BOOK REVIEW

DENATIONALISATION AND ITS DISCONTENTS. CITIZENSHIP REVOCATION IN THE 21ST CENTURY: LEGAL, POLITICAL AND MORAL IMPLICATIONS BY CHRISTIAN BROWN PRENER (BRILL NIJHOFF 2023). 240 PAGES. PRICE €154.00. ISBN 9789004508491

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States around the world are increasingly weaponising citizenship and utilising denationalisation as a tool to punish their citizens[1] on grounds of 'national security' and 'counter-terrorism'.[2] In addition to the notorious denationalisation measures adopted by many western states in response to the rise in global terrorism, non-western states have also denationalised their citizens in recent years. In 2022, Myanmar revoked the citizenship of 33 persons who 'had been leading, involved in or supportive of the (armed) resistance against the military rule known as the Spring Revolution'.[3] To this end, legal instruments like the '*Counter-Terrorism Law* were used to punish dissidence and resistance',[4] effectively branding dissidents as *terrorists*. Even the Americas, the region with 'the most far-reaching right to a nationality in a legally binding human rights document to date',[5] are not immune to this trend. In 2023, Nicaragua declared over 300 persons to be 'traitors to the homeland'[6] and arbitrarily stripped them of their nationality through 'judicial decisions that relied on a constitutional reform which was not in force at that time'.[7] In February 2023, the National Assembly of Nicaragua adopted 'a constitutional reform and specific legislation to deprive persons declared traitors to the homeland of their nationality'.[8] In these contexts, denationalisation is a weapon (authoritarian) governments use to quash dissent and

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1 See, eg, Rainer Bauböck, 'Weapons of Massive Deception: Defusing the Destructive Potential of Citizenship in a New Geopolitical Era', *Weaponized Citizenship: Should International Law Restrict Oppressive Nationality Attribution?* (Blog Post, 30 June 2023) <https://globalcit.eu/weaponized-citizenship-should-international-law-restrict-oppressive-nationality-attribution/9>, archived at <perma.cc/V5H7-N4ZF>.

2 See, eg, Luuk van der Baaren et al, Institute on Statelessness and Inclusion and Global Citizenship Observatory, *Instrumentalising Citizenship in the Fight Against Terrorism: A Global Comparative Analysis of Legislation on Deprivation of Nationality as a Security Measure* (Report, March 2022) 6.

3 Nyi Nyi Kyaw, 'Citizenship Stripping in Myanmar as Lawfare' (2022) 4(2) *Statelessness & Citizenship Review* 280, 280. According to Kyaw, the persons who were stripped of their citizenship included 'opposition politicians, (ex)-diplomats, dissidents, social media influencers-cum-fundraisers, writers, singers, actors and beauticians': at 280.

4 ibid 284.

5 Laura van Waas, 'Nationality Matters: Statelessness under International Law' (PhD Thesis, Tilburg University 2008) 60.

6 Human Rights Council, *Report of the Group of Human Rights Experts on Nicaragua*, UN Doc A/HRC/52/63 (2 March 2023) 15 [106], [108] ('*HRC Report 2023*').

7 Human Rights Council, *Report of the Group of Human Rights Experts on Nicaragua*, UN Doc A/HRC/55/27 (28 February 2024) 5 [37].

8 *HRC Report 2023* (n 6) 15 [106].

punish those who dare to oppose them, using *national security* as their justification for these arbitrary practices.

Within this global context, Christian Prener's book, *Denationalisation and Its Discontents*, is a timely contribution to the ongoing scholarly discussion on this topic.[9] The book is based on the author's doctoral dissertation, which was completed at the University of Aarhus, Denmark.[10] The author's stated purpose with this book is 'to contribute to existing discourses and scholarship on the overarching question of whether security-related denationalisation is acceptable in a modern liberal society and within the framework of international human rights law'.[11] The scope of the book is thus focused on denationalisation in the context of *national security*, and the author has limited the case studies to Western countries: the United Kingdom ('UK'), Denmark, France and the United States ('US'). Indeed, as the author notes, '[t]he speed with which the legislative introduction and expansion of denationalisation powers has taken place across Europe has been truly remarkable'.[12] This book arrives at a crucial moment and is an important addition to the growing body of literature on this topic.

Denationalisation and Its Discontents begins in Chapter One, where the author outlines the book and sets the context in which his work takes place. He begins with a brief history of denationalisation in the 21st century, taking readers back to 1937 when German Jews — like philosopher Hannah Arendt — were stripped of their nationality and rendered stateless.[13] The author points out that attitudes concerning denationalisation shifted after the war and 'most western states removed their provisions allowing for denationalisation, while others kept powers in place but refrained from using them'.[14] As the author points out, after lying dormant for several decades,[15] denationalisation 'suddenly re-emerged into Western politics and law in response to the 9/11 terrorist attacks in 2001'.[16]

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9 See, eg, Matthew J Gibney, 'Should Citizenship Be Conditional? The Ethics of Denationalization' (2013) 75(3) *The Journal of Politics* 646; Audrey Macklin, 'The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?' in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer Open 2018) 163; Sangita Jaghai and Laura van Waas, 'Stripped of Citizenship, Stripped of Dignity? A Critical Exploration of Nationality Deprivation as a Counter-Terrorism Measure' in Christophe Paulussen and Martin Scheinin (eds), *Human Dignity and Human Security in Times of Terrorism* (TMC Asser Press 2020) 153. See also Symposium, 'The Power to Expel: Deportation and Denationalisation in Historical, Legal and Normative Perspective' (2020) 34(4) *Citizenship Studies* 265; Patti Tamara Lenard, 'Democratic Citizenship and Denationalization' (2018) 112(1) *American Political Science Review* 99. See generally Audrey Macklin and Rainer Bauböck (eds), 'The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?' (Working Paper No 2015/14, Robert Schuman Centre for Advanced Studies and EUDO Citizenship Observatory, 2015).

10 Christian Brown Prener, *Denationalisation and Its Discontents: Citizenship Revocation in the 21st Century: Legal, Political and Moral Implications* (Brill Nijhoff 2023) Preface.

11 ibid 6.

12 ibid 291.

13 ibid 1.

14 ibid 2.

15 ibid 2. The author notes that this period of dormancy applies to 'modern liberal democracies': at 2. Citizenship stripping remained a weapon used by authoritarian regimes to punish dissidents, and by many states to exclude individuals and entire groups. The mass denationalisation which resulted from ruling 168-13 ('*La Sentencia*') of 2013 by the Dominican Republic's Constitutional Tribunal is a prime example: Sentencia TC/0168/13 [Sentence TC/0168/13] (República Dominicana Tribunal Constitucional [Dominican Republic Constitutional Court] 23 September 2013).

16 ibid.

In the introductory chapter, the author offers a detailed summary of the drastic changes in citizenship stripping powers, noting that 22 out of 36 western states had expanded their denationalisation powers by January 2016.[17] This expansion entails broader power to strip persons of their nationality 'on grounds of misconduct or disloyalty considered seriously prejudicial to the vital interests of the state'[18] within the context of the post-9/11 global security concerns. The author explains how international law is being circumvented to expand denationalisation powers, noting that denationalisation

> has gone from being a *judicial* decision exclusively taken by the courts on the basis of a criminal conviction for a serious terrorist offense, to also being an *administrative* decision taken by government authorities prior to any criminal conviction and thus solely based on suspicion of conduct prejudicial to the vital interests of the state. The transformation of denationalisation from a *reactive* judicial decision to a *proactive* administrative decision effectively leaves government authorities with the power to deprive citizenship with immediate effect, without any prior court proceedings, from citizens deemed dangerous, insofar as the citizen does not become stateless.[19]

The book continues with Chapter Two, which provides readers with a history of loss of citizenship, serving as an introduction to the notion of *denationalisation*. This chapter goes back to antiquity, discussing practices of ostracism, expulsion and banishment in Greece and Rome, where these practices also meant loss of property and rights.[20] In the Middle Ages, banishment was a common punishment for 'individuals allegedly guilty of serious crimes or those who had been disloyal or somehow breached their allegiance to the king'.[21] Over time, the penal system was introduced and the removal of criminals from society through imprisonment became the norm.[22] The author then discusses denationalisation practices in the 20th century, from denationalisation 'to rid communist "radicals" in both the US and several European states'[23] to the mass denationalisations carried out by the Nazi regime that stripped 'thousands of German citizens of Jewish, Roma and Sinti descent, along with homosexuals'[24] of their citizenship. Taking readers for a stroll through the ages, the author evidences the historical link between various forms of *expulsion* from society, which historically served as punishment. Denationalisation in the modern world is a continuation of these trends. The chapter also discusses the birth of the international human rights system and its attempts to limit denationalisation, in particular where loss of nationality leads to statelessness. Another important point the author discusses is the role of citizenship in upholding inequality, arguing that although citizenship is supposed to create *equality* among citizens within the state, it perpetuates global inequalities outside of the state.[25] In the context of denationalisation, the author notes that it 'is not only about a loss of citizenship: it is, importantly, also about loss of a

17 ibid 3.
18 ibid 3.
19 ibid 4.
20 ibid 11–3.
21 ibid 12.
22 ibid 14.
23 ibid.
24 ibid 15.
25 ibid 19.

particular citizenship'.[26] This latter point raises interesting questions on citizenship that merit further — and broader — discussions.

Chapters Three and Four contain 'reflections on denationalisation's compatibility with liberal principles and some of the misconceptions that seem to prevail'.[27] Chapter Three examines the assumptions that are used to justify denationalisation, primarily that denationalising those who are suspected or have been convicted of terrorism increases national security (the *utilitarian view*).[28] The chapter provides strong arguments against the claim that denationalisation is an effective national security measure, demonstrating that this practice does more harm than good and is not an efficient deterrence mechanism. Chapter Four examines the moral justifications of denationalisation as a form of punishment for severe offenses (the *retributive view*).[29] The chapter demonstrates that denationalisation as a form of punishment is incompatible with democracy.

Chapter Five provides readers with an analysis of existing international standards on nationality matters, in particular the right to nationality and standards to prevent and address statelessness.[30] Chapters Six and Seven focus on the European Human Rights System, in particular the *European Convention on Nationality* ('*ECN*') and the *Convention for the Protection of Human Rights and Fundamental Freedoms* ('*ECHR*'), respectively. Chapter Six analyses the *ECN*, which establishes 'a set of mandatory principles that state parties have to respect when legislating on nationality'.[31] Prener concludes that the provisions under the *ECN* 'effectively limit the sovereign capacity of states to revoke nationality in a range of situations and, most importantly, establishes a non-derogatory obligation not to create statelessness'.[32] Chapter Seven explores relevant case law before the European Court of Human Rights, providing an in-depth analysis of cases and of the principles and doctrines derived from human rights obligations under the *ECHR* that are relevant to denationalisation.[33] Although the *ECHR* does not contain a provision on the right to nationality, this right is protected in the European system.[34]

Chapters Eight, Nine, Ten and Eleven explore denationalisation in four countries: the UK, Denmark, France and the US, respectively. Each chapter gives a detailed overview of the country's nationality laws — including changes to provisions and the adoption of new legislation on nationality — and how denationalisation powers have been expanded in these jurisdictions. The author's analysis also includes case law from both domestic and regional (namely the

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26 ibid 20.

27 ibid 28.

28 ibid 27.

29 ibid 51–2.

30 ibid 65.

31 The principles, as per art 4, are that '(1) everyone has the right to a nationality; (2) statelessness must be avoided; (3) no one may be arbitrarily deprived of his or her nationality; and (4) neither marriage nor the dissolution of marriage between a national of a state party and an alien, nor the change of nationality by one of the spouses during marriage, may automatically affect the nationality of the other spouse': ibid 99.

32 ibid 105.

33 ibid 107–8.

34 See especially Caia Vlieks, *Nationality and Statelessness in Europe: European Law on Preventing and Solving Statelessness* (Intersentia 2022) 163. See also Eva Ersbøll, 'The Right to a Nationality and the European Convention on Human Rights' in Stéphanie Lagoutte, Hans-Otto Sano and Peter Scharff Smith (eds), *Human Rights in Turmoil: Facing Threats, Consolidating Achievements* (Martinus Nijhoff 2007) 249, 269–70.

European Court of Human Rights) courts. The UK, Denmark and France have all expanded their denationalisation powers in light of increasing threats of global terrorism. However, as the author notes, these powers have been expanded beyond denationalisation as a counter-terrorism measure.[35] In Denmark, for instance, a person can be denationalised for 'all crimes deemed seriously prejudicial to the vital interests of state'.[36]

For this reason, it is particularly interesting that the author includes a case study that disrupts this trend: the United States, one of the key players in the global war on terror. The United States — unlike the other three states — does not permit the involuntary loss of nationality, with constitutional protections against denationalisation having been 'established by the US Supreme Court in the late 20th century'.[37] In this analysis of the United States, the author concludes that although 'international law starts with the recognition of states' sovereign power to control and thus deprive citizenship from [their] own nationals ... [t]he Fourteenth Amendment provides the opposite starting point for American citizenship.'[38]

Denationalisation powers in the US, as the author points out, are beyond the powers of all branches of government.[39] However, the author issues a word of caution, noting there are 'indications that the US has joined the 21st century "trend" of denationalisation in a more covert and illicit fashion'[40] through vague claims of fraud in the naturalisation procedures of certain persons. The situation in Nicaragua — where the constitution was amended to allow for denationalisation[41] — demonstrates that denationalisation can make a comeback, even in countries where nationality is a constitutionally protected right.

Chapter Twelve focuses on matters of sovereignty, exploring the 'intent-to relinquish doctrine' as developed by the Supreme Court of the United States ('SCOTUS').[42] This doctrine — introduced by the author in Chapter Eleven — creates 'an absolute constitutional protection of legally attained citizenship',[43] a unique feature among western states. This doctrine cements citizenship as a constitutionally protected right that cannot be lost without the consent of the individual.[44] The doctrine, as the author notes, was never fully explained and no clear theoretical underpinning was developed by the SCOTUS. Prener explains that this 'provides a unique context to discuss whether denationalisation is in fact within the power and sovereign authority of state'.[45] The findings from this chapter

35 Prener (n 10) 227.
36 ibid.
37 ibid 244.
38 ibid 268.
39 ibid. Involuntary loss of citizenship is only permissible in instances of 'fraud, concealment of material facts or wilful misrepresentation in the naturalisation process': at 268. *Natural born* United States ('US') citizens cannot lose their citizenship without their consent, ie, voluntary renunciation: at 268.
40 ibid.
41 *HRC Report 2023* (n 6) 15 [106].
42 Prener (n 10) 272.
43 ibid.
44 It should be stressed that the US is not the only country in the world with a constitutionally protected right to citizenship. For example, citizenship is also recognised as a constitutional right across many countries in Latin America. Some countries, like Ecuador, do not permit loss of citizenship by natural born citizens under any circumstance; even voluntary renunciation is not recognised by the Ecuadorian government: Gabriel Echeverría, *Report on Citizenship Law: Ecuador* (Country Report, No 2017/05, February 2017) 11.
45 ibid 273.

can inform discussions on whether denationalisation falls within the realm of state sovereignty in other contexts.

Prener concludes the book in Chapter Thirteen with some important reflections. He stresses that 'the most controversial development' is not the return of denationalisation 'but rather states' strenuous efforts to continuously lower and circumvent the safeguards put in place to mitigate the harm caused by denationalisation practices.'[46] Prener's analysis of the practices in the countries the book examines makes this growing trend evident and it is evident that these practices will likely be adopted by other countries. Perhaps the most troubling finding is that denationalisation has 'morphed into a sanction no longer reserved for criminal terrorist convicts or threats to the national security of the state'.[47] Further, the increasing use of the state's *vital interest* as the threshold for denationalisation is concerning, as it potentially opens the door for the use of denationalisation as a tool to quash dissent and silence opposition. This is already a reality in other contexts around the world, as the situation in Nicaragua unfortunately shows.

The book identifies another worrying trend that is on the rise. In Denmark and the UK, denationalisation was only employed in cases concerning persons with two or more nationalities who had committed crimes that posed a threat to national security. However, both countries have begun implementing

> creative circumventions of such limitations by applying their own definitions of statelessness — that go against well-established definitions in international law — effectively suggesting that insofar a person is able to acquire citizenship elsewhere, such an individual will not be rendered stateless by a denationalisation order.[48]

This also creates the issue, as the author points out, of differentiated treatment among nationals: between dual and mono-nationals and between *natural born* and *naturalised* nationals.[49]

Although the book has a specific focus on western liberal democracies, its findings are without a doubt relevant beyond this specific scope. It is on this point that I would like to raise one point of criticism of the book. In the same vein as the critique expressed by Louise Tiessen about a different book — which was also reviewed in this journal — this book primarily contributes to the 'debate on what denationalisation does to conceptions of Western citizenship'.[50] Perhaps there will be future opportunities for the author to share reflections and insights on this matter in a wider, more global perspective. The author leaves us with some important questions: '[w]here is and should citizenship be going? What role, if any, should citizenship play in the future of liberal democracy?'[51] These are questions of global significance that should be considered beyond the limited context of (Western) liberal democracies. Recent events have demonstrated that today's world is so interconnected that an incident in one corner of the world can have a massive impact across the planet.

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46 ibid 289.

47 ibid.

48 ibid 290.

49 ibid 292.

50 Louise Tiessen, '*When States Take Rights Back: Citizenship Revocation and Its Discontents*, Edited by Émilien Fargues, Elke Winter and Matthew J Gibney (Routledge, 2020) 140 Pages. Price £96.00 ISBN 9780367896454' (2021) 3(1) *Statelessness & Citizenship Review* 169, 174.

51 Prener (n 10) 302.

In sum, *Denationalisation and Its Discontents* is an important addition to ongoing debates on the weaponisation of citizenship and more broadly on the 'securitisation of migration and citizenship policies'.[52] The arguments presented by the author make a strong case that 'contemporary denationalisation powers are inherently disproportionate to their purpose'[53] and have no place in the world, especially in (so-called) liberal democracies. This book is a valuable resource for academic and non-academic audiences seeking a robust analysis of the practice of denationalisation and will undoubtedly become a go-to source of information on this important topic.

52 Rutger Birnie and Rainer Bauböck, 'Introduction: Expulsion and Citizenship in the 21st Century' (2020) 24(3) *Citizenship Studies* 265, 266.

53 Prener (n 10) 293.