the increase of naturalisations.

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

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

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

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

Some experts proposed adding to these individual or professional restrictions a citizenship criterion that would be based either on ethnic origin or degree of assimilation. George Mauco (who, since 1932 when he published his doctorate on the subject (Mauco 1932), was consid-

ered the immigration expert) was one of the principal defenders of this approach.

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

Mauco had proposed in 1939, on the eve of the war, a review of all naturalisations, and between 1940 and 1944 the Vichy Regime, incorporating a Nazi law, revised the naturalisations that had taken place since the passing of the 1927 law, resulting in 15,154 French citizens becoming foreigners. The procedure was aimed at Jews, 6,000 of whom were denaturalised and many of whom were deported to Germany (Weil 2002). However, it is important to note that technically the imposition of collective discrimination based on origin, which often meant the deportation to Germany and extermination of French Jews or those of Jewish origin, was effected without modification of French nationality law.

5.2.3 *Nationality after the Second World War*

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

With this goal in mind, the ordinance of 19 October 1945 established a new nationality code. It confirmed an open approach to the integration of immigrants and their children regardless of their country of origin, contrary to the wishes of the proponents of the ethnic approach, led by Georges Mauco, general secretary of the High Committee of Population. However, the duration of required residence was raised from three years to five and the rights of married women were slightly reduced. The system adopted in 1945 tried to maximise the number of women who remained French by restricting the ability of women to choose their nationality after marriage. Foreign women who married French men were automatically French except if 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.

5.2.4 *Naturalisation policy from 1945 to 1973*

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

5.2.4.1 *The new French people are mostly European*

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

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

As a result of Ribeyre's instructions, the composition of naturalised citizens changed significantly over the years. For example: in 1946, the population called 'Armenians and Turks' were 7.1 per cent of those 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 evolution reflected changing demands for naturalisation, but at the same time it would not have been possible without strict selection among the applications: between 1951 and 1953 the naturalisation approval rate³ fluctuated between 60 and 65 per cent while in previous years it had always been higher than 75 per cent. And these selections were clearly made to favour certain nationalities that were considered 'easier to assimilate' (Weil 1995). By the middle of the 1950s, these restrictions had started to calm down as the economy picked up steam and new staff controlled the Population Ministry. The new direction was evident in the instructions of 22 November 1953 which encouraged 'liberal application of the naturalisation laws' and after about one year this new direction had an impact on the naturalisation statistics (cf. Table 5.2). Up until the end of the 1960s, Italians, Poles, and Spanish people were

Table 5.2: Acquisitions of nationality in France broken down by mode of acquisition

	<i>Total</i>	<i>Acquisitions by decree</i>			<i>Acquisitions by declaration</i>		
		<i>Naturalisations</i>	<i>Reintegrations</i>	<i>as minors</i>	<i>by marriage</i>	<i>as minors</i>	<i>other declarations</i>
1945	17,884	3,377	903	703	976	11,282	-
1946	38,869	14,154	744	3,216	5,187	15,088	-
1947	111,736	67,737	1,899	15,607	11,992	14,095	-
1948	70,925	48,955	1,186	9,868	3,269	7,422	3
1949	61,270	41,701	1,411	9,295	479	8,137	26
1950	43,790	27,912	977	7,075	270	7,255	129
1951	25,257	14,897	502	4,063	194	5,386	65
1952	28,139	15,707	493	4,798	211	6,534	20
1953	34,824	19,078	650	6,749	188	7,880	35
1954	39,308	20,410	593	6,883	164	10,992	16
1955	44,972	21,506	452	7,619	248	14,658	27
1956	38,040	17,263	350	7,091	233	12,726	129
1957	36,890	17,620	514	7,456	377	10,549	192
1958	34,452	17,205	458	6,789	702	8,904	217
1959	34,098	17,278	497	7,005	924	8,113	76
1960	29,683	13,192	253	5,763	2,035	8,184	123
1961	25,954	10,774	167	5,011	1,770	7,993	82
1962	28,149	11,120	157	5,617	1,234	9,686	235
1963	30,648	13,443	115	6,749	917	9,167	156
1964	27,289	11,890	147	5,773	764	8,479	160
1965	41,487	20,029	205	10,625	735	9,575	215
1966	30,488	15,652	204	7,018	635	6,707	180
1967	57,231	30,415	222	15,026	668	10,469	326
1968	38,287	19,876	520	9,539	520	7,299	454
1969	38,397	19,457	702	9,957	536	7,556	119
1970	35,000	18,002	784	9,200	372	6,498	92
1971	39,989	20,531	952	11,071	363	6,916	102
1972	35,254	17,235	823	9,793	282	6,945	94
1973	33,662	17,434	761	8,456	464	6,175	326
1974	36,050	16,241	711	7,076	5,984	5,226	745
1975	41,388	18,006	1,021	7,647	8,394	5,348	922
1976	45,131	20,140	1,538	8,989	9,181	4,107	1,133
1977	48,135	21,610	1,676	9,620	9,885	4,198	1,093
1978	50,977	22,439	1,670	9,996	10,849	4,623	1,361
1979	46,810	20,164	1,562	9,256	10,044	4,245	1,519
1980	52,129	20,203	1,977	9,324	13,767	4,836	1,996
1981	54,030	21,541	2,811	10,048	13,209	4,600	1,802
1982	48,835	18,073	2,349	8,037	14,227	4,473	1,668
1983	39,714	13,213	1,557	5,220	13,213	4,793	1,699
1984	35,575	13,635	1,599	4,822	10,279	4,201	1,037
1985	60,688	26,902	2,708	11,978	12,634	5,088	1,367

Sources: Table of persons acquiring French citizenship (Spire & Thave 1999).

over 70 per cent of the newly naturalised French, but they became increasingly outnumbered by migrants from former French colonies.

5.2.4.2 *The impact of decolonisation*

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

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

5.2.5 *The law of 1973*

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

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

Nationality became a divisive issue in the mid 1980s as young people who had been born in France and had been made automatically

French by law were increasingly seen as a problematic 'unassimilated' population. They were 'French without being aware of it or wanting it' ('français sans le savoir et sans le vouloir'). It was true that since 1981 several hundred children who had been born in France to Algerian parents had expressed their desire to renounce their allegiance to France (Brubaker 1992). They had often been made French at birth due to double *ius soli*: they had been born in France to a parent born in Algeria before 1962, at the time when Algeria was still a French territory divided into three regions (the same was not true, for instance, of Moroccans). For these children, some of whose parents had fought for the independence of Algeria, and above all for the Algerian state, being made French at birth without the possibility of renouncing their French citizenship (a different situation for 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' demand, 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.

5.2.6 *Preserving ties of nationality with French emigrants*

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

The 1803 Civil Code allowed French citizens to move abroad and acquire foreign nationality, but in doing so they would lose their French nationality. However, just before the war with Austria, Napoleon ended this freedom 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 avoid people changing

citizenship in order to escape military service. The law of 9 April 1954 stated again that all men younger than 50 years old who acquired foreign citizenship would remain French unless they specifically requested permission from the French government. But while the goal of the 1889 law had been to prevent people from avoiding military service, the logic of the 1954 law was different (Weil 2002). It was 'essential to allow French people living abroad to retain their French citizenship while in the process of extending French culture and economic strength'. However, there was a troubling inequality in the citizenship law. Legally, a French man who became a citizen of another country would remain French unless he specifically requested the forfeiture of his French citizenship. Women however, would lose their French nationality if they became citizens of another country. The law of 1973 assured absolute equality between men and women and therefore abolished this discrimination.

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

5.3 Recent developments and current institutional arrangements

5.3.1 Nationality regulations since 1985

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

5.3.1.1 Nationality law becomes a political issue (1985-1993)

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

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

The growing number of foreigners demanding French citizenship during the 1980s and 1990s went hand in hand with an increase in the diversity of national origins, reflecting the various new migration waves that had blossomed since the early 1970s (see Table 5.3).

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,

Table 5.3: Acquisitions of nationality in France by former nationality (in per cent)

	<i>All modes of acquisition</i>					<i>Total</i>
	<i>Europe</i>	<i>Africa</i>	<i>America</i>	<i>Asia</i>	<i>Other</i>	
1985	46.8%	26.1%	3.9%	22.2%	1.0%	100%
1986	48.9%	27.0%	4.4%	18.7%	1.0%	100%
1987	45.7%	28.4%	3.9%	20.6%	1.4%	100%
1988	44.0%	31.5%	4.2%	19.5%	0.7%	100%
1989	37.5%	34.5%	4.6%	22.7%	0.7%	100%
1990	31.7%	42.5%	4.6%	20.5%	0.8%	100%
1991	27.0%	48.9%	4.5%	19.3%	0.4%	100%
1992	22.1%	54.2%	4.5%	19.0%	0.2%	100%
1993	20.0%	56.2%	4.4%	18.8%	0.6%	100%
1994	18.4%	58.2%	4.6%	18.1%	0.8%	100%
1995	18.7%	55.1%	5.4%	19.7%	1.1%	100%
1996	17.7%	55.7%	5.1%	20.6%	0.9%	100%
1997	18.1%	56.1%	5.0%	19.8%	1.1%	100%
1998	17.4%	57.6%	5.0%	18.8%	1.2%	100%
1999	15.2%	60.4%	4.8%	18.2%	1.4%	100%
2000	13.6%	61.2%	5.0%	18.6%	1.5%	100%
2001	12.3%	64.0%	4.9%	17.3%	1.5%	100%
2002	12.9%	65.3%	5.3%	16.4%	0.1%	100%
2003	12.9%	66.8%	5.5%	14.8%	0.1%	100%

Source: Ministry of Social Affairs.

and Tunisia), followed by Southeast Asia, and Portugal. Since 1992, Maghrebians represent more than 40 per cent of the new French citizens, which has been of crucial importance in the ongoing debates about access to French nationality.

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

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

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

5.3.1.2 *Nationality rights become a form of immigration control (1993)*

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

vate law? To resolve the problem, starting in 1927, an autonomous *Code de la Nationalité* existed.

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

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

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

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

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

The law of 1993 was therefore a serious attempt to restrict access to French nationality from several angles. Nevertheless, it did liberalise access to nationality in one small respect (Lagarde 1993: 559). Whereas

previously the administration could reject citizenship applications without justification, it was required to justify its decisions from 1 January 1994 onwards.⁴ Therefore government bureaucrats could no longer reject people based on unsubstantiated ‘suspicions’ and needed to document their decisions.

5.3.1.3 *A compromise between two principles (1998)*

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

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

- It re-established the principle that children born in France to foreign parents would be deemed French if they still lived in France at the age of eighteen and had remained in France throughout their adolescence.
- It upheld the need for children between sixteen and eighteen to openly declare their desire to become French, but for children between the ages of thirteen and sixteen the parents could make this declaration, with the child’s consent, if the child had lived in France since the age of eight.
- The requirement of five years residence at the moment of acquisition would no longer have to be necessarily continuous.
- The ‘double *ius soli*’ rule for children of Algerian parents (but not for children of parents born in Overseas Territories) was re-established.
- The delay for obtaining citizenship by marriage was reduced to one year.

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

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

- Adolescents born in France to foreign parents could experience difficulty in proving that they had continuously resided in France for five years before the date of their application to become French citizens. Failure to prove this constituted the main reason for refusal: 42 per cent of all applicants in 1996. After leaving school, at the age of sixteen, young people were often unemployed and therefore unable to prove their link with an institution during that time.
- The tribunals in charge of registering declarations employed different practices in this regard. The refusal rate at the national level had remained stable for two years at 2.6 per cent. Yet, without any coherent explanation, significant differences existed between regions. Three regions had a particularly high refusal rate: Low-Normandy (7 per cent), Lorraine (5.3 per cent) and Brittany (6 per cent). In 1996, seven departments had a refusal rate of over 10 per cent: Morbihan (41.2 per cent), Gers (24.3 per cent), Alpes de Haute Provence (20 per cent) Dordogne (17.5 per cent), Meurthe et Moselle (10.9 per cent), Lot (10.4 per cent). As a result, some tribunals gained a reputation for being restrictive, others for being more liberal.
- The most serious situation resulted from individuals not applying because they believed that they were already French. One study undertaken in Alsace spells this out (Weil 1997). Some young people who had been born in France felt French, and not having been properly informed of their status as a foreigner missed the deadline of 21 years of age without realising it. Information was circulated irregularly, which might explain the significant variations in the rates of nationalisation requests in the same region, for example in Alsace, 68 per cent in Mulhouse as opposed to 42 per cent in Strasbourg. Unequal access to information almost certainly disproportionately affected young people from underprivileged immigrant backgrounds.

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

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

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

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

5.3.1.4 New restrictions introduced by the 2003 Law

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

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

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

As early as 1945, assimilation became a condition for naturalisation, as the foreigner had to prove that he or she was sufficiently fluent in the French language. The 2003 law reinforced this condition and added the requirement of proving sufficient knowledge about the rights and responsibilities of French citizenship. The deputies who

drafted this amendment stated that it was to ensure that newly naturalised citizens understood the significance of 'becoming a citizen'. The decision of 22 February 2005 goes further and proposes formal procedures for evaluating the 'linguistic assimilation of candidates for French citizenship'. Language competency is now judged in a 20 to 30 minute interview in an office specifically designated as an 'Assimilation Evaluation Office'. It is for the moment however unclear how this new condition will be interpreted and applied by the prefectures and consular services.

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

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

5.3.2 *Institutional arrangements: the long road to naturalisation*

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

5.3.2.1 *Starting with the prefectures*

The first step is for naturalisation applications to be submitted to the prefecture office. While this step is often considered a mere technicality it is in fact a crucial stage, because the prefecture must verify that the foreigner has the right to become French. In the application the candidate must provide paperwork proving his or her residence in France. The candidate is then subject to an investigation by the *gendarmes*, the police, and finally the mayor's office, before verification that the applicant is eligible is given (Spire 2005).

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

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

5.3.2.2 *Treatment of the applications*

Each application is examined by a staff person who reports, on an 'instruction page'⁵, on the most important aspects of the file likely to be analysed during the deliberations. For example, the staff person might highlight the length of residence in France, the opinion of the prefecture, the age of the applicant, his or her profession, his or her family situation. After 1945, this process of highlighting important aspects was performed by an additional agent specifically designated for the task, but, since the 2003 reforms, the applications are only viewed by

one person, except in the most difficult of cases where a second agent is required. This change allowed the Under Secretary of Naturalisations to shorten the delays without hiring additional staff. In 2002, the average waiting period for having an application reviewed by the Under Secretary of Naturalisations was sixteen months, and by the end of 2004 this period had fallen to three months (not counting the review time for each prefecture). In difficult cases the application is examined by the head of the office, and if necessary, by the Under Secretary of Naturalisations (Weil 2005). Only in rare cases is the final decision the product of two or three successive opinions.

For an application to be considered 'acceptable' the first criterion is residence in France, i.e. the candidate must have his or her current primary residence in France. The applicant must also justify his or her 'assimilation into the French community, primarily by sufficient knowledge of the French language' (art. 21-24 of the Civil Code). 40 per cent of the applications deemed 'unacceptable' are because of these criteria. During the 1950s when most applicants were European, the criterion of 'assimilation' was rarely used and mainly signified linguistic competence.⁶ 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.⁷ The naturalisation candidate may also have to prove that he or she is a member of society 'in good standing' and without conflicts in the community, although this is rarely pursued.

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

3.2.3 *Increasing importance of appeals and the role of the Conseil d'Etat*

Since the beginning of the 1980s the number of appeals brought before the *Conseil d'Etat* 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.⁸

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

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

5.4 Conclusions

The full history of French nationality law cannot be understood without also studying developments in other modern states. Nineteenth-century European lawyers in charge of creating citizenship laws all read the same texts and adapted them to their individual countries as they saw fit (Weil 2002: 194). For example, after the Civil Code was adopted, Napoleon ordered, in 1809 just before the war with Austria, 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 the only European country of immigration in Europe at the end of the nineteenth century, France was the first state that opted for *ius sanguinis*, only to reintroduce *ius soli* in 1889. The latter was then founded on socialisation rather than on the former principle of feudal allegiance. In the latter half of the twentieth century, most of the European countries became, willingly or not,

countries of immigration and often followed the path taken by France. And, when European countries that followed the French tradition of *ius sanguinis* perceived themselves as countries of immigration, important legal changes were soon to follow. Laws that used *ius soli* to automatically attribute citizenship to grandchildren of immigrants were adopted by the Netherlands in 1953, Spain in 1982, and Belgium in 1992 (Weil & Hansen 1999). Across Europe various other measures have also been taken to ease access to citizenship for children of immigrants. With the exception of Denmark, Greece and Luxembourg, all of the EU-15 Member States allow children of immigrants born or raised on their soil to access citizenship imposing on them all the requirements of the regular naturalisation procedure. So, as more and more countries receive large numbers of immigrants, and in turn switch to more liberal nationality laws, it seems that the borders of nationality law are directly linked with migration flows. Of course, nationality law has several layers, and we must analyse the access for immigrants and their children, the access for spouses, the rules governing denaturalisation, and the rules governing the change from one nationality to another.

But in France, after fifteen years of debate and three legislative changes (1993, 1998 and 2003), the logic of the progressive integration of immigrants and their descendants that was adopted in 1889 does not seem to be in question. In current French nationality law, the longer the link with France the fewer individuals can refuse to be French. French nationality is therefore automatically given to the third generation born in France (double *ius soli*). Second-generation children are recognised as French at the age of majority, and their agreement is assumed if they do not formally refuse French nationality. For the immigrant generation one needs to follow the impact in practice of new naturalisation conditions. Until now, naturalisation was relatively easy and given to 80 per cent of applicants. France admits dual nationality, albeit not to nationals of countries still adhering to the Council of Europe 1963 Convention. Legally, as a principle of international and national law, people with a second nationality cannot invoke their foreign nationality *vis-à-vis* the second state of which they are a national. In their relation with the state, the fact that nationals may possess another nationality is not significant. As for cultural integration, a person who has dual nationality only 'practices' the nationality of the country of residence but like the culture of origin, the nationality of origin that is not 'practiced' disappears rapidly with the succession of generations.

Chronological table of major reforms in French nationality law

Date	Document	Content of change
19 October 1945	Ordinance on nationality	Confirms a liberal approach to the integration of the immigrants.
24 December 1945	Decree on naturalisation	The ministry of Population is in charge of the implementation of the naturalisation policy.
23 April 1952	Circular on naturalisation	More explicit conditions for assimilation; the creation of an assimilation report (procès-verbal d'assimilation)
22 December 1961	Law No. 61-408 (Art. 2-6)	No required period of residence for migrants from former French colonies or territories
22 December 1961	Law No. 61-408 (Art. 7)	Good health is no longer a requirement
3 July 1962	Evian Agreements	French muslims born in Algeria while it was a French department are deemed to have relinquished French citizenship if they don't make a declaration recognising French nationality before 27 March 1967.
9 January 1973	Law No. 73-42 on naturalisation	It completely equalises the situation of men and women and that of natural and legitimate children.
8 Décembre 1983	Law No. 83-1046	No more discrimination of naturalised citizens: a person who has acquired French nationality enjoys all the rights attached to the status of being a French citizen, from the day of that acquisition.
7 May 1984	Law No. 84-341	This law imposes a six month delay after marriage before the spouse can be naturalised by declaration.
22 July 1993	Law No. 93-933 on naturalisation	Imposing two new conditions for the naturalisation of a spouse: the couple must have been living together continuously during two years, and the French partner must retain his or her nationality.
22 July 1993	Law No. 93-933 on naturalisation	Creation of a mechanism of voluntary declaration between the age of 16 and 21.
16 March 1998	Law No. 98-170 (Art 2)	Suppression of the previous

Date	Document	Content of change
16 March 1998	Law No. 98-170 (Art. 6)	law: Automatic access to French nationality at 18 for children born in France of two foreign born parents.
16 March 1998	Children born in France of foreign parents can declare their desire to become French when between sixteen and eighteen years of age	
16 March 1998	Law No. 98-170 (Art.. 29)	Establishment of a special status for minors ('titre d'identité républicain').
20 August 1998	Decree No. 98-719	Public information regarding nationality matters
17 October 2000	Circular n°2000/530	Facilitated naturalisation for children who are under six years of age when they arrive in France.
30 December 2000	Law No. 2000-1353	Waiving the fees for naturalisation
26 November 2003	Law No. 2003-119	Access to French nationality by marriage after 2 years in France or 3 years in a foreign country
14 January 2005	Decree 2005-25	New formal procedure for evaluating the 'linguistic assimilation' of candidates for French citizenship'

Notes

- 1 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.
- 2 For that purpose they just need to produce their own birth certificate and that of one of their parents.
- 3 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.
- 4 The administration was also required to justify its decisions concerning cases of loss of French citizenship.
- 5 This 'pink slip' is filled out by hand by the staff at the office of the Under Secretary of Naturalisations and has no officially required protocol. The comments are

completely up to the agent at hand and are subsequently signed and stamped by this agent.

- 6 In a decision of 12 March 1953 ('The Spouse Bazso'), the *Conseil d'Etat* overruled a judgement of the administration that had considered an applicant insufficiently assimilated because of ongoing ties with a foreign country.
- 7 On 9 November 2000 the administrative tribunal of Nantes stated that 'while the headscarf is considered a requirement that expresses religious convictions, it shall not be considered an ostentatious or proselytising symbol' (Morillon 2003: 284).
- 8 Decision of the *Conseil d'Etat* of 27 May 1983.

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