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The Undesirable Citizens

A legal and ethical analysis of citizenship deprivation in a national security context.

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Table of contents

List of abbreviations

ACHR	American Convention on Human Rights
BNA 1981	British Nationality Act 1981
CCQRCNL	Convention on Certain Questions relating to the Conflict of Nationality Laws
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
COE	Council of Europe
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECN	European Convention on Nationality
EU	European Union
GlobalCit	Global Citizenship Observatory
IA	Immigration Act 2014
IANA	Immigration, Asylum and Nationality Act 2006
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IHRL	International Human Rights Law
ISI	Institute on Statelessness and Inclusion
ISIS	Islamic State of Iraq and Syria
NIAA	Nationality, Immigration and Asylum Act 2002
SIAC	Special Immigration Appeals Commission
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UN	United Nations
VCLT	Vienna Convention on the Law of Treaties
1954 Convention	Convention relating to the Status of Stateless Persons
1961 Convention	Convention on the Reduction of Statelessness

1 Introduction

Over the last two decades states worldwide have either amended or crafted new law provisions to make it possible to deprive the citizenship of individuals deemed a threat to national security.[1] The expanded deprivation powers and increased use of the measure raises both legal and ethical concerns. From a legal perspective it raises concerns as citizenship deprivation often is applied as an administrative measure in the form of executive power, and because the right to nationality is considered a fundamental human right.[2] From an ethical perspective citizenship deprivation raises questions of whether it violates the principle of equality[3] as deprivation may only be lawfully applied against naturalized and dual citizens. Other ethical issues relate to the responsibility of the political community when its citizens behave in undesirable ways[4] and whether citizenship deprivation could be considered a legitimate punishment.[5]

While the trend has been global since September 11 2001, the expansion of states power to deprive citizenships on national security grounds has been most extensive in Europe.[6] This may be understood in the context of the increasing security challenges European states have faced in the last two decades. A period marked by several terrorist attacks in Europe and the large number of European foreign fighters recruited by ISIS.[7] In this context citizenship deprivation,

[1] Birnie, Rutger, and Rainer Bauböck. "Introduction: Expulsion and Citizenship in the 21st Century." *Citizenship Studies* 24, no. 3 (2020): 265-76. DOI:10.1080/13621025.2020.1733260. 265.

[2] UDHR Art.15, CERD Art.5, para. d(iii), CEDAW Art. 9, ICCPR, Art.24(3), CRC Art.7-8, ECN Art.4(a).

[3] Lenard, Patti Tamara. "Democracies and the Power to Revoke Citizenship." *Ethics & International Affairs* 30, no. 1 (2016): 73–91. DOI:10.1017/S0892679415000635. 79.

Gibney, Matthew J. "Should Citizenship Be Conditional? The Ethics of Denationalization." *The Journal of Politics* 75, no. 3 (2013): 646–58. DOI:https://doi.org/10.1017/s0022381613000352. 652.

[4] Miller, David. "Democracy, Exile, and Revocation." *Ethics & International Affairs* 30, no. 2 (2016): 265–70. DOI:10.1017/S0892679416000137. 269.

Lenard, "Democratic Citizenship and Denationalization." *The American Political Science Review* 112, 1 (2018): 99-111. DOI:10.1017/S0003055417000442. 106-107

[5] Cohen, Elizabeth F. "When Democracies Denationalize: The Epistemological Case against Revoking Citizenship." *Ethics & International Affairs* 30, no. 2 (2016): 253–59. DOI:10.1017/S0892679416000113. 256.

[6] Tripkovic, Milena. "Renouncing Criminal Citizens: Patterns of Denationalization and Citizenship Theory." *Punishment & Society*, (2022):1-23. DOI: 10.1177/14624745221080705. 6.

[7] Coca-Vila, Ivó. "Our "Barbarians" at the Gate: On the Undercriminalized Citizenship Deprivation as a Counterterrorism Tool." *Criminal Law and Philosophy* 14, no. 2 (2020): 149-67. DOI:https://doi.org/10.1007/s11572-019-09517-5. 150.

Boekestein, Tom L., and Gerard-René De Groot. "Discussing the Human Rights Limits on Loss of Citizenship: A Normative-legal Perspective on Egalitarian Arguments regarding Dutch Nationality Laws Targeting Dutch-Moroccans." *Citizenship Studies* 23, no. 4 (2019): 320-37. DOI:10.1080/13621025.2019.1616448. 320.

the unilateral act where a state without consent revokes an individual of their citizenship, has increasingly emerged as a security measure applied against individuals convicted or suspected of terrorism.[8]

Terrorism is a direct threat against human rights in which states have a duty to protect its territory and residents from. The objective of deprivation is to protect the state from its own citizens by deporting a possibly dangerous individual following a deprivation order or by issuing a deprivation order while the individual is outside the state, denying their return.[9] While deprivation is a measure that has affected relatively few individuals, certain states apply it more than others. In Europe, the United Kingdom has been an outlier and has in recent years adopted amendments which has resulted in expanded executive deprivation powers.[10] Since 2006 around 175 individuals have been deprived of their citizenship on national security grounds.[11] Globally, Bahrain is the only state that has deprived more individuals of citizenship, and provides an example where extensive deprivation powers have been applied against human rights defenders and political opponents in the name of national security.[12]

This thesis seeks to explore to what extent the international legal framework provides limitations for states exercise of deprivation powers in the national security context, and whether citizenship deprivation could be morally justified. The first conclusion is that the international legal framework to a certain extent constrains states deprivation powers in terms of avoiding statelessness, discrimination, and arbitrariness. However, the increasing trend of applying citizenship deprivation as a security measure might put these standards under pressure. The second conclusion is that citizenship deprivation cannot be morally justified because it is a

[8] Jaghai Sangita, & Laura van Waas, "Stripped of Citizenship, Stripped of Dignity? A Critical Exploration of Nationality Deprivation as a Counter-Terrorism Measure". In *Human Dignity and Human Security in Times of Terrorism*. Edited by Christophe Paulussen & Martin Scheinin. 154-179. The Hague: T.M.C. Asser Press, 2020. 154-156.

[9] Krähenmann, Sandra. "Foreign fighters, terrorism and counter-terrorism". In *Research Handbook on International Law and Terrorism*, Cheltenham, UK: Edward Elgar Publishing, 2020. 252.

Van Waas, Laura. "Foreign Fighters and the Deprivation of Nationality: National Practices and International Law Implications." In *Foreign Fighters under International Law and Beyond*, edited by Andrea de Guttry, Francesca Capone, Christophe Paulussen, 469-487, The Hague, T.M.C. Asser Press, 2016. 475.

[10] Mantu, Sandra. "'Terrorist' Citizens and the Human Right to Nationality." *Journal of Contemporary European Studies* 26, no.1 (2018): 28-41. DOI:10.1080/14782804.2017.1397503. 32.

[11] ISI & GlobalCit, *Instrumentalising Citizenship.* 2022. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf . 10.

[12] Ibid. 18-19.

permanent and exceptionally severe punishment which only some parts of the citizenry can be subjected to.

1.1 Research Question

The thesis seeks to analyse two aspects of citizenship deprivation. It is therefore necessary to divide the research questions into two different but affiliated questions.

The first question relates to the legal aspect of citizenship deprivation and asks:

> *To what extent do international and human rights law limit states in their exercise of citizenship deprivation as a national security measure?*

The second question relates to the ethical aspect of citizenship deprivation and asks:

> *Can citizenship deprivation as a national security measure be morally justified? And if so, under what conditions?*

The topic chosen for the thesis is interesting for several reasons, not least because the right to nationality is an important right and often a prerequisite for invoking other fundamental rights. Additionally, the facilitation of depriving the citizenship of alleged or convicted terrorists has been widely debated in Europe in the last decades. Because citizenship deprivation in this context is regarded as a security measure, the thesis also seeks to contribute to the wider debate on the balancing act between protecting national security without compromising universal human rights. This reinforces the importance of examining the legal norms and ethical principles in which citizenship deprivation may conflict with, as reflected in the research question.

Although both legal and ethical aspects of citizenship deprivation have been addressed in the literature, it is a subject of constant development. Mainly because some years has passed since a few of the European foreign fighters returned and new cases have been processed.[13] Additionally, although three years have passed since the fall of ISIS, many Europeans are still detained in camps in North Syria, where their deprivation cases have developed.[14] Furthermore,

[13] Johansen v. Denmark No 27801/19.

[14] R (Begum) v SIAC (2021), 135.

certain states, such as the UK, are constantly attempting to amend their deprivation laws.[15] These recent developments make the topic legally relevant and also raise new ethical questions about citizenship deprivation. The focus of the thesis is mainly directed towards the European context but will also draw on examples from outside Europe.

The following sections in this chapter will first describe the methodology and methods chosen for the thesis. Further the chapter will provide relevant definitions and use of terminology, and finally, a chapter overview of the thesis.

1.2 Methodology

As reflected by the two-folded research question, the thesis adopts a multidisciplinary approach. Adopting such an approach is valuable because a comprehensive analysis of citizenship deprivation requires both legal and ethical considerations. The legal analysis is important to understand what states legally are permitted to do but will however not provide any definite answers on whether the measure can be regarded as morally right. Both components are equally important to understand what states are permitted to do legally and morally. Therefore, a multidisciplinary approach is beneficiary, deriving perspectives and methods from the disciplines of law and normative political theory. These approaches will be described in the following sections.

1.2.1 Legal method

The legal analysis will mainly rely on doctrinal legal research. This approach aims to analyse and identify legal principles and concepts found in primary and secondary sources which include conventions, statutes, and case law.[16] This approach will usually exclusively focus on the letter of the law without considering the "law in action". As citizenship has a complex nature it is necessary to include some historical and political considerations to understand the law

[15] UK Parliament. "Final text of Nationality and Borders Bill agreed." *UK Parliament*. 29.04.22. https://www.parliament.uk/business/news/2021/december-2021/lords-debates-nationality-and-borders-bill/

[16] McConville, Mike, and Wing Hong Chui (Eds). *Research Methods for Law*. 2nd ed. Edinburgh: Edinburgh University Press, 2017.1.

Hutchinson, Terry, and Nigel Duncan. "Defining and Describing What We Do: Doctrinal Legal Research." *Deakin Law Review* 17, no. 1 (2012): 83-119. 84.

amendments and the justifications provided for the amendments.[17] Only relying on the traditional doctrinal approach could result in ignoring important aspects of citizenship deprivation.

The aim of the legal analysis is first to analyse the relevant international legal framework in order to identify the constraints they may provide for states exercise of deprivation powers. The focus is directed towards three core principles found in several international conventions, treaties, and case law, namely the prohibition of arbitrariness,[18] avoidance of statelessness[19] and the absolute prohibition against discrimination.[20]

Secondly, the chapter will provide a brief analysis of the relevant provisions of the British Nationality Act 1981 (BNA 1981) in light of the constraints derived from the international legal framework. Only instruments the UK is party to will be applied. The reason for choosing the British law is that the UK, compared to other European democracies, has gone the furthest in lowering the threshold for citizenship deprivation.[21] By analysing the British law, one may also assess to what extent international and human rights law limit state powers of deprivation, also for other states.

1.2.1.1 The legal sources

The legal sources of international law are found in Article 38(1) of the Statute of the International Court of Justice (ICJ). These include international conventions, international custom, general principles of law and as subsidiary means, judicial decisions, and academic work.[22]

The legal analysis will interpret relevant provisions of the 1961 Convention on the Reduction of Statelessness (1961 Convention) and the European Convention on Nationality (ECN) in line

[17] McInerney-Lankford, Siobhán. "Legal Methodologies and Human Rights Research: Challenges and Opportunities" in *Research Methods in Human Rights*, Edited by Bård A. Andreassen, Hans-Otto Sano, and Siobhán McInerney-Lankford. 1-14. Cheltenham, UK: Edward Elgar Publishing, 2017. 47.

[18] UDHR Art. 15, ACHR Art.20(3) ECN Art.4(c).

[19] 1961 Convention, 1954 Convention

[20] E.g., ICCPR Art. 2, ICESCR Art. 2, CERD Art. 5, CRPD Art. 3, CRC Art. 3, CEDAW Art. 2-3. ECHR Art. 14.

[21] Bolhuis, Maarten P, and Joris Van Wijk. "Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism." *European Journal of Migration and Law* 22, no. 3 (2020): 338-65. 349.

[22] Statute of the ICJ Art. 38(1).

with the general rules of treaty interpretation established by the 1969 Vienna Convention on the Law of the Treaties (VCLT), Art. 31-33.[23] The VCLT is not ratified by all states, but it has on several occasions been established by the ICJ that Art. 31-32 of the VCLT reflects rules of customary international law.[24]

The 1961 Convention is the primary international instrument that sets out general rules for the prevention of statelessness and the only UN treaty that provides rules on deprivation of citizenship.[25] The ECN is also a significant treaty in the European context as it is the only regional convention elaborating on rules of nationality laws. These conventions are therefore relevant. Relevant case law and decisions from the ECtHR will be included in the analysis as member states of the Council of Europe (CoE) are obliged by Article 46 of the ECHR to comply with final judgments from the court.[26]

The analysis will be supported by secondary sources of "soft law", such as relevant General Comments, communications, guidelines, and resolutions. While not having a binding character, soft law may still be of legal relevance as it may contribute to clarifying and developing the meaning of the treaties and provide guidance on how they should be understood.[27] Nevertheless, the weight of soft law should not be equated with the legal weight of the text of the law or "hard law".[28]

1.2.1.2 Delimitations

The scope of the thesis must be limited due to space limitations. The thesis will therefore not focus on deprivation in relation to EU law,[29] or the ICCPR Article 12(4).[30] Whether citizenship

[23] VCLT Art. 31.

[24] Qatar v. United Arab Emirates para. 75.

[25] Edwards, Alice. "The Meaning of Nationality in International Law in an Era of Human Rights: Procedural and Substantive Aspects". In *Nationality and Statelessness under International Law*, edited by Alice Edwards and Laura van Waas, 11–43. Cambridge: Cambridge University Press, 2014. 22.

[26] ECHR Art. 46.

[27] Lagoutte, Stéphanie, Thomas Gammeltoft-Hansen, and John Cerone (Eds). *Tracing the Roles of Soft Law in Human Rights*. Oxford: Oxford University Press, 2016. 7.

Thürer, Daniel. "Soft Law", *Oxford Public International Law*. 2009. https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1469. paras. 11 and 28.

[28] Qatar v. United Arab Emirates para. 101.

[29] See e.g. Case C-135/08 Rottman v. Freistaat.

[30] ICCPR Art. 12(4).

deprivation could be considered a punishment will not be included as it would require a more in-depth analysis of other procedural criteria under Article 6-7 of the ECHR. In the ECtHR judgment of *Ghoumid and others v. France* the court did not consider the deprivation as a punishment as it did not meet the threshold for a punitive sanction under the ECHR.[31]

1.2.2 Normative political theory

The second part of the thesis seeks to examine the ethical question of whether citizenship deprivation can be morally justified by discussing the moral arguments provided by political theorists and considering possible objections.[32] This section will specify the methodological questions most relevant to the thesis.

The ethical analysis is guided by the ethical assessments made in normative political theory. As a subfield of political science and philosophy normative political theory seeks to answer conceptual, normative, and evaluative questions about politics and society.[33] In terms of the general methodology, the ethical analysis is not based on a single coherent ethical framework or theory, but rather appeal to reasons from different frameworks and theories. Adopting such an approach is inspired by the work of Joel Feinberg in his book "Harm to Others". One remark from the introduction of Feinbergs book helps to explain the approach further:

> I appeal at various places, quite unselfconsciously, to all the kinds of reasons normally produced in practical discourse, from efficiency and utility to fairness, coherence, and human rights. But I make no effort to derive some of these reasons from the others, or to rank them in terms of their degree of basicness. … Progress on the penultimate questions need not wait for solutions to the ultimate ones.[34]

While relying on a single coherent framework may be useful, the thesis will follow Feinberg's more explorative approach. The analysis is based on reasons found in central contributions in

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[31] Ghoumid and others v. France No 52273/16 para. 72-73.

[32] List, Christian, and Laura Valentini, "The Methodology of Political Theory", in *The Oxford Handbook of Philosophical Methodology*, edited by Herman Cappelen, Tamar Szabó Gendler, and John Hawthorne, 525-553. Oxford Handbooks, 2016. DOI: https://doi.org/10.1093/oxfordhb/9780199668779.013.10. 529.

And legal theorists, as List and Valentini notes, political and legal theory are best viewed as "overlapping fields of enquiry", 529.

[33] Ibid. 526.

[34] Feinberg, Joel. *Harm to Others*. New York, Oxford: Oxford University Press, 1987, 18.

The citation is also emphasized in: Wolff, Jonathan. *Ethics and Public Policy A Philosophical Inquiry*. London: Routledge, 2011. 6.

the relevant literature on citizenship deprivation such as membership, equality, responsibility, rights, theories of punishment and international justice.

1.2.2.1 Idealistic and realistic approaches to morality

A useful framework of inquiry adopted is the idealistic and realistic approaches to morality developed by Joseph Carens.[35] While Carens developed these approaches in relation to his work on the ethics of migration, they are also of great value in assessing questions about citizenship deprivation.

The realistic approach to morality emphasizes what is possible under the actual circumstances in the world, thus avoiding a too large gap between the "ought" and the "is". Such an approach is therefore constrained by political and institutional arrangements of the current world we live in.[36] The idealistic approach on the other hand involves moral considerations guided by our highest ideals and focuses on what is possible in an ideal world or how things ideally should be.[37] This approach allows for a more critical perspective compared to the realistic approach, as it "avoids legitimating policies and practices that are morally wrong and gives the fullest scope to our critical capacities".[38] However, since we do not exist in an ideal world, such an approach will not give us much guidance on how we can make moral choices in the current world.[39] The solution must be to combine these two approaches, which may be placed on a spectrum. Carens suggests that the aim of morality is to guide action.[40] If morality is to function in this way, we need to make use of both approaches as the thesis will do. This implies two perspectives for assessment. From an ideal approach with an assumption that principles are followed as they are meant to be followed. And from the realistic approach with an assumption restricted by how we know people and institutions follow them in the real world. The analysis will however mostly lean towards the latter approach.

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[35] Carens, Joseph H. "Realistic and Idealistic Approaches to the Ethics of Migration." *The International Migration Review* 30, no. 1 (1996): 156–70. DOI: https://doi.org/10.2307/2547465. 156.

See also Carens, *the Ethics of Immigration*. Oxford: Oxford University Press, 2013. 300-306.

[36] Carens, "Realistic and Idealistic Approaches", 156-157.

Carens, *The Ethics of Immigration*, (Oxford: Oxford University Press, 2013), 304.

[37] Carens, "Realistic and Idealistic Approaches", 166-167.

Carens, *The Ethics of Immigration*, (Oxford: Oxford University Press, 2013), 301.

[38] Carens, "Realistic and Idealistic Approaches", 167.

[39] Ibid. 168.

[40] Ibid. 156.

1.3 Definitions & Terminology: Citizenship & Deprivation of Citizenship

1.3.1 Citizenship

While acknowledging that the use of the terms "citizenship" and "nationality" vary in different disciplines, the thesis adopts a view embraced by scholars of international human rights law (IHRL) that the terms may be used interchangeably.[41]

Citizenship is a legal status and represents a bond between the individual and the state. Through the legal status of citizenship, states acknowledge a person as a formal member of the political community.[42] It is the legal status that is at stake in the discussion on citizenship deprivation. In this thesis, the term citizenship refers to the legal meaning. In the Nottebohm case from 1955 the ICJ describes nationality as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties".[43] Recognition as a citizen means that the individual acquires access to certain rights and services in that particular state. These include for instance residence rights, political participation rights, social benefits, and consular support.[44] Citizenship also entails duties and is in this sense a mutual relationship between the individual and the state.

Citizenship is also important beyond the internal state-individual relationship. Rogers Brubaker has described citizenship as "an international filing system, a mechanism for allocating persons to states".[45] Citizenship also creates obligations upon states to other states, which for instance include the duty to readmit citizens from abroad and states' rights to exercise diplomatic protection.[46] In a world of states, citizenship says something about which state you belong to rather than another, it may therefore also be an important part of a person's identity.

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[41] Edwards "The Meaning of Nationality", 14.

Spiro, Peter J. *Citizenship: What Everyone Needs to Know*. Oxford: Oxford University Press, 2019, 3.

Eide, Asbjørn. "Citizenship and International Human Rights Law: Status, Evolution, and Challenges". In *Citizenship and the State in the Middle East*, Edited by Nils A. Butenschøn, Uri Davis & Manuel Hassassians, 88-122. New York: Syracuse University Press, 2000. 104.

[42] Carens, *The Ethics of Immigration*, (Oxford: Oxford University Press, 2013), 20.

Shaw, Jo. "Introduction. In *The People in Question: Citizens and Constitutions in Uncertain Times*, 3–34. Bristol University Press, 2020. DOI:10.46692/9781529208900.002. 4.

[43] Liechtenstein v Guatemala, 23.

[44] Edwards "The Meaning of Nationality", 12.

[45] Brubaker, Rogers. *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press, 1992. 31.

[46] Ibid. 13.

There are three main modes of citizenship acquisition, (1) jus sanguinis through decent/parentage, (2) jus soli by birth on the territory or (3) by naturalisation, which is the process where a non-citizen acquires citizenship after birth.[47]

IHRL confirms that states are to ensure the protection and enjoyment of the human rights of all individuals within their territories,[48] including non-citizens. Even though many rights have been extended to non-citizens, citizenship as a legal bond is still important for the effective protection of the human rights of the individual. Mainly because non-citizens may have difficulties in asserting and defending their rights in the state they reside in.[49] Non-citizens do not have an absolute right to reside in a state they are not citizens of and could therefore also be at risk of deportation.

1.3.2 Deprivation of citizenship

Deprivation of citizenship is the unilateral act where a state without consent revokes an individual of their citizenship.[50] The state terminates the legal recognition of the individual, who then becomes a non-citizen and lose the rights attached to the citizenship in that state. When citizenship is deprived, the state no longer has a legal or moral responsibility of the individual.[51]

There are different grounds for citizenship deprivation, for instance when citizenship has been acquired by fraud, longer residence abroad, or in some cases when an individual acquires a new citizenship.[52] These cases are not the focus here. The interest of this thesis lies exclusively in cases where citizenship has been legally acquired and may be deprived without the individual's consent, on the grounds of national security. The term citizenship deprivation will only refer to

[47] Edwards "The Meaning of Nationality", 16.

Orgad, Liav, "Naturalization", in *The Oxford Handbook of Citizenship*, edited by Ayelet Shachar and others, 337-357. Oxford Academic, 2017. DOI: https://doi.org/10.1093/oxfordhb/9780198805854.013.15. 340.

[48] UDHR. ICCPR Art. 2(1).

[49] Adjami, Mirna & Julia Harrington. "The Scope and Content of Article 15 of the Universal Declaration of Human Rights", *Refugee Survey Quarterly*, 27, 3, (2008): 93-109, DOI:https://doi.org/10.1093/rsq/hdn047. 94.

[50] Jaghai & van Waas, "Stripped of Citizenship, Stripped of Dignity", 156.

[51] Gibney," Matthew J. "Denationalisation and Discrimination." *Journal of Ethnic and Migration Studies* 46, no. 12 (2020): 2551-2568. DOI: 10.1080/1369183X.2018.1561065. 2552.

[52] Bauböck Rainer & Vesco Paskalev. "Cutting genuine links: A normative analysis of citizenship deprivation". *Georgetown Immigration Law Journal* 30, (2016): 47–104. 52.

such cases unless stated otherwise. The terms deprivation, denationalization, revocation, and withdrawal will be used as synonyms.

Citizenship deprivation in the context of national security is often perceived as a preventative rather than a punitive measure. The state seeks to protect the state from its own citizens, either by deporting a possibly dangerous individual following deprivation or issuing a deprivation order while the individual is outside the state, denying their return.[53] While deprivation in some circumstances would not lead to deportation, the thesis will have an assumption that deportation will follow from the deprivation.

States have different deprivation procedures, and it is beyond this thesis to explain all of them. A main distinction is that some states only allow for deprivation following a criminal conviction for specified crimes, such as terrorism.[54] Other states make use of deprivation as an administrative measure. In these cases, an executive authority, often a minister, makes the deprivation decision.[55] This is the case in the UK, where the Secretary of State decides whether a person is considered a national security threat without judicial approval or a criminal conviction.[56] The deprivation process is followed by administrative tribunals instead of a court or a judge, thus not following criminal law standards, with stricter rules of evidence, and procedural safeguards.[57] It is the administrative and preventative nature that makes deprivation especially problematic from a legal perspective, which is the focus for the legal analysis. While citizenship deprivation is not regarded as a punishment in a legal sense, it will be referred to as a punishment in chapter four.

[53] Krähenmann, "Foreign fighters". 252.

Van Waas, "Foreign Fighters and the Deprivation of Nationality", 475.

[54] Tripkovic, Milena. "Transcending the Boundaries of Punishment: On the Nature of Citizenship Deprivation." *British Journal of Criminology* 61, no. 4 (2021): 1044-065. 1048.

[55] Jaghai and Van Waas, "Stripped of Citizenship, Stripped of Dignity", 160.

[56] Anderson, David. Q.C. *Citizenship Removal Resulting in Statelessness*. London: UK Government. 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL__web_.pdf. 15.

[57] Lavi, Shai. "Citizenship revocation as punishment: On the modern duties of citizens and their criminal breach." *University of Toronto Law Journal* 61, no. 4 (2011):783-810. DOI:10.1353/tlj.2011.0040. 788.

1.4 Chapter overview

The thesis is divided into five chapters. The next chapter provides a background for the research topic. While it is beyond this thesis to provide a comprehensive historical overview, it will include a brief historical context, and developments after World War II until today. The chapter also provides a brief overview of the relevant literature on citizenship deprivation. It is brief as the literature will be analysed in depth in chapter four. Chapter three will provide a legal analysis of the international legal framework and relevant provisions of the British Nationality Act 1981. Chapter four provides an ethical analysis on whether citizenship deprivation can be morally justified. Chapter five concludes.

2 Background & Literature Review

2.1 Background

2.1.1 Historical Overview

Depriving a person of their membership in a community is not a new phenomenon. In ancient Greece ostracism was a procedure where residents where exiled by democratic vote.[58] In medieval and early modern Europe banishment was a common legal penalty where a person was banished because of behaviour considered unworthy and therefore ordered to leave the community's territory.[59] Another variant was the 18th century practice in England of exiling convicts to Australia, as an objective of colonial expansion and as a solution for overcrowded prisons.[60] By the beginning of the 20th century banishment was mostly viewed as unnecessary. One reason was that an expansion of domestic prisons made it possible to separate criminals within the state, and that rehabilitation and reintegration gradually were accepted as an important goal of punishment.[61] Another reason was the rise of nationalism which turned the state into a more defined membership unit, where a distinction between insiders and outsiders became more important.[62] From a state-perspective this distinction was and still is of great importance, which explains why questions on citizenship previously only has been a matter of states internal affairs.[63] While banishment may be regarded as the predecessor of citizenship deprivation, it was not until the late 19th and early 20th century that the first deprivation laws were introduced.[64]

2.1.2 The World Wars and the Development of Human Rights

Right before and under World War I, new deprivation laws were adopted and applied against citizens deemed as "undesirables", including anarchist, communists, and citizens of German origin.[65] Then came the darkest era in the history of citizenship deprivation. The period from

[58] Forsdyke, Sara. "Exile, Ostracism and the Athenian Democracy." *Classical Antiquity* 19, no. 2 (2000): 232–63. DOI:https://doi.org/10.2307/25011121. 232.

[59] Gibney, "Denationalisation and Discrimination." 2553.

[60] Macklin, Audrey. "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien," *Queen's Law Journal* 40, no. 1 (2014):1-54. 5.

Carens, *The Ethics of Immigration*, (Oxford: Oxford University Press, 2013), 100.

[61] Macklin, "Citizenship Revocation", 5.

[62] Gibney, "Should Citizenship Be Conditional?", 648.

[63] Butenschøn, "Citizenship and Human Rights", 557.

[64] Gibney, "Denationalization", 365-366.

[65] Ibid. 366.

1920 until the end of World War II was characterized by mass denationalization by the Soviet Union and the Nazi-regime.[66] Citizenship deprivation was now associated with totalitarian regimes, and was rarely applied by Western states after the war.[67] A citation from Hannah Arendt's "The Origins of Totalitarianism" reflects this well: "one is almost tempted to measure the degree of totalitarian infection by the extent to which the concerned governments use their sovereign right of denationalization".[68] The fact that deprivation laws could facilitate the persecution of entire groups in the society and render millions of people stateless was a factor contributing to the understanding that states unlimited power over citizenship was problematic.[69]

The brutalities of World War II inspired the development of the UDHR. Specifically, its Article 15, represented a discursive shift on nationality matters.[70] The right to nationality was now considered a human right which meant that not only the states, but also the individual's interests should be considered in matters of nationality.[71] It thus became a subject for international law. Even though the UDHR articulated the right to nationality as a human right, Article 15 did not receive considerable attention in the following UN human rights conventions.[72] The 1961 Convention and the ECN were nevertheless important contributions to giving content to the right to a nationality.[73]

2.1.3 A New Security Era

The current resurrection of deprivation powers in many Western democratic states represents a new chapter in the history of citizenship deprivation. Increased globalisation, immigration and the emergence of non-state security threats influenced policy changes on citizenship, especially the latter.[74] In the aftermath of the terrorist attack in the US in 2001 security concerns was

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[66] Weil, Patrick. "Can a Citizen Be Sovereign?" *Humanity: An International Journal of Human Rights, Humanitarianism, and Developmen*t 8, no. 1 (2017):1-27. DOI:10.1353/hum.2017.0000. 3.

Gibney, "Denationalization", 366.

[67] Gibney, "Denationalisation and Discrimination." 2559.

[68] Arendt, Hannah. *The Origins of Totalitarianism.* New York: Harcourt, Brace & World, 1966, 278.

[69] Jaghai and Van Waas, "Stripped of Citizenship, Stripped of Dignity?" 166.

[70] Spiro, Peter J. "A NEW INTERNATIONAL LAW OF CITIZENSHIP." *The American Journal of International Law* 105, no. 4 (2011): 694–746. DOI:https://doi.org/10.5305/amerjintelaw.105.4.0694. 710.

[71] Edwards "The Meaning of Nationality", 24. Eide, "Citizenship and International Human Rights Law", 93.

[72] Adjami & Harrington, "The Scope and Content of Article 15", 94.

[73] Kesby, *The Right to Have Rights* (Oxford: Oxford University Press, 2012), 49.

[74] Midtbøen, Arnfinn H. "Dual Citizenship in an Era of Securitisation." *Nordic Journal of Migration Research* 9, no. 3 (2019): 293-309. 304.

heightened worldwide and led to an expanding implementation of security measures. Further concerns emerged from 2011 and onwards because of the high number of foreign terrorist fighters recruited by ISIS, and their possible return.[75] Citizenship deprivation has in this period increasingly emerged as a security measure used against both convicted terrorists and individuals suspected of terrorism, including foreign fighters.[76]

According to a new report by the Institute on Statelessness and Inclusion (ISI) and the Global Citizenship Observatory (GlobalCit), since 2000 one in five states have introduced or expanded provisions of citizenship deprivation related to disloyalty, national security, or counterterrorism.[77] Further ISI and Globalcit reports an acceleration of states amending or introducing new deprivation powers between 2016 and 2022, which may reflect a growing concern about returning foreign fighters.[78]

The development has however been most extensive in Europe. In a recent study of 37 European democracies, Milena Tripkovic found that 22 states currently have legal provisions allowing citizenship deprivation because of harmful or allegedly harmful conduct.[79] These include Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Malta, Montenegro, the Netherlands, Norway, Romania, Slovenia, Switzerland, Türkiye, and the UK. Half of these states either amended or added these provisions in the past two decades.[80] However, to avoid statelessness, deprivation only applies to dual nationals in most states. In others, such as Belgium, Bulgaria, Cyprus, Estonia, France, Germany, Ireland, Italy, Malta and Romania, only naturalized citizens may be deprived of citizenship. Only in Italy and the UK deprivation resulting in statelessness is permitted.[81]

[75] Pillai & Williams, “The Utility of Citizenship, 852.

[76] Jaghai and van Waas, “Stripped of Citizenship, Stripped of Dignity?”, 154.

[77] ISI & GlobalCit, *Instrumentalising Citizenship in the Fight Against Terrorism*. 2022. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf. 26.

[78] Ibid. 27.

[79] Tripkovic, "Renouncing Criminal Citizens”, 6.

[80] These include Austria, Belgium, Denmark, Finland, Germany, Italy, Latvia, Montenegro, the Netherlands, Norway, Romania, Türkiye and the UK. Ibid.

[81] Tripkovic, "Transcending the Boundaries of Punishment”, 1052.

The UK is an outlier and has in recent years amended deprivation laws which have resulted in expanded executive deprivation powers.[82] According to the BNA 1981 citizenship may be deprived when its "conducive to the public good".[83] Since 2006 it is estimated that 175 individuals have been deprived of their citizenship on national security grounds.[84] Globally, the only country that has deprived more individuals is Bahrain, where broad deprivation laws have been used against human right defenders and political opponents in the name of national security.[85] As the UK is regarded a liberal democracy and an important contributor to the development of human rights it is especially interesting that the UK, in the European context, has been at the forefront of this development.

Despite the increasing trend, some states have either refrained from adopting such measures or withdrawn them. Sweden and the Czech Republic is among the states with no national security related deprivation powers, whereas Canada in 2017 reversed a provision permitting deprivation of dual nationals convicted for terrorism.[86] Interestingly, in the US citizenship may only be lost voluntarily (except in cases of fraud), the US Supreme Court addressed this question in the case of Trop v. Dulles where citizenship deprivation was considered "a form of punishment more primitive than torture".[87] Nevertheless, there are cases where one can question what the US authorities consider voluntary renunciation.[88]

To summarise, while banishment or exile historically was a common practice, citizenship deprivation was rarely applied after the Second World War. In the following decades after 2001 citizenship deprivation has resurrected as a security measure. Even though the measure has affected relatively few people, the newly enacted legislative changes illustrate a changed pattern in how states utilise their power to manage security threats through citizenship laws.

[82] Mantu, Sandra. "'Terrorist' Citizens and the Human Right to Nationality." 32.

[83] BNA 1981 40(2).

[84] ISI & GlobalCit, *Instrumentalising Citizenship.* 2022. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf 10.

[85] Ibid. 18.

[86] Ibid. 25-26.

[87] Trop v. Dulles, 356 U.S 86 (1958). 101.

[88] See e.g the case of Hamdi in Nyers, Peter. "The Accidental Citizen: Acts of Sovereignty and (un)making Citizenship." *Economy and Society* 35, no. 1 (2006): 22-41. DOI: 10.1080/03085140500465824. 25-33.

2.2 Literature Review

The academic literature reflects the increased focus on citizenship deprivation in the political and legislative sphere. The legal scholarship has mostly focused on the legality of citizenship deprivation and whether the measure could be in violation of certain legal principles, such as statelessness[89] and discrimination.[90] Because citizenship deprivation only affects naturalized or dual nationals, Audrey Macklin has for instance argued that the measure appears as discriminatory against these groups.[91] Another important aspect concerns whether deprivation should be considered a punishment and the legal issues related to the administrative nature of the measure. While counterterrorism often engages criminal law and civil/administrative law, citizenship deprivation is mostly only processed through the latter.[92] As deprivation may have intrusive consequences for the individual, several legal scholars have argued that deprivation only should be permitted as part of a criminal conviction for severe crimes, which includes the legal safeguards and higher standards of proof provided by criminal law.[93]

From a national security perspective, it is however logical why states oppose conceptualizing deprivation as a punishment. Mainly because deprivation is regarded as efficient, in the sense that the state can remove possible dangerous citizens without lengthy criminal trials, where also secret information may be disclosed.[94] Another reason is that deportation almost always follows

[89] Brandvoll, Jorunn. "Deprivation of Nationality: Limitations on Rendering Persons Stateless under International Law." Chapter. In *Nationality and Statelessness under International Law*, edited by Alice Edwards and Laura van Waas, 194–216. Cambridge: Cambridge University Press, 2014. DOI:10.1017/CBO9781139506007.009.

[90] Boekestein, and De Groot. "Discussing the Human Rights Limits on Loss of Citizenship".

[91] Macklin, Audrey, "Citizenship Revocation", 51.

[92] Almutawa, Ahmed, and Clive Walker. "Citizenship as a Privilege and the Weakness of International Law: The Consequences for Citizenship Deprivation in Bahrain and the UK." *Journal of Human Rights Practice*, (2022):1-22. DOI: https://doi.org/10.1093/jhuman/huac054. 2.

[93] Coca-Vila, "Our "Barbarians" at the Gate", 162-163.

Lavi, Shai. "Punishment and the Revocation of Citizenship in the United Kingdom, United States, and Israel." *New Criminal Law Review* 13, no. 2 (2010): 404-26. DOI:https://doi.org/10.1525/nclr.2010.13.2.404. 424.

Schuck, Peter H. "Should Those Who Attack the Nation Have an Absolute Right to Remain Its Citizens?" In *Debating Transformations of National Citizenship*. Edited by Rainer Bauböck. IMISCOE Research Series. 2018. DOI:https://doi.org/10.1007/978-3-319-92719-0_33. 179.

Macklin, Audrey. "On Producing the Alien Within: A Reply". In *Debating Transformations of National Citizenship*. Edited by Rainer Bauböck. IMISCOE Research Series. 2018. DOI:https://doi.org/10.1007/978-3-319-92719-0_45. 246.

[94] Gibney, "Denationalization", 373-374.

a deprivation order. Deprivation and deportation are often less costly than for instance incarceration, either as a punishment or as preventative custody.[95]

The literature on the ethics of citizenship deprivation has mostly focused on whether states are morally permitted to deprive citizenships. The political theorist examining the issues have not reached an agreement and it is therefore interesting to further assess the ethics of citizenship deprivation. The scholarship commonly adopts one of two perspectives which will be presented briefly as chapter four will discuss them in depth.

One side of the debate consists of scholars who argue that citizenship deprivation under limited circumstances may, at least in principle, be permissible.[96] The general idea is that certain types of serious crimes, such as involvement in terrorism, in principle, could make the individual liable for deprivation. One position represented by Christian Joppke is that involvement in terror breaches the contract or relationship between the state and the individual. Liberal states are hence fully justified in depriving terrorists of the citizenship "they have factually renounced and even wish to destroy".[97] David Miller also argues that when individuals through their actions make themselves enemies of democracy, it does not seem morally wrong for states to deprive their citizenship, provided that the individual has grown up or spent several years in another state.[98] Legal safeguards must however be in place, and it is only applicable to dual-nationals. From Christian Barry and Luara Ferracioli's position, provided that the individual's rights will be respected, when a dual-national is involved in serious political crime enabled by the assistance or passiveness of another state, citizenship deprivation could in principle be justified.[99]

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[95] Barry, Christian and Luara Ferracioli. "Can Withdrawing Citizenship Be Justified?" *Political Studies* 64, no. 4 (2016): 1055-070. DOI: 10.1177/0032321715606569. 1056.

[96] Miller, David. "Democracy, Exile, and Revocation."

Barry and Ferracioli. "Can Withdrawing Citizenship Be Justified?"

Joppke, Christian. "Terrorists Repudiate Their Own Citizenship" in *Debating Transformations of National Citizenship*. Edited by Rainer Bauböck. IMISCOE Research Series. Springer, Cham, 2018. DOI: https://doi.org/10.1007/978-3-319-92719-0_34.

Joppke, Christian. 2016. "Terror and the Loss of Citizenship." *Citizenship Studies* 20 no. 6–7 (2016): 728-748. DOI:10.1080/13621025.2016.1191435.

[97] Joppke, "Terrorists Repudiate Their Own Citizenship", 184.

[98] Miller, "Democracy, Exile, and Revocation, 270.

[99] Barry & Ferracioli, "Can Withdrawing Citizenship Be Justified?", 1065.

The other side of the debate finds it difficult to justify citizenship deprivation for several reasons. Matthew Gibney and Patti Tamara Lenard has for instance argued that the measure is in violation of the principle of equality because it contributes to creating different classes of citizens[100] and because persons committing the same crime will be subject to unequal punishment.[101] Lenard also emphasizes the responsibility states have for their citizens and holds that deprivation seems like a reluctance to take responsibility for its failure in educating its citizens properly.[102] Macklin proposes that citizenship should be understood as a special and unique bond between the state and the individual, which is not "fungible".[103] Deprivation will thus disrupt this bond and impose a burdensome harm on the individual different from the harm inflicted by statelessness.[104] Others have argued against deprivation because of its permanent nature. Elisabeth Cohen has made the case that deprivation goes against the assumption that individuals residing in a democracy can develop their character over time.[105] Additionally, Lenard argues that deprivation as a punishment is unacceptable because the person could be deported to a state not able to provide for their protection[106] and that deprivation makes it difficult to ensure that an appropriate punishment has been exacted.[107]

Citizenship deprivation is also a matter relevant for international justice and states moral obligations to other states. Several theorists have argued that depriving the citizenship of terrorists could lead to unfair treatment of other states. Miller has for instance argued that such a practice seems like an "arbitrary imposition by one state on another"[108] as the individual could pose a risk in the receiving state. Rainer Bauböck has also suggested that states practicing citizenship deprivation try to disclaim responsibility for their "bad guys" and thereby seeks to move the responsibility to over to other states.[109]

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[100] Gibney, "Should Citizenship Be Conditional?", 652.

[101] Lenard, "Democracies and the Power to Revoke Citizenship", 79.

[102] Lenard, "Democratic Citizenship and Denationalization.", 106-107.

[103] Macklin, "The Return of Banishment", 169.

[104] Ibid. 171.

[105] Cohen, "When Democracies Denationalize", 256.

[106] Lenard, "Democracies and the Power to Revoke Citizenship.", 84.

[107] Lenard, "Democratic Citizenship and Denationalization.", 105.

[108] Miller, "Democracy, Exile and Revocation", 269-270.

[109] Bauböck, Rainer. "Whose Bad Guys Are Terrorists?". In *Debating Transformations of National Citizenship*. Edited by Rainer Bauböck. IMISCOE Research Series. 2018. DOI: https://doi.org/10.1007/978-3-319-92719-0_38. 204-205.

Although both legal and ethical aspects of citizenship deprivation have been addressed in the literature, it is as previously mentioned a subject of constant development. New cases have been processed[110] and certain states, such as the UK, are constantly attempting to amend their deprivation laws.[111] These recent developments reinforce the importance of examining citizenship deprivation further.

[110] Johansen v. Denmark No 27801/19. R (Begum) v SIAC (2021).

[111] UK Parliament. "Final text of Nationality and Borders Bill agreed." *UK Parliament*. 29.04.22. https://www.parliament.uk/business/news/2021/december-2021/lords-debates-nationality-and-borders-bill/

3 Legal Analysis

3.1 Introduction

It is commonly recognized that states have a right to determine who are its nationals,[112] regulations on citizenship thus fall within the sovereignty of the state, which is a fundamental principle of intentional law. These regulations must however follow the developments of international law and be in accordance with international conventions, international custom and principles of law related to nationality.[113] The aim of the legal analysis is first to analyse the relevant international legal framework in order to identify the constraints they may provide for states exercise of deprivation powers (3.2). The focus is directed towards three core principles found in several international conventions, treaties, and case law, namely the prohibition of arbitrariness,[114] avoidance of statelessness[115] and the absolute prohibition against discrimination.[116] Secondly, the chapter will provide a brief analysis of the relevant provisions of the British Nationality Act 1981 (BNA 1981) in light of the constraints derived from the international legal framework (3.3).

3.2 The International Legal Framework

3.2.1 The Universal Declaration of Human Rights (UDHR)

The right to nationality is by IHRL recognized as a fundamental right. The importance of this right is illustrated in numerous international and regional legal instruments.[117] Article 15 of the UDHR is essential and provides that "everyone has the right to nationality" and that "no one shall be arbitrarily deprived of that nationality".[118] Although, the UDHR is not legally binding, the declaration is regarded as "a statement of principle".[119] Whether Article 15 can be considered a part of customary international law is nevertheless a question that remains unclear.[120] Though in a decision from the Eritrea Ethiopia Claims Commission (*Eritrea v.*

[112] CCQRCNL Art.1. ECN Art. 3.

[113] CCQRCNL Art.1.

[114] UDHR Art. 15, ACHR Art.20(3) ECN Art.4(c).

[115] 1961 Convention, 1954 Convention

[116] ICCPR Art. 2, ICESCR Art. 2, CERD Art. 5, CRPD Art. 3, CRC Art. 3, CEDAW Art. 2-3. ECHR Art. 14.

[117] UDHR Art.15, CERD Art.5, para. d(iii), CEDAW Art. 9, ICCPR, Art.24(3), CRC Art.7-8, ECN Art.4(a).

[118] UDHR Art.15 (1)(2).

[119] Fripp, Eric. "Deprivation of British Citizenship or Right of Abode." In *The Law and Practice of Expulsion and Exclusion from the United Kingdom: Deportation, Removal, Exclusion and Deprivation of Citizenship*, edited by Eric Fripp, 383–412. BC Paperbacks. London: Hart Publishing, 2015. DOI:http://dx.doi.org/10.5040/9781782256472.ch-012. 385.

[120] Mantu. *Contingent Citizenship* (Leiden: Brill Nijhoff, 2015), 30.

Ethiopia), the Commission acknowledged that the prohibition of arbitrary deprivation of nationality was a rule of customary international law.[121]

3.2.2 The 1961 Convention on the Reduction of Statelessness (1961 Convention)

The 1961 Convention on statelessness is the primary international instrument that sets out general rules for the prevention of statelessness. In doing so, and as the object and purpose of the convention is to reduce and prevent the occurrence of statelessness, the convention gives effect and substance to the right to nationality from the UDHR Article 15.[122] In this sense, the convention establishes a legal source that restricts the state parties power regarding citizenship laws. The convention may be regarded as a hybrid instrument, indicating its combination of human rights with other purposes.[123] The avoidance of statelessness is a general principle of international law and is linked with the right to nationality. Most states respect this principle and only allow for deprivation when the individual has another citizenship. The 1961 convention has been ratified by 78 states, where the UK is among the state parties.[124]

The 1961 Convention do not define the term "stateless", however, the 1954 Convention relating to the Status of Stateless Persons Article 1(1) stipulates that a "stateless person" means a person who is not considered as a national by any State under the operation of its law".[125]

3.2.2.1 Article 8

Article 8 (1) of the 1961 Convention establish the general rule that a "state shall not deprive a person of its nationality if such deprivation would render him stateless".[126] This should be interpreted to mean that the individual must have another nationality at the time when the deprivation order is set out.

Despite the general rule, Article 8 permits citizenship deprivation resulting in statelessness in certain circumstances. The provision of interest in the context of national security is Article

[121] Eritrea v. Ethiopia, Eritrea's Claims 15, 16, 23 & 27–32. paras. 57-58.

[122] 1961 Convention preamble

[123] Fripp, "Deprivation of British Citizenship", 387.

[124] United Nations Treaty Collection. "Convention on the Reduction of Statelessness". https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en

[125] 1954 Convention Art. 1(1)

[126] 1961 Convention 8(1)

8(3)(a)(ii), declaring that an individual may be deprived of their citizenship where the person "has conducted himself in a manner seriously prejudicial to the vital interest of the state".[127]

However, the exceptions to the Convention are only acceptable if the state made a declaration to retain the possibility to deprive an individual of their nationality at the time of signature, ratification, or accession provided that the grounds for deprivation existed in the domestic laws at that time.[128] This is a right the UK has retained.

A definition of "Seriously prejudicial to the vital interests of the state" is not provided by the treaty text. From the travaux preparatoires it is indicated that the state's "vital interests" relates to its functioning. The conduct must therefore threaten the functioning of the state, which is understood as "safeguarding its integrity and its external security and in protecting its constitutional foundations".[129] This also indicates that the conduct must be of a very serious nature that excludes general crimes.

From the UNHCR guidelines it is interpreted that the term "seriously prejudicial" means that the person must be able to impact the state negatively and that the conduct must be fundamentally related to the harm.[130]According to the UNHCRs Expert Meeting Interpreting the 1961 Statelessness Convention (Tunis Conclusions) "acts of treason, espionage and – depending on their interpretation in domestic law – "terrorist acts" may be considered to fall within the scope of this paragraph"[131]

Interpreting Article 8(3)(a)(ii) of the convention, and more precisely the sentence "has conducted himself", indicates that the individual must have already committed the acts against the state when the state decides to deprive citizenship. Therefore, a deprivation order may not be based on a general suspicion that the person will carry out such an act in the future.[132]

Article 8(4) provides that deprivation permitted by the convention must be in accordance with the law of the state, which also provides for the right to a fair hearing.[133]

[127] 1961 Convention 8(3)(a)(ii)

[128] 1961 Convention Article 8(3).

[129] UNGA (1961) para. 13.

[130] UNHCR Guidelines (2020) para. 61.

[131] UNHCR Tunis Conclusions (2014) para. 68.

[132] UNHCR Guidelines, (2020) para. 63.

[133] 1961 Convention Art. 8(4).

3.2.3 The European Convention on Human Rights (ECHR)

The right to nationality is not guaranteed by the ECHR nor its protocols. Still, the European Court of Human Rights (ECtHR) has confirmed that arbitrary denial of citizenship[134] and arbitrary citizenship deprivation[135] in some circumstances are capable of engaging Article 8 of the ECHR regarding the right to respect for private and family life.[136]

Regarding arbitrary denial of citizenship, the court held in *Genovese v. Malta* that such denial could raise an issue under Article 8 because of its effect on the individual's private life since it is a part of a person's social identity.[137] In *Ramadan v. Malta* the court broadened this view to include that arbitrary deprivation of citizenship also could raise an issue under Article 8. The court argued that losing a citizenship already acquired or born into could have the same or even bigger impact on the individual's right to private and family life.[138]

When considering whether citizenship deprivation is in violation of Article 8 the ECtHR raises two separate questions. First, if the deprivation was arbitrary. In determining whether the deprivation was arbitrary the court considers three issues: if the deprivation was in accordance with the law, the presence of necessary procedural safeguards and if the state authorities acted diligently and swiftly.[139] Second, the court considers whether the consequences of the deprivation are proportionate to the aim of the deprivation. This includes considering whether the individual would be rendered stateless, if there was a threat of expulsion, and how it affects the person's capability to live with their family.[140]

In the cases of *K2 v United Kingdom*, *Ramadan v Malta*, and *Ghoumid and others v France* it seems that the important factor in considering the consequence of the deprivation was if the

[134] Karassev v. Finland No 31414/96 para. 1(b) Genovese v. Malta No 53124/09 para. 33.

[135] Ramadan v Malta No 76136/12 para. 85, K2 v. United Kingdom No 42387/13, Ghoumid and others v. France No 52273/16.

[136] ECHR Art. 8.

[137] Genovese v. Malta No 53124/09 para. 33.

[138] Ramadan v Malta No 76136/12 para. 85. This case was not related to national security.

[139] K2 v United Kingdom No 42387/13 para 50. Ramadan v Malta No 76136/12 para. 86-87. Ghoumid and others v France No 52273/16. para 44.

[140] K2 v United Kingdom No 42387/13 para 62. Ramadan v Malta No 76136/12 para. 90-93. Ghoumid and others v France No 52273/16 para 49-51.

person was expelled or rendered stateless.[141] For instance, in Ghoumid and others v France, the court stressed that because no deportation order had been issued "the consequence of the deprivation of nationality for their private life had solely consisted in the loss of an element of their identity".[142] Because the deprivation not necessarily led to deportation, it was therefore not regarded as extensively intrusive on the right to private and family life.

This leads us to the recent case of *Johansen v Denmark* where the court departs from this view. Johansen who held Danish and Tunisian citizenship had been convicted for travelling to Syria as a foreign fighter for ISIS. In 2018 the Danish Supreme Court ruled that his Danish citizenship was to be deprived and issued a deportation order with a ban on re-entry to Denmark.[143] Johansen had limited connections to Tunisia as he was born, educated and had his family in Denmark.[144] The ECtHR upheld the Supreme Courts arguments and rejected the complaint made by the applicant that his rights under Article 8 were violated, the application was declared inadmissible.[145] What separates this case from the others is that it was clear that the deprivation order also led to his expulsion. As Johansen was a born Danish citizen, had lived his whole life in Denmark and was married to a Danish woman whom he also had a son with,[146] it appears evident that the deprivation and deportation have a considerably intrusive impact on his family and private life. Yet, the court held that the expulsion was not disproportionate to the "legitimate aim pursued namely, the protection of the public from the threat of terrorism".[147]

Seen in light of this case, it remains unclear how great the burden on the family must be for deprivation to be considered disproportionate. It is thus difficult to see how Article 8 can limit a states' power to deprive individuals convicted of terrorism of their citizenship. It will however depend on a concrete assessment in the individual case assessing particularly the procedural guarantees provided and how intrusive the deprivation will be.

[141] K2 v United Kingdom No 42387/13 para 62. Ramadan v Malta No 76136/12 para. 90-93. Ghoumid and others v France. No 52273/16 para 49-51.

[142] Ghoumid and others v. France No 52273/16 para. 49

[143] Johansen v. Denmark No 27801/19 para. 16.

[144] Johansen v. Denmark No 27801/19 para. 5.

[145] Johansen v. Denmark No 27801/19 para. 84-85.

[146] Johansen v. Denmark No 27801/19 para. 63.

[147] Johansen v. Denmark No 27801/19 para. 84.

3.2.4 The 1997 European Convention on Nationality (ECN)

On the regional level the ECN is the only convention elaborating on the law of nationality and provides limits on the power of states when it comes to citizenship deprivation. The ECN is therefore an important treaty within the European context. Article 4 establish that rules on nationality shall be based on the principles that:

a) Everyone has the right to nationality
b) Statelessness shall be avoided
c) No one shall be arbitrarily deprived of his or her nationality.[148]

Like the 1961 convention, Article 7 (1(d) of the ECN provides that "conduct seriously prejudicial to the vital interest of the State Party" can lead to loss of nationality,[149] however the individual cannot be made stateless.[150] The ECN therefore provides a higher protection against statelessness than the 1961 Convention, as the only exception under the ECN that a person can be made stateless is if the citizenship was acquired by fraud, false information, or concealment of facts.[151]

From the explanatory report of the ECN, it is specified that "conduct seriously prejudicial to the vital interests of the State Party" includes "treason and other activities directed against the vital interests of the State concerned"[152] but do not explicitly mention terrorism.

The ECN is ratified by 21 states and signed by eight.[153] The UK is among the countries that have neither signed nor ratified the convention, which is clearly reflected in the law. Non-parties often have more discretionary formulations of conduct that might lead to deprivation, compared to the ECN Article 7(1) d.[154] These include for instance the UK where citizenship may be deprived when its "conducive to the public good" and Belgium where the individual "seriously

[148] ECN Art.4.

[149] ECN Article 7(1)d.

[150] ECN Article 7(3).

[151] ECN Art. 7(3).

[152] CoE *Explanatory Report to the ECN.* 1997. https://rm.coe.int/16800ccde7. para. 67.

[153] CoE. "Chart of signatures and ratifications of Treaty 166". 15.01.23 https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=166

[154] Article 7(1) d "Conduct seriously prejudicial to the vital interests of the State Party"

fail in their duties as Belgian citizens".[155] As non-parties these rules are not legally binding for the mentioned states.

3.2.5 The Prohibition of Arbitrary Deprivation of Citizenship

The legal framework provides no absolute prohibition on citizenship deprivation and is thus in certain circumstances legitimate. Deprivation will however be considered illegitimate when it is regarded as arbitrary. The UNs Human Rights Council has stated that "arbitrary deprivation of nationality, especially on discriminatory grounds, is a violation of human rights".[156] Deprivation regarded as directly discriminatory will be independently prohibited which will be addressed in the next section.

On the universal level Article 15(2) of the UDHR explicitly establish a prohibition of arbitrary deprivation.[157] At the regional level Art. 20(3) of the American Convention on Human Rights[158] prohibits arbitrary deprivation, which also is recognized as a principle by the ECN Art. 4.[159]

According to the explanatory report of the ECN the deprivation must be "foreseeable, proportional and prescribed by law", if it leads to statelessness, is discriminatory or is based on political grounds deprivation is regarded as arbitrary.[160]

Article 8(4) of the 1961 Convention provides that a state should not exercise the power of deprivation permitted by the convention, except in accordance with the law which also provides for the right to a fair hearing.[161] The hearing must be conducted by a court or an independent body, the individual must be issued the decision and the reason for the deprivation in writing and the deprivation may not enter into force before all judicial remedies are exhausted.[162] Due process, which includes adequate procedural safeguards is thus of importance.

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[155] ISI & GlobalCit, *Instrumentalising Citizenship.* 2022. https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf . 27.

[156] UN Human Rights Council (2016), para 2.

[157] UDHR Art.15

[158] ACHR Art.20(3)

[159] ECN Art.4(c)

[160] CoE *Explanatory Report to the ECN.* 1997. https://rm.coe.int/16800ccde7. para. 36.

[161] 1961 Convention art. 8 (4).

[162] UNHCR Tunis Conclusions (2014) para. 26.

This also follows from the arbitrary test of the ECtHR in the context of Article 8 previously mentioned. The court considers three issues: if the deprivation was in accordance with the law, the presence of necessary procedural safeguards and if the state authorities acted diligently and swiftly.[163]

As Adjami and Harrington note, arbitrariness is a standard reference in international law and may provide further guidance on how to interpret what arbitrary deprivation of citizenship entails.[164] Arbitrariness may be interpreted so at it includes not only acts "against the law", but also in a broader way including "elements of inappropriateness, injustice and lack of predictability". [165] In assessing whether actions should be considered arbitrary, it is pointed out that reasonableness, necessity, and proportionality should be included.[166] Deprivation must be proportionate to the legitimate aim pursued by the state and the least intrusive means to achieve the purpose, the interest of the state must be balanced against the impact on the rights of the person.[167]

Whether the individual becomes stateless because of the deprivation, will have an impact on the proportionality assessment. As stated in the Tunis Conclusions "deprivation that result in statelessness will generally be arbitrary because the impact on the individual far outweighs the interests the State seeks to protect".[168]

Furthermore, the UNHCR Guidelines No. 5 on statelessness emphasize that laws permitting citizenship deprivation on terrorism grounds "should be publicly available and precise enough to enable individuals to understand the scope of impermissible conduct".[169] Preciseness and predictability are accordingly of great importance.

[163] K2 v United Kingdom No. 42387/13 para 50, Ramadan v Malta No. 76136/12 para. 86-87. Ghoumid and others v France No. 52273/16. para. 44.

[164] Adjami & Harrington, "The Scope and Content of Article 15", 101.

[165] Human Rights Committee (1994) Communication No. 458/199 para. 9.8

[166] Human Rights Committee (1994) Communication No. 458/1991 para. 9.8. and (1997) Communication No. 560/1993 para. 9.2.

[167] UNHCR Tunis Conclusions (2014) para. 19-20.

[168] UNHCR Tunis Conclusions (2014) para. 23.

[169] UNHCR Guidelines (2020) para. 65.

To avoid arbitrary deprivation of nationality, the deprivation must thus be in accordance with the law, which is foreseeable and sufficiently precise, meet procedural safeguards and be proportional to the legitimate aim. Deprivation made on discriminatory grounds is prohibited and thus arbitrary, and deprivation resulting in statelessness will in general be arbitrary.

3.2.6 The Principle of Non-discrimination

The principle of non-discrimination further restricts the state's power to deprive citizenships as deprivation on discriminatory grounds is regarded as arbitrary. The principle of non-discrimination is enshrined in several IHRL instruments[170] and protection from racial discrimination is regarded an erga omnes obligation.[171]

The 1961 Convention provide that individuals or groups shall not be deprived of their citizenship "on racial, ethnic, religious or political grounds".[172] Article 5 lit.(d)(iii) of the 1965 CERD prohibits racial discrimination specifically on the right to nationality.[173] Further Article 9 of the CEDAW and Article 18 of the CRPD prohibits discrimination against women and persons with disabilities in matters of nationality.[174]

The ECN is clearer when it comes to differentiating between citizens based on how they acquired citizenship. Article 5(2) specifies that state parties "shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently".[175] The convention does not specify whether this also applies to differentiating between mono and dual nationals.

[170] E.g., ICCPR Art. 2, ICESCR Art. 2, CERD Art. 5, CRPD Art. 3, CRC Art. 3, CEDAW Art. 2-3. ECHR Art. 14.

[171] Crawford, James, and Ian Brownlie. *Brownlie's Principles of Public International Law*. 9th ed. Oxford: Oxford University Press, 2019. 569.

[172] 1961 Convention Art. 9.

[173] CERD Arti. 5 lit.(d)(iii).

[174] CEDAW Art. 9 CRPD Art. 18 (1) a.

[175] ECN Art. 5(2)

The UNHCR Guidelines have also noted that differentiating between naturalized citizens and other citizens is problematic and that naturalized citizens "should not be subject to a different set of rules on withdrawal of nationality to a national who acquired nationality by birth".[176]

Nevertheless, not all unequal treatment amounts to discrimination. As the Human Rights Council has noted, if differential treatment is reasonable, objective and seeks to achieve a legitimate purpose, it is not discrimination.[177] The ECtHR differentiates between two types of discrimination (1) difference in treatment and (2) a general policy or measure that has disproportionately prejudicial effects on a particular group (even where it is not specifically aimed at that group and there is no discriminatory intent).[178] Both types will be in violation of Article 14, taken in conjunction with another Article of the ECHR, without an objective and reasonable justification.[179]

3.2.7 Summary

To sum up, the legal constraints that can be derived from the sources are first that states in general are not permitted to deprive citizenships if it leads to statelessness. The 1961 Convention do however not impose an absolute ban on deprivation leading to statelessness, but the requirements that must be met for it to be in line with the Convention are high. At the same time, it appears that acts of terrorism, depending on the state, may fall within the scope of the exception found in Article 8.

Citizenship deprivation must not be arbitrary. To avoid arbitrary deprivation of nationality, the deprivation must thus be in accordance with the law, which is foreseeable and sufficiently precise, meet procedural safeguards and be proportional to the legitimate aim. If the deprivation is discriminatory, it is also regarded as arbitrary, but the absolute prohibition on discrimination is in itself a legal constraint.

Another possible constraint is found in the ECHR, while the convention does not guarantee the right to nationality, deprivation could according to the ECtHR in some circumstances engage

[176] UNHCR Guidelines (2020) para.112.

[177] Human Rights Committee, General Comment 18 (1989) para. 13.

[178] Biao v Denmark No 38590/10 paras. 90-91.

[179] Biao v Denmark No 38590/10 paras. 90-91 and 118.

Article 8 on the right to family and private life. But it remains unclear how great the burden on the family must be for deprivation to be considered disproportionate in cases regarding national security.

I will now briefly evaluate the British laws based on the principles outlined above. I will focus on whether the law could be regarded as sufficiently precise, if the law provides adequate safeguards against statelessness and if it could be regarded as discriminatory to illustrate how the principles can be applied and assessed in practice.

3.3 The United Kingdom: The British Nationality Act 1981 (BNA 1981)

The laws governing citizenship deprivation are found in Section 40 of the BNA 1981. The present provisions of the BNA 1981 are the result of the amendments made between 2002 and 2014. These amendments have expanded executive deprivation powers for the Secretary of State.[180] The decision is not dependent on judicial approval or a criminal conviction for a terrorist offence.[181] Of special interest were the amendments that came with the Nationality, Immigration and Asylum Act 2002 (NIAA 2002), the Immigration, Asylum and Nationality Act 2006 (IANA 2006) and the Immigration Act 2014 (IA 2014).

The NIAA 2002 expanded the power so that it could be applied to all British citizens, not only naturalized citizens, who had done "anything seriously prejudicial to the vital interest" of the state but also provided protection against statelessness.[182] The IANA 2006 lowered the threshold for deprivation to the current "conducive to the public good" standard.[183] A debated exception to the safeguard against statelessness came with the IA 2014. Following the amendment naturalized citizens may be deprived even if it results in statelessness.[184]

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[180] Bolhuis and van Wijk, "Citizenship Deprivation", 347. Mantu, Sandra. "'Terrorist' Citizens and the Human Right to Nationality." 32.

[181] Anderson, David. Q.C. *Citizenship Removal Resulting in Statelessness*. London: UK Government. 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL__web_.pdf. 15.

[182] Mantu, "'Terrorist' Citizens and the Human Right to Nationality.", 32.
Fripp "Deprivation of British Citizenship", 402.

[183] Pillai & Williams, "The Utility of Citizenship", 853.

[184] Mantu, "'Terrorist' Citizens and the Human Right to Nationality.", 34.

In 2022 the British government proposed, through the Nationality and Borders Act 2022, an amendment to the BNA 1981, which would allow the Secretary of State to deprive people of citizenship without giving them a written notice. The proposal was however voted against and not implemented.[185] Under the present law, an individual who is to be deprived of citizenship must be given a written notice[186] and may appeal the deprivation decision through the First-tier Tribunal.[187] However, where the Secretary of State made the decision of deprivation based on information which should not be made public, the individual may appeal to the Special Immigration Appeals Commission (SIAC).[188]

Procedural safeguards are provided by the law as the individual can appeal the decision. However, whether it could be regarded as effective is another matter. The deprivation order takes immediate effect and is often followed by an exclusion order. If the person is deprived while abroad, the person is excluded from entering the country and the appeal must be pursued from outside the UK.[189] The individual thus becomes a non-citizen before they have had the chance to appeal the decision. The notice of appeal must in cases where the individual is abroad be given to SIAC within 28 days.[190] Which could be challenging in cases where the authorities are unaware of the individual's location. According to Macklin, the notice is often sent to the persons last known address in the UK, and if the individual is abroad they might not receive it within the 28-days' time limit of appeal.[191]

The relevant provisions of the BNA 1981 include:

> 40(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.[192]
>
> 40(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.[193]

[185] UK Parliament. "Final text of Nationality and Borders Bill agreed."

[186] BNA 1981 40(5).

[187] BNA 1981 40A(1).

[188] SIAC Act 1997 s. 2B.

[189] Mantu, *Contingent Citizenship* (Leiden: Brill Nijhoff, 2015), 220.

[190] SIAC (Procedure) Rules 2003 8(1)(b)(ii)

[191] Macklin, Audrey. "A Brief History of the Brief History of Citizenship Revocation in Canada," *Manitoba Law Journal* 44, no. 1 (2021): 434-467. 441.

[192] BNA1981, 40(2).

[193] BNA 1981, 40(4)

40(4A) But that does not prevent the Secretary of State from making an order under subsection (2) to deprive a person of a citizenship status if-

a) the citizenship status results from the person's naturalisation,

b) the Secretary of State is satisfied that the deprivation is conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom, any of the Islands, or any British overseas territory, and

c) the Secretary of State has reasonable grounds for believing that the person is able, under the law of a country or territory outside the United Kingdom, to become a national of such a country or territory.[194]

What appears from the relevant laws, is that the Secretary of State may deprive citizenship in two circumstances:

(1) Under 40(2) with broad discretion, applying to all British citizens, however, limited under 40(4) so the power shall not be exercised if it results in statelessness. The deprivation power may only be applied if the individual possesses another nationality.

(2) The second circumstance under 40(4A) applies exclusively to naturalized citizens. The deprivation may lead to statelessness provided that the Secretary of State "has reasonable grounds for believing" that the individual is able to acquire citizenship in another country.

3.3.1 Is the law precise and predictable?

It must be questioned if the law is sufficiently clear and precise in light of the conditions outlined above. This has a bearing on whether the provision is in accordance with the prohibition against arbitrariness. This applies in particular to paragraph 40(2), which allows the Secretary of state to deprive citizenships if it is "conducive to the public good".

The text of the law does not provide a definition of "conducive to the public good". A definition is found in the "Secretary of States Transparency Report on Disruptive Powers". In this report, it is stated that "deprivation on conducive grounds is an appropriate response to activities" such as:

> National security including espionage and acts of terrorism directed at this country or an allied power; unacceptable behavior of the kind mentioned in the then Home Secretary's

[194] British Nationality Act 1981, 40(4A).

statement of 24 August 2005 ('glorification'of terrorism etc); war crimes; and serious and organized crime.[195]

The terms used are broad, especially "unacceptable behavior". What would constitute "unacceptable behavior" is found in a statement from Lord Bates regarding a non-exhaustive list of unacceptable behaviours "that could lead to the exclusion of a foreign national from the United Kingdom".[196] The statement was an answer to a question from the parliament, not regarding citizenship deprivation, but on what kind of behaviour would exclude non-nationals from the UK.

From the text of the law itself, it is unclear what kind of acts would fall within the scope of "conducive to the public good". When examining the definitions provided by the British government it seems that a wide range of activities may fall within this scope. Leaving a broad discretion to the Secretary of State to decide what would constitute, for instance, "unacceptable behavior". Even though the "conducive grounds" is publicly available, it is not provided in the law itself. Therefore, it appears that the provision is not sufficiently precise so that citizens would understand what kind of conduct would lead to deprivation. It is also problematic that the definition of "conducive to the public good" include a reference to a list of exclusion reasons for non-nationals. This indicates that nationals may be deprived of their citizenship in the same way as non-nationals may be excluded.

The provision appears unclear and unpredictable for the individual. Additionally, such a broad formulated law is especially problematic because it potentially could be used arbitrarily by the authorities, as the room for interpreting what would constitute "conducive to the public good" is too wide. This is reinforced by the fact that it is the Secretary of State who makes the decision administratively without judicial approval.

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[195] Home Office. *HM Government Transparency Report: Disruptive Powers 2020*. CP 621. (UK: Home Office, 2022), 26. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058164/E02724471_CP_621_Web_Accessible.pdf.

See also: UK Visas and Immigration. Deprivation and nullity of British citizenship: caseworker guidance. (2017). At 55.4.4. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631643/deprivation-nullity-Chapter-55.pdf

[196] UK Parliament. "Exclusion Orders. Questions for Home Office." 14.01.15 https://questions-statements.parliament.uk/written-questions/detail/2015-01-14/HL4168

There is also no requirement in 40(2) that the act must have been carried out, compared to the formulation found in 40(4A) c or Article 8(3)(a)(ii) in the 1961 Convention. This also opens the possibility for interpreting the provision in a preventative way, based on a suspicion that the person will commit a crime in the future, rather than evidence of a committed act. The threshold of "conducive to the public good" thus appears low, especially compared to article 8(3) of the 1961 convention where the threshold is set at "seriously prejudicial to the vital interests of the state".[197]

3.3.2 Avoiding Statelessness

While the BNA 1981 provides protection against statelessness for non-naturalized citizens, under the BNA 40(2) the Secretary of State only must be "satisfied" that the individual has another nationality and will therefore not be rendered stateless. This indicates that the provision does not provide absolute protection against statelessness as it remains unclear what it would take for the Secretary of State to be "satisfied".

Whether the deprived individual has had another nationality at the time of the deprivation order has been questioned in many cases. In the appeal case of *Pham v Secretary of State for the Home Department*, the UK Supreme Court held that it was insignificant that the authorities of the other state refused that the individual was a citizen or denied the individual entrance to the state.[198]

This was also a question in the case of Shamima Begum. Begum was born and raised in London, at the age of 15 she travelled to Syria. With the fall of ISIS in 2019, she was detained by the Syrian Democratic Forces in North Syria where she still is located.[199] Begum was deprived of citizenship in 2019 on conducive grounds, the Secretary of State argued that she was not made stateless as she was entitled to Bangladeshi citizenship through descent.[200] Begum appealed the decision on the basis that she was not considered a citizen under Bangladeshi law. In the case of appeal, in their interpretation of the Bangladeshi law, SIAC concluded that she was not made de jure stateless.[201] The authorities of Bangladesh deny her status as a citizen as Begum never

[197] 1961 Convention Art.8(3).

[198] Pham v Secretary of State for the Home Department (2015) paras. 35-38.

[199] Begum v Secretary of State for the Home Department (2020) paras. 12-14.

[200] Ibid. para. 27.

[201] Ibid. paras. 121-128.

had applied for dual nationality or visited the country.[202] Begum appealed on the basis that she would be rendered stateless and that her right to a due process was curtailed as it was impossible for her to take part in the appeal. This resulted in a decision by UK Supreme Court where her claims were rejected. The court held that her appeal is "to be stayed until Ms Begum is in a position to play an effective part in it without the safety of the public being compromised".[203] The result of the deprivation is that Begum is rendered de facto stateless in Syria indefinitely.

Additionally, under 40(4A) the Secretary of State is permitted to deprive the citizenship of a naturalized citizen even if it results in statelessness, but this is only if the Secretary of State "has reasonable grounds for believing" that the individual is able to become a citizen in another state. Whether this could be considered a sufficient protection is questionable, as there is a high risk of the individual not only becoming stateless but remaining so. It is not certain that another state would grant citizenship to a person deprived of citizenship because of conduct deemed as "seriously prejudicial to the vital interests" of the UK. That the person is able to acquire another citizenship is not the same as the actual acquirement of a citizenship.

Further, it may also be questioned whether the provision itself is in accordance with the 1961 Convention, as the exception to rendering someone stateless only is acceptable if the state "retained" the right to deprive citizenship resulting in statelessness.[204] The UK retained this right when becoming a party to the convention, however, when NIAA 2002 came into force, the act introduced a prohibition on deprivation leading to statelessness. With the IA 2014 the power was reintroduced. It is therefore questionable whether the reintroduction is in accordance with the 1961 Convention.[205]

3.3.3 Discrimination

It appears from the relevant laws of the BNA 1981 that all British citizens may be deprived of their citizenship unless it results in statelessness. However, the exception found in the BNA 40(4A) establishes that the consequence of statelessness only is limited to naturalized citizens.

[202] Bangladesh Ministry of Foreign Affairs "Bangladesh's position on the report of revoking Ms Shamima Begum's citizenship by the British Government in connection with her involvement in ISIS in Syria" 20.02.19. https://mofa.gov.bd/site/press_release/a5530623-ad80-4996-b0b4-f60f39927005

[203] R(Begum) v SIAC (2021), 135.

[204] 1961 Convention Art. 8(3)

[205] Fripp, Eric. "Deprivation of British Citizenship", 410.

The British government has justified the distinction between naturalized and British-born mono-nationals in the following way: "Naturalised citizens have chosen British values and have been granted citizenship on the basis of their good character. It is therefore appropriate to restrict a measure with such serious consequences as becoming stateless to naturalised citizens."[206] Whether this is an objective and reasonable justification could however be questioned.

Additionally, as the law protects against statelessness, the deprivation power is only applicable to dual nationals. This will in practice mean that when a British mono-national and a naturalized or dual-national citizen commit the same type of crime, only the second group could be deprived of citizenship.

While the law has no discriminatory intent nor is aimed at a particular group, it could be argued that the law could have discriminatory outcomes or prejudicial effects on a group in the society.[207] This is because while most British mono-nationals would be ethnically British, individuals who are either dual-national and/or naturalized would exclusively be of different ethnic origins, other than British. This means that it is mainly minorities that are affected by this power.[208]

Though it is not only naturalized or dual citizens who are targeted. The Begum case indicates that even British-born individuals who lack evidence of holding citizenship in another state, could be deprived of citizenship because of their parents' background. Although it is difficult to discover whether a practice is discriminatory, such an interpretation of the laws might nevertheless result in discriminatory outcomes. The BNA 1981 do not only place a disadvantage on naturalized citizens, but it also places a disadvantage on individuals who have parents born in another country. Such a broad interpretation must be viewed as problematic and shows that it is challenging to understand who can be considered safe from deprivation and what it takes for the Secretary of State to be "satisfied" that the person would not become stateless.

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[206] Home Office. *Immigration Bill. European Convention on Human Rights. Supplementary Memorandum by the Home Office*. (2014) para. 15. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/276660/Deprivation_ECHR_memo.pdf

[207] As noted in Biao v Denmark No 38590/10 para. 90-91.

[208] Naqvi, Zainab Batul. "Coloniality, Belonging and Citizenship Deprivation in the UK: Exploring Judicial Responses." *Social & Legal Studies* 31, no. 4 (2022): 515-534. 516.

3.4 Conclusion

Based on this analysis, it does not appear that the UK has been largely restricted by international and human rights law when utilizing citizenship deprivation as a national security measure. The laws governing citizenship deprivation must be considered as vague and unpredictable which gives broad discretion to the Secretary of State. Additionally, the Begum case illustrates that the protection against statelessness is inadequate for non-naturalized citizens. Even if the law provision does not have discriminatory content, it could be argued that it could create discriminatory outcomes. The procedural safeguards are present, but it is problematic that the deprivation order takes effect before the individual has been able to appeal the decision. Especially when the individual is outside the UK and therefore not able to take part in an effective appeal.

The right to nationality is only explicitly enshrined in the non-binding UDHR and the regional ECN, not ratified by the UK, and only provides a right to a nationality, not a specific one. In the international legal framework, the focus is to a greater extent directed at avoiding statelessness, rather than protecting a particular citizenship of the individual. Avoiding statelessness is of great importance and a legal norm most states respect, but this could also have adverse consequences for dual citizens who have engaged in or are suspected of "deprivation-worthy" crimes. This would be especially true in cases where the dual-national is deprived of the citizenship of the state he or she has grown up in and has strong connections to. The 1961 Convention do however not establish a total prohibition on deprivation leading to statelessness, but the requirements that must be met for it to be in line with the Convention are high. At the same time, it appears that acts of terrorism, depending on the state, could fall within the scope of the exception found in Article 8(3)(a)(ii). Although the ECtHR has pointed out that arbitrary deprivation in some circumstances could engage Article 8, it remains unclear how great the burden on the family must be for deprivation to be considered disproportionate in cases concerning national security.

Despite their limitations, the international legal framework does to a certain extent constrain states exercise of deprivation powers especially when it comes to avoiding statelessness. However, as illustrated by the British case, the increasing trend of applying administrative citizenship deprivation as a security measure might put these legal standards under pressure.

4 Can citizenship deprivation be morally justified?

A comprehensive analysis of citizenship deprivation requires both legal and ethical considerations. Only considering the legal limitations on citizenship deprivation, will not provide any definite answers on whether the measure can be regarded as ethically right or desirable. The aim of this chapter is thus to discuss whether citizenship deprivation can be morally justified.

The chapter will first present some common grounds for the two main positions that will be discussed (4.1). These common grounds include that deprivation resulting in statelessness is unacceptable and that the measure should be regarded as a punishment. Further, the chapter will discuss the two central positions. First, I will discuss the moral arguments against citizenship deprivation (4.2). Second, I will discuss whether deprivation can be justified under limited conditions (4.3).

4.1 Some common grounds

4.1.1 Statelessness

As previously discussed, avoiding statelessness is a generally respected norm. While political theorists disagree on how to understand the individual's right to citizenship, there is generally a consensus that citizenship deprivation resulting in statelessness is unacceptable.

An influential argument for why statelessness is unacceptable is due to Arendt who wrote about the mass denationalizations in the 1920-30s. Arendt argued that the stateless suffered in three ways. First, they lost their home which included the social texture in which they were born and had established themselves. Second, they lost their state protection, not only the legal status in their state, but in all states. And third they lost ''a place in the world which makes opinions significant and actions effective''.[209]

An important defender of the view that deprivation resulting in statelessness is wrong is Gibney. He argues that deprivation rendering someone stateless is both unjust and cruel. First, it would be unjust not to grant an individual citizenship in at least one state as individuals have no other

[209] Arendt. *The Origins of Totalitarianism* (New York: Harcourt, Brace & World, 1966), 293–96.

choice but to live under the power of a state.[210] Statelessness may also lead to "exclusion, precariousness and general dispossession" and is therefore also cruel.[211] As a further argument Barry and Ferracioli argue that deprivation that results in statelessness also is problematic because the individual not only loses emotional connection, but also the opportunity to pursue their plans and projects connected to the state of nationality.[212] These are compelling reasons for why deprivation leading to statelessness is unacceptable.

4.1.2 Deprivation as Punishment

A central question in the debate on citizenship deprivation is whether deprivation should be considered a form of punishment. As deprivation have intrusive consequences for the individual, several legal scholars have argued that deprivation only should be permitted as part of a criminal conviction for severe crimes, which includes the legal safeguards and higher standards of proof provided by criminal law.[213] Such a conclusion is also embraced by most political theorists debating the issue.[214] There is agreement that deprivation is a punishment, but disagreement as to whether it could be considered a legitimate punishment.

4.2 Citizenship as an Absolute Right

A moral prohibition on citizenship deprivation is primarily based on the idea that citizenship should be considered an undeniable right. Citizenship as a status should thus be secure and equal and the individual may not be excluded from the political community because of undesirable behaviour. This section discusses the arguments against citizenship deprivation, which relates to t moral membership in the political community (4.2.1), the principle of equality (4.2.2.) and deprivation as a permanent and uncertain punishment (4.2.3).

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[210] Gibney "Should Citizenship Be Conditional?", 651.

[211] Ibid. 651.

[212] Barry and Ferracioli, "Can Withdrawing Citizenship Be Justified?", 1060.

[213] Lavi, "Punishment and the Revocation of Citizenship" 424.

Schuck, "Should Those Who Attack the Nation", 179.

Macklin, Audrey. "On Producing the Alien Within", 246. Coca-Vila, "Our "Barbarians" at the Gate", 162-163.

[214] Gibney, "Should Citizenship Be Conditional?.", 652. Lenard, "Democratic Citizenship and Denationalization.", 104. Joppke, "Terror and the Loss of Citizenship.", 735. Barry & Ferracioli "Can Withdrawing Citizenship Be Justified?", 1060. Miller, "Democracy, Exile, and Revocation", 268.

4.2.1 Moral Membership & the Responsibility of the Political Community

The legal status of citizenship will in most cases also mean membership in a political community. An ethical issue with citizenship deprivation thus concerns firstly, whether it can be considered morally right to deprive the citizenship of an individual from a state they have deep connections to. And secondly, where they have been formed. Such a stance could both focus on the connection a person has to their state or the scope of responsibility the political community has for its citizens.

First, it may be argued that it is immoral for a state to deprive the citizenship of a terrorist who has strong connections to the depriving state. Some political theorists, such as Carens suggest that the moral right to a membership is based on the connections a person has formed by residing in a state over several years.[215] Carens further emphasize that:

> There is something deeply wrong in forcing people to leave a place where they have lived for a long time. Most people form their deepest human connections where they live. It becomes home. Even if someone has arrived only as an adult, it seems cruel and inhumane to uproot a person who has spent fifteen or twenty years as a contributing member of society in the name of enforcing immigration restrictions.[216]

Carens arguments are however focused on the rights of irregular migrants and long-term residents' access to citizenship,[217] it is also relevant in the debate on citizenship deprivation. If we accept that it is morally wrong to not grant access to citizenship for long-term residents who have genuine connections to the community it must also be morally wrong to deprive the citizenship of a citizen who have these connections.[218] However, this position will not protect all citizens from deprivation, it will only protect citizens with undisputable connections to the state. Citizens who have what may be considered weaker connections, by living in another state or have shorter time of residence in the state, would then not be protected from deprivation.[219]

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[215] Carens, Joseph, "Who Gets the Right to Stay?" 21.01.18. *Boston Review*. https://www.bostonreview.net/articles/joseph-h-carens-who-gets-right-stay/

[216] Ibid.

[217] Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013) 100-102.

Carens, "Who Gets the Right to Stay?" 21.01.18. *Boston Review*. https://www.bostonreview.net/articles/joseph-h-carens-who-gets-right-stay/

[218] Gibney "Should Citizenship Be Conditional?", 655.

[219] Ibid. 656.

Another line of thought on the individual's bond to the political community relates to the responsibility of the political community when its citizens behave in undesirable ways. A political community may be defined by its member's shared public culture, which is a set of common norms and values.[220] They are decided based on public deliberation, which must be sufficiently open to all members of the community. The norms and values are transmitted to the members in both formal and informal ways, and the political community is responsible for ensuring that the norms and values are conveyed to the entire citizenry.[221] If the political community fail in this task, it must also take responsibility for the consequences.[222] Lenard argues that when citizens behave in undesirable ways, by for instance, try to undermine the foundations of the political community, the political community has failed its members, those affected as well as the wrongdoer.[223] Depriving the individual of their citizenship, should be viewed as a reluctance to take responsibility for its failure in educating its citizens properly, which includes both those born on the territory, as well as naturalized citizens.[224] From this perspective the state has a moral responsibility to provide a proper punishment for all its citizens, regardless of the individuals connections. Miller on the other hand suggests that if a citizen has grown up or spent several years elsewhere, the state will not have such a responsibility.[225] I will discuss this further in the second part of the chapter.

4.2.2 The Principle of Equality

A second ethical concern relates to the principle of equality. Equality is a democratic principle and citizens residing in a democracy must therefore have equal rights and opportunities. A challenge to the principle of equality is found in the fact that citizenship deprivation only may be lawfully applied against naturalized and/or dual citizen, as discussed in the former chapter.

Because only dual-nationals and/or naturalized citizens may be deprived of their citizenship it has been argued that the measure is in violation of the principle of equality because it

[220] Lenard, "Democratic Citizenship and Denationalization." 106.

[221] Ibid. 106.

[222] Ibid. 106. Carens, *The Ethics of Immigration*, (Oxford: Oxford University Press, 2013) 105.

[223] Lenard, "Democratic Citizenship and Denationalization." 106.

[224] Ibid. 106-107.

[225] Miller, "Democracy, Exile and Revocation", 270.

contributes to creating different classes of citizens[226] and persons committing the same crime will be subject to unequal punishment.[227] When only some citizens can be subjected to the punishment, it indicates that there exists a fundamental inequality between citizens. One group will have their citizenship secured forever, where the other may not. Even if they commit the exact same "deprivation-worthy" crime, the punishment they are subjected to will be different. The naturalised or dual national may then argue that they are treated as second-class citizens.[228] Such an unequal treatment for naturalized citizens must be regarded as invidious, as Gibney puts it "the status of citizenship, as the grounding principle of state membership, simply ought to be a status which admits of no gradations. Citizenship worth its name entails equal standing amongst the member of political community".[229] In a similar vein, Lenard has argued that making only dual nationals liable for the risk of deprivation contravenes the principle that "the package of rights to which all citizens are entitled is prima facie equal".[230]

An objection to this argument is that different treatment not necessarily need to be discriminatory or unfair. As Miller and Barry and Ferracioli emphasize, it is the situation of the person that is of importance. That mono-nationals will be rendered stateless as a result of deprivation is a quite different and more burdensome situation from the situation of those who may rely on another citizenship elsewhere.[231] From Miller's perspective the first question that must be raised is whether the individual has been involved in conduct that could justify his exclusion from the political community. If the answer is yes, the question is then if the deprivation may be conducted without violating his rights.[232] If the individual possesses another citizenship, his rights will thus not be violated. Treating the mono-national more advantageously may be the result but compares to situations where a person's prison sentence is reduced due to circumstances that would make imprisonment especially burdensome for the person.[233] From this position, that only dual-nationals may be deprived of citizenship should not be regarded as invidious discrimination.

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[226] Gibney "Should Citizenship Be Conditional?", 652

[227] Lenard "Democracies and the Power to Revoke Citizenship.", 79.

[228] Gibney "Should Citizenship Be Conditional?", 654.

[229] Ibid. 655.

[230] Lenard, Patti Tamara. "Patti Tamara Lenard Replies." *Ethics & International Affairs* 30, no. 2 (2016): 271–73. DOI:10.1017/S0892679416000149. 272.

[231] Barry & Ferracioli. "Can Withdrawing Citizenship Be Justified?", 1062.

[232] Miller, "Democracy, Exile, and Revocation.", 268.

[233] Ibid. 268.

The strength of the argument above will however rest on how the impact of deprivation is considered. It seems that the stance above adopts a perspective where citizenships are replaceable and may be viewed as equal. If not rendered stateless it is insignificant which citizenship the individual holds.[234] From another perspective, it may be argued that citizenship is not replaceable in this sense. Macklin argues that the bond of citizenship is unique both as a special state-individual relationship and because the entitlements and opportunities connected to citizenship greatly vary in different states.[235] To be deprived of some citizenships will thus be more burdensome than others. If the deprived individual has no connections to the other state and the other citizenship also is considered less "valuable", they are too left in a quite burdensome situation, although statelessness is worse. From this perspective citizenship deprivation is wrong also for dual-nationals because the unique bond will be disrupted and impose harm on the individual which is different from the harm that is inflicted by statelessness.[236] If we consider the impact of deprivation in this way it is difficult to justify that only dual-nationals can be deprived of citizenship. Even if deprivation does not lead to statelessness, it is a severe punishment that only some categories of the citizenry is at risk of. Dual-nationals will then have a citizenship that is dependent upon their conduct which undermines the equality between citizens.

4.2.3 A Permanent & Uncertain Punishment

The nature of citizenship deprivation as punishment also raises ethical concerns. Deprivation has been criticized for its permanent nature and because it brings uncertainty both for the individual and its contribution to prevent future harm. The idea is that if the same objectives could be met with other types of punishments, then deprivation would seem unnecessary. The two main points is first, that incarceration is more advantageous for the prevention of future harm and for ensuring the rights of the individual. And second that incarceration is more advantageous than deprivation because it provides the possibility for moral reform.

First, deprivation entails uncertainty for the individual and for the prevention of future harm. Lenard emphasizes that deprivation makes it difficult to ensure that an appropriate punishment

[234] Macklin, "The Return of Banishment", 169.

[235] Ibid. 170.

[236] Macklin, "The Return of Banishment", 171.

has been exacted, which is dependent on whether the receiving states are willing and able to provide a punishment.[237] Even if the receiving state confirms this willingness, another possibility is that the punishment enacted in the receiving state is too hard or too relaxed, or maybe the individual would not be punished at all. Another possibility is that the person could be deported to a state not able to provide for their protection, for instance, a weak or failed state.[238] Which would entail a high degree of uncertainty for the individual. If the democratic state instead incarcerates the criminal, the state has the knowledge that the criminal is subject to a punishment which secures the prevention of future harm[239] and avoids the unpredictability deprivation entails.

However, the validity of the argument depends on which theory of punishment one adopts. The arguments above are persuasive if one adopts a utilitarian view on the justifications for punishment which may be traced back to the thought of Jeremy Bentham. In his understanding, the act of punishment is essentially bad and may therefore only be justified if it leads to good consequences, mainly the prevention of future crimes.[240] Though, if one adopts a retributive understanding of punishment, traced to Kant and Hegel, the argument become less persuasive. From this perspective the act of punishment is not justified because of the consequences of it, but because the criminal deserves to be punished.[241] The punishment should thus correlate to the moral wrong that has been inflicted by the crime.[242] From a strict retributive perspective, it could hence be argued that depriving a terrorist of their citizenship would be appropriate and proportional to the moral wrong that has been committed. However, while it may seem from a retributive perspective like deprivation and incarceration have the same objectives (to remove the person from the rest of the society, take away some basic freedoms and signalize the

[237] Lenard, "Democratic Citizenship and Denationalization.", 105.

[238] Lenard, “Democracies and the Power to Revoke Citizenship.”, 84.

[239] Lenard, "Democratic Citizenship and Denationalization.", 105.

[240] Altman, Matthew C. *A Theory of Legal Punishment: Deterrence, Retribution, and the Aims of the State*. Routledge Research in Legal Philosophy. Milton Park, Abingdon, Oxon: Routledge, 2021. 2.

See also: Bentham, Jeremy. The Works of Jeremy Bentham, vol. 1. Edinburgh: William Tait, 1843. https://oll.libertyfund.org/title/bowring-the-works-of-jeremy-bentham-vol-1. 396.

[241] Altman. *A Theory of Legal Punishment*, (Milton Park, Abingdon, Oxon: Routledge, 2021), 2.

See also: Kant, Immanuel. The Philosophy of Law. Edinburgh: Clark, 1796. https://oll.libertyfund.org/title/hastie-the-philosophy-of-law. 195.

[242] Lavi, "Citizenship revocation as punishment”, 786.

wrongdoings of the person),[243] incarcerations could be more advantageous and appropriate as it also will contribute to the prevention of future harm outside the state.

Second, as a punishment citizenship deprivation stands out, it is permanent and cannot be reversed.[244] Other forms of punishment, such as imprisonment may be served within years, be reassessed, and include opportunities for parole.[245] Because of its permanency, Cohen argues from an epistemological perspective, that deprivation is undemocratic. This is because deprivation goes against the assumption that citizens in a democracy are capable of developing their character over time.[246] Development in character may reflect whether a punishment has been effective and therefore whether the person can return to society.[247] This development or assessment cannot take place if a person is deprived of citizenship. Additionally, it is not only individuals that may develop, societies are also constantly developing. New information has led to retrials in cases regarded as serious crimes, additionally the society's attitudes on security and executive power could also change over time.[248] It is therefore important, as Cohen emphasise that punishment in a democracy cannot be permanent but must entail the possibility of periodic reconsidering to ensure that the punishment is proportionate and suitable.[249] Conversely, it can be argued that a prison sentence for a convicted terrorist also will be relatively permanent and that the terrorist in any case will not be able to return to society. If that is the case, what makes deprivation different? According to Cohen, a criminal punished in a democracy should at every stage of the punishment receive democratic treatment,[250] the criminal should therefore also be treated in a way that their return to society is possible even if it is not likely. As citizenship deprivation as punishment is permanent and makes reassessment, rehabilitation, and reform impossible, the measure should not be regarded as an acceptable punishment.

[243] Lenard, "Democratic Citizenship and Denationalization.", 105.

[244] Cohen, "When Democracies Denationalize", 255.

[245] Ibid. 255-256.

[246] Ibid. 256.

[247] Ibid. 257.

[248] Ibid. 256-257.

[249] Ibid. 258.

[250] Ibid. 258.

This section has examined some of the ethical issues with citizenship deprivation and the arguments against it. The next section will examine whether citizenship deprivation under certain circumstances may be justifiable.

4.3 Justifying Citizenship Deprivation

What forms the basis for justifying deprivation is the view that citizenship to some extent is conditional on conduct. More precisely, the idea is that certain types of serious crimes, such as involvement in terrorism, could make the individual morally liable for deprivation. Deprivation could therefore, in principle, be morally justified under certain conditions. Such a position takes various forms, and I will discuss two of them in the following sections. One variant of the position represented by Joppke, and Miller adopts a type of contractual understanding of citizenship or democracy. Another, but related variant of this position represented by Barry and Ferracioli, adopts a functionalist understanding of citizenship, with a focus on the individuals self-exclusion.

The similarities of this position are that deprivation only should target serious offenders involved in terror,[251] actions that make you an enemy of democracy[252] and actions of a serious and political nature.[253] It is also generally agreed that the deprivation only can affect dual nationals[254] as discussed in the previous section and must include legal safeguards. This will include the requirement that the depriving state must examine the possible consequences of deporting the individual to the other country of nationality.[255] If the other state of nationality for instance is considered a failed state and/or are unable or unwilling to protect the individuals' basic rights, deprivation cannot be justified.[256]

While supporters of this position generally agree that deprivation in principle can be justified under certain conditions, they are more divided in the question of whether states should be granted the power to deprive citizenships. Miller emphasizes that democratic states should be

[251] Joppke, "Terror and the Loss of Citizenship", 743.

[252] Miller, "Democracy, Exile, and Revocation", 266.

[253] Barry & Ferracioli. "Can Withdrawing Citizenship Be Justified?", 1065.

[254] Joppke, "Terror and the Loss of Citizenship", 745.

[255] Miller, "Democracy, Exile, and Revocation", 269.

[256] Barry & Ferracioli, "Can Withdrawing Citizenship Be Justified?", 1066.

able to hold this power, but only use it sparingly.[257] Joppke and Barry and Ferracioli on the other hand hold that granting states the power to deprive is risky as there is a possibility that states will abuse the power and thus not abide by the restrictions that would make deprivation morally acceptable.[258]

This section is divided into three parts. The first two parts (4.3.1 and 4.3.2) will discuss under what conditions it would be acceptable to deprive the individual of their citizenship. The third part (4.3.3) discusses the issue of international justice and whether states have moral obligations towards other states when depriving a dangerous individual of their citizenship.

4.3.1 Breach of Contract

Having established the general idea of the position this section will further explain and assess two variations of the general position. A first position is that the implicit contract which democracies are built upon requires citizens, in exchange for the rights, opportunities and benefits they have, to fulfil obligations.[259] These include according to Miller for instance obeying the law and "conducting themselves politically in a manner that is respectful of fellow citizens".[260] Miller argues that when individuals, in exceptional cases, violate this contract, through actions that make them enemies of democracy, it does not seem morally wrong for states to make use of the power to deprive their citizenship.[261] Miller suggests, in a similar vein as Lenard that states have a responsibility and opportunity to shape the political identity of future and present citizens. Those born on the territory and those who have lived there for several years.[262] Failing in this task, the state must take responsibility for the possible consequences that may be the result of "political ignorance or alienation".[263] The state that has shaped the individual's political identity, is from this view, responsible for the individual. If the dual citizen has grown up or spent several years in another state, which has failed the task of

[257] Miller, "Democracy, Exile, and Revocation." 270.
[258] Barry & Ferracioli. "Can Withdrawing Citizenship Be Justified?", 1067.
Joppke "Terror and the Loss of Citizenship.", 745.
[259] Miller, "Democracy, Exile, and Revocation, 266.
[260] Ibid. 266.
[261] Ibid. 270.
[262] Ibid. 270.
[263] Ibid. 270.

facilitating proper citizenship education or social and political integration,[264] the depriving state will not have the same responsibility as it would for those who have lived most their lives in the state. This approach suggest that states responsibility is different for immigrants, as Miller argues that by applying this principle, it is possible to distinguish "between home-grown terrorists" and "those arriving from elsewhere", where only the second group would be liable for deprivation.[265]

However, it seems unclear why the contract between the state and the immigrant who has spent years elsewhere, but still lives in the state, is different from the one between the state and those who have become citizens at an earlier stage in their lives. If we are to understand this relationship as a contract, the contract will also entail creating an environment for successful integration.[266] The state should therefore have equal responsibility for integrating and shaping the political identity of both groups, and thus also take responsibility for the possible consequences of failing in this task. I will come back to this under section 4.3.3.

Another position represented by Joppke is that citizenship is an imaginary contract, and a violation of the contract must involve the possibility of losing citizenship.[267] When individuals take part in terrorism the contract is violated. Liberal states are hence fully justified in depriving terrorists of the citizenship "they have factually renounced and even wish to destroy".[268] As terrorism is an exceptional form of crime as of its public dimension and motive to undermine the public order, it may also justify a distinctive punishment such as citizenship deprivation.[269] It is also argued that terrorists are not ordinary criminals as they place themselves outside the legal order, the penal rationale of reintegration and rehabilitation therefore becomes illogical.[270] While it is true that terrorism may be morally distinctive from other types of crimes, one may still question why only terrorists should be deprived of citizenship and not serial killers. As Gibney emphasize, other crimes than terror may also have a distinctive character, for instance mass murder or hate crimes, and these distinctions are met with harsher punishments in the

[264] Miller, "Democracy, Exile and Revocation", 270.
[265] Ibid. 270.
[266] Lenard, "Democratic Citizenship and Denationalization.", 107.
[267] Joppke, "Terror and the Loss of Citizenship.", 742-743.
[268] Joppke, "Terrorists Repudiate Their Own Citizenship", 184.
[269] Joppke, "Terror and the Loss of Citizenship",731.
[270] Ibid. 731.

form of longer sentences, and not deprivation.[271] Nevertheless, it can be argued that terrorism has a more harmful effect on society than other violent criminal acts. However, one need not dismiss reintegration and rehabilitation of the perpetrator for that reason. Even if terrorist oppose rehabilitation, as citizens, they should still be treated in a way that it is possible within the framework of standard punishment in a democracy as previously discussed (4.2.2).

4.3.2 Self-exclusion

The second variant of the general position represented by Barry and Ferracioli holds that under certain circumstances a person involved in serious political crimes may be morally liable for citizenship deprivation.[272] They argue that it is the serious and political nature of the crime that makes deprivation a fitting and proportionate response from the state, and underlines that "if they are prepared to carry out such acts of serious political violence, then they have no grounds for complaint if the community chooses to banish them. They have already, in effect, self-excluded."[273] However, for deprivation to be justified another state must make itself liable for receiving the deprived person. A second condition is thus that the political crime has been enabled by the assistance or passiveness of another state and that this state must take responsibility for the person.[274]

The first point of Barry and Ferraciolis argument in justifying deprivation is the focus on what the criminal express with their actions. When individuals take part in serious political crimes, it is argued, that they signalise a strong "disassociation" from the community which should be interpreted as their "self-exclusion".[275] It seems that deprivation thus is an appropriate reaction from the state because the individual has renounced their own citizenship. However, if we accept that certain types of conduct amount to self-exclusion or voluntary renunciation, we also give states a wide room for interpretation of behaviour. Especially because what is considered political or non-political crime varies greatly from one state to another. Why the state should interpret certain types of actions as a renunciation of citizenship also becomes less reasonable

[271] Gibney, "Denationalization", 373.

[272] Barry & Ferracioli. "Can Withdrawing Citizenship Be Justified?", 1065.

[273] Ibid. 1066.

[274] Ibid. 1065.

[275] Ibid. 1066.

when one remembers that citizens do have an opportunity to formally renounce it.[276] Interpreting other actions, than a formal renunciation as self-exclusion from the political community will therefore not be necessary on the part of the state. I will discuss this argument further under section 4.3.3.

4.3.3 International Justice and Moral Obligations to Other States

Citizenship deprivation may also raise questions of international justice and whether states have an obligation to protect the international community from dangerous individuals. When a state deprives the citizenship of an individual deemed a threat to national security, there is a chance that the person also will be a risk in the state deported to. Such a practice will according to Miller seem like an "arbitrary imposition by one state on another" with the potential of creating issues of unfairness between states in the international community.[277]

To avoid issues of unfairness, Miller suggests as previously mentioned, that the state that has shaped the individual's political identity is responsible for the individual. If the dual citizen has grown up or spent several years in another state, which has failed the task of implementing proper citizenship education or social and political integration,[278] it is rightful that the burden should be with the receiving state. By applying this principle, he argues, it is possible to distinguish between "home-grown terrorists" and "those arriving from elsewhere", where only the second group would be liable for deprivation.[279] However, it must be questioned who should be regarded as "those arriving from elsewhere"? If the citizen has spent several years in both states, it would be difficult to categorize citizens in these two groups. When it comes to denationalization of naturalized citizens it should be emphasized that the process of naturalization is not a swift or simple task. To be eligible to apply for citizenship it is often a requirement that the person has spent several years in the state. Should a person who has, for instance, lived six years in a state before obtaining citizenship, and then takes part in terrorism be considered a "home-grown terrorist" or as "arriving from elsewhere"?. A clear distinction between the two groups may be difficult to draw.

[276] Lenard, "Democratic Citizenship and Denationalization." 106.

[277] Miller, "Democracy, Exile and Revocation", 269-270.

[278] Ibid. 270.

[279] Ibid. 270.

From an idealistic perspective, it is plausible that this approach could avoid the issue of unfairness. However, from a realistic perspective, one may object to this approach. In practice, states do not base their deprivation assessments on a person's connection to the other state of nationality, how many years a person has lived there or whether the person has lived there at all. One illustrative example is that of Adam Johansen described in the former chapter. His strong links to Denmark played an insignificant role, while his limited connections to Tunisia was in focus. The only important thing was that he was not rendered stateless. A similar example is that of Jack Letts, a dual national of the UK and Canada, born and raised in the UK. Letts travelled to Syria in 2014 to join ISIS, in 2019 he was deprived of his British citizenship.[280] These examples illustrate that even though it is obvious that Johansen and Letts are "products" of Denmark and the UK, it is in the state´s interest to place them in the group of "those arriving from elsewhere". In practice, the likelihood of treating other states unfairly is high and may also send undesirable signals to other states in the international community. Bauböck draws a comparison with what kind of signal would have been sent if either Germany or Austria had deprived Hitler after his death. Such a decision would not only have signalised a denial of his grave crimes but would neither have contributed to relation building with the states victimized by his crimes.[281] Because the deprivation not will make the dual-national stateless, both states will have a motivation to deprive the citizenship of the individual first in order to shift the responsibility over to the other.[282] If all states had made use of such an approach it could lead to a race between multiple states where the goal is to deprive the citizenship first, and as Macklin put it "to the loser goes the citizen".[283] From a realistic perspective, illustrated by the examples above, it is reasonable to assume that states not will abide by this condition in a sincere way.

A second proposal related to international justice is presented by Barry and Ferracioli. In their approach, the receiving state would only be responsible for the deprived individual if the receiving state has been involved in the crime by encouragement, active assistance or passiveness in preventing the crime.[284] The other state must therefore take responsibility for the individual because they already have granted citizenship to the individual, but also because

[280] Macklin, "A Brief History of the Brief History", 452-453.
[281] Bauböck, Rainer. "Whose Bad Guys Are Terrorists?", 204.
[282] Bauböck, "Whose Bad Guys Are Terrorists?", 204.
[283] Macklin "The Return of Banishment", 171
[284] Barry & Ferracioli, "Can Withdrawing Citizenship Be Justified?", 1065.

their active or passive involvement in the crime demonstrates a "serious disrespect" to the victimized states interests.[285] It seems plausible why the receiving state should take responsibility for the individual under such a circumstance. However, the willingness of the receiving state to punish the individual and prevent future crime should be questioned, even if such a willingness is expressed. If the receiving state was part of the crime, especially by active encouragement, then it would be reasonable to believe that the authorities of this state would not be willing to provide a punishment that would secure the prevention of future harm.

Following Barry and Ferraciolis approach, what makes the other state (state A) liable to take responsibility for the criminal is that it actively contributed or failed to prevent the crime against the depriving state (state B). Then the conduct that makes State A responsible is also the same conduct that made the individual liable to deprivation to begin with. After all, State A has also taken part in this serious political crime which has violated rights of civilians. It would therefore be reasonable to assume that state A either is unconcerned about violations of fundamental rights or simply support them.[286] If the latter is true, there is a great risk that the criminal will execute future violence, not necessarily in state A, but possibly against other states with the support of state A. What has been discussed previously in relation to preventing future harm will thus be reinforced following this approach. While Barry and Ferraciolis conditions may avoid the issue of unfairness between state A and B, it would under these very conditions, be unwise to deport the individual to state A, because the prevention of future harm would not be secured.

4.4 Conclusion

From an idealistic perspective one may persuasively argue that states in exceptional circumstances should be allowed to deprive citizenships of dangerous individuals if there is no chance that the individual becomes stateless, their human rights are respected and the receiving state expresses willingness to punish the individual. However, from a realistic perspective, considering how states act in the real world citizenship deprivation becomes difficult to justify. Both in terms of the individual subject to the punishment, but also in terms of the international community.

[285] Barry & Ferracioli, "Can Withdrawing Citizenship Be Justified?", 1066.

[286] Carey, Brian. "Against the Right to Revoke Citizenship", *Citizenship Studies* 22, no.8 (2018):897-911. DOI: 10.1080/13621025.2018.1538319. 907.

Most importantly, deprivation cannot be justified because it is an undemocratic punishment. Even if deprivation does not lead to statelessness, the punishment is permanent and severe. One could argue that involvement in terror is a distinct type of crime which justifies a distinct type of punishment. It violates the bond between the individual and the state in a special way which is impossible to repair. This is however a stance we must resist. All citizens must be penalised within the standard framework of punishment in a democracy, which entails periodic reassessment. Even if the perpetrator does not wish to become reintegrated or could be rehabilitated, they must, as citizens in a democracy, still be treated in a way that it is possible. Additionally, accepting that some types of conduct amounts to self-exclusion should also be resisted as it would give the state a wide room for interpretation of behaviour.

If we accept citizenship as unique bond between the individual and the state, deprivation is an exceptionally severe punishment. While differentiating between dual and mono-nationals may not seem like invidious discrimination, only subjecting specific groups in society to this type of punishment still undermines the equality between citizens. Dual-nationals will have a less secure status as citizens, it is dependent upon good conduct. Mono-citizens may however conduct themselves in the most undesirable ways without any risk of being deprived of their citizenship. The solution must however not be that all citizens should be at risk of deprivation, but rather that no citizens should be at such risk.

Additionally, states have a moral obligation to all its citizens, those born there and naturalized citizens. The state should therefore have equal responsibility for educating, integrating, and shaping the political identity of all groups in the society. If we are to understand democracy as a contract, the contract should also entail the facilitation of a successful integration. When citizens conduct themselves in undesirable ways, the state and political community, must take the responsibility of this failure. This entails accepting that terrorism and extremism also grows within the borders of a liberal democracy and not something that only originates from non-liberal states.

This is also connected to international justice and states moral obligations to other states, which provides an additional reason to reject the states right to exercise this power. Citizenship deprivation risks avoiding responsibility of individuals who are in fact products of the depriving state and therefore placing an unreasonable burden on the other state. Additionally, depriving a

terrorist of citizenship will neither contribute to protect the international community from dangerous individuals. All states have criminals, and all states have a responsibility to punish them and hold them accountable for their actions. In a globalized world, deporting a perceived or real security threat to another state will not contribute to international security or the prevention of future harm.

5 Conclusion

The thesis has provided a legal analysis of the international legal framework and relevant provisions of the BNA 1981. It found that the international legal framework to a certain extent constrains states' exercise of deprivation powers in terms of avoiding statelessness, arbitrariness, and discrimination. The avoidance of statelessness is an important restriction but could on the other hand have adverse consequences for dual-nationals involved or suspected of "deprivation-worthy" crimes, even if it does not amount to discrimination. However, it does not appear that the UK has been largely restricted when utilizing citizenship deprivation as a national security measure. It also illustrates that expanded deprivation powers and the increasing trend of applying citizenship deprivation as a security measure might put these legal standards under pressure. Vague and unpredictable deprivation provisions, together with the administrative nature of the measure provides the executive with extensive powers, which especially pose a risk to the standard of arbitrariness. While the UK so far is an outlier among its European neighbours, citizenship deprivation is more commonly brought to the political agenda also in other European states.

The ethical analysis examined the question of whether citizenship deprivation can be morally justified. The analysis found that citizenship deprivation cannot be morally justified because of its severe and permanent nature as a punishment. All citizens should be penalised within the standard framework of punishment in a democracy, the punishment must entail periodic reassessment and citizens are to be treated in a way that reintegration and rehabilitation is possible. Also, if we accept citizenship as a unique bond between the individual and the state, the punishment is severe even if it does not lead to statelessness, which makes it difficult to justify why only certain groups in the society can be deprived of citizenship. Additionally, states have a moral obligation to all its citizens. This responsibility entails educating, integrating, and shaping the political identity of all groups in the society. Failing in this task must also entail providing a punishment which holds the criminals accountable for their actions without moving the responsibility to other states in the international community.

Terrorism can never be justified; it is a heinous crime and a serious threat to human rights and freedoms. However, the state's solution to dealing with terrorism must never be to sacrifice the fundamental human rights and democratic principles it is trying to uphold. In that case we might risk forgetting what we are actually defending in our pursuit of a society free from terrorism.

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