



Christoph Brendel, Leipzig

Citizenship and New Terrorism

Membership and Rights in an Era of Crisis and Transformation

The essay addresses the question of how the emergence of the global terrorism and the struggle against it affect the institution of citizenship. After elucidating history and features of terrorism, the author focuses on membership in the nation-state (citizenship). Proceeding from the assumption that membership is essentially about identity and difference, inclusion and exclusion, it is examined how societies react to the terrorist menace in terms of citizenship. The process of rethinking and adjusting citizenship in Western societies after 9/11 is briefly illustrated by the cases of the U.S. and Israel, thereafter German citizenship law is scrutinized. The author finally argues that citizenship, in particular the deprivation of the citizen status, is no effective instrument and should not be used as such in fighting the new terrorism. As the meaning of the nation-state and of the correlating citizenship, in any event, declines under the conditions of globalization, establishing „conditional“ or „second class“ citizenship will only accelerate its demise.

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1 I. Introduction¹

Having seen *Heath Ledger* as *The Joker* in *Christopher Nolan's* film „*The Dark Knight*“, no other metaphor than this can be the starting point for our reflections on the phenomenon of the new terrorism. The Joker is the perfectly disconcerting incarnation of terrorism in the 21st Century as it is commonly perceived and depicted. He is the omnipresent threat, looking for nothing but violence, destruction and chaos, which he sees as ends in themselves. He is completely without empathy, and feels nothing but contempt for human life. Besides this, there is no chance for negotiations or deterrence since he has got nothing to lose but his life, which, for him, counts next to nothing.

2 The citizens of Gotham City are the innocent targets of The Joker's indiscriminate attacks. They have not the slightest idea of how to cope with the situation, nor do they have the means to confront the menace (leaving aside here the District Attorney's and Batman's fight against The Joker, both very different in their respective manifestations). Among the many issues the citizenry might be wondering about are the fundamental questions,

3 Who is The Joker? Who are we? Is The Joker part of Gotham City's citizenry or an out-cast? Is he a human being at all and should he be treated as such? What is our relation to him? And how is it possible to fight The Joker?

4 Alongside these core questions, we will be examining a set of problems that emerge from the object of investigation: social membership and terrorism under the conditions of globalization. We will begin with a brief analysis of the phenomenon of terrorism; the lense through which we will thereupon be looking at this complex is the institution of citizenship². As we will see, the concept of citizenship provides a wide range of ele-

¹ Der Aufsatz wurde im Rahmen des 7. Beitragswettbewerbes "Recht in Zeiten des Terrors" angefertigt und mit dem Sonderpreise "Bester fremdsprachiger Beitrag" ausgezeichnet.

² Citizenship does not translate directly into the German terms *Staatsangehörigkeit* or *Staatsbürgerschaft*; for the discussion of the notions see v. *Münch*, *Die deutsche Staatsangehörigkeit*, 2007, pp. 17-19; an interesting

ments which will allow for a broader understanding of the problem of terrorism. We will see, among others, how the state has formed citizenship as an institution and that today globalization contests this definition. A special focus will thereby be put on the legal aspects of citizenship and particularly on the influence the new terrorism has on it. In this process we will have an overview on some global developments as well as a closer look at the German citizenship law. It will finally be argued that citizenship law cannot be an effective instrument and should not be employed as a tool in fighting the new terrorism. The scope of the inquiry is limited to the Western perspective of advanced liberal democracies; the cases of the U.S., Israel, and Germany illustrate the argument of the paper. Nevertheless, some aspects will be similarly applicable to the experience of non-Western societies, too.

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5 II. Who is The Joker? – History and Features of the New Terrorism

Comprehensive works on the history and nature of terrorism have been written by authors such as *Bruce Hoffman*, *Walter Laqueur*, and *David C. Rapoport*.³ Insightful examinations in German academe include those by *Peter Waldmann* and *Herfried Münkler*.⁴ It is not intended in this paper, though, to provide an exact picture of terrorism. All that can be done here is a rough outline of some key issues in order to lay grounding for further considerations.

6 1. Defining Terrorism

The words terror, terrorism and terrorist are omnipresent and exert significant influence on politics, particularly since 9/11. The terms serve political and normative ends, as *Charles Tilly* notes. It is the imprecise political use of these notions that hinders academic description and explanation of the phenomenon. Indeed, „social scientists who attempt to explain sudden attacks on civilian targets should doubt the existence of a distinct, coherent class of actors (terrorists) who specialize in a unitary form of political action (terror) and thus should establish a separate variety of politics (terrorism)“.⁵

7 As a matter of fact, there is no consensus on a definition of terrorism, neither among politicians nor scholars. Two fundamental issues of dissent are (1) the phenomenon of states using armed forces against civilians („state terrorism“) and (2) the resistance against an occupying power („freedom fighters“). The High-level Panel on Threats, Challenges and Change of the UN offers the description of terrorism as

8 “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act“.⁶

9 Notwithstanding the contentious issues, there is the widely shared view among scholars that terrorism serves as a means and not as an end.⁷

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excursion on the concepts of *citizen*, *citoyen*, and *Bürger* in England, France, and Germany can be found in *Koselleck*, *Begriffsgeschichten*, *Studien zur Semantik und Pragmatik der politischen und sozialen Sprache*, 2006, pp. 402-461.

³ *Hoffman*, *Terrorismus – Der unerklärte Krieg*², 2006 (original title: *Inside Terrorism*, 1998); *Laqueur*, *The Age of Terrorism*, 1987; *Rapoport* (ed.), *Terrorism: Critical Concepts in Political Science* (4 Volume Set), 2006.

⁴ *Waldmann*, *Terrorismus. Provokation der Macht*, 1998; *Münkler*, *Die neuen Kriege*³, 2007.

⁵ *Tilly*, *Terror, Terrorism, Terrorists*, *Sociological Theory*, 22(1), 2004, pp. 5-13 (5).

⁶ At no. 164 d); the report is available online: <http://www.un.org/secureworld/report3.pdf>.

⁷ *Rapoport*, *Modern Terror: History and Special Features*, in: *Tan* (ed.), *The Politics of Terrorism. A Survey*, 2006, pp. 3-24 (4).

10 2. From Robespierre to Bin Laden

But if terrorism is no end in itself, what means does it serve then? A historic approach may provide some insights in this regard. Most scholars trace back the concept and vocabulary of terrorism to the French Revolution and *Robespierre* who erects the „Reign of Terror“ in 1793-1794. It aimed at instilling a „democratic character“ in the people through trials and mass executions carried out by the „Revolutionary Tribunals“ as agents of government. Other pre-modern terrorist organizations were, for instance, the Sons of Liberty who fought the British before and during the American Revolution, and the Ku Klux Klan.

- 11 The radical shift from pre-modern to modern terrorism took place in late 19th Century Tsarist Russia.⁸ Until that time the perpetrators or mobs in general vastly outnumbered the victims, whereas from then on a small elite, „the heroes of history“, could frighten large masses and inflict unthinkable damage. Crucial developments facilitated this change: the invention of dynamite, new communication technologies, enhanced transportation facilities, and the appearance of mass media. The moment, when time and space began to shrink, marks also the appearance of modern terrorism. *David C. Rapoport* subdivides the genesis of modern terrorism into four distinct waves: the „Anarchist“ wave (1880-1920), the „Anti-Colonial“ wave (1920-1962), and the „New-Left“ wave (1960 to the end of the 20th Century) overlapping with the „Religious“ wave (since around 1979). The name of each wave reflects one of its major features – Anarchist ideas; the striving for independence from colonial states; Neo-Marxist thinking; and religious doctrines. Each wave had its respective „signature tactics“ – assassination of prominent government officials; more complicated undertakings, for example, attacking governmental institutions; airline hijacking and hostage-taking; and „self-martyrdom“, „suicide bombing“.⁹ As of now, it is unforeseeable when the last wave of religious terrorism will end.

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12 3. The Prevailing Wave of Religious Terrorism

While the third „New-Left“ wave of terrorism, predominantly secular and already international in its conception, ebbed in the 1990s, religiously motivated terror experienced a steep rise at a global level. Three major events in 1979 mark the take-off of that new wave of international terrorism: the Iranian Revolution, the Egyptian-Israeli peace treaty, and the Soviet invasion of Afghanistan. The Shia project in Iran demonstrated the political power of Islam and the foundation of a religious state has been ever since on the agenda of Shia and Sunni Muslim terrorists alike. The peace treaty between *Sadat* and *Begin* for many symbolized a declaration of bankruptcy of Arab radical nationalism. The growing discontent with many mostly secular regimes in the Arab world made these governments now a primary target for religious terrorists. Finally, the Soviet invasion of Afghanistan attracted volunteers from the entire Sunni Muslim world who regarded it as their religious duty (*jihad*) to fight the Communist intruders as „fighters for God“ (*mujahidin*) alongside the Afghan Taleban movement. They were ideologically armed by Salafism, a school of religious thought that seeks to go back to the historic roots of Islam.

- 13 Islamic terrorism strives for goals which have repercussions inside and outside the Muslim world. The call for political unity among Muslims and the struggle against outsiders are two major purposes of religious Islamic terror. But there are also countries with a primarily Muslim population which have experienced, and continue to suffer from, Islamic terror (for example, Algeria, Lebanon, Egypt, Libya, Tunisia, Indonesia etc.). This terror's intention is to destabilize the ruling regimes and install *theocracies*. On the part of the Shia Islam, the state of Iran and its proxies like Hezbollah were and

⁸ See *Ivianski*, *The Terrorist Revolution. Roots of modern terrorism*, in: *Rapoport* (ed.), *Terrorism. Critical Concepts in Political Science*, Vol. 1, 2006, pp. 73-94.

⁹ *Rapoport* (fn. 7), pp. 3-24.

are the key players. The cradle for Sunni terrorism, however, was the long war in Afghanistan. A network emerged which is today the main source of international religious terror: Al-Qaeda. Their recruits came from Arab countries, Africa and the Sunni Muslim Diaspora all over the world. After the Soviet defeat they went either back to their home countries strengthening local terrorist structures there, engaged in other battle fields (for example, Bosnia, Chechnya etc.) or kept on aiding the Taleban in Afghanistan. Besides challenging the political *status quo* in the Muslim world, Al-Qaeda started attacking the West as the principal target. Bombings all over the world and ongoing activities in Afghanistan, Iraq, and other countries and zones of conflict are just the recent incidents of religious Islamic terrorism.¹⁰ To be sure, there have also been terrorist acts committed by religiously motivated Christians, Jews, various sects, and other religious groups but religious Islamic terrorism is today the major threat with which the world has to grapple. Furthermore, since the 1990s we have been witnessing an important additional shift in the nature of the terror that allows us to label it „new terrorism“.

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14 4. What's New About the New Terrorism? ¹¹

As our short trip into history shows, terrorism is not new at all. But many observers speak of a new terrorism¹² at work or even of an „Age of Terror“¹³ that we are living in. The truth is that globalization has fundamentally changed some important parameters of our world which have rendered the emergence of a new kind of terrorism possible. Among these factors are the increasing porosity of borders, the evolution of globe-circling infrastructures, and the development of new and advanced communication technologies. These processes make recruitment, fund-raising, movement and communication much easier than ever before. *Paul R. Pillar* puts it this way:

15 „In today's globalizing world, terrorists can reach their targets more easily, their targets are exposed in more places, and news and ideas that inflame people to resort to terrorism spread more widely and rapidly than in the past“.¹⁴

16 Like corporations or NGOs, terrorism has evolved in terms of organizing principles. Terrorist groups nowadays function in more horizontal and less hierarchical and command-driven groups. They work as networks and („sleeper“) cells and their capacity for change is high.¹⁵ In addition, terrorists are not bound territorially or structurally to states anymore – the sphere of action is global. At the same time, the terrorist's ideological profile remains generally vague and accessible. The terrorist networks are capable of integrating or loosely connecting itself with other groups. Perpetrators do not even have to belong to a terrorist group and, can set about doing the terrorist's work independently. So Al-Qaeda and others can inspire people in Western countries to become terrorists.¹⁶ The so-called homegrown terrorism is just one more aspect of that new kind of „Hydra-headed“ terror. The common denominator may very often only be

¹⁰ *Rapoport* (fn. 7), pp. 3-24.

¹¹ For an interesting discussion of current international terrorism see the videos of the October 10, 2008 panel „Al Qaeda 3.0“ of The New America Foundation, available online: http://www.newamerica.net/events/2008/al_qaeda_3_0.

¹² Among others *Laqueur*, *The New Terrorism : Fanaticism and the Arms of Mass Destruction*, 1999; *Morgan*, *The Origins of the New Terrorism*, *Parameters US Army War College Quarterly*, Spring 2004, pp. 29-43, available online: <http://www.carlisle.army.mil/usawc/Parameters/04spring/morgan.pdf>.

¹³ See, for instance, the BBC series by *Peter Taylor* with this title, available online: http://news.bbc.co.uk/1/hi/programmes/age_of_terror; *Fisk*, *The Age of Terror - a landmark report*, *The Independent*, October 8 2006, available online: <http://www.independent.co.uk/opinion/commentators/fisk/robert-fisk-the-age-of-terror--a-landmark-report-418953.html>.

¹⁴ *Pillar*, „Terrorism Goes Global: Extremist Groups Extend their Reach Worldwide,“ *The Brookings Review*, 19 (Fall 2001), available online: http://www.brookings.edu/articles/2001/fall_terrorism_pillar.aspx.

¹⁵ *Rapoport*, *Modern Terror* (fn.7), pp. 19-22; *Münkler*, *Ältere und jüngere Formen des Terrorismus. Strategie und Organisationsstruktur*, in: *Weidenfeld* (ed.), *Herausforderung Terrorismus. Die Zukunft der Sicherheit*, 2004.

¹⁶ The attacks of July 7, 2005, in Great Britain and the abortive bombings of July 31, 2006, in Germany are attributed to „homegrown“ Islamic terrorism.

the hate towards the West, in particular the U.S. (President *Obama* could possibly change the rules of the game) and Israel (here change seems rather unlikely in the near future, given the strong anti-Semitism imported from the West and the political-religious conflict in the Middle East).

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- 17 One of the new terrorism's features is an increasing indiscriminateness. It bothers very little to distinguish between its victims; people of all social, religious or ethnic backgrounds have been attacked. Terrorists of the new generation have perpetrated mass-casualty attacks against the West like the August 7, 1998 US embassy bombings in East Africa, 9/11 in the U.S., the March 11, 2004 Madrid train bombings, the July 7, 2005 bombings in London – and some are even said to be trying to obtain radiological, chemical, and biological weapons. But the danger of terror rises also with the diffusion of the global media, most notably the internet. *Peter Waldmann* therefore speaks about terrorism as a „communications strategy“. ¹⁷ As the world becomes one big stage with one big global audience, for terrorists the motivation to slip into the role of The Joker increased again. The collective psyche of „post-heroic“ societies is apparently a weak point of industrialized countries and terrorism intends to cause „systemic disruptions“ with huge potential economic damage by taking advantage of this fact. ¹⁸

18 III. Who are We? – Citizenship as Identity and Difference

At the core of human life is membership to a social community. *Michael Walzer* notes that social membership is the first and most precious good we can give one another. It is a decision according to the perception of the current members about the future members and the nature of the membership, in particular the rights and duties it conveys. ¹⁹ A basic differentiation between the various social communities was made by *Max Weber* who introduced the notions of „open“ and „closed“ social relationships. The first is accessible for everyone capable and inclined to join community, whereas the second excludes and restricts the participation in it. ²⁰ There is a large variety of social communities; the most prominent, of course, is the family. We can think of communities as inspired by religious or ethnic components. Others are, for instance, corporations, unions, or associations of any sort. Some are rather „open“ and some tend to be „closed“. However, each community sets terms for membership and designs rights and duties.

- 19 The kind of membership into which we are inquiring here more thoroughly is citizenship – membership in the state. *Peter J. Spiro* is perfectly right in reminding us that „[c]itizenship is a historically contingent institution, a modern phenomenon that is not inherent to social existence. Humankind existed for millennia without states and without citizenship“. ²¹ But, nevertheless, state and citizenship are still the dominant, yet contested, institutions in our world.

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20 1. The Modern State as Territorial and Membership Organization

The ideas of territorial integrity and sovereignty are commonly attributed to the peace treaties of Münster and Osnabrück in 1648 („Peace of Westphalia“). The international system of states is thereby seen as a seamless patch rug of territorial states which are sovereign. Sovereignty is understood as the right and the capability to exclude external actors from domestic authority structures. These circumstances led to the question of

¹⁷ Waldmann, *Terrorismus* (fn. 4), pp. 13, 56-61.

¹⁸ *Münkler* (fn. 15), pp. 34-38.

¹⁹ *Walzer*, *Sphären der Gerechtigkeit*, 1992 (original title: *Spheres of Justice*, 1983), chapter 2, pp.65-107.

²⁰ *Weber*, *Wirtschaft und Gesellschaft*⁵, 1980, part 1 chapter I pp. 23-25.

²¹ *Spiro*, *Beyond Citizenship. American Identity after Globalization*, 2008, p. 7; for a recent paper on present and future of citizenship see *Schuck*, *Three Models of Citizenship*, draft of September 19, 2008, available online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1267356.

how to allocate people to the states and pressed for a set of mutually agreed rules for inclusion and exclusion. The institution of citizenship was invented and law assumed the task of defining who gets membership in the state and what benefits and duties it connotes for its citizens. These elements are reflected in modern theory of state. According to *Georg Jellinek*, the state consists of three elements: a sovereign power, a marked-off territory and a people.²² The German *Bundesverfassungsgericht* (Federal Constitutional Court) follows this model in naming citizenship „das rechtliche Band“ (the legal bond) between the state and the people.²³ Equally, the International Court of Justice described citizenship as

21 „legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties“.²⁴

22 The basic elements of inclusion and exclusion are also inherent in the idea of the nation. Internally the nation works inclusively, integrating the insiders; externally it is a means of exclusion in order to keep outsiders apart from the national community. With the advent of this concept, the modern state started to legitimate itself through pointing to the nation as the *pouvoir constituant*. And, of course, it must be a delimited or defined nation, a „community of experience, sacrifice, and destiny“, whose will the state shall represent.²⁵ This is why access to the nation is restricted by citizenship. Even the formation of a European nation, despite the inclusion of more people(s) than ever before in Europe, would only apply those features on another level.²⁶

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23 As we see, citizenship correlates with the territoriality of the modern state and the idea of the nation. It is a particular expression of belonging to this form of association and conveys social and legal identity. However, its core issue of exclusion is problematic.

24 2. The Liberal Dilemma of Citizenship

An important antagonism in regard to citizenship deserves our brief attention. The conflicting view is the basic liberal tenet of inclusion which for some is irreconcilable with the inherent exclusiveness of citizenship regimes.²⁷ *Seyla Benhabib* describes this as the „paradox of democratic legitimacy“.²⁸ On the one hand, the idea of popular sovereignty implies that the sovereign people, the *demos*, can decide who is part of it and restrict thus the circle of members of the community. The liberal intention to include everyone and, especially, the idea of universal human rights, on the other hand, has a „context-transcending appeal“.²⁹

25 The inextricably interwoven relation between democracy and nationalism are perfectly circumscribed by *Liah Greenfeld*:

²² *Jellinek*, *Allgemeine Staatslehre*³, 1913, p. 406.

²³ *Bundesverfassungsgericht*, 2 BvF 2, 6/89, October 31, 1990.

²⁴ International Court of Justice, *Liechtenstein v. Guatemala*, judgement of April 6, 1955, available online: <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=lg&case=18&k=26>.

²⁵ Leaving aside concepts of the nation like, for example, that of *H.G. Wells* „Our true nationality is mankind“, cited in *Miller*, *In Defence of Nationality*, *Journal of Applied Philosophy*, Vol. 10, No. 1 (1993), pp. 3-16 (5).

²⁶ For the time being, the EU-citizenship, as provided in Article 17 Treaty of Nice, is only complementary and does not replace national citizenship.

²⁷ See, for instance, *Schmitt*, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, 1923, who saw the two concepts as incompatible and as being cause for the „crisis of parliamentarism“; *Habermas*, in contrast, rejects the perception of the incompatibility, furthermore, he sees both as fundamental for the democratic constitutional state, see *Habermas*, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, 1992, pp. 112-135.

²⁸ *Benhabib*, *The Rights of Others. Aliens, Residents and Citizens*, 2004, p. 43-48.

²⁹ *Benhabib*, (fn. 28), p. 19.

- 26 „Nationalism was the form in which democracy appeared in the world, contained in the idea of the nation as a butterfly in a cocoon“.³⁰
- 27 Liberalism, striving for the implementation of human rights, has pressed to level entry barriers and pushed forward its agenda for the extension of citizen's rights to non-members. Thus, as the threshold for membership lowers and nonmembers have equal rights, the liberal dream seems to come true. Yet, as the power of the state seems to decline in the wake of globalization, both citizenship and liberal theory are heavily challenged.

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28 **3. Globalization and Citizenship**

The process of globalization, as it was already roughly outlined in the context of the new terrorism, fundamentally questions nation-state and citizenship. It is *Spiro* again who shall guide our reasoning here. The above quoted paragraph continues on about the state and citizenship

- 29 „there will come a day when we once again live without them. [...] the present circumstances and the nascent features of a transnational institutional order suggests shifting powers and associations, ones not rooted in the state.“³¹
- 30 To sum up some factors once again, the globalization process is comprised of the rise of a global economy, enlargement of free-trade zones, internationalization of armament, communication and technology, the emergence of international cultural networks and electronic spheres, and a growth in international political actors. Territoriality becomes increasingly anachronistic by the the phenomena of international mobility and migration and the Westphalian order seems to fade away with its strict separation of entities. Further, the concept of the nation is apparently withering. However, it is not clear what principle will replace the old model. In this respect we are actually „travelers navigating an unknown terrain with the help of old maps, drawn at a different time and in response to different needs“.³²
- 31 Liberal theory has strongly relied on the state as the guarantor of rights, security, and redistribution of resources. Power had been won for the individuals to domesticate the state and hold it accountable. The idea of the (civic)³³ nation has had its merits of integrating people for common purposes such as public welfare. It is not claimed here, though, that the nation-state has totally lost the legitimacy for its existence or its undertakings; but the nation-state has reached its pinnacle and is gradually losing influence.
- 32 One important aspect which comes along with globalization is the erection of worldwide standards of human rights and various regional human rights regimes (for example, the European Convention on Human Rights with its Court in Strasbourg). Since the „Universal Declaration of Human Rights“ of 1948 much has happened in the field at a worldwide level; many rights were elaborated, such as rights to life, rights to freedom, rights to political participation, rights to the protection of the rule of law, rights to fundamental social, economic, and cultural goods. As political and economic power is shifting to nongovernmental actors, human rights will be a key instrument to hold those corporations, NGOs, and other associations accountable; yet, enforcement remains difficult in the short run. However, as the state's power erodes, so does the meaning of citizenship. *Spiro* argues in his 2008 book „Beyond Citizenship. American Identity after Globalization“ – where he examines predominantly U.S. citizenship law – that identities and affiliations are migrating to ethnic, religious and many other interest-driven asso-

³⁰ *Greenfeld*, Nationalism. Five Roads to Modernity, 1992, p. 10.

³¹ *Spiro*, (fn. 21), p.7.

³² *Benhabib*, (fn. 28), p. 6.

³³ As opposed to the ethnic nation which is usually perceived as overly exclusive. The excesses of nationalism are, accordingly, in general ascribed to the ethnic version of the nation concept.

ciations. As citizenship corresponds directly to the nation-state, the latter's decline renders citizenship less meaningful, too. These assumptions hold true for the case of Germany, as well.

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33 **4. Citizenship in Germany**

Germany is not that special in terms of citizenship anymore, as her recent history might wrongfully suggest. Since the foundation of the German *Reich* in 1871, German citizenship became an object of pride, privilege, and safety not only for German citizens but also for foreigners interested in attaining this status. German citizenship largely reflected the conception of the German nation, emphasizing the ethnic components.

34 Nonetheless, the history of citizenship between 1933 and 1945 constituted a breach, not continuity.³⁴ The *Gesetz über den Widerruf und die Aberkennung der deutschen Staatsangehörigkeit* (law about the revocation and deprivation of the German citizenship) of July 14, 1933³⁵ and all subsequently enacted laws and ordinances³⁶ – with which hundreds of thousands of German citizens were stripped of their citizenship status – were quite the contrary to the earlier idea of citizenship as representing privilege and safety. Like other totalitarian political systems, the Nazis used citizenship and citizenship law for the deprivation, ostracism, and destruction of disliked people, in particular Jews and political enemies. Because of the Nazis' obsession with race and blood, the formal equality of the citizens was replaced by the allegedly substantial equality of the race.³⁷

35 The second important fact that shaped the history of citizenship in Germany, was the situation of millions of ethnic Germans after World War II, finding themselves outside the redrawn borders of Germany as disliked minorities scattered all over Eastern and South-Eastern Europe. This is still apparent in the distinction by the German *Grundgesetz* of 1949 (Basic Law) between *Staatsangehörigkeit* (citizenship) in Article 16 and the *Deutscheneigenschaft* (quality of being German) of Article 116 paragraph 1 *Grundgesetz*.³⁸

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36 The issue of denaturalization, that is, loss of the citizenship status, was supposed to have disappeared with the collapse of the *Deutsche Demokratische Republik* (German Democratic Republic) that did not hesitate to deprive a number of citizens of their citizenship because of political reasons. It will be analyzed in the next chapter whether this time actually has ended.

37 Coming back to the introductory statement that Germany is not so unique in terms of the concept of citizenship, some additional comments have to be made here in order to get a general idea of German citizenship law as foremost substantiated in the *Staat-*

³⁴ Gosewinkel, *Einbürgern und Ausschließen*, 2001, p. 13.

³⁵ RGBL. 1, S. 480; available online: http://www.documentarchiv.de/ns/1933/deutsche-staatsangehoerigkeit_ges.html.

³⁶ Hailbronner/Renner, *Staatsangehörigkeitsrecht*, Kommentar, 1991, Einl. B marginal notes 7-19.

³⁷ The German *Grundgesetz* (Basic Law) tried to undo the actions of the Nazis by the provisions in Article 116 paragraph 2. It stipulates that those citizens who were deprived of their citizenship for political, racial or religious reasons between Januar 30, 1933 and May 8, 1945 and their off-springs would regain the status upon request. Those deprived of their citizenship status but residing in Germany after May 8, 1945 in Germany are to be considered as not having lost citizenship, unless they do not express a contradictory will.

³⁸ Article 116 paragraph 1 of the *Grundgesetz* provides that a German is a person who possesses German citizenship or who was admitted to the territory of the German *Reich* within the boundaries of December 31, 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such a person. Since January 1, 1993 the *Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge* (Federal Expellees Act) sorts out who qualifies for repatriation under Article 16 paragraph 1 *Grundgesetz*; available online: <http://bundesrecht.juris.de/bvfg/index.html>.

sangehörigkeitsgesetz (Citizenship Act)³⁹. First of all, German citizenship is primarily obtained by descent (*ius sanguinis*), that is, being born by a German mother or father – as a matter of principle, notwithstanding the place of birth. This rule is complemented by the so-called *Optionsmodell* (model of choice), which provides that persons born to noncitizen parents, but inside Germany (*ius soli*), between the age of 18 and 23 have to opt for their parents' or the German citizenship. Spouses or partners usually qualify after a continuing marriage of two years and a period of residence of three years. Non-citizens generally qualify after having resided in Germany for eight years, given that there is no reason for the applicant to be deported and she can make a living on her own. German citizenship law is still not very sympathetic to multiple citizenship, but there is an increasing number of exemptions made.⁴⁰ In particular the legislative reform of 2000, achieved by a majority composed of the Social Democrats, the Greens and the Liberals, has made the German citizenship less „closed“ and more up to date and flexible.

- 38 So the conclusion at this point is that the German concept of citizenship still puts weight on the ethnic element, but is slowly accepting the reality of globalization and its repercussions, particularly the phenomenon of multiple citizenship. Germany is just as any other Western nation-state experiencing the gradual decline of state and nation as basic tenets. What way the German citizenship will take under these circumstances is unsettled. A more „open“ citizenship, embracing the *ius soli* rule and accepting multiple citizenship, on the one hand would tune in to the realities of globalization, on the other hand the adaption to the situation might also simply bolster up its own decline. In view of this and other aspects, we will be examining in the following the role of citizenship law in the context of the struggle against international terrorism.

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39 **IV. The Joker and Us – Citizenship as a Weapon Against the New Terrorism?**

First, we have asked who The Joker is and how he is threatening our societies. Secondly, we drew attention to membership with a special focus on membership in the state – we thereby inquired the meaning of citizenship and how globalization is contesting the premises of the nation-state. In the following section we will finally put the pieces together and get to the core questions of this paper,

- 40 Does the confrontation with new terrorism affect our understanding of citizenship? Is citizenship changing in the course of the struggle against the threat? Can and should citizenship and citizenship law be used as a tool for fighting terrorism?

41 **1. The Role of Citizenship Law**

One aspect of the citizenship law is that it holds, creates, and consolidates under the surface of legal formalization the social and political self-definitions of the respective community.⁴¹ It says a great deal about the „we“ by mapping the boundaries of the community. The other important aspect is that it reflects the state of mind of the insiders, the people included in this group. In situations of menace, war, social tension etc. (for example, an influx of massive immigration that seemingly overstrains the current population) citizenship will likely resemble the actual or supposed need for limitation of entry or even closure of the doors. Historic evidence for this connectivity can be found in abundance. Naturalization or residency requirements can be tightened and non-

³⁹ The *Staatsangehörigkeitsgesetz* of 2000 substituted the *Reichs- und Staatsangehörigkeitsgesetz*, which had been in force basically since 1913.

⁴⁰ For instance, the number of naturalized citizens who maintained their original citizenship was as high as 59.241 out of a total number of 113.030 in 2007, see *Bundesamt für Migration und Flüchtlinge* (Federal Bureau for Migration and Refugees) (Susanne Worbs), *Die Einbürgerung Ausländern in Deutschland*², Working Paper 17, 2008, p. 26; available online: http://www.bamf.de/cln_092/nn_442016/SharedDocs/Anlagen/DE/Migration/Publikationen/Forschung/WorkingPapers/wp17-einbuengerung.templateId=raw,property=publicationFile.pdf/wp17-einbuengerung.pdf.

⁴¹ Gosewinkel (fn.34), p. 15.

citizens be deported or interned (for the U.S. see, for instance, the Japanese, German, and Italian American internment during World War II).

- 42 The question, that will especially preoccupy us here in the following, is whether citizens can also be stripped of their citizenship status. *Rogers Brubaker* notes that one could assume the state being permitted to exclude persons irrespective of their status. What he sees as prohibiting the states in doing so is the system of states, which does not allow the single state to get rid of its citizens, thereby passing on the responsibility and its costs to other states. The practice of excluding its own citizens is ascribed by *Brubaker* to non-liberal states.⁴² This assumption may have been correct in 1992, as a matter of principle, but it does not hold true today anymore.

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43 **2. Rethinking Citizenship in the Context of the New Terrorism?**

The fight against terrorism since 9/11 has called into question many basic principles regarding personal freedom, fundamental rights, security, the rule of law, and many other issues at stake. One of the objects of rethinking and adjustment has certainly also been citizenship. In many countries immigration law has been modified, security checks and the option of refusing citizenship on security grounds introduced or other additional requirements implemented. Besides that, some policy makers around the world started thinking about the possibility of depriving citizens involved in terrorist activity of their citizenship status.

44 **a) The United States of America**

A short look into the history of citizenship in the U.S. shows, that denaturalization was not unknown to it. As late as 1958, the Supreme Court rejected a constitutional challenge to a provision of the 1940 law that denationalized American citizens for voting in foreign elections. The Court ruled in the *Perez v. Brownell* case that Congress's power to conduct foreign affairs included an implied power of denationalization. The relevant status – the Fourteenth Amendment – was understood as not stipulating a restriction of the power of Congress. In contrast to this, Chief Justice *Warren* in his dissenting opinion called citizenship "the constitutional birthright of every person born in this country". According to that opinion, the people gave legitimacy to the state and their citizenship status could therefore not be taken away by the state.⁴³ In *Afroyim v. Rusk* of 1967 the Supreme Court overruled its previous holding, affirming that the Fourteenth Amendment establishes

- 45 "a citizenship which a citizen keeps unless he voluntarily relinquishes it. Once acquired, this Fourteenth Amendment citizenship was not to be shifted, cancelled, or diluted at the will of the Federal Government, the States, or any other governmental unit".⁴⁴

- 46 The *Bush* administration after 9/11 started to rethink this view of citizenship. While the Justice Department in November 2001 offered residents and even illegal immigrants a fast track to citizenship for information leading to the apprehension of terrorists on the hand,⁴⁵ it later drew questionable legislation on the other. The Domestic Security Enhancement Act of 2003 (so-called PATRIOT Act II), if it had been passed, would have given more power to the government to make use of the „enhanced“ expatriation regulations. In addition to the existing acts for denationalisation – for example, obtaining naturalization in another country or serving in another country's armed forces – section 501 of the legislation draft provides for the denaturalization of a U.S.-citizen „if, with the intent to relinquish his nationality, he becomes a member of, or provides material

⁴² *Brubaker*, Staats-Bürger. Deutschland und Frankreich im historischen Vergleich, 1994 (original title: Citizenship and Nationhood in France and Germany, 1992), pp. 50-52.

⁴³ 356 U.S. 44 (1958).

⁴⁴ 387 U.S. 253 (1967).

⁴⁵ The Michigan Daily, Citizenship offered for terrorist info, November 30, 2001; online: <http://www.michigandaily.com/content/citizenship-offered-terrorist-info>.

support to, a group that the United States has designated as a 'terrorist organization', if that group is engaged in hostilities against the United States".⁴⁶

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47 Although the PATRIOT Act II did not come into force, naturalized citizens involved in terrorist activities were stripped of their citizenship if they were found to have made false statements in the course of the application process.⁴⁷

48 The government also intended to deprive even U.S.-citizens – *José Padilla* and *Yaser Hamdi* who were being detained indefinitely as "illegal enemy combatants" – of their *habeas corpus* and due process rights. This practice was ended by the Supreme Court in the *Hamdi v. Rumsfeld* case of 2004.⁴⁸ Another current practice of the executive branch regarding citizenship is delaying the naturalization applications of thousands of immigrants by profiling individuals it perceives to be Muslim and subjecting them to indefinite security checks.⁴⁹

49 **b) Israel**

Another interesting case is Israel. About 20 percent of the population are Arabs, who pose a genuine challenge to the Jewish majority who are trying to maintain the Jewish character of the country. It is specifically security issues, related to the question of loyalty in crises – which might be considered as describing the permanent situation in the Middle East – that lead to a peculiar balance of a democratic constitutional state that sees the need to discriminate a large portion of its citizens.⁵⁰

50 Until recently Israeli citizenship could be revoked by the Minister of Interior for "breach of trust to the state" or "unauthorized travel to an enemy country", but it was only in 2002 that this power was first used against Arab citizens of Israel. On July 28, 2008, the *Knesset* passed an Amendment of the 11th clause of the Nationality Law which transferred the power of revoking a citizen's citizenship from the Minister of Interior to the Court of Administrative Matters upon the Minister's request. The person subject to the request must now have committed an act that constitutes a "breach of loyalty to the State of Israel".⁵¹ However, the revocation must not result in the person becoming stateless;⁵² in the event that it does, the person will be granted a permit of residence in Israel. It was argued that the law actually targets a specific population: Arab citizens of Israel. It is cited, in contrast, that not even Jewish Israeli spies for the Soviets were

⁴⁶ Domestic Security Enhancement Act of 2003 (so-called Patriot Act II), available online: http://www.loyalnine.com/DSEA2003_text_Patriot_Act_2.

⁴⁷ See the report of the U.S. Customs and Immigration Enforcement concerning its involvement in counter-terrorism efforts of January 17, 2007, available online: http://www.ice.gov/pi/news/factsheets/TerrorismCasesFactsheet_070117.htm.

⁴⁸ 542 U.S. 507 (2004); for the case of *Yaser Hamdi* and its implications for the discussion on U.S. citizenship see, among others, *Eastman*, Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11, available online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=905570.

⁴⁹ Report of the Center for Human Rights and Global Justice, available online: <http://www.chrgj.org/docs/AOH/AmericansonHoldReport.pdf>.

⁵⁰ See *Peled*, Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State, *American Political Science Review*, Vol. 86, No. 2, June 1992, pp. 432-443.

⁵¹ Such a breach is defined as follows: (1) committing, assisting in, or enticing into the commitment of a terrorist act, including taking an active role in the activities of a terrorist organization, as defined by the Prohibition on Financing of Terrorism Law, 5765-2005; (2) committing an act that constitutes treason or aggravated espionage in accordance with the Penal Law, 5737-1977; or (3) acquiring citizenship or a right to permanent residence in a country or an area specified as Iran, Afghanistan, Libya, Sudan, Syria, Iraq, Pakistan, Yemen, and the Gaza Strip. Judicial approval for a revocation is not required within the first three years after acquisition of citizenship, if that acquisition was based on false information, see Law Library of Congress, Israel: Nationality and Citizenship - Revocation of Citizenship, September 8, 2008, available online: http://www.loc.gov/lawweb/servlet/lloc_news?disp3_640_text.

⁵² Determining statelessness, the Law presumes that a person who permanently resides outside of Israel will not remain stateless, see Law Library of Congress (fn. 51).

denaturalized.⁵³

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51 **c) Germany**

One could expect the German history of citizenship (as explicated above under chapter III. 4.) to be an important impediment to the practice of expatriation.⁵⁴ Indeed, Article 16 paragraph 1 of the *Grundgesetz* stipulates

52 „No German may be deprived of his citizenship. Citizenship may be lost only pursuant to a law, and against the will of the person affected only if he does not become stateless as a result“.

53 In 2006, this provision became subject of a case before the *Bundesverfassungsgericht* in which it had to rule on the revocation of citizenship.⁵⁵ A former Nigerian national who had made false statements in the application process and additionally had been convicted of drug crimes, was stripped of his citizenship status by the authorities and left stateless. The Court notes that definitive revocations because of false statements had taken place in 84 cases between 2002 and October 2005, but until the May 24, 2006 judgement it had not been resolved as to whether that practice was in accordance with the *Grundgesetz*. The Court's ruling was supported by four out of eight Constitutional Court judges, which meant that the Court could not find the revocation to infringe constitutional law (see § 15 paragraph 4 clause 3 *Bundesverfassungsgerichtsgesetz*, Federal Constitutional Court Act). In its judgement the Court held Article 16 paragraph 1 clause 1 of the *Grundgesetz* not to be principally barring the revocation of citizenship. Furthermore, concerning the terms of clause 2 of the Article the Court found the revocation constitutional, even if it leads to statelessness of the person. It argued that the provision of the Article 16 could not be understood as including unlawfully obtained citizenship and that, furthermore, this view was also compatible with international law. Another question the Court had to answer was whether the legal basis for the revocation, § 48 *Landesverwaltungsverfahrensgesetz Baden-Württemberg* (Administrative Procedure Act of the State), satisfied the principle of legal proviso as stipulated in Article 16 paragraph 1. According to the minority vote, the federal legislator had to create regulations regarding the revocation of citizenship.

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54 As a result of the 2006 judgement, a draft legislation of October 15, 2008⁵⁶ finally seeks to regulate the revocation of citizenship. It constitutes a number of acts for the revocation (such as fraud, threat, bribery, and false statements) within a period of five years since the citizenship was granted – even if the person thereby becomes stateless. Other parties, who derive their citizenship of the denationalized person, will not automatically lose it; a discretionary decision shall be made; children older than five years do not lose their citizenship.⁵⁷

⁵³ Benziman, Conditional Citizenship, Haaretz, September 3, available online: <http://www.haaretz.com/hasen/spages/1017712.html>; 2008; see also The Israel Democracy Institute, Revoking Citizenship on Grounds of Disloyalty to the State, October 8, 2008, <http://www.idi.org.il/sites/english/BreakingTheNews/Pages/RevokingCitizenshipEfratRahaf.aspx>.

⁵⁴ For the issue of revocation and loss of the German citizenship see *Lübbe-Wolff*, Entziehung und Verlust der deutschen Staatsangehörigkeit – Art. 16 I GG, Jura 1996, pp. 57-64.

⁵⁵ *Bundesverfassungsgericht*, 2 BvR 669/04, May 24, 2006, available online: http://www.bundesverfassungsgericht.de/entscheidungen/rs20060524_2bvr066904.html.

⁵⁶ *Entwurf eines Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes*, electronic preliminary version, October 10, 2008 (BT-Dr 16/10528), available online: <http://dip21.bundestag.de/dip21/btd/16/105/1610528.pdf>.

⁵⁷ The provision on children who derive their citizenship of a denaturalized parent, was demanded by the judgements of the *Bundesverfassungsgericht* of October 24, 2006, 2 BvR 696/04, and the *Bundesverwaltungsgericht* (Federal Administrative Court) of September 5, 2006, 1 C 20.05. The dubious perception of the capability of a child of having consciousness of her citizenship only at the age of five is in accordance with the Constitutional Court's judgement of October 24, 2006.

- 55 Two other examples of recent adaptations of the German citizenship law are the introduction of naturalization tests and general security checks. The first of the prerequisites for obtaining naturalization, as laid down in § 10 paragraph 1 of the *Staatsangehörigkeitsgesetz* (Citizenship Act), is the commitment to the „free democratic basic order“ and the declaration to refrain from any activities directed against it. Since September 1, 2008 every person who wants to naturalize has to pass a standardized test of 33 questions about the political system and culture of Germany. The intention of the test is to check the applicants for some general knowledge deemed to be important for integration into German society. In contrast to earlier tests promoted by some states, the adopted test does not ask questions aimed predominantly at Muslims and their potential sympathy for Islamic terrorists. Thus, the test of the Federal Department for Migration and Refugees seems to meet the constitutional prerequisites.⁵⁸
- 56 A contentious issue remains the general security check by the *Bundesamt für Verfassungsschutz* (Federal Office for the Protection of the Constitution) in order to gain substantial information about the applicant's potential activities against the „free democratic basic order“, which would render the applicant ineligible for naturalization (§ 11 *Staatsangehörigkeitsgesetz*). The security check is regulated in § 37 paragraph 2 of the *Staatsangehörigkeitsgesetz*, and is employed irrespective of the existence of an initial suspicion. This practice is held to infringe the applicants' basic right to „*informationeller Selbstbestimmung*“ (privacy) of Article 2 para. 1, Article 1 para. 1 *Grundgesetz*.⁵⁹

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57 **3. Citizenship as a Weapon Against the New Terrorism?**

The examples that were brought forward here demonstrate a trend towards rethinking and redefining citizenship. Finally, we have to take sides and make a case *pro* or *contra* this development. At the core of the issue lies the concept of the nature of citizenship. There is one extreme opinion which says that the state has the power of determining its circle of members independently and regardless of any considerations. This view of citizenship sees the state as the central figure which assembles the citizens according to its wishes. The radically contrasting (now outdated) perception contended that citizenship is an inalienable right which cannot be taken away either by the state nor the citizen. This view dates back to the 19th Century when citizenship was widely thought of as this kind of connection between state and citizen which could never be divided. With the rise of Liberalism, the evolution of the modern state, and the beginning of global mass migration, that idea of citizenship, of course, had to be abandoned. The focus shifted from state to citizen. Citizenship was increasingly seen as being subject only to the will of the individuals. If they wanted to relinquish their original citizenship – by emigrating and obtaining new citizenship or for any other reason – their intention would be respected. In the age of globalization and the decline of the nation-state, again, most states are becoming less jealous and more sympathetic to multiple citizenship.

- 58 Stripping citizens of their citizenship is, in principle, not forbidden from an international law perspective. International law – especially after the experiences of World War II and its aftermath which left hundreds of thousands without any citizenship – was more concerned about statelessness. Many Conventions and Declarations reaffirmed the right to citizenship and denounced leaving individuals stateless. Among the most important ones is the Universal Declaration of Human Rights of 1948 which reads in Article 15
- 59 (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of

⁵⁸ See *Bundesamt für Migration und Flüchtlinge* (Federal Bureau for Migration and Refugees), Information for the naturalization test: http://www.integration-in-deutschland.de/nn_282322/SubSites/Integration/DE/02_Zuwanderer/Einbuengerungstest/einbuengerungstest-node.html?__nnn=true.

⁵⁹ *Dubin*, Migration und Schutz der inneren Sicherheit, 2008, p. 155.

his nationality nor denied the right to change his nationality.

- 60 So the main doubt about the legitimacy of revoking citizenship, in terms of international law, is about expatriations that result in the statelessness of the person. The May 24, 2006 judgement of the *Bundesverfassungsgericht* is therefore highly problematic in the light of this decision of international law in respect of statelessness. In the context of the citizenship of the European Union it is, moreover, not clear what legal repercussions a revocation of the citizenship of a EU Member State has in regard to community law. On February 18, 2008 the German Federal Administrative Court decided to submit that question to the European Court of Justice in Luxemburg.⁶⁰

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- 61 In today's world, losing citizenship does not mean losing all rights. *Hannah Arendt* famously spoke about „the right to have rights“, with which she meant the basic connection of being entitled to rights and possessing citizenship as member of a nation-state.⁶¹ The rise of the idea of human rights and the establishment of global and regional human rights regimes is a main feature of our time. As mentioned above, this development correlates with the overall process of globalization and it constitutes the chance to manage global spheres and domesticate global actors. Therefore, from a practical perspective emphasizing substantial legal benefits, the loss of one's citizenship is not as hard as it used to be.
- 62 Furthermore, assuming that citizenship together with the nation-state loses meaning as part of one's identity, it is difficult to think of citizenship as a means for fighting terrorism this way. With regard to religious Islamic terrorists, for them the *Ummah* (community of believers, the entire Muslim world) is the community that counts. If a dismissal from a community is likely to bother them, it must be that of their religious group or family. In addition to that, on their self-appointed, religiously-ordained, transcendental mission few things will hinder them from doing what they regard as the will of God. If at all, the prospect of expatriation will merely deter sympathizers and supporters; a suicide bomber will not refrain from blowing himself up because of the possibility of losing his citizenship. On the contrary, a vague definition of who qualifies for expatriation and an expansive practice of denaturalization could affect innocent individuals. As we see, the possible positive effects of this instrument in fighting terrorism are marginal, the negative implications incalculable.
- 63 The reason why revocation of citizenship in the context of the struggle against terrorism could be used is that it satisfies the population's call for action and would, therefore, be of a rather symbolic character. There will always be politicians and civil servants who might think that denaturalization could be the perfect solution for the problem. This practice, however, would be a far cry from being part of a comprehensive and global strategy of fighting terrorism. If states started to exclude and remove individuals deemed as terrorists, it would only demonstrate irrationality and the nonexistence of a common goal. Moreover, making someone disappear in one country and having her in another again is simply a zero-sum game. The executive branch, in general, should not resort to denaturalization for reasons of satisfying the public's yearning for excluding perpetrators from the national community. In particular, the impression that the government was targetting a certain ethnic and/or religious social group, could lead to a further alienation of those who society's fight against terror urgently needs. It could seed mistrust and social tensions.

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- 64 In the end, the institution of citizenship will suffer because of those concepts of citizen-

⁶⁰ *Bundesverwaltungsgericht*, 5 C 13.07, February 18, 2008, available online: <http://www.bundesverwaltungsgericht.de>.

⁶¹ *Arendt*, *Elemente und Ursprünge totaler Herrschaft*, 1962 (original title: *The Origins of Totalitarianism*, 1951), p. 444.

ship. In the short run, denationalization seems to strengthen the citizen's perception of citizenship, but this is a delusion. We have seen that citizenship is under the pressure of globalization. Further decimating the standing of citizenship by an increased use of the expatriation mechanisms, would only serve to devalue it more.

65 V. Conclusion

In January 2008 the U.S.-born Al-Qaeda spokesman *Adam Gadahn* (born *Adam Pearlman*) renounced his U.S. citizenship on camera. After tearing his passport in half, he tells the camera: "I don't need it to travel anyway".⁶² This is just another case in point that supports the opinion that citizenship law cannot and should not be a tool in fighting international terrorism. Even if it hurt some terrorists, although unlikely, it will most probably cause more damage to both society and the institution of citizenship.

66 In other words, The Joker does not care about the nation-state and whether he is a member of it. The last thing the citizenry of Gotham need at the moment is social unrest among the citizens and insecurity about their citizenship status. In the beginning it seems to be such a brilliant idea to draw clear borders between in and out, good and evil. The Joker and all of his sympathizers and aides should be stripped of their status as citizens of Gotham and expelled from the community. Final deportation – if for moral and legal reasons they cannot be executed – appears as the remedy to remove the menace from public concern.

67 This concept of citizenship, though, has to be disapproved. Chief Justice *Warren* in the *Trop v. Dulles*⁶³ case of 1958 makes the right point in noting

68 „Citizenship is not a license that expires upon misbehavior“ and „the deprivation of citizenship is not a weapon that the Government may use to express its displeasure at a citizen's conduct, however reprehensible that conduct may be“.

69 Justice *Felix Frankfurter*, who wrote the majority opinion in *Perez v. Brownell*, asked in his dissenting opinion in *Trop v. Dulles*, referring to the capital punishment,

70 „Is constitutional dialectic so empty of reason that it can be seriously urged that loss of citizenship is a fate worse than death?“

71 Now, most states have abolished the capital punishment but the „constitutional dialectic“ of many constitutions is fundamentally contested by the phenomenon of new terrorism. It can be claimed that the examples in this paper demonstrate that we are, apparently, going backwards in the history of citizenship. The traced process of rethinking citizenship after 9/11 could indicate an emergence of „second class“ or „conditional“ citizenship. At this point in history – where the institution of citizenship is suffering a gradual loss of meaning due to globalization – this step back could even accelerate its decline.

Zitierempfehlung: Christoph Brendel, HFR 2003, S. 169 ff.

⁶² CNN online, Tape: American al Qaeda member renounces citizenship, January 6, 2008, <http://www.cnn.com/2008/WORLD/meast/01/06/gadahn.tape/index.html>.

⁶³ 356 U.S. 86 (1958), available online: <http://bulk.resource.org/courts.gov/c/US/356/356.US.86.70.html>.