



## Gender differentiation and citizenship acquisition: Nationality reforms in comparative and historical perspective

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### ABSTRACT

Feminist scholars have made an impressive contribution to the rethinking of citizenship, but they have largely neglected the gender differentiation of citizenship acquisition. This neglect has resulted in a lack of knowledge concerning the processes of change underpinning nationality reforms that have weakened the patriarchal nature of citizenship. This article seeks to fill the current void through a comparative analysis of nationality reforms that have granted married women an independent right to nationality and mothers the right to transmit their nationality to their children. It examines the politics of these reforms in the United States, France and Germany as well as the international dimension of these nationality reforms. The analysis reveals the long-term significance of the early internationalization of women's nationality rights and the interplay between domestic and transnational feminist activism.

### Introduction

Several intellectual currents have contributed to the vibrant growth in scholarship on citizenship during recent decades. This scholarship has resulted in a major re-conceptualization of citizenship. A narrow concept associated with nationality has been transformed into an encompassing one involving multiple dimensions, such as status, membership, identities, rights, obligations and participation.

Feminist thought has been a major force invigorating the rethinking of citizenship by challenging gender blind notions and male centric assumptions. A key thrust of feminist scholarship on citizenship has scrutinized the gendered nature of its dimensions and the implications for women's citizenship as well as the differences between women's and men's citizenship. Especially important has been the focus on rights, but feminists have also examined the obligations of citizenship, the participatory dimension, and membership and its bonds with the state and other citizens resulting in inclusion and exclusion (Kerber, 1998; Lister, 1997; Siim, 2013). In feminist scholarship a broader re-conceptualization of citizenship has eclipsed the narrower notion rooted in nationality, and citizenship acquisition has been supplanted by other research concerns.

This article puts the spotlight on what has become a neglected area of feminist scholarship: citizenship acquisition and nationality reforms. Although feminist historians have provided insightful accounts of the gendered nature of citizenship acquisition in specific eras and countries, their analyses have seldom continued into contemporary times. Comparative research seeking to understand the commonalities of the

reforms as well as the importance of national and international contexts in shaping the reforms is also missing.

Attention to citizenship acquisition and nationality in feminist research is warranted for three main reasons. Historically, citizenship has been a patriarchal institution that prescribed the indivisible nationality of the family, enshrining *pater familias* and marriage as its cornerstones. The husband's nationality determined that of his wife and the father's nationality that of the children. As a pillar of gender differentiation of citizenship, derivative nationality—the right to nationality derived from family relationships—deserves feminist scrutiny. The second reason is to understand the processes of change involved in nationality reforms that have eroded gender differentiation in citizenship acquisition. Such an understanding can provide insights for formulating future feminist strategies for reform in countries where gender differentiation in citizenship acquisition remains encoded in nationality laws. Third, nationality laws determine who are citizens, and thus are the very foundation for accessing citizenship rights as well as the other dimensions of citizenship that have been the focus of feminist researchers.

This article has two major aims. The first is to take initial steps in filling an important void in feminist scholarship on citizenship through a comparative analysis of the nationality reforms that have undermined the patriarchal nature of citizenship acquisition. The second aim is to bring nationality reforms onto the feminist research agenda so that the reforms that have weakened the gender differentiation of citizenship acquisition since the end of World War II (WW II) are no longer an unwritten chapter.

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## The study

The primary focus of the study is two key reforms that have undermined the patriarchal nature of citizenship acquisition. The first altered citizenship rights so that women, irrespective of marriage, had an independent right to nationality and married women were no longer forced to acquire the nationality of their husband. The second reform granted mothers the right to transmit their nationality to their offspring. A third reform equalized citizenship acquisition of foreign-born wives and husbands of citizens.

The introduction of the first two reforms in North America and Western Europe spanned several decades, from the early 1920s to the mid-1980s. Looking at the reforms across decades, three periods stand out. Nationality reforms have often occurred in the wake of wars, and several countries adopted new nationality laws in the 1920s and during 1945–55. A third period of reform was from the mid-1970s to the mid-1980s when many nationality reforms involved gender, primarily introducing the right of mothers to pass on their nationality to their children and equalizing the procedures for foreign-born spouses of citizens in acquiring nationality, but in a few countries married women finally gained an independent right to nationality.

The sequencing of reforms discloses huge cross-national differences in introducing the reforms, which raises the question of what triggered the reforms and the process of change. How important have women's movements and feminist actors been in the process? To explore these questions, I examine the reforms in the United States, France, and Germany.

A major criterion in selecting these countries has been that they represent different national frameworks of citizenship acquisition in terms of the key routes to becoming a citizen and how gender and ethnicity/race are encoded in the routes. The citizenship acquisition framework represents a specific set of thresholds to nationality reform, which are discussed below when I present the context of nationality reform in each country.

A second criterion has been the timing of the reforms. The United States and France were forerunners in introducing the reforms, while Germany introduced the reforms several decades later. As forerunners the US and France deserve special attention to understand how the reform process got underway. Germany introduced the reforms in the 1950s and the 1970s. The timing of the German reforms was similar to several West European countries that adopted the reforms after WW II. The German case is of special interest. As most West European countries, the major route of citizenship acquisition in Germany is *ius sanguinis*, the principle of blood or descent, where parentage, fatherhood and wedlock have been pivotal. However, the German framework of citizenship acquisition has been viewed as exemplifying a purer version of *ius sanguinis* than most other countries. Furthermore, the politics of nationality were influenced by the aftermath of the Nazi regime and the partition of Germany. In these respects Germany appears to provide a least-likely case, that is, the reforms would not be introduced or would be seriously delayed. Nevertheless, Germany did introduce the reforms, and it was not among the very last European countries to introduce the nationality reforms. This choice of countries highlights variations in time and allows us to analyze opportunity structures and movement priorities, resources and strategies in different contexts as well as over time. An examination of the politics of nationality reform in these countries provides the beginnings of understanding the process of change that has undermined the gender differentiation of citizenship acquisition – a process that reveals the importance of the interplay between domestic and international feminist activism.

## The politics of nationality reform in the United States

Features of the national framework of citizenship acquisition influenced the politics of nationality reform. As a nation of immigrants, a central pathway to citizenship has been naturalization. Rules on

naturalization have been enmeshed in efforts to control immigration and who would become future citizens. However, the most common route to citizenship has involved an expansive version of *ius soli*, the territorial or birthplace principle of determining nationality. Persons born in the United States have been citizens at birth regardless of their parents' nationality, immigration status, or even ineligibility to become naturalized citizens. The birthplace principle has marginalized *ius sanguinis*, the principle of blood or descent, as an avenue to citizenship. It applies only to children born outside the United States. The marginalized position of the principle of descent in the US citizenship framework created a comparatively low threshold of reform with respect to equalizing the rights of mothers and fathers in transmitting their nationality to their offspring.

Early naturalization laws established gender and racial inequalities in acquiring citizenship. The first mention of women in the laws governing citizenship acquisition occurred in the 1804 Naturalization Act that granted citizenship to the widow of an alien who died before completing the naturalization process (US Congress, 1804, 293). These provisions indicate that derivative citizenship in the form of marital naturalization was the norm. Legislation in 1855 and 1907 fully incorporated derivative nationality and strengthened the gender differentiation of citizenship acquisition. The 1855 act granted citizenship to foreign-born women who married US citizens, and it replaced “parents” with “father” in transmitting nationality to children born abroad. The 1907 act divested American-born women of their nationality if they married a foreigner (Bredbenner, 1998; Cott, 1998; Kerber, 1998; Sapiro, 1984). In sum, married women's nationality has been intertwined with immigration policy, a divisive issue. Divisions extended to women; the ending of derivative citizenship had drastically different consequences for the rights of immigrant wives of citizens and native-born women married to an alien.

The racist character of naturalization laws deepened divisions. The 1790 Naturalization Act laid down that only “free white persons” could become naturalized citizens (US Congress, 1790, 103), creating a fault line in access to citizenship that privileged white women. The 1855 act, introducing marital naturalization for foreign wives of US citizens, stipulated that “the wife herself might be lawfully naturalized” (Bredbenner, 1998, 15), thus excluding nonwhite wives. After the Civil War persons of African descent were no longer barred from naturalization, but exclusion of Asians intensified.

In conclusion, the framework of citizenship has created divisions among women, which seem hardly conducive to achieving nationality reform. Conversely, with the exception of immigrants' marital naturalization, the incorporation of derivative citizenship, especially in the case of native-born women, happened much later in the US than in many European countries. Its application to American-born women in 1907 occurred when the suffrage and women's movements were well-established and growing in strength. Also crucial in the US context was that women's nationality rights and voting rights became entangled. A 1915 Supreme Court decision upheld derivative citizenship, underlining the implications of the principle for married women's political rights (Kerber, 1998, 41–42). The court ruling contributed to fusing the two causes, making married women's independent citizenship a movement priority. Energized by their suffrage victory, movement women turned their efforts to nationality reform.

## The 1922 Married Women's Citizenship Act (the Cable Act)

The Married Women's Citizenship Act came on the heels of the introduction of women's suffrage in 1920, and women's enfranchisement affected the politics of nationality reform. Granting women the right to vote entailed one of the largest expansions of the electorate in US history, and initially there were fears that women would vote *en bloc*. Thus neither the political parties nor elected officials could afford to appear as neglecting the concerns of women voters. Women's suffrage also increased the significance of derivative citizenship in two different

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