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Citizenship as Contingent National Belonging: Married Women and Foreigners in Twentieth-Century Switzerland

Brigitte Studer (translated by Kate Sturge)

> 'As marriage is of all human actions that in which society is most interested, it became proper that this should be regulated by the civil laws.'
>
> Montesquieu, *The Spirit of Laws*, Book XXVI, chapter 13[1]

In 1937 Dr Max Ruth, high-ranking police department official at the Swiss Ministry of Justice and Police, published his influential treatise 'Das Schweizerbürgerrecht' ('Swiss Citizenship'). In it he wrote:

> Citizenship is something whole, indivisible, absolute, something that one has or does not have, but which one cannot have in part or conditionally or in an altered form. Thus everyone has or fails to have it in the same degree. Here in Switzerland there are no classes of citizens, nor any distinctions in citizenship based on how it is acquired or how long it has been held.[2]

The concept of citizenship has a dual dimension, which the Swiss term '*Burgerrecht*' underlines. It emcompasses both citizenship rights – the individual's integration into a juridical and political space, a territorial integration that in the democratic state is attended by universal rights and obligations – and the status of nationality itself,

which marks inclusion in and exclusion from the national community.[3] Contrary to Max Ruth's account of Swiss citizenship, the modern, constitutional state breached the principle of universality in both respects: women and men received unequal treatment firstly in the internal relation of state to citizens, and secondly in the external relation of state to non-nationals.

Of the two aspects of citizenship outlined above, this paper will focus on the second, nationality. Historical research, and especially research in gender history, has long demonstrated that citizenship is a dynamic concept and that not all citizens enjoyed citizenship rights in equal measure.[4] But as regards nationality, too, in many states an exception existed until well into the twentieth century. Nationality was far from being something whole, indivisible or absolute that could only be lost through voluntary renunciation: if a woman married a foreign national, she was deprived of her own nationality.

This arrangement, known as the 'marriage rule', often had harsh consequences. For example, during the Second World War the Swiss Irma Bornheim became stateless upon marrying a German Jew. In late August 1942, when the Swiss borders were sealed, she wrote from Paris to the Swiss President, asking to be allowed to regain her Swiss nationality: 'I really am a true Swiss; I went to school in Switzerland and my parents and forebears all served the country.' She asked for her reintegration into nationality to be 'granted by special grace, the normal course of law being closed to me'.[5] After a year of administrative formalities Bornheim was finally allowed to enter Switzerland as a refugee, but not to apply for reintegration into Swiss nationality. Because her husband, who had been deported by the Nazis, was classed as 'missing', she could not satisfy the condition for reintegration that her marriage first be dissolved. Some women's cases took an even more tragic course. The mentally ill Frieda Rech, married to a German, was sent back to her village of residence in the Third Reich, where she appears to have fallen victim to Nazi euthanasia policies.[6]

Not until 1957 was the United Nations' Convention on the Nationality of Married Women ratified, requiring signatory states to disregard women's marital status in their nationality legislation. Neither marriage or divorce nor changes in the husband's nationality were to have automatic consequences for the nationality of the wife. For many countries this was a novelty, and in fact Switzerland did not fulfil the Convention's requirement until the amended nationality law was passed on 23 March 1990, coming into force on 1 January 1992.[7]

In the following paper, the practices and controversies surrounding the special legal treatment of women according to their marital status will be examined for the case of Switzerland – a country whose high migrant population throughout the century meant that a large number of Swiss women who remained in their own country after marriage came to be classed as 'aliens'.[8]

Unlike most states in Europe and North and South America, in Switzerland these discriminatory measures remained in effect for most of the twentieth century, although international shifts in the codification of female nationality had an impact on Swiss deliberations of the issue of marriage and citizenship. The Swiss case in particular seems to support the view of French ethnologist Marcel Mauss: while there is a tendency for different societies' legal institutions to move into line with each other, juridical phenomena shape fundamental structures and values of a society that prove particularly resistant to reform.[9]

For women who married foreign nationals, one of the most important principles of the modern nation state was violated – the principle that there can be no involuntary loss of nationality. This fact will serve as a magnifying lens to examine the gendered construction of the national. The marriage rule is particularly revealing in that it marks the intersection of population policies, including those towards foreigners, with the politics of marriage and the body. In the discourses and practices around deprivation of and reintegration into nationality for Swiss women marrying foreign husbands, divergent interpretations of the social and gender order were both expressed and constituted: the notions articulated at any one point were always in flux, and adapted or 'modernised' themselves as Swiss society was transformed.

In particular, these conceptions of social relations were closely interlocked with attitudes toward self and other, with notions of the 'Swiss' and the 'un-Swiss'. Excluding women who had married foreigners also meant drawing normative boundaries internally. The use of certain 'gender technologies'[10] in the construction of the national, by which knowledges of gender were deployed to regulate the political, served to specify the rights and duties of the Swiss citizen, and especially the female Swiss citizen. They served to delimit the 'imagined political community', as Benedict Anderson has defined the nation,[11] and to determine who was outside it.

Indeed the modern nation state introduced legal regulation and hence defined the boundaries of nationality.[12] The wife's adoption

of her husband's nationality was an invention of the administrative state in the late eighteenth and the nineteenth century. In France the system was codified in the Code Civil of 1804; in the USA not until 1855, culminating in 1907, when women's loss of nationality was laid down explicitly in law.[13] Switzerland waited until 1940 to introduce such a law. Why did this discrimination persisit when the trend otherwise pointed towards a reduction of legal disparities? This question is especially interesting because the modern nation state considered standardisation essential, for reasons not only of principle (lawfulness, equality) but also of practicality (efficient administration) and politics (stabilising the social order).

One answer may be found by separating the dual strands that pervade the tradition of modern citizenship. J. G. A. Pocock's influential study identifies these as republicanism, based on civic duties and virtues, and the more recent universalist liberalism.[14] The former is corporative in orientation, focusing on the family or small, manageable communities and stressing the tasks of the citizen within such communities; the latter privileges the individual's equality of rights. Recent research shows that Pocock's interpretation of different but parallel 'languages' can very fruitfully be applied to Swiss history.[15] For a country characterised by its plethora of particularist interests, the concept of nation offered by civic republicanism – one based on active political participation – provided a shared point of reference that could also accommodate the liberals. The federal state of 1848 was a product of liberalism, yet from the very start it included important elements of the republican tradition. Clear traces of this fact can be seen in the locally organised structure of Swiss nationality: in Switzerland, nationality can still only be conferred through membership of a municipality. Furthermore, for the whole nineteenth and twentieth century Swiss nationality was not contractualist but genealogical, normally transmitted by the principle of *jus sanguinis* (citizenship conveyed through blood lines / heredity). Up to the present day, no *jus soli* (citizenship dependent upon place of birth / parents' residency) has existed.

Inclusion in nationality is thus seen as a matter of destiny, independent of the individual will and of personal interests. Since, on the other hand, 'naturalisation' – voluntary entry into the nation – is also possible, the Swiss example here illustrates the contradiction, highlighted by Benedict Anderson, within the modern nation, which is at once both open and closed. Even if an individual can be integrated

via naturalisation, discursively the modern nation draws its strength from equating itself with a community. To belong to this community, what counts is not free will but 'natural' ties (such as skin colour, gender, family relationships or place of birth).[16] Other historians, such as Eric Hobsbawm, have also emphasised that various and conflicting projects are at work in every nation-building process.[17]

This coexistence of different political traditions often gives rise to disputes over the definition of citizenship and hence of national belonging, and these are ultimately negotiated and decided on the national political plane. For this reason, the following investigation will focus on the bureaucratic administration, which, as Max Weber has shown, is the defining agency of the legal and rational rule of modern societies.[18] Here, one occupational group in the state's sphere plays a key role, namely the juridical experts. The 'juridical field', to follow Pierre Bourdieu, is a highly differentiated one, comprising divergent political and personal positions, conflicts of competence and competitive relations. The state-recognised experts in law and justice also held different amounts of symbolic capital. Yet, in a certain sense, they owned the monopoly on the definition of the area.[19] The field was largely cordoned off against non-authorised actors from outside.

Of course, the juridical field was not the only one to participate in the process of defining national belonging. However, it was a central site of the formation of this discourse. In addition, the implied actors – councillors, officials, politicians, and law professors, even the politically committed women's representatives – all had to articulate their positions within the logic of state authority and juridical patterns of thought. That this rationalised language concealed not only political strategies but also very particular conceptions of social order is something we have learned from the work of both Pierre Bourdieu and Michel Foucault.[20]

Over and above the immediate determination of nationality, the discourses and practices I shall investigate here reflected and regulated the organisation of gender relations within marriage. In particular, they inscribed their norms on the gendered body and its functions in reproduction.

As the twentieth century began, this issue acquired a new social and political relevance. In many European countries, declining birth rates and increasing hostility to immigration combined to form an explosive mixture of anxiety and aggression in population policy. The tension between the irreconcilable principles of the nation's openness

and its closedness[21] initially remained unresolved. The First World War provided the first decisive impetus towards a bounded or closed nation, followed by the effects of the Depression and the Second World War. This article aims to show that the process of 'closing' the nation would not only redefine the categories of aliens and refugees, but would also profoundly affect the political status of Swiss women who allied themselves to 'the other'. In part, the debate around inclusion and exclusion was articulated through the definition of patterns of female belonging.

While the impact of these events was Europe-wide, Switzerland shows a certain time-lag. In terms of society and mentality, in Switzerland the 'war culture', the system of socially mediated values, symbols and norms that specifically prevailed in wartime, persisted well into the years after the Second World War.[22] I have divided my analysis of this process into several phases in order to highlight those historical moments in which controversies accumulated and converged, often galvanising a legislative resolution. Analysis of these moments illuminates the close interweaving of discursive gender construction, nation state, legal system and politics.

The first phase covers the second half of the First World War, from 1917, and the interwar period up to the mid 1930s, when questions of citizenship and migration gained in significance and led to a concentration of international legislation. During this period jurists and state bureaucrats contended with the problematic contradictions between internationalisation of law and the discourse of '*Überfremdung*', a term perhaps best translated as 'swamping' by the alien.

The creation in 1917 of the Swiss *Fremdenpolizei*, which oversaw the policing of foreigners in Switzerland, marked an incisive shift in state policy towards immigration and aliens. It marked the emergence of a central administrative apparatus for monitoring settlement and residence, also impelling a radical shift from liberal to restrictive discourses of naturalisation and more restrictive naturalisation practices. Assimilation was no longer considered the desired outcome of naturalisation but rather its precondition.[23] Underlying this shift was a new perception of threat to the nation, officially articulated in the notion of *Überfremdung*, which was to dominate Switzerland's public discourse right into the 1950s and 1960s.[24]

In the interwar period, criticism of the 'marriage rule' was beginning to mount both in Switzerland and internationally. Previously

barely questioned, the rule meant that in the cases of marriage between partners of different nationalities, the woman immediately acquired her husband's nationality and lost her own. Three reasons may be identified for the shifting perceptions of this rule that seem to apply to the majority of countries involved. Firstly, the experience of the First World War showed that the arrangement could have serious consequences for many women, who might become stateless or, as relatives of a citizen of an enemy state, face retaliatory measures in their own country. Secondly, the war was followed by a speedy rise in general support for universal suffrage and the women's vote, leading to increased reservations about the automatic naturalisation granted to the wives of nationals. Finally, numerous international women's organisations – such as the International Alliance of Women (IAW), the International Council of Women (ICW) or the Women's International League for Peace and Freedom (WILPF) – called for a nationality law that disregarded marital status. 'That a married woman should have the same right to retain or change her nationality as a man' was the demand addressed to the Versailles Conference in 1919.[25]

Swiss women's organisations, which were closely connected to international networks, had become increasingly aware of the growing significance of this issue since the war. In 1916 the Swiss women's suffrage association (Schweizerischer Verband für Frauenstimmrecht or SVF) convened a committee to study the question, followed in 1917 by the convening of a similar committee by the umbrella organisation of the Swiss women's associations, the Bund Schweizerischer Frauenvereine (BSF).

Espousing the principle of individuality, the women's associations introduced a 'new' conception of nationality that would become generally known in legal and political circles as the 'modern' one.[26] In contrast to the 'classical' or 'traditional' understandings of nationality and citizenship, it posited an incontrovertible individualisation of all citizens of a state, irrespective of gender and marital status.[27] The demands of the women's organisations thus focused attention on the question of coherence among theories of state, constitutional principles, legal dogmas and judicial practices. They cast new light on the long extant tension between corporatist and individual notions of citizenship, between the close attention the modern state should pay to its individual citizens and the subsumption of individual women into the family.[28]

In Switzerland the principle of the individual equality of all citizens was written into the 1848 constitution (art. 4: 'All Swiss are equal

before the law') and the modified constitution of 1874. The interpretation of this clause long remained almost unchallenged, but towards the end of the nineteenth century questions began to arise, first from individual women, then from women's organisations, as to whether the term 'Swiss' did not actually include the female sex as well.[29] Jurists thus faced increasing calls to provide a theoretical legitimation for the inequality that existed. The same applied to the marriage rule.

The practice of depriving women of their nationality upon marriage to an alien, nowhere enshrined in positive statutory form during the nineteenth century (or beyond that, up to 1941), was said to be based on customary law. According to article 54, paragraph 4 of the modified Swiss constitution of 1874, the married woman would acquire the nationality of her husband, or, if marrying within Switzerland, she would be admitted to full membership in her husband's *Heimatgemeinde* (community of origin), a status which children inherited from fathers and which men could also pass to their wives.[30] The point of this provision, as numerous jurists later explained, was to force the municipalities to accept wives of community members (Bürger) and thus entitle them to the social benefits this status accrued, including social assistance and welfare.[31] Controversies persisted over the issue of whether these provisions meant a corresponding loss of citizenship in her home municipality for the Swiss woman marrying a Swiss man from a different area or the loss of nationality for the Swiss woman marrying an alien. At the beginning of the century, however, the tendency seemed to be towards abolishing the rule. In 1903, while Swiss immigration policy was still in its liberal phase, the legislature initially made it possible for widowed, separated and divorced women to regain their nationality without cost.[32]

There was yet another reason why jurists disagreed on the legality of the marriage rule. Since 1848, Swiss nationality legislation had followed the maxim that the application of the Swiss norm must not cause statelessness.[33] Yet this was exactly what the marriage rule did cause, if the husband's country did not automatically grant nationality to women who 'married in'. In the interwar period, the countries applying this type of rule were still a minority, but a growing one. In 1933 there were twenty-two of them, including the Soviet Union, the USA, Belgium, France, Canada, China and several South American countries, as against forty-two states which continued to maintain the principle of unified family nationality.[34] The Swiss federal court had decided

in 1910, citing a 1798 precedent, that in cases of potential statelessness the woman should be allowed to retain her Swiss nationality.[35]

One legislative shift towards the 'modern' principle lent particular energy to the international and Swiss debate between the wars. In 1922 the USA's Cable Act secured the principle of independent nationality for married women. The guarantee was partial: it applied only as long as the woman remained in the USA, and not if she had lived in her husband's country for over two years or for over five years in any foreign country. The Cable Act also abolished the husband's right to automatically obtain nationality for his wife.[36] After Soviet Russia in 1918, the USA now became the first western country to adopt the 'modern', equality-based perspective in nationality matters. Latin American and Caribbean states soon followed.[37]

Aside from numerous campaigns by the large international women's organisations, ICW, IAW and WILPF, as well as the International Federation of University Women (IFUW), the period following the Cable Act saw a male-dominated group, the Gesellschaft für Internationales Recht (Society for International Law), publicly supporting international regulation of the issue for the first time. At its 1922 conference, the Society passed a resolution calling for 'the question of nationality of married women to be regulated uniformly by treaty', which gave married women the right to decide.[38] An initial step in this direction was expected in 1930 from the third League of Nations conference on legal codification, in The Hague. However, the conference was a disappointment. The delegates could only manage to agree on a declaration of principle, restricted to recommending the forty-seven participating states to modify their nationality legislation so as to prevent a woman from losing her nationality against her will and solely due to marriage.[39]

In Switzerland, the Cable Act paved the way for a government resolution of November 1922 which provided new legal backing to the federal court's practice of allowing Swiss women to retain their nationality of descent where necessary.[40] This did not, of course, settle the question of principle, and the SVF therefore reopened the issue at its 1923 general meeting. The association passed a resolution favouring a right of option for Swiss women 'marrying out' which would have enabled her to hold dual nationality.[41] The federal administration rejected the proposal without further comment.

This unceremonious rejection illustrates the uneasy position of the Swiss women's organisations. Swiss women had no right to vote or to

stand for election until 1971, and until 1923 the federal court had not even granted women throughout Switzerland the right to practise law, on the grounds of their lack of political rights.[42] After the First World War the occasional representative of the women's organisations was appointed to extra-parliamentary commissions or to the federal consultation process, but this practice depended on who was politically responsible at any one time.[43] For the most part, the organisations had to be content with intervening from the outside, often with the help of supportive reports from respected male jurists, or with finding male representatives to work on their behalf. In short, until the last quarter of the twentieth century women were only marginally present at the sites where competing concepts of nationality were negotiated and ultimately defined.

A further obstacle to women's demands was an increase in the strength of the federal administration, which underwent rapid expansion in the 1920s, particularly in the areas of immigration policy and the policing of aliens.[44] Power was also shifting within the administration, from the *Fremdenpolizei* to the police service department of the Swiss Ministry of Police and Justice (EJPD), marking a political change in immigration practices that now sought to intensify the monitoring of foreigners within the country rather than merely seeking to fend off 'undesirable aliens' at the Swiss border. Reflecting this new emphasis on the domestic aspect of immigration policy, in 1926 the police department of the EJPD became the agency responsible for deliberating the requests of Swiss women to regain their nationality, which had previously been in the jurisdiction of a section of the Ministry of Foreign Affairs, or as it was then known, the Political Ministry.[45]

One of the driving forces behind the construction of a set of restrictive legal instruments and an equally restrictive administrative practice in immigration policy was the head of the police department, Dr Ernst Delaquis (1878–1951).[46] Born in Alexandria, Egypt, Delaquis was a doctor of law who had studied in Heidelberg, Munich and Berlin, and, before his appointment as section head in the Swiss federal administration, had held a professorship of criminal law in Frankfurt. Until he left the administration in 1929,[47] he worked to centralise competence in matters of immigration law in the hands of the Confederation, as well as to create selective conditions for foreign nationals wishing to reside or settle in Switzerland. Delaquis believed that the state ought to be able to choose immigrants according to their 'quality' and 'usefulness'. He advocated the introduction of a

checking procedure for candidates applying to settle in Switzerland, covering health, capacity to work and potential for assimilation.[48] Foreigners who were 'undesirable' or classed as potentially dangerous were to be expelled. From the perspective of the functionary Delaquis, the state was entitled to protect itself legally from abuse of its social provisions, especially welfare benefits, by certain aliens, and thus to secure its own material interests.[49] To this end he also proposed improved international regulation of the welfare obligations owed to foreign nationals.[50] In his opinion Switzerland was supporting needy foreigners generously while Swiss nationals abroad received little or no aid from their states of domicile – the reciprocity of the treaties on this matter being, he claimed, 'purely theoretical'.[51]

The arguments Delaquis brought forward to support his policy of defending the state's interests and expanding the repertoire of legal instruments of control were not merely pragmatic, administrative ones. Alongside the functional criterion that foreigners must not pose a financial burden to the state, he also drew on criteria much less easy to objectivise. Thus, among Delaquis's proposed selection conditions were the country's 'capacity for absorption' and the foreigner's 'capacity for assimilation'. As he wrote in his 1921 draft for a federal law on the rights of aliens to reside and settle, the 'number of foreigners coming in to settle permanently must not exceed what is reconcilable with the country's interests'. The chief concern of the admission procedure must, he continued, be the issue of '*Überfremdung*'.[52] By deploying this concept, which remained vaguely defined but became ever more prevalent in the 1920s, Delaquis situated himself within the framework of a discourse of national belonging that considered everything designated 'foreign' to be a threat to 'Swissness', however this was defined.

As Delaquis explained in his speeches and writings, to 'combat *Überfremdung*' was also to strengthen homogeneity and cohesion from the inside. In contrast to later interpretations of the 'danger of *Überfremdung*', however, Delaquis's strategy did still include the integration of people who had already settled in Switzerland. One means to this was naturalisation. In 1928, before Delaquis left office, a modification of the article on nationality in the Swiss constitution had been completed. The Confederation had been granted the authority to combat '*Überfremdung*' with legislation on nationality. The goal of naturalisation, or even 'compulsory naturalisation', as the *jus soli* was sometimes known, was to bind new citizens to Switzerland, so that in cases of external threat they would be willing to fight for the

country.[53] Here it becomes clear that Delaquis, while sharing in the then dominant discourse of a 'unified Swiss *Wesen* [nature, character]', defined national belonging at least partially through cultural factors.[54] For him, the decisive issue was loyalty to the country. Though such loyalty derived primarily from descent, under certain circumstances it could be assimilated or learned. Loyalty was thus to some degree a dynamic and mutable characteristic, rather than exclusively an essential or inherited quality.

The constitutional article passed in 1928 under Delaquis's aegis also gave authority to the government to pass a law which allowed the children of mothers of Swiss descent to obtain Swiss nationality via the *jus soli*, provided the parents were resident in Switzerland when the children were born. Citizenship was to be granted at the mother's inherited community of origin. Although no corresponding legal instruments were created in the subsequent years, the decision of principle had fundamental importance. Firstly, the new ruling meant that a child's membership in the nation could be inherited not only from the father but also from the mother. And for the question of married women's nationality, it implied that women's nationality was not wholly extinguished on marriage to a foreigner, as the BSF legal committee noted with approval.[55]

This did not, however, mean that Delaquis advocated a nationality independent of marital status. When in 1926 the SVF approached him on the matter, he responded with concerns encompassing civil law as well as constitutional and international questions.[56] Delaquis's negative stance reflects the ambiguity within his – and in general the Swiss – culturalist conception of the nation. Since the country's unusual ethnic and cultural heterogeneity ruled out monothetic classifications from the start, the definition of what was Swiss relied on negative differentiation, as not-French, not-German, not-Italian.[57] After the turn of the century, and particularly after the First World War, notions of ethnicity increasingly began to crowd into this definitional space. The agents of the new semantics of nation were various organisations of civil society. In Switzerland they were traditionally closely connected with the state administration, such as the Neue Helvetische Gesellschaft (New Helvetic Society), the Schweizerischer Juristenverein (Swiss Jurists' Association), the Schweizer Städteverband (Association of Swiss Towns) or the Schweizerische Gemeinnützige Gesellschaft (Swiss Charitable Society).[58] The political and citizenship-oriented view of national belonging began to give way to notions of

a culturally homogenous group that must be preserved. This homogeneity, and the national loyalty derived from it, rested first and foremost upon descent – it was inherited. Here the argumentation bordered on biologist theories. But at the same time it also contained elements of an environmental theory, since under certain circumstances Swiss nationality might constitute itself through the influence of the family and general social milieu. The latter case found expression in the 1928 constitutional article: integration was possible for children born in Switzerland to mothers who had been Swiss before their marriage.

However, it seems the constitutional article was merely one last, ambiguous, manifestation of a liberal understanding of citizenship. As the interwar period progressed, the dominant view of citizenship gradually retreated from even this minimal version of a *jus soli*, and the article was never applied. The development gained momentum through the appointment of Heinrich Rothmund (1888–1961) to succeed Delaquis as head of the central police service. Rothmund, a jurist, had headed the Swiss aliens police since 1919, and from 1929 united both functions until his retirement in 1954. Like Delaquis, he was interested in centralising immigration and nationality policy, but he set slightly different priorities in the admission criteria for would-be residents. As both his practice and his writings show, he placed an even stronger emphasis on moral and ethnic criteria, without abandoning the economic and financial components of the battle against *'Überfremdung'*. In Rothmund's view, the proposed admission checks should chiefly address the personality and origin of the applicant: 'If he is irreproachable, and if his race and origin allow us to assume he will be able to enter into our way of life and our *Wesen*, in other words that he is very likely to be capable of assimilation, then we can begin to ask about the purpose of his stay and the occupation he wishes to pursue.' [59] On this basis Rothmund derived a hierarchy of capacity for integration. From the start it bore anti-Semitic traits, though their full force emerged only after 1933 in the context of refugee policy.[60]

In view of this hardening of immigration policy and of conceptions of national belonging, it is hardly surprising that the 1930s brought no progress for women's demands regarding the individual right to nationality. The women's organisations began to cooperate more closely on the issue, and in October 1932 a joint petition was submitted to the government by the BSF, the SVF, the WILPF, the Schweizerischer Akademikerinnenverband (Swiss Association of University

Women), and the Social Democratic party's women's group.[61] This too remained without effect. Not only did the women's organisations lack any bridgehead to the relevant offices in the federal administration, but liberalisation was also hampered by the headway made by conservative positions on family policy right up to government level.[62]

Even so, criticism of the marriage rule at home and abroad made a debate among legal scholars inevitable. The Schweizerische Vereinigung für Internationales Recht (Swiss Organisation for International Law), for example, devoted a February 1933 conference to the issue of married women's nationality. To be sure, the two keynote speakers both argued in favour of retaining the status quo, and the oppositional opinion of Antoinette Quinche, the first female lawyer in Lausanne, remained clearly a minority view.[63] The argumentation is revealing. While the second speaker, Dr Emil Beck, professor of law at the University of Berne, was content to argue historically that the Swiss marriage rule was simply a matter of customary law[64], Georges Sauser-Hall, a respected professor of law at the Universities of Geneva and Neuchâtel and member of the Institut de Droit International, tried much harder to present a plausible justification. His reasoning made it clear that the legal regulations were underlaid by social perceptions of national belonging. Differing interests, he noted, had to be weighed against one another: despite his sympathy with the individualist view held by the women's organisations, he still felt that 'perfect equality between man and woman' must be 'sacrificed to higher interests'. For reasons of 'social cohesion', family unity must take precedence.[65] He explained the need to subordinate women's interests by citing the Swiss conception of nationality, which differed both from the Soviet idea of a purely economic tie between state and citizen, and from the American notion of a territorial bond where settling in a country was decisive. In Switzerland, there was a moral and spiritual tie that depended neither on political convictions nor on residence in the country. Only nationality could form the 'cement that safeguards the cohesion of the people', and it was a 'powerful factor in the cohesion of the family'. That was why this conception had 'become tradition' in the majority of European states.[66]

Sauser-Hall was thus defending a legal practice which, as he himself admitted, sacrificed the principle of equality, but which he considered vindicated by the higher interests of the state and the community. In a country like Switzerland, with its many centrifugal forces, only a homogenous mentality could secure social stability or, as Sauser-Hall

put it, could effect 'cohesion'. For this, the 'unity of the family' was an essential factor. Sauser-Hall thus once again publicly underscored the 'traditional' meaning of nationality, gender and marriage, based on a corporatist, as opposed to a liberal and individualist, view of the social order. The central structuring principle of this community – in both large (the state) and small (the family or marriage) – was a hierarchical gender relationship in which the man was the decision-maker. From the second half of the 1930s onwards and into the war, the conservative and patriarchal semantics of nation was to intensify radically. In fact, the representatives of the 'traditional' principle would even succeed for the first time in inscribing what had previously been a common-law practice into a positive statute, albeit within the temporary wartime *Vollmachtenrecht*, or special mandate law.[67] This codification arose within the discursive construction of what might be called a 'nation of descent'.

The architect of this construct was Dr jur. Max Ruth (1877–1967). From 1920 he was deputy director of the police department, and after Delaquis's retirement he took on responsibility for questions of naturalisation and nationality. In 1943 Ruth also became head of the newly created appeals department of the EJPD. Ruth was a consistent upholder of the 'classical' principle, which he justified using social Darwinist, genealogical arguments. He gave the position here termed 'nation of descent' a broad conceptual frame in the lengthy 1937 treatise mentioned above, 'Das Schweizerbürgerrecht'.[68] His theses seem to have had some public resonance, for according to Annie Leuch (1880–1978), the leading SVF proponent of nationality reform, his text was well received among contemporary jurists, both male and female.[69]

Ruth's ideas rested on a 'nationality of lineage'. This, he explained, implied a 'collective family nationality', since, according to Swiss law, 'one is not a citizen as a private person, not by virtue of one's will, but as a momentary, transient link connecting past and future generations of a lineage which is represented by the family living at any one time and which belongs to the state'.[70] Ruth's 'lineage' was the agnatic family of Roman law. His colleague and successor Jean Meyer defined this in his doctoral thesis as 'encompassing all the members descended from a common male ancestor'.[71]

When Ruth spoke of the family, he was actually referring to the legal institution of marriage. 'If marriage becomes meaningless for the acquisition and loss of nationality, the collective family nationality

that rests upon it will be shattered into its constituent atoms, leaving a nationality that is entirely individual. That would mean a complete break with our historical development.'[72] Ruth was concerned not to let his account appear antiquated. On the contrary, he presented it as progress: the emergence of the 'patriarchal marriage (and family)' was a 'turning point in cultural history' which 'the women's rightists' were trying to reverse – a 'tremendous atavism, a relapse into the pre-historic time before marriage existed'. For Ruth the reasoning behind Swiss citizenship, which tightly interwove marriage or family with nationality, also made it impossible for Switzerland ever to follow the American model, let alone the Soviet one. The American case was not comparable because nationality there was based not on descent and the family community but on the 'community of settlement'; in the Soviet case because in the absence of veneration for marriage and family, nationality itself was held in slight regard.[73]

Ruth's vindication of the marriage rule, inscribing it into an apparently natural order, did not exclude rational and bureaucratic considerations. The modern social-welfare state provided for its citizens and thus needed clear criteria to ascertain who was entitled to such benefits. 'In the case of impoverishment, however, a Swiss woman who has been married to a foreigner has lost her claim to welfare provision from her previous home municipality. This may mean a situation where she has to be sent home with her husband. Certainly, that is often a harsh measure. But is it less harsh to separate the woman from her family, keep her here and send the husband and children home? Or are we expected to look after the husband and children too, who are not even Swiss?' [74]

In response to the objection that in wartime a woman could be treated as belonging to an enemy state, Ruth permitted himself the following comment: 'Let us not be presumptuous enough to make the cheap – and unfair – remark that Swiss women should generally refrain from marrying foreigners.' However, 'If a Swiss woman does decide to tie her fate to that of a foreigner, it must be said that in times of crisis we can no longer completely count on her.' When she married, remarked Ruth, a woman switched her familial lineage.[75] The allusion here is to the supposed uncertainty of female loyalty towards the national community, the 'community of destiny', upon marriage to a foreign national. After all, a woman's marriage could 'easily be stronger than her nationality'.[76] This view flowed from Ruth's conception of the family as rooted in a gender-hierarchical

internal order. As Ruth put it, as long as a marriage lasted, 'the woman belongs to the man'. For the woman, marriage was not just a community, rather a 'community of destiny'. Just as the man's destiny was his fatherland, the woman's was marriage.[77]

In view of Ruth's remarks on the heredity of nationality through the agnatic family, it might seem paradoxical that he simultaneously pleaded for an increase in naturalisations. Yet on closer inspection, his call to unify federal law on the naturalisation of the 'paper foreigners' whose '*Wesen*' was 'rooted here with us' – in other words who were excellently assimilated – was less a liberalisation than an improvement in the efficiency of control. He himself considered his proposals a contribution to the 'problem of *Überfremdung*'. Very likely it was the same intention that prompted his call for the implementation of the 1928 constitutional article with its restricted *jus soli* for the Swiss-born children of a Swiss mother.[78] The 'compulsory naturalisation' he recommended for such children, or as he called it their 'incorporation', seemed to him to be a 'patriotic deed'. He saw in it a means of 'sustaining a stable *Staatsvolk* (people bound to the state) that is master in its own house'. Despite the fundamental unpredictability of female allegiance, in this case Ruth thought the state would nonetheless be able to count on a new generation of young citizens with the desired 'feeling for the fatherland' and 'convictions towards the state'.[79]

Ruth's explicitly genealogical, even *völkisch* derivation of citizenship from 'blood' illuminates a significant aspect of the marriage rule more generally. Sociologist Theresa Wobbe has, in a somewhat different context, referred to women's physical and symbolic 'vulnerability' in the construction of community.[80] The regenerative tasks allocated to women, she writes, are crucial for the maintenance of social and cultural continuity across generations; women thus constitute a vulnerable point for this continuity. To control the dissolution and formation of community and thus to preserve continuity, societies establish appropriate instruments, for example the regulation of marriage. Ruth emphasised this relationship between the control of women's bodies and control over the political body. As he wrote: 'The woman belongs to the man because marriage exists to enable the establishment of a new generation and because only the succession of generations can ensure immortality for the *Staatsvolk*.'[81]

From this point of view, depriving women of their nationality upon marriage with a foreigner may be interpreted as a radical exclusion of

those women seen as being at risk of 'infringement' by another nation. For a woman who remained in Switzerland, this risk was apparently felt to be less pressing. At any rate, her offspring could be integrated without too much difficulty into the Volkskörper ('ethnic body') – or in Ruth's republican terminology, whereby the citizens themselves are the state, into the '*Staatsvolk*'. Pursuing this thinking a little further, it becomes apparent that the female body's reproductive significance had a crucial role in shaping its symbolic significance for the construction of the nation. In the organic argumentation of many (not all) proponents of the 'traditional' principle, the unity of the family was firmly intertwined with the unity of the nation to form the precondition for a stable social order.

But Ruth was also interested in population policy in the sense of an optimal management of membership of and exclusion from nationality. Representing a powerful and in some sectors highly centralised administration, he sought to establish a clear dividing line through the country's inhabitants. On one side of this line would be those whose unconditional loyalty to the state could be assumed, who could be directly counted on as belonging to the body of the state and who would be rewarded by the state with certain benefits; on the other side were those who could not be included in this unity.

From this perspective, two aspects of nationality were of particular concern to the federal authorities from the mid 1930s on: fictitious marriages, and exceptions to the marriage rule. International developments led to fears among the authorities responsible for Swiss immigration policy that increased numbers of 'undesirable' aliens would arrive and seek to gain permission to stay or settle through marriage. However, official suspicion now also extended to non-Swiss women who had been automatically naturalised via marriage to a Swiss man. In 1935 the head of the EJPD police department, Heinrich Rothmund, wrote to the head of the department of foreign affairs in the Political Ministry: 'In practice, marriages between German Jews and Swiss women are hardly in our interest, since in such cases the family will do everything it can to stay put in Switzerland. When German Jewesses marry Swiss men there is a danger of fictitious marriage, a danger that has often enough become reality.'[82]

In the years that followed, the question of fictitious marriages worried both the public and many jurists, as well as the federal court and the women's organisations.[83] The legal committee of the BSF had, with some difficulty, reached a cautious position in 1937. On the one

hand the committee, whose arguments always followed a strictly legalistic rationale, wished to avoid losing credibility with the authorities, but on the other it regarded the problem of fictitious marriages as a logical consequence of the prevailing nationality legislation.[84] As a compromise, they recommended a probationary period for the marriage of a non-Swiss woman to a Swiss man, during which the woman would retain her nationality of descent. After this period she would receive facilitated access to Swiss nationality.[85] A ruling like this, argued the committee, would move Switzerland closer to the international norm, where it was increasingly rare for marriage to bear directly on citizenship.[86] However, the committee's proposal met with no success. The federal court moved to a more restrictive practice in 1939 which was codified in a government decree of 20 December 1940. The suspicion that the marriage was fictitious became grounds for annulling it.[87]

The government decree concluded a decades-long dispute over nationality competencies and interpretation between the judiciary and the executive – in the government authorities' favour, at least for the time being. They removed competence for the examination of nationality questions from the federal court, and transferred it to the EJPD. Unlike the jurists at the top level of the EJPD, many of those in the federal court supported the 'modern' principle in married women's nationality. In fact, in 1928 federal judge Wilhelm Stauffer had been the first Swiss jurist to publicly call for nationality to be independent of marital status.[88]

The federal court also tended to apply the marriage rule in a rather liberal way, something that had attracted criticism from Max Ruth and others, such as the respected constitutional lawyer Walter Burckhardt.[89] In 1938 the disagreement escalated when France further modified its nationality legislation.[90] In the future France would no longer take foreign legislation into account when ruling on the acquisition and loss of French nationality.[91] The EJPD, and subsequently the Political Ministry, instructed the Swiss Embassy in Paris and the Swiss cantonal authorities supervising the registration of marriages that they must uphold the previous position, whereby a married woman's nationality could not be subject to her own free will.[92] In practice, this meant that a Swiss woman became stateless on marrying a French man unless she had successfully petitioned for French citizenship. The federal court flatly contradicted this stance. In two decisions it concluded that until her petition for French citizenship had received a response, the Swiss woman remained Swiss, and she continued to do so if her petition was

refused.[93] Above all – and this was the crucial point for the dispute with the federal administration – she retained Swiss nationality even if she failed to submit a petition.[94]

In 1940, the government decree provided a twofold anchor for women's unconditional loss of nationality upon marriage to a foreigner: firstly by making the loss of nationality automatic for Swiss women marrying foreign nationals, and secondly by transferring competence for this issue to the EJPD. The move was strongly criticised by the federal commission monitoring the constitutionality of government practices in wartime, and Parliament held off approval of the decree. There were legal problems both on the procedural side, regarding the exclusion of the federal court, and with the lack of possibilities for appeal.[95] The latter point was corrected in the government decree of 11 November 1941: although the EJPD still retained competence on nationality issues, judicial appeal was now possible.[96]

The new decree contained detailed provisions on the 'loss of nationality through marriage' (art. 5), explicitly noting that 'when a Swiss woman concludes a marriage, valid in Switzerland, with a foreigner, she loses Swiss nationality'. For the first time, the loss of female nationality due to marriage was established in positive law.[97] Moreover, this rule was to apply in all cases, irrespective of the foreign legislation involved.

The decree bore the unmistakable signature of Max Ruth, and contemporaries confirmed that he was the driving force behind it.[98] Ruth's 1937 treatise had already expressed his disapproval of the federal court's practice of waiving the marriage rule where there was a risk of statelessness. He felt this could only be condoned for reasons of 'expediency' or 'compassion', warning that under no circumstances should any inferences of principle be drawn. 'Compassion for the woman who would become stateless must not become a general compassion for the Swiss woman who loses her nationality through marriage and exchanges it for her husband's.'[99] After the government resolution of 1941, he gave his views even more forceful expression. He rejoiced that Swiss law would no longer yield to foreign legislation; now a simple, easily comprehensible law had been established that could be 'automatically' implemented with 'logical consistency'.[100]

During the war, the federal administration translated these principles into administrative practice – with the 'logical consistency' Ruth so admired.[101] Just a few days after the decree was passed, the EJPD approached the cantons to describe its application. In part, Ruth's

exact wording was used to explain the rectification of hardships arising from the marriage rule: 'Before concluding a marriage like this, the woman must consider the consequences, and subsequently she must bear those consequences. She must know that according to Swiss law the woman belongs to her husband and that as long as her marriage exists she is obliged to share his destiny.' This was no empty doctrine. As a memorandum circulated to the cantons noted, the remarks referred specifically to those Swiss women married to German Jews still living in Nazi Germany. Shortly before this time, Nazi citizenship law had collectively deprived these women of their nationality. In this case, Swiss women became 'stateless' on the basis of a foreign law, not a Swiss one, and hence it was not permissible to 'restore Swiss nationality to such women'.[102]

For many formerly Swiss women made stateless by the Nazi authorities, the consequences of this view were disastrous.[103] Not until late December 1942 were these Swiss-born women recognised as cases of hardship and allowed privileged refugee status at the Swiss border. And only in July 1944 did formerly Swiss women who had 'become foreign nationals through marriage' receive express permission to enter the country, with their children up to age 18.[104] The number of applications for reintegration into nationality provides a glimpse of the scale of the problem: between 1930 and 1950 14,340 such applications were lodged with the EJPD, of which 11,877 were approved. Of these, 99.5 per cent were from women who had married a foreign national.[105]

After the war, the changes so long desired by the women's organisations seemed possible at last. The signs included awareness of the wartime sufferings of Swiss women and the emergence of a new international conception of law based on human rights. It must have come as a disappointment when, in 1946, the government mandated Max Ruth to draw up the new nationality law.[106] Already in retirement, Ruth published his report in late 1949, proposing that the controversial government decree of 1941 be largely adopted into regular legislation. Ruth's proposal was not accepted in this form. Instead, in 1952 a compromise was agreed upon, allowing women a right of option to retain their nationality of descent, and it remained in force until the end of 1991.[107] The postwar decision, reached in the context of debate on abolishing the marriage rule, can only be described as having normalised an incoherency in the policy of the Swiss government on this issue.

The continuity in the Swiss conception of nationality was, to be sure, not the work of Max Ruth alone. His successor, Dr jur. Jean Meyer, whose doctoral thesis dealt with the loss of nationality through marriage, vigorously supported the unconditional unity of the family in nationality law.[108] At a meeting with a women's delegation on 27 September 1947, Meyer clarified his distaste for any breach of this principle – a view shared by the head of the EJPD, Eduard von Steiger, and the deputy head of its police department, Dr Robert Jezler.[109]

By now, however, the opposition had begun to mobilise. In 1951 a government-appointed commission of experts, including representatives of the women's organisations, produced a proposal that deviated from the 'classical' principle and managed to gather backing from the majority of the cantons.[110] When compared to the consultation process on Ruth's report in 1949, this development marked a shift of opinion that reflected both women's lobbying at cantonal level and the impact an official report could have on perceptions of a political issue. In fact, the draft law that was presented did not wholly decouple nationality from marital status; instead, a clause was included that gave a woman the option of making a special declaration if she wished to retain her Swiss nationality. To the chagrin of the women's associations, the idea had come from one of their own representatives.[111] The advocates of the marriage rules eagerly embraced this 'right of option' as a way of forestalling more far-reaching solutions. Although the proposal satisfied neither the women's associations nor Max Ruth, it obtained the assent of the commission's majority and was adopted in the draft legislation.[112]

The parliamentary debate that followed in 1951 and 1952 is noteworthy less because of the outcome of the vote itself than because, for the first time, the issue was being discussed by politicians, and no longer almost exclusively by civil servants and legal experts. Yet even among the legislators, it was the legally trained who made their views most clearly known. Their lines of argument were not solely legal, however: they voiced controversies around the relationship of gender, marital status and nationality that had been running for half a century.[113] The proponents of the 'modern' principle focused on the injustices arising from the marriage rule, such as the possible loss of employment for women in public service. They also deplored dependence on foreign law and, more fundamentally, cast general doubt on the legality of a loss of nationality.

In the face of such liberal and individualist reasoning, their opponents invoked topoi grounded in classical republicanism and conceptions of community. Their primary concern was the threat that seemed posed to the unity of the family. In addition, they repeatedly referred to the interests of the municipality, cast as a community that should not be burdened with financial responsibilities for people it barely knew, namely those 'Swiss women who have moved away'. They rejected the obligation to support 'countless people who have lost all connection to the municipality where they were born and are completely unknown there'.[114]

In the debate, the suspicion of deficient loyalty among women who had married a foreigner made its appearance in various guises. Two parliamentary representatives indicated the risk to the country if these women continued to be teachers, doctors or lawyers and hence held positions buttressing the state. Another painted a frightening picture of the dangers of espionage. Finally, many anti-reform arguments articulated a normative image of femininity that assigned women strict moral duties. One parliamentarian expressed his concern that unscrupulous women would exploit the right of option in order to retain their Swiss citizenship, while the others would bow to the good of the family, which was self-evidently served by the wife's adopting her husband's nationality.[115]

Extensive lobbying by women's associations, including petitions and ministerial meetings, assured that the right of option was finally ratified with a comfortable majority. Another factor shaping politicians' perceptions of the legal status quo was the injustice endured in the many 'cases of hardship' during the war, which prompted new ways of thinking about this problem, according to the speaker of one government commission.[116] More pragmatic was the concern that it was becoming increasingly difficult to apply the marriage rule without entailing statelessness, because most countries had ceased to automatically grant women their husband's nationality upon marriage in the postwar period. However, the idea that a woman ultimately had to choose between fatherland and husband had not yet been laid to rest, as the following example makes clear. The period of reflection, proposed in the draft law, would have granted women one year to apply for their retention of Swiss nationality, but the compromise procedure between the two legislative chambers led to the elimination of this period of reflection. As a Catholic-conservative deputy declared, 'Anyone entering the state of marriage must be aware of the

consequences in every respect, and that includes reflecting on the question of nationality status. […] A woman who marries a foreigner should think the matter over very carefully.'[117]

These words confirmed a prediction made by one participant at the start of the debate, that the strongest opposition to reform would be neither political nor legal, but social and moral in nature. 'Many advocates of the traditional solution', he had noted, 'fear that the demands of the women's associations express this individualism which, as a French lawyer has said, reduces marriage to a contract that must be renewed every day, and fails to comprehend the institutional character of the marriage bond effected by that contract.'[118]

As a result of the 1952 compromise, until 1 January 1992 a woman had to declare at the moment of marriage that she wished to retain her nationality. As a parliamentary supporter of the right of option explained, 'If the Swiss woman marrying out wishes to renew her faith towards the Swiss Confederation (and not just towards her husband), she may remain within the Confederate bond of loyalty.'[119]

Thus the opinions voiced in the parliamentary debate allow us to trace the conflicting representations of the Swiss citizen. For the opponents of reform, the citizen was closely bound to the local community; his relationship to the communal good was marked by readiness for self-sacrifice. Such conditions did not seem to be fulfilled by women who chose a foreign national as their life companion. The crux of this notion of the Swiss 'political body' was the republican, non-contractualist view of marriage (or family) and state. As Ruth put it, 'Marriage is destiny and fatherland is also destiny'.[120] Neither the one nor the other was subject to the free will of the individual. Moreover, one flowed from the other. For in Switzerland, the family was considered a generative element of nationality and based, in Ruth's words, on the 'male lineage'. It was not possible to escape the patrilineal and patriarchal principle: 'The more resolutely the wife binds her destiny to that of her husband, the greater chance there is of a good marriage'.[121] The woman's relationship to the state was thus only indirect, mediated by the man, and only this family constellation could guarantee loyal citizens.

In the twentieth century this conception came under increasing attack. After all, it belied the claim that citizenship entitled its bearers to legal rights, a claim which now became ever more significant. The marriage rule supposedly rested on customary law, yet leading jurists in Switzerland held that no such law had ever existed.[122] What

was at stake, then, was an invented tradition – invented by administrative practice itself. The codification of this practice required elaborate strategies of justification from the juridical and administrative field, making explicit the logic which allowed parallel versions of nationality to coexist according to gender and marital status. By its very nature, this task fell to the legal profession as a group. Their monopoly as authorised experts in questions of law meant they alone were entitled to address the subject and to make competent, 'transcendent' statements.[123] Yet the members of the profession by no means shared the same interests, whether politically or professionally, as was shown by the wartime disputes between the judiciary and the federal administration. Not until the war, and indeed for positive law not until after it, did the proponents of the marriage rule succeed in codifying the construction of a conditional nationality status for women. Paradoxically, the revised nationality law of 1952 was represented as progress.[124] In reality, it legally secured the distinct position of the female citizen for the first time.

The special treatment of female citizens prescribed by the marriage rule was initially a matter of practice. Its rise to theoretical prominence coincided with the 'nationalisation' of the Swiss people. In the interwar period this process involved more than the drawing of discursive and legal boundaries between Swiss citizens and foreigners. Everything 'alien' acquired the significance of a threat to the particularity of 'Swissness'. In the more deeply incised matrix of belonging and exclusion, the female 'gendered body' presented a factor of uncertainty for the taxonomy of citizenship. For the patrilineal succession and the patriarchal family structure that shaped the view of the 'classical' principle's advocates, women marrying foreigners represented a danger to the unity of the nation in both biological and moral terms – biological because their children belonged to a 'different' nation, and moral because they owed loyalty to their foreign husband.

The position of woman within nationality can thus be regarded as analogous to the 'stranger' discussed by sociologist Georg Simmel.[125] Rather than standing outside a particular social group, this 'stranger' is to a large degree part of it, yet is not fully integrated and thus never quite considered to be loyal. Women, too, were part of the Swiss nation, but in contrast to male citizens their membership was a contingent one. If they married a foreigner, they were assumed to have taken up a position outside the community of national solidarity. Gender acted as a marker in the process of setting internal boundaries

between 'self' and 'other' that was initiated in Switzerland by the First World War. It provided a symbolic boundary between a nationality that was stable and permanent, thus grounded in loyalty, and one that was inherently unstable. The resultant norm had tangible effects on the agency and actions of citizens, depending on their gender. As marriage statistics show, the marriage rule indirectly acted as a ban specifically on marriage between Swiss women and non-Swiss men. Throughout the twentieth century, there were significantly fewer such marriages than between Swiss men and non-Swiss women. In the 1950s, only one Swiss woman in twenty-one married a foreign man, as against one Swiss man in seven marrying a foreign woman,[126] and the disparity was even greater in times of crisis and war. The loss of nationality was not a peripheral matter for women, as the enthusiastic embrace of the right of option shows: in certain cantons in 1953, every single Swiss woman marrying a foreigner signed the declaration to retain or re-attain her nationality of descent.[127] Only from 1992 on did Swiss women 'marrying out' remain an unconditional part of the Swiss Confederate 'bond of loyalty' without having to make an explicit declaration. Until then they were 'borderline cases' whose membership in the Swiss nation was merely contingent.

Notes

My thanks to Gérald Arlettaz and Patrick Kury, and to the anonymous reviewers whose stimulating commentaries and criticism greatly enriched the present text.

1. The Swiss federal judge Dr Wilhelm Stauffer, in 1928 the first Swiss jurist to publicly call for nationality to be independent of marital status, quoted this passage at the start of his essay 'Ehe und Heimat', *Schweizerische Juristen-Zeitung*, 39 (1943), pp. 269–79.
2. Max Ruth, 'Das Schweizerbürgerrecht', *Zeitschrift für Schweizerisches Recht. Neue Folge*, 56 (1937), pp. 1a–156a, here pp. 5a–6a.
3. On the legal definition of nationality see, for example, Susanne Schmidheiny, *Die privatrechtlichen Folgen der selbständigen Staatsangehörigkeit der Ehefrau* (Juris-Verlag, Zurich, 1958), p. 28.
4. A typology of citizenship is provided by T. H. Marshall, *Citizenship and Social Class and other essays* (Cambridge University Press, Cambridge, 1950). For Switzerland, see Brigitte Studer, Regina Wecker and Béatrice Ziegler (eds), *Geschlecht und Staat/Femmes et citoyenneté: Schweizerische Zeitschrift für Geschichte/Revue suisse d'histoire*, 3 (1996), and *Frauen und Staat: Berichte des Schweizerischen Historikertages in Bern, Oktober 1996/Les Femmes et l'Etat: Journée nationale des Historiens suisses à Berne, octobre 1996* (Schwabe, Basle, 1998) (Itinera 20).
5. See her dossier in the Swiss federal archive, Schweizerisches Bundesarchiv E 4265 1985/57, M 2609. Cited in Ka Schuppisser, '"Denn im Herzen bin ich eine 'Schweizerin' im wahrsten Sinne des Wortes" : Wiedereinbürgerungsverfahren 1937–1947. Die ehemalige Schweizerin im Diskurs der nationalen Identität der Frau' (unpublished Master's thesis, Berne, 1998), p. 98.
6. André Lasserre et al., *La Politique vaudoise envers les réfugiés victimes du nazisme, 1933 à 1945: Rapport présenté en juin 2000 au Conseil d'Etat du canton de Vaud en exécution de son mandat du 18 juin 1997* (circulated, Lausanne 2000), p. 47.

7. Georg Kreis and Patrick Kury, *Die schweizerischen Einbürgerungsnormen im Wandel der Zeiten* (Nationale Schweizerischen UNESCO-Kommission, Berne, 1996); May B. Broda, 'Auslandschweizerinnen, ehemalige Schweizerinnen – ihre Rückwanderung aus Deutschland 1939–1948', in *Auf den Spuren weiblicher Vergangenheit (2): Beiträge der 4. Schweizerischen Historikerinnentagung*, ed. Arbeitsgruppe Frauengeschichte Basel (Chronos, Zurich, 1988), pp. 251–61; Brigitte Studer, 'Von der Legitimations- zur Relevanzproblematik. Zum Stand der Geschlechtergeschichte', in *Geschlecht hat Methode: Ansätze und Perspektiven in der Frauen- und Geschlechtergeschichte. Beiträge der 9. Schweizerischen Historikerinnentagung 1998*, ed. Veronika Aegerter et al. (Chronos, Zurich, 1999), pp. 19–30; Brigitte Studer, 'Nationalität auf Widerruf', *'98 – Die Zeitung*, 2 (1998), pp. 30–1; Regina Wecker, '"Ehe ist Schicksal, Vaterland ist auch Schicksal und dagegen ist kein Kraut gewachsen": Gemeindebürgerrecht und Staatsangehörigkeit von Frauen in der Schweiz 1798–1998', *L'Homme ZFG*, 10 (1999), pp. 13–37.
8. In 1914 the proportion of foreign nationals among residents of Switzerland was over 15 per cent. Later the number fell, rising again after 1945. In 1975 it had reached more than 16 per cent. In border cantons like Geneva and Basle the proportion around 1900 was as high as 40 per cent, in the city of Zurich 17 per cent.
9. Marcel Mauss, 'Nation, nationalité et internationalisme', in *Oeuvres* (Minuit, Paris, 1969), vol. 3, p. 618.
10. See Ruth Roach Pierson, 'Nations: Gendered, Racialized, Crossed with Empire', in *Gendered Nations: Nationalisms and Gender Order in the Long Nineteenth Century*, ed. Ida Blom, Karen Hagemann and Catherine Hall (Berg, Oxford and New York, 2000), pp. 41–61, here p. 41.
11. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, London and New York, 1991), pp. 5–6.
12. On the development and effects of this setting of boundaries between nationals and non-nationals, see especially Gérard Noiriel, *La Tyrannie du national: Le Droit d'asile en Europe 1793–1993* (Calmann-Lévy, Paris, 1991).
13. Nancy F. Cott, 'Marriage and Women's Citizenship in the United States, 1830–1934', *American Historical Review*, 103 (1998), pp. 1440–74, here p. 1461.
14. J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton University Press, Princeton, NJ, 1975).
15. Helpful on these questions are studies by Manfred Hettling, *Politische Bürgerlichkeit: Der Bürger zwischen Individualität und Vergesellschaftung in Deutschland und der Schweiz von 1860 bis 1918* (Vandenhoeck & Ruprecht, Göttingen, 1999); Thomas Maissen, 'Die Geburt der Republik: Politisches Selbstverständnis und Repräsentation in Zürich und der Eidgenossenschaft während der Frühen Neuzeit', unpublished professorial thesis, University of Zurich, 2000; and Béla Kapossy, 'Introduction: From Republicanism to Welfare Liberalism', *Schweizerische Zeitschrift für Geschichte/Revue suisse d'histoire*, 50 (2000), pp. 275–303.
16. Anderson, *Imagined Communities*, p. 143.
17. Eric Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge University Press, Cambridge, 1990).
18. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, trans. Ephraim Fischoff et al. (University of California Press, Berkeley, 1978).
19. Field-defining in this respect is the work of Pierre Bourdieu. See, in particular, 'The Force of Law: Toward a Sociology of the Juridical Field', trans. R. Terdiman, *Hastings Law Journal*, 38 (1987), pp. 814–53, and 'Rethinking the State: On the Genesis and Structure of the Bureaucratic Field', trans. L. Wacquant and S. Farage, *Sociological Theory*, 12 (1994), pp. 1–19.
20. See, for example, Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (Vintage, New York, 1979), and *The History of Sexuality*, vol. 1, *An Introduction*, trans. Robert Hurley (Vintage, New York, 1985).

21. Also useful here is Krzysztof Pomian, *L'Europe et ses nations* (Gallimard, Paris, 1990), pp. 214–15.
22. This definition is adapted from Ina-Maria Greverus, *Kultur und Alltagswelt: Eine Einführung in die Fragen der Kulturanthropologie* (Beck, Munich, 1978), pp. 344–6.
23. Examples include the following papers by Gérald Arlettaz and Silvia Arlettaz: 'Naturalisation, "assimilation" et nationalité suisse: L'Enjeu des années 1900–1930', in *Devenir suisse: Adhésion et diversité culturelle des étrangers en Suisse*, ed. Pierre Centlivres (Georg Editeur, Geneva, 1990), pp. 47–62; 'Un Défi de l'entre-deux-guerres: Les Etrangers face au processus de nationalisation et de socialisation du peuple suisse', in *Le Goût de l'histoire, des idées et des hommes: Mélanges offerts au professeur Jean-Pierre Aguet*, ed. Alain Clavien and Bertrand Müller (Editions de l'Aire, Lausanne, 1996), pp. 319–46; 'La Politique suisse d'immigration et de refuge: Héritage de guerre et gestion de paix', *Guerres et paix: Mélanges offerts à Jean-Claude Favez*, ed. Michel Porret et al. (Georg, Geneva, 2000), pp. 661–84; and Gérald Arlettaz's 'La Suisse, une terre d'accueil en question: L'Importance de la Première Guerre mondiale', in *L'Emigration politique en Europe aux XIXe et XXe siècles: Actes du colloque organisé par l'Ecole française de Rome* (Collection de l'Ecole française de Rome, Rome and Paris, 1991), pp. 139–59. See also Rudolf Schläpfer, *Die Ausländerfrage in der Schweiz vor dem Ersten Weltkrieg* (Juris Druck, Zurich, 1969).
24. On the concept of '*Überfremdung*', see Gaetano Romano, 'Zeit der Krise – Krise der Zeit: Identität, Überfremdung und verschlüsselte Zeitstrukturen', in *Die neue Schweiz? Eine Gesellschaft zwischen Integration und Polarisierung (1910–1930)*, ed. Andreas Ernst and Erich Wigger (Chronos, Zurich, 1996), pp. 41–77, and Jakob Tanner, 'Nationalmythos und 'Überfremdungsängste': Wie und warum die Immigration zum Problem wird, dargestellt am Beispiel der Schweizer Geschichte des 19. und 20. Jahrhunderts', in *Fremd im Paradies: Migration und Rassismus*, ed. Udo Rauschfleisch (Lenos, Basle, 1994), pp. 11–26.
25. Women's International League for Peace and Freedom, *Extract from the Forthcoming Report of the International Congress of Women held at Zurich, May 12–17, 1919* (no publisher, Zurich, 1919), p. 13.
26. Chrystal Macmillan, *The Nationality of Married Women* (London, 1929), p. 9; Arnold Whittick, *Woman into Citizen* (Athenaeum, London, 1979), p. 75; Leila J. Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton University Press, Princeton, 1997), pp. 146–50. On the position of the BSF (association of Swiss women's organisations), see Bund Schweizerischer Frauenvereine (BSF), *17. Jahresbericht*, 1917 / 18, pp. 32–3, and Annie Leuch-Reineck, 'Die Nationalität der verheirateten Frau und die schweizerische Gesetzgebung', *Schweizer Frauenblatt*, 31 (4 August 1923) and 32 (11 August 1923).
27. On this question, see Elisabeth Frey, *Über das Bürgerrecht der Ehefrau in der Schweiz und ihren Nachbarstaaten* (Ernst Lang, Zurich, 1942), p. 16, and Ladislaus Vidor, *Die Staatsangehörigkeit der Ehefrau nach schweizerischem Recht* (Buchdruckerei J. Weiss, Affoltern am Albis, 1932), p. 92.
28. Michel Foucault uses the notion of 'pastoral power' to indicate the interest of the modern state in each of its citizens individually. See his 'The Subject and Power', in H. Dreyfus and P. Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, 2nd edition (University of Chicago Press, Chicago, 1983), pp. 208–26.
29. See Marianne Delfosse, *Emilie Kempin-Spyri (1853–1901): Das Wirken der ersten Schweizer Juristin. Unter besonderer Berücksichtigung ihres Einsatzes für die Rechte der Frau im schweizerischen und deutschen Privatrecht* (Schulthess, Zurich, 1994), and Katharina Belser et al. (eds), *Ebenso neu als kühn: 120 Jahre Frauenstudium an der Universität Zürich* (eFeF-Verlag, Zurich, 1988), p. 178.
30. The paragraph reads: 'Through her marriage, the wife acquires citizenship of her husband's municipality of origin'.
31. This, at least, was the argumentation in the parliamentary debate on the new nationality law of 1952.

32. Federal law on the acquisition and renunciation of Swiss citizenship, 25 June 1903. Apart from marital status, the conditions were a domicile in Switzerland and a period of not more than ten years between the change in marital status and the application.
33. Markus Luther, *Die Staatsangehörigkeit der einen Ausländer heiratenden Schweizerin* (Verlag Hans Schellenberg, Winterthur, 1956), pp. 78–9.
34. Georges Sauser-Hall, *La Nationalité de la femme mariée*, published by the Schweizerische Vereinigung für internationales Recht (Druckschrift Nr. 29, Zurich, 1933), p. 10.
35. Decisions of the Swiss federal court (BGE) 36, I, pp. 225–7; Luther, *Die Staatsangehörigkeit*, pp. 104–5, 110–11, 125–7.
36. The legal development is traced in detail in Cott, 'Marriage and Women's Citizenship'.
37. Carmen Naccary, *La Nationalité de la femme mariée dans les principaux pays* (Imprimerie Atar, Geneva, 1925).
38. Internationaler Frauenbund, *Vereinigter 3. und 4. Jahresbericht der siebenten Geschäftsperiode 1922–1924* (International Council of Women, *Combined Third and Fourth Annual Report of the Seventh Quinquennial Period)*, p. 32.
39. Sauser-Hall, *La Nationalité*, p. 8; Vidor, *Die Staatsangehörigkeit*, pp. 97–9; Schweizerischer Verband für Frauenstimmrecht (Swiss women's suffrage association, SVF), 'Zum Bürgerrecht der ausheiratenden Schweizerin, von 1915 bis 1952', p. 3; Nitza Berkovitch, *From Motherhood to Citizenship: Women's Rights and International Organizations* (The Johns Hopkins University Press, Baltimore and London, 1999), pp. 80–82.
40. BSF, *22. Jahresbericht*, 1922/23, p. 24.
41. *Jahrbuch der Schweizerfrauen* (Basler Druck- und Verlagsanstalt, Basle, 1923), p. 156.
42. Decision of the federal court, 24 February 1923, in the case of Frl. Dr jur. Roeder, BGE 49, I, pp. 14 ff., cited in Elisabeth Köpfli, *Die öffentlichen Rechte und Pflichten der Frau nach schweizerischem Recht* (Druck J. Weiss, Affoltern am Albis, 1942), p. 42. See also Brigitte Studer, '"Alle Schweizer sind vor dem Gesetze gleich": Verfassung, Staatsbürgerrechte und Geschlecht', in *Herausgeforderte Verfassung: Die Schweiz im globalen Kontext. 16. Kolloquium (1997) der Schweizerischen Akademie der Geisteswissenschaften*, ed. Beat Sitter-Liver (Universitätsverlag, Freiburg, 1999), pp. 63–83.
43. Beatrix Mesmer, 'Pflichten erfüllen heisst Rechte begründen: Die frühe Frauenbewegung und der Staat', *Schweizerische Zeitschrift für Geschichte*, 46 (1996), pp. 332–55, and Elisabeth Joris, 'Geschlechtshierarchische Arbeitsteilung und Integration der Frauen', in *Etappen des Bundestaates: Die Staats- und Nationsbildung in der Schweiz, 1848–1998*, ed. Brigitte Studer (Chronos, Zurich, 1998), pp. 187–201.
44. Uriel Gast, *Von der Kontrolle zur Abwehr: Die eidgenössische Fremdenpolizei im Spannungsfeld von Politik und Wirtschaft 1915–1933* (Chronos, Zurich, 1997), and Angela Garrido, *Le Début de la politique fédérale à l'égard des étrangers* (Histoire et Société Contemporaines 7, Lausanne, 1987), pp. 57–60.
45. Arlettaz and Arlettaz, 'La Politique suisse d'immigration', p. 675; Frey, *Über das Bürgerrecht der Ehefrau*, p. 71; Gast, *Von der Kontrolle zur Abwehr*, pp. 233–5.
46. There is little research on Delaquis's leading role in the legal codification of Swiss aliens policy. Important points are made in Arlettaz and Arlettaz, 'Un Défi de l'entre-deux-guerres', pp. 332–3.
47. On Delaquis, see Historisches Lexikon der Schweiz, http://www.dhs.ch (as per 30 March 2001).
48. Ernst Delaquis, 'Nationale Niederlassungspolitik: Vortrag, gehalten in der Neuen Helvetischen Gesellschaft, Gruppe Zürich, am 10. April 1924', *Schweizerische Zeitschrift für Volkswirtschaft und Sozialpolitik*, 30 (1924), pp. 225–42, here p. 236.
49. Ernst Delaquis, 'Der gegenwärtige Stand der Massnahmen gegen die politische Überfremdung: Öffentlicher Vortrag', *Schweizerische Zeitschrift für Gemeinnützigkeit*, 60/2 (1921), pp. 41–9, and 60/3 (1921), pp. 57–66. See especially 60/3, pp. 65–6.
50. Ernst Delaquis, 'Im Kampf gegen die Überfremdung: Die Neuorientierung der Niederlassungspolitik. Vortrag, gehalten im Bernischen Juristenverein am 10. Januar 1921',

Zeitschrift des Bernischen Juristenvereins, LVII (1921), pp. 49–69, here p. 66. See also Gast, *Von der Kontrolle zur Abwehr*, pp. 246–58.

51. Delaquis, 'Nationale Niederlassungspolitik', pp. 230–31.
52. Federal law on residence and settlement of aliens, notes on the police department draft (13 June 1921), cited in Arlettaz and Arlettaz, 'Un Défi de l'entre-deux-guerres', p. 333.
53. Ernst Delaquis, *Der neueste Stand der Fremdenfrage* (Stämpfli & Cie, Berne, 1921), p. 10.
54. See especially Delaquis , 'Im Kampf gegen die Überfremdung', and Delaquis, *Der neueste Stand*.
55. Report of the study committee in BSF, *27. Jahresbericht*, 1927 / 28, p. 25.
56. Communication from Delaquis to the SVF, mentioned in SVF, 'Zum Bürgerrecht der ausheiratenden Schweizerin', p. 2; Biographical notes on Annie Leuch-Reineck, Gosteli-Archiv, Worblaufen, 1934 / BSF / 3578.
57. Here I follow the argumentation of Kreis and Kury, *Die schweizerischen Einbürgerungsnormen*, pp. 52–3.
58. See the papers by Arlettaz and Arlettaz; also Alain Clavien, *Les Helvétistes: Intellectuels et politique en Suisse romande au début du siècle* (Société d'histoire de la Suisse romande / Editions d'en bas, Lausanne, 1993).
59. Heinrich Rothmund, 'Die berufliche Überfremdung und Vorschläge zu ihrer Abhilfe: Vortrag gehalten an der Jahresversammlung der Schweizerischen Gemeinnützigen Gesellschaft am 30. September 1924 in St. Gallen', *Schweizerische Zeitschrift für Gemeinnützigkeit*, 10 (1924), pp. 339–40.
60. On Rothmund's anti-Semitism, see Heinz Roschewski, 'Heinrich Rothmund in seinen persönlichen Akten: Zur Frage des Antisemitismus in der schweizerischen Flüchtlingspolitik, 1933–1945', *Studien und Quellen*, 22 (1996), pp. 107–36, and *Rothmund und die Juden: Eine historische Fallstudie des Antisemitismus in der schweizerischen Flüchtlingspolitik 1933–1957* (Helbing & Lichtenhahn, Basle, 1998). For the Second World War see also Ladislas Mysyrowicz, 'Le Dr Rothmund et le problème juif (février 1941)', *Schweizerische Zeitschrift für Geschichte*, 2 (1982), pp. 348–55.
61. The Swiss Catholic women's association did not participate (Christa Mutter, '"Die Hl. Religion ist das tragende Fundament der katholischen Frauenbewegung": Zur Entwicklung des Schweizerischen Katholischen Frauenbunds', in *Auf den Spuren weiblicher Vergangenheit (2): Beiträge der 4. Schweizerischen Historikerinnentagung* (Chronos, Zurich, 1988), pp. 183–98).
62. See Brigitte Studer, 'Familienzulagen statt Mutterschaftsversicherung? Die Zuschreibung der Geschlechterkompetenzen im sich formierenden Schweizer Sozialstaat, 1920–1945', *Schweizerische Zeitschrift für Geschichte*, 47 (1997), pp. 151–70; Doris Huber, 'Familienpolitische Kontroversen in der Schweiz zwischen 1930 und 1984', in *Familie in der Schweiz*, ed. Thomas Fleiner-Gerster, Pierre Gilliand and Kurt Lüscher (Universitätsverlag, Freiburg, 1991), pp. 147–66.
63. Hans Fritzsche, *Die Schweizerische Vereinigung für Internationales Recht (1914–1944), Separatdruck aus der Festschrift Max Huber 'Vom Krieg und vom Frieden'* (no date, no publisher), p. 90.
64. Emil Beck, *Die Staatsangehörigkeit der Ehefrau*, published by the Schweizerische Vereinigung für internationales Recht (Druckschrift Nr. 30, Zurich 1933), p. 14; Wilhelm Stauffer, 'Die Staatsangehörigkeit der Ehefrau', *Zeitschrift des bernischen Juristenvereins*, 64 (1928), pp. 325–32, here p. 326; Hortensia Zängerle, *Die öffentlichrechtliche Stellung der Frau in der Schweiz* (Buchdruckerei A. Meierhans, Freiburg, 1940), p. 27; Jean Meyer, *La Perte de la nationalité suisse par mariage* (Imprimerie St-Paul, Fribourg, 1942), p. 35; Frey, *Über das Bürgerrecht der Ehefrau*, p. 14; Luther, *Die Staatsangehörigkeit*, pp. 100–25.
65. Sauser-Hall, *La Nationalité*, pp. 34–5.
66. Sauser-Hall, *La Nationalité*, p. 13.
67. This was available to the government between 1939 und 1947.
68. Max Ruth, *Das Fremdenpolizeirecht der Schweiz* (Polygraphischer Verlag, Zurich, 1934).

69. SVF, 'Zum Bürgerrecht der ausheiratenden Schweizerin', p. 4, 'Protokoll über die 72. Jahresversammlung des Schweizerischen Juristenvereins, 13. und 14. September 1937 in Sitten', *Zeitschrift für Schweizerisches Recht. Neue Folge*, 56 (1937), pp. 29a–505a.
70. Ruth, 'Das Schweizerbürgerrecht', pp. 127a and 135a.
71. Meyer, *La Perte de la nationalité*, p. 84; Zängerle, *Die öffentlich-rechtliche Stellung der Frau*, p. 25.
72. Ruth, 'Das Schweizerbürgerrecht', p. 127a. My thanks to Brigitte Schnegg for drawing my attention to Ruth's frequent use of the word 'family' when he meant 'marriage'.
73. Ruth, 'Das Schweizerbürgerrecht', pp. 31a, 128a–129a.
74. Ruth, 'Das Schweizerbürgerrecht', p. 133a.
75. Ruth, 'Das Schweizerbürgerrecht', pp. 134a, 32a.
76. Ruth, 'Das Schweizerbürgerrecht', pp. 27a, 133a–134a.
77. Ruth, 'Das Schweizerbürgerrecht', pp. 138a, 134a–135a.
78. Ruth, 'Das Schweizerbürgerrecht', pp. 80a–81a, 149a–156a.
79. Ruth, 'Das Schweizerbürgerrecht', pp. 154a, 56a.
80. Theresa Wobbe, 'Die Grenzen der Gemeinschaft und die Grenzen des Geschlechts', in *Denkachsen: Zur theoretischen und institutionellen Rede vom Geschlecht*, ed. Theresa Wobbe and Gesa Lindemann (Suhrkamp, Frankfurt a. M., 1994), pp. 177–207, here pp. 191–3.
81. Max Ruth, 'Das Bürgerrecht beim Eheschluss einer Schweizerin mit einem Ausländer', *Zeitschrift des bernischen Juristenvereins*, 78 (1942), pp. 1–21, here p. 9.
82. Heinrich Rothmund to Maxime de Stoutz, 28 October 1935, reproduced in *Documents diplomatiques suisses*, vol. 11 (Benteli Verlag, Berne, 1989), pp. 524–6, here p. 526.
83. August Egger, 'Über Scheinehen', in *Festgabe Fritz Fleiner* (Polygraphischer Verlag, Zurich, 1937), pp. 85–114; Charles Knapp, *Le Mariage fictif et la nationalité de la femme mariée* (Roth & Cie, Lausanne, 1940); Alfred Siegwart, *Die zweckwidrige Verwendung von Rechtsinstituten: Freiburger Rektoratsrede* (Paulusdruckerei, Freiburg, 1936). On the question of fictitious divorces by women who had married a German Jew, see *Documents diplomatiques suisses*, vol. 11, p. 541 (4 November 1935).
84. Sitzungsprotokoll der BSF-Gesetzesstudienkommission vom 14. Juni 1937, Gosteli-Archiv, Worblaufen, BSF, Gesetzesstudienkommission.
85. BSF, *36. Jahresbericht*, 1936/37, p. 32.
86. Sitzungsprotokoll der BSF-Gesetzesstudienkommission vom 26. Oktober 1942, Gosteli-Archiv, Worblaufen, BSF, Gesetzesstudienkommission.
87. *Bundesblatt der Schweizerischen Eidgenossenschaft*, 1 (1940), pp. 30–32.
88. Stauffer, 'Die Staatsangehörigkeit der Ehefrau'.
89. Walter Burckhardt, *Kommentar der Schweizerischen Bundesverfassung*, 3rd edition (Stämpfli, Berne, 1931), p. 503; Ruth, 'Das Schweizerbürgerrecht', p. 14a.
90. Alice Weber, *Die Staatsangehörigkeit der Ehefrau nach dem französischen Gesetz vom 10. August 1927* (Buchdruckerei Gutenberg, Lachen, 1930).
91. Luther, *Die Staatsangehörigkeit*, p. 119.
92. EJPD memorandum to the cantonal authorities supervising registry offices, 26 August 1939, *Bundesblatt der Schweizerischen Eidgenossenschaft* (1939) II, p. 282. See also Luther, *Die Staatsangehörigkeit*, pp. 119–20; Stauffer, 'Ehe und Heimat', p. 273.
93. Unpublished decisions Liais contra Municipality of Rance, 9 February 1940, and Kercoff contra Municipality of Cernier, 31 May 1940. See also *Neue Zürcher Zeitung*, 825 (7 June 1940).
94. Luther, *Die Staatsangehörigkeit*, pp. 120–21.
95. Luther, *Die Staatsangehörigkeit*, p. 93.
96. *Bundesblatt der Schweizerischen Eidgenossenschaft* (1941) II, pp. 325–6.
97. 'Botschaft des Bundesrates an die Bundesversammlung zum Entwurf zu einem Bundesgesetz über Erwerb und Verlust des Schweizerbürgerrechts vom 9. August 1951', *Bundesblatt der Schweizerischen Eidgenossenschaft* (1951) II, pp. 669–720, here p. 689.
98. Stauffer, 'Ehe und Heimat', p. 275; SVF, 'Zum Bürgerrecht der ausheiratenden Schweizerin', p. 4.

99. Ruth, 'Das Schweizerbürgerrecht', pp. 14a–15a.
100. Ruth, 'Das Bürgerrecht beim Eheschluss', pp. 1, 10.
101. Max Ruth, Preface to Henri Werner, *Fremdenpolizei in der Schweiz* (Verlag Schweiz. Juristische Kartothek, Geneva, 1942), p. 5.
102. EJPD memorandum, 'Kreisschreiben zum Bundesratsbeschluss vom 11. November 1941 über das Bürgerrecht der Schweizerin, die einen Ausländer heiratet (und dasjenige der Kinder aus einer solchen Ehe)', cited in Schuppisser, *'Denn im Herzen'*, p. 50.
103. On the situation of Swiss women in the Second World War who lost their nationality through marriage to an alien, see especially Schuppisser, *'Denn im Herzen'*; Lasserre et al., *La Politique vaudoise*, pp. 17, 47, 245–6; Nathalie Gardiol, 'Les Suissesses devenues étrangères par mariage et leurs enfants pendant la Deuxième Guerre mondiale: Un sondage dans les archives cantonales vaudoises', *Schweizerische Zeitschrift für Geschichte/ Revue suisse d'histoire*, 51 (2001), pp. 18–45. On the anti-Semitic underpinning of the authorities' policy on 'foreign Jewish women and Jewish Swiss women' during the war, see Jacques Picard, *Die Schweiz und die Juden 1933–1945: Schweizerischer Antisemitismus, jüdische Abwehr und internationale Migrations- und Flüchtlingspolitik* (Chronos, Zurich, 1994), pp. 208–17.
104. EJPD police department, 'Beilage zu den Weisungen der Polizeiabt. vom 12. Juli 1944 über Aufnahme oder Rückweisung ausländischer Flüchtlinge, 12. Juli 1944', cited in Schuppisser, *'Denn im Herzen'*, p. 57.
105. On the numbers of Swiss women regaining nationality, see Schuppisser, *'Denn im Herzen'*, p. 81–91.
106. BSF, *46. Jahresbericht*, 1946 / 47, pp. 65–6.
107. The new law providing for nationality, including women's, to be independent of marital status, came into force on 1 January 1992 (*Bundesblatt der Schweizerischen Eidgenossenschaft* (1990) I, pp. 1598–607).
108. Meyer, *La Perte de la nationalité*. See also Jean Meyer, 'Die bürgerrechtliche Einheit der Familie in der Rechtslehre und in ihren heutigen Auswirkungen: Quelques observations concernant l'exposé de M. le prof. A. Egger' (12 March 1951), Gosteli-Archiv, Worblaufen, Broschürensammlung 9101 / 13.
109. SVF, 'Zum Bürgerrecht der ausheiratenden Schweizerin', p. 5; BSF, *46. Jahresbericht*, 1946 / 47, p. 55.
110. Documentation of the consultation between the canton governments on the draft legislation of 1 December 1949 and 8 January 1951.
111. Tina Peter-Rüetschi, *Der Verlust des Schweizerbürgerrechts durch Heirat: Vorschlag für eine Revision der geltenden Regelung* (Schulthess, Zurich, 1950).
112. SVF, 'Zum Bürgerrecht der ausheiratenden Schweizerin', p. 5; Elisabeth Nägeli, *Das neue Bürgerrechtsgesetz vom 29. September 1952 mit Ergänzungen vom 7. Dezember 1956* (Schriftenreihe des BSF) (Schulthess & Co., Zurich, 1958), p. 17; 'Botschaft des Bundesrates an die Bundesversammlung zum Entwurf zu einem Bundesgesetz über Erwerb und Verlust des Schweizerbürgerrechts vom 9. August 1951', *Bundesblatt der Schweizerischen Eidgenossenschaft* (1951) II, p. 687.
113. *Amtliches Stenographisches Bulletin, Nationalrat*, 1951, pp. 744–83, 801–49, and 1952, pp. 310–23; *Amtliches Stenographisches Bulletin, Ständerat*, 1952, pp. 66–113 and 269–78; 'Bundesgesetz über Erwerb und Verlust des Schweizerbürgerrechts, vom 29. September 1952', *Bundesblatt der Schweizerischen Eidgenossenschaft* (1952) III, pp. 137–51.
114. *Stenographisches Bulletin, Nationalrat*, 1951, p. 847.
115. *Stenographisches Bulletin, Nationalrat*, 1951, p. 769.
116. *Stenographisches Bulletin, Nationalrat*, 1951, p. 771.
117. *Stenographisches Bulletin, Nationalrat*, 1951, p. 774.
118. *Stenographisches Bulletin, Nationalrat*, 1951, p. 746.
119. *Stenographisches Bulletin, Nationalrat*, 1951, p. 771.
120. Ruth, 'Das Schweizerbürgerrecht', p. 134a.

121. Ruth, 'Das Bürgerrecht beim Eheschluss', p. 9.
122. Zaccharia Giacometti, 'Die Verfassungsmässigkeit des Optionsrechtes der ausheiratenden Schweizer Bürgerin', *Schweizerische Juristen-Zeitung*, 48 (1952), pp. 85–92, here p. 91.
123. On the status of experts, see Pierre Bourdieu, 'Social Space and Symbolic Power', trans. L. Wacquant, *Sociological Theory*, 7 (1989), pp. 14–25.
124. The law is published in *Bundesblatt der Schweizerischen Eidgenossenschaft* (1953) III, pp. 137–51. See also Frey, *Über das Bürgerrecht der Ehefrau*, p. 98.
125. Georg Simmel, 'Der Fremde', in *Das individuelle Gesetz* (Suhrkamp, Frankfurt a. M., 1968), pp. 63–70.
126. Käthe Biske, 'Die Schweizer Frau in der Statistik', *Die Schweiz. Ein Nationales Jahrbuch*, 1958, pp. 5–30, here pp. 9–10; Gardiol, 'Les Suissesses devenues étrangères'.
127. BSF, *Jahresbericht*, 1953, p. 8.