Soldiers and Wayward Women: Gendered Citizenship, and Migration Policy in Argentina, Italy, and Spain since 1850

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Soldiers and Wayward Women: Gendered Citizenship, and Migration Policy in Argentina, Italy and Spain since 1850

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ABSTRACT Policies that regulate peoples international movement and their state membership have historically made distinctions based on perceived sexual differences, but little is known about the process by which this has happened. This paper explores how and with what consequences migration and nationality policies have been gendered in two quintessential countries of emigration (Italy and Spain), and in a country of immigrants (Argentina) over a 150-year period. I argue that these migration and nationality policies have reflected the dynamics of the political fields in which they have been crafted. Especially before the Great War, laws and official practices that showed a disproportionate interest in men as soldiers and workers, and in women as mothers and as morally suspect subjects mirrored a dynamic of competition over migrants among these countries. A subsequent harmonization of policies reflected a dynamic of accommodation to the realities of a settled emigrant population and dual nationality. In addition, the administrative mechanisms coupled with these laws have operated differently with respect to men and women. The consequences of these laws and mechanisms have persisted even when the letter of the law has ostensibly become gender neutral.

The classification of people into masculine and feminine categories—each with distinct roles, rights and responsibilities—has been a fundamental feature of citizenship since its inception. Weber (1927, p. 320ff.) observed that since antiquity state membership has been the prerogative of men wielding weapons and resources, their dependants deriving a quasi-insider status and limited benefits. Marshall’s study of British citizenship noted in passing that members’ rights have in some important respects been gendered (Shafir, 1998, p. 97). Pateman (1988, p. 7ff.) has argued that the contract of the French Revolution involved bonds among members of a brotherhood, not universal communal ties. It is not surprising that citizenship originated as a gendered institution since its architects drew on patriarchal social arrangements prevalent in households, shops and communities of their day (Tilly, 1996). Less obvious is precisely how and with what effects ties between individuals and particular nation-states have been fashioned in ways that varied by perceived sexual difference. From an analytical standpoint, it is advantageous to study these ties within, and at the intersection of, territorial borders because they have developed
concomitantly with a system of sovereign, yet interdependent, states (Zolberg, 1981), and under conditions of mass international migration. Consequently, this paper examines how, under what dynamics, and with what consequences three countries connected by substantial migration have built gendered ties to spatially mobile individuals since the mid-nineteenth century.

Drawing on an analysis of nationality, and migration laws as well as related administrative practices in Argentina, Italy and Spain, I argue that these very policies have been the mechanism through which state actors defined relations to people by perceived sexual differences and associated roles. Moreover, official gendered categories have mirrored dynamics of the political field in which states have struggled to affiliate or administratively enfold migrants. By political field I mean the set of relations linking state actors differently positioned to exercise legitimate control over mobile individuals. Especially before the Great War, laws and official practices reflected a dynamic of competition over the affiliation of migrants and their children, showing a disproportionate interest in men as soldiers and workers, and in women as mothers and morally suspect subjects. A subsequent harmonization of policies reflected a dynamic of accommodation to the realities of a settled emigrant population and dual nationality. Finally, membership and mobility policies have consistently had gendered consequences. The combined operation of applicable policies from all three countries has adversely affected women, and men of military service age. The opportunity and material costs historically borne by women of uncertain or changing nationality, and their descendants is difficult, if not impossible, to assess. More patent are negative effects that have in some instances persisted even when the letter of the law has become gender neutral.

In this paper, citizenship or nationality refer to a tie between an individual and a particular state that entails enforceable rights, and obligations (Tilly, 1996; Calhoun, 1997). It implies a distinction that allows people to be sorted into those who have privileged access to valued material and symbolic goods (citizens) and those who do not (foreigners). The complement of rights and obligations attached to citizenship has varied significantly across time and place, the British trajectory described by Marshall being one of several configurations (Mann, 1996) none of which followed a steady evolutionary course (Somers, 1994). Indeed, the mix of civil, political and social rights has varied significantly by gender across the countries examined in this study, augmented and diminished in a sometimes orderly and at other times erratic manner.

Formal state membership is admittedly a baseline of belonging, but is nonetheless important for several reasons. Methodologically, citizenship laws, related administrative practices and peoples’ engagement of policies can be examined across national and temporal contexts. As performative acts (Austin, 1975; Bourdieu, 1991, p. 227; Scott, 1998, p. 3), citizenship laws call into being a relationship they purport to describe or name, and represent emergent states’ claims in a struggle over how the social world was to be seen and carved up. Official categorizations constitute not only the law on the books, but have gradually become part of how people understand themselves in relation to particular nation-states. Most importantly, with the advent of a world system of sovereign nation-states, human rights have become linked to individuals’ state membership and absent these formal ties people “no longer belong to any community whatsoever” (Arendt, 1973, p. 295). Thus, while formal state membership does not exhaust citizenship, it is a crucial and consequential component.
As suggested earlier, perceived sexual difference has historically been a fundamental criterion to sort citizens. Gender allows state agents to classify citizens into masculine or feminine subcategories associated with particular roles. “Soldier” has been a role traditionally tagged onto the male category (Tilly, 1996), while “mother” and all it subsumes has been associated with persons classed as female. Its seemingly natural character and its ready availability as a way of organizing social life have given gender its power as a classificatory system (Verdery, 1994), and often hidden the inequities inherent to this parsing of a state’s population. While the secular trend has been towards greater equity among male and female citizens in laws, distinctions endure at the level of implementation, and this suggests the persistence of older categorizations and of a social structure that depends on women and men playing particular roles.

This paper comprises four main parts. The first briefly reviews historical and contemporary studies of gendered citizenship and migration policies. The second explains this study’s case selection, data and methods rationale as well as offering context for the argument. The third, empirical, portion reviews the unfolding of nationality and migration policy in Argentina, Italy and Spain since the 1850s and is subdivided according to the dynamics prevalent before and after the Great War. A final section examines three implications that flow from the argument outlined earlier. To anticipate, students of how state policies regulating membership and mobility are gendered should pay attention to: (a) the implementation of laws at different administrative levels in addition to the content of laws issued by central states; (b) the international face of citizenship and migration policies and hence their combined effects by gender; and, finally, (c) officially sanctioned gender categories, related roles and their effects on individuals and families.

Perspectives on Gender in Citizenship and Migration Policy

Scholars have examined the gendering of migration and citizenship policy in historical and contemporary perspective, each yielding critical analytic insights. Historical studies have drawn out the women’s dependence on their men’s citizenship and class status as well as the perverse effects of citizenship and migration policy (Bredbenner, 1998; Gardner, 2005; Hsu, 2000). These studies have been especially adept at showing how race and gender intersected as axes of selection and how they mattered in encounters between state agents and potential entrants and members (Nakano Glenn, 2002; C. Lee, 2003; E. Lee, 2003). From a contemporary standpoint, scholars have documented a number of modern-day instances in which citizenship and migration law violate presumed gender equity norms and situated these in the long view (e.g. Bhabha & Shutter, 1994; Kofman et al., 2000, p. 85ff; Stolcke, 1997). Other analysts have argued that gender distinctions have all but disappeared from contemporary nationality law in liberal democratic countries (Hansen & Weil, 2001). Migration policies are likewise commonly assumed to be gender neutral. By contrast, studies that focus both on the text and implementation of citizenship and migration law find distinctly gendered patterns (Hagan, 1994; Reepak, 1995; Singer & Gilbertson, 2003).

Missing from these accounts is an examination of citizenship and migration law over time and place, and that gives due attention to administrative implementation. A cross-national view allows analysts to treat migration and membership law as the variable product of relations among countries linked by migratory flows and not solely as the outcome of political processes in core receiving countries. It is useful to examine
migration and nationality policies in tandem because who leaves or enters a state’s territory conditions who remains or becomes a member (Aleinkingoff, 2001, p. 267; Brubaker, 1992, p. 29). This multi-state perspective also draws attention to the unanticipated and often negative consequences suffered by people subject to the joint application of policies from sending and receiving countries. A cross-temporal view underscores the enduring effects of migration and nationality policies even in an age when gender-based inequities have purportedly long disappeared from the text of liberal democratic law. The key contribution of this paper is to illustrate such an approach thereby uncovering the mechanisms and dynamics through which ties between states and mobile individuals have been gendered.

Case Selection, Data and Methods

The migratory network and political field constituted by Spain, Italy and Argentina is especially well-suited to an examination of how and under what circumstances nationality and migration policies have been made and gendered. These countries have been linked by substantial migration flows over a 150-year period. Indeed, relative to an initial population of 1.8 million at the time of its first census in 1869, Argentina received more European migrants by 1932 than any other country in the Americas, and was second only to the US in the absolute number of European arrivals (Germani, 1962, p. 198). More than two-thirds of these migrants were Italians and Spaniards. Another 1.8 million Italians and 2.7 million Spaniards migrated to the Americas between 1916 and 1975 with a substantial number going to Argentina (Rosoli, 1977; Vilar and Vilar 1999).

In addition, the movement of people between these countries happened concurrently with nation-state building and consolidation processes so that connections between states and nationals were sometimes made over great distances and/or involved individuals already identified as members by another state. All three states faced the challenge of constituting national populations, which in the mercantilist view of nineteenth-century state-makers would be better if large. Italy and Spain confronted the difficult task of administratively embracing as their own legions of their men and women who lived or spent a great deal of time abroad due to demographic and economic pressures at home, and the pull of emerging North and South American labor markets. Extremely underpopulated, Argentina faced the challenge of attracting workers and of extending citizenship to people already claimed as citizens by Spain and Italy, including many born on Argentine soil. Thus, relations between Argentina, Italy and Spain have often been characterized by competition to forge and/or maintain links with migrants and their children.

The policies that emerged as a result of these dynamics have been gendered in ways that affect migration and nationality even today when, in a reversal of historical trends, Argentines are claiming nationality in ancestral homeland states and/or retracing the steps of their European predecessors (Cook Martín, 2005a). Focusing on a migratory system and political field comprising three countries over the long run counters the tendency to take as normative the experience of core receiving states. It also calls attention to the common challenges and conflicting goals of countries in relatively symmetrical relations as they tried to embrace individuals as nationals.

What follows draws on an interpretive reading of citizenship, immigration and emigration laws, associated legislative debates, administrative regulations and reports,
period jurisprudence and secondary historical accounts. I have compiled similar records for each country and have tried to interpret them in a manner that does not assume the perspective of any one national actor. To attenuate the bias inherent in relying on state-generated documents, I have relied on the secondary historical literature that emphasizes migrants’ engagement of state policies, and on popular period literature.

Citizenship and Migration Policy Patterns Since the 1850s

Two dynamics have characterized the political field in which the laws and official practices examined here emerged: state competition to make nationals of people who flowed between Italy, Spain and Argentina; and accommodation to the challenges of dual state affiliation often through synchronization of policies pertaining to migrants and their children. If laws and official practices represent two fundamental ways in which states embrace individuals (Torpey, 2000; Noiriel, 1996), then it is important to point out that not all people have been grasped by states in the same manner. States have consistently made gender distinctions among the embraced and these have varied depending on the dynamics at work. Moreover, the administrative mechanisms used to implement state migration and especially nationality policies have been consistently gendered, often with long-lasting effects.

The intensity of the dynamics described above waxed and waned, but competition was typical of the nation-state building period before the Great War and accommodation of the inter- and postwar periods. Before 1919, migration and nationality policies reflected the challenges of constituting a national population in contexts of considerable emigration (Italy and Spain), and immigration (Argentina). Italian and Spanish policies aimed to regulate emigration, protect and maintain ties with emigrants and extend nationality to their children. These goals were at odds with those of Argentine policies that aspired to attract European workers, ease their naturalization and confer citizenship to their Argentine-born children. To achieve these ends, the three countries passed laws, crafted a supporting organizational infrastructure and developed official practices to process migrants and nationals. In each of these policy domains gender figured as an often unrecognized but crucial criterion for determining inclusion and access to valued resources.

Competition and the Emergence of Migration Policies Before 1919

In this section, I review the categorization of migrants in Spanish, Italian and Argentine law by asking who qualified as an immigrant or an emigrant, whose entry or exit was regulated, and how entry or exit was to be controlled. I show that “immigrant” and “emigrant” were primarily masculine categories, while women and children fell into a residual category of persons whose access to state-controlled material and symbolic goods depended on relationships to male heads of household. These categorizations are consistent with Argentina’s interest in men as workers, and in women and children as supporting members of family production units. They are also consistent with Italy and Spain’s interest in controlling the departure of men as would-be soldiers and taxpayers, and the three countries’ view of women as biological and social reproducers of the “nation”. Spain and Italy in particular worried that emigrant women could both detract from the nation’s numeric growth and sully its reputation by participating in the international white slave trade. These interests underlay the dynamic of competition over migrants and their children. Emigration and immigration policies were also gendered by the manner of regulation at different locations, and administrative levels.
Argentina’s Constitution of 1853 and 1876 Law of Immigration and Colonization combined to define desirable immigrants as European male heads of household in their productive years and of a particular class location and morality. Specifically, the Constitution charged the federal government with “fostering European immigration” (Article 25), and the 1876 Law profiled desirable immigrants as “honorable and hard working”, having skills or a trade, being under 60, and having “good moral character and aptitudes” (República Argentina, 1876). In addition, “immigrants” were individuals who arrived with 2nd- or 3rd-class fares, an indication of limited financial means. Moreover, by extending government assistance to immigrants’ “wives and children”, legislators revealed their conception of immigrants as male heads of working households and principal family bread-winners, a common nineteenth-century perspective (Hobsbawm, 1987, p.198).

These definitions and requirements put single and/or unaccompanied women—a growing proportion of migrants to Argentina during this period and of workers worldwide—at a distinct disadvantage for two reasons. First, because these women did not fall into the immigrant category as legally defined and understood, they were ineligible to receive housing, transportation and job placement services from the Argentine government (República Argentina, 1876). Second, even if they had contested these categorizations, women faced negative moral perceptions of female emigration. Indeed, women who migrated to Argentina alone had long been associated with prostitution and the white slave trade (Guy, 1991). This made it unlikely they would receive requisite certificates from sending and receiving state officials, at least not without considerable expense to circumvent bureaucratic barriers.

Argentine policymakers wanted to attract women, but as dependent members of a patriarchal household. Indeed, constitutional framers and lawmakers viewed women as central to the task of populating a deserted national territory and of reproducing the nation. Constitutional framer J.B. Alberdi (1915, p. 25) described women as “modest and powerful makers of...public and private customs, and citizens, makers of the states’ foundations, organizers of the family”, and an “army” that would assimilate newcomers. However, as in other countries, theirs was to be a contingent role.

On the sending end of the migration stream, emigration law defined emigrants by gender, intended destination and class. In Italy, the 1901 Law of Emigration in force during the period of massive Italian population outflows defined “emigrant” as someone whose destination was not Europe or an Italian possession and who purchased a 3rd-class fare (Regno d’Italia, 1901). By stressing the conscription status of potential migrants, the Law demonstrated that “emigrant” was an imminently male category. Similarly, the 1907 Spanish Emigration Law defined emigrants as Spaniards leaving the national territory with a 3rd-class fare to any point in the Americas, Asia or Oceania, and who had made provisions to meet military service obligations (Bayon Marine, 1975).

Spanish and Italian emigration laws specifically barred several categories of people from exit, but two attracted special attention from policymakers: prospective soldiers and women. In Italy, a series of ministerial circulars urged mayors and prefects to issue certificates of good conduct sparingly to men who had not yet fulfilled military service obligations (Ostuni, 2001; Manzotti, 1969). After passage of the 1888 Crispi Law, emigration would be free “save for such duties as the law imposes on citizens”, namely, military service for men between 18 and 32 years of age. It also restricted the emigration of married women. The 1901 Law of Emigration dedicated more ink to regulating the emigration of military aged men than to any other non-organizational matter. It implicitly derogated provisions of the Crispi Law that limited the emigration of women, but it had
special requirements concerning women between 15 and 18 suspected of traveling abroad to engage in prostitution. In 1919, the government approved the *Unified Text of the Law on Emigration* (Regno d’Italia, 1919) which also limited the types of jobs Italian women could do abroad.

Spain had regulated the departure of subjects during the colonial and early postcolonial period through a system of travel permits issued almost exclusively to males (Reino de España, 1930), but an 1853 Royal Circular Order (RCO) lifted the emigration ban to Spanish colonies and to Latin American Republics (Reino de España, 1905, p. 15). However, to receive the required passport, married women were to get permission from their husbands, and men between 18 and 23 to make a substantial deposit or provide a substitute for military service (Bayon Marine, 1975). Subsequent royal orders simultaneously proclaimed the freedom to emigrate and subjected men and women to increased regulation and bureaucratic discretion. This placed an especially heavy burden on women because they faced greater difficulties in securing the required papers (Reino de España, 1916, p. 506).

The *1907 Emigration Law* in effect during the height of Spanish migration to the Americas, and its 1924 successor, further institutionalized and refined the constraints on men subject to military service obligations and on women by incorporating previous restrictive provisions and integrating them with laws in other spheres such as the law on military enrollment. Organizationally, the Law was supported by the *Superior Council on Emigration* and local emigration committees and thus had the potential to more effectively regulate the emigration of women and draft-age men than its predecessors. The Law maintained the prohibition on unauthorized travel by unaccompanied and married women that its 1901 Italian counterpart had rescinded. Spanish emigration policy had regulated the emigration of women and potential soldiers consistently since 1853, and these controls remained unchanged in Spanish law well into the Franco era.

It is not surprising that emigration policies would show concern for the departure of prospective soldiers. Tilly (1990) has argued that in Europe between 1600 and 1800, states made wars and wars made states. Armed conflict required the ability to conscript and mobilize many soldiers. The Italian and Spanish states, however, faced a situation in which large numbers of draft-eligible men were leaving the national territory to avoid military service, a reasonable tactic given its length and peril (Cook Martín, 2005b). These men were also in their economic prime. In addition, the male children of emigrants, Italy and Spain’s future soldiers, were being claimed as nationals by receiving states.

The reason for emigration policies’ focus on women is not as readily apparent. From a material perspective, women were needed as workers in the absence of men. The dearth of men to cultivate lands and harvest crops in places like Galicia, Andalucía and Sicilia, for instance, raised appreciation of women laborers and thus their departure received greater scrutiny than in the past (Reino de España, 1905, p. 26; Reeder, 2003). In addition, the departure of women presaged a permanent population loss and this contradicted persistent mercantilist notions that measured Italy and Spain’s strength by their numbers (Reino de España, 1916, pp. 98, 100; Hansen, 1940, p. 8). Emigration officials reasoned that wives who remained in the homeland represented the only tangible link to migrants and a reasonable guarantee of return and remittances. On the other hand, if a wife joined her husband abroad, not only would a husband’s remittances and possibly allegiance be lost, but if he should naturalize, the entire household would take the nationality of its male head, with the consequent loss of members to the homeland state (Hernández Borge, 1998, p. 230).
From an ideological perspective, European officials shared a perception that emigration threatened women’s moral purity, and exceeded their capacities (Ostuni, 2001, p. 311). Moreover, these weak and wayward women called into question the homeland’s honor. Based on a nationwide survey of prefects and mayors commissioned by the Italian government, Leone Carpi (1874) recounted a “typical” story of Italian women who had left the security of the village to find themselves in dire economic straits and bad company that ultimately led to prostitution, syphilitic infection and incarceration. Several decades later, a Spanish official similarly worried about women’s capacity to resist the moral dangers of the journey abroad, their consequent degradation and implications for the homeland’s honor. Women’s “characteristic weakness, inferior instruction, and mental poverty . . . lead [them] to instinctually prostitute themselves [and] make it easy for traffickers to intervene” (Reino de España, 1916, p. 402). If men’s emigration was disastrous, but understandable—the official lamented—the departure of women was painful and a shame to the country (Reino de España, 1916, p. 462). Buenos Aires’ reputation as a center of trafficking in women (Guy, 1991) only bolstered such views among policymakers.

**Competition in Citizenship Law and Administrative Practice**

The claims, silences and contradictions of Spanish, Italian and Argentine nationality law suggest it emerged in a context of competition over geographically mobile men and women. Citizenship laws were admittedly not written solely with migrants in mind, but peoples’ anticipated and actual departure or arrival posed dilemmas and opportunities the resolution of which was critical to policymaking in the domain of state membership. In support of this point, the following paragraphs compare legal criteria for attributing nationality, mechanisms for its transmission, and provisions for its maintenance, loss and recovery. Since policy refers to laws and to associated official practices, the discussion also examines administrative mechanisms meant to embrace people as nationals and demonstrates that these operated differently with respect to some men and all women.

Like its European counterparts, Argentine nationality policy turned on the perception of men as natural candidates to state membership, and of women as subjects whose link to the state derived from relations to men. However, it consistently strove to maintain legal ties with Argentine men and women, and to create affiliations with foreign men. This reflects the broader state project of constituting a national population from European migrants.

A treaty concerning nationality signed with Spain in 1863 represented an early statement of the principles underlying state membership in these countries. From the Argentine perspective, the main criterion for attributing nationality was the principle of *jus soli* or right of territory. Children born on Argentine soil were considered legal members of the Argentine state. Spanish men could also become Argentine through a formal declaration. From the Spanish standpoint, the main principle for attributing nationality is *jus sanguinis* or right of descent. This meant that Spaniards and their descendants in Argentina were considered legal members of the Spanish state. It was precisely Argentine-born men that interested the Spanish state, the nationality of women being contingent on their civil and family status. The 1863 Treaty resolved competing claims by allowing Spanish men in Argentina at the time of independence (1810) to recover their “original nationality”, and by declaring that the children of Spaniards born in Argentina could be both Spanish and Argentine, depending on the jurisdiction of residence (Belgrano, 1942; Alvarez Rodriguez, 1990, p. 62ff).
The 1869 Argentine Citizenship Law drew and expanded on the principles set down in the 1863 treaty with Spain (Reino de España, 1907; República Argentina, 1860). Place of birth remained the main criterion for attributing legal citizenship, but it was also extended to the foreign-born children of Argentines. Newcomers could request a letter of citizenship after two years of residence in Argentina at no cost to the applicant and by simple petition before a federal magistrate with minimal documentation. An immigrant was also eligible for naturalization on marrying an Argentine woman, which was considered a service to the nation. New citizens would be exempt from military service during ten years following naturalization. Congressional debates show these favorable terms mirrored legislators’ belief that migrants wanted to avoid homeland states’ intrusive conscription and taxation practices, historically directed at men (República Argentina, 1866, 1874; Reino de España, 1907; Alberdi, 1915). These were the very migrants with which Spain and Italy still maintained a purportedly exclusive and enduring tie. In practice, naturalization procedures proved complicated and their navigation required considerable cultural, social and economic capital, and this had a disproportionate effect on women and poor men.

Jurisprudence developed to address the silences of the 1869 Citizenship Law favored the persistence of existing ties with citizen men, women and their children born abroad as well as the establishment of strong ties to immigrant men. Contrary to practice in other countries (Bredbenner, 1998, p. 195), Argentine women would not lose their nationality on marrying foreigners and consequently their children could opt for Argentine citizenship even if born abroad. Until the 1890s Argentine courts held that for civil matters, Argentine women would be co-nationals of their foreign husbands while conserving their Argentine citizenship. This legal artifice preserved a semblance of agreement with the internationally observed principle of the legal unity of the family, while maintaining intact ties to Argentine women and their children. Concerning foreign-born men naturalized in Argentina or Argentines who naturalized abroad, Argentine courts also held the virtual impossibility of losing citizenship.5

Another of the Law’s silences concerned the status of foreign-born women who married Argentines. In this instance, jurisprudence also favored the establishment of ties to newcomers. Julieta Lanteri’s successful 1911 appeal of a lower court’s ruling before the Argentine Supreme Court established the critical precedent (Rivarola, 1912; Carbone Oyarzun, 1928).6 Lanteri—an Italian immigrant brought up in Buenos Aires and among Argentina’s first female physicians—argued that there was no gender specification in the 1869 Citizenship Law or in the 1853 Constitution (Bellota, 2001). Further, because she had married an Argentine man, and the 1865 Italian Civil Code in force at the time stipulated that married women “followed” the nationality of their husbands, she would have had no formal state affiliation.

Gendered distinctions were also evident in how Spanish and Italian laws provided for the attribution, transmission, maintenance, loss and recovery of state membership. These laws reflected states’ efforts to formally define membership, and to anticipate competing claims made on their nationals by other states like Argentina. This suggests that nationality law emerged from a consideration of practical state-building interests, and was not solely or even primarily based on ethnic conceptions of membership.7

In contrast to the Argentine case, the tendency was to privilege ties with men, through whom descent was reckoned. The Italian and Spanish civil codes defined the principle ruling attribution of formal state membership as one of descent (jus sanguinis). The 1865 Italian Civil Code maintained that nationality was a matter of “race” and given that “the various races are transmitted through blood and do not depend on the circumstance of
birth” it was the parents, and in particular the father, who determined “almost genetically” the nationality of their children (Bussotti, 2002; Regno d’Italia, 1865).

Contradictory provisions made the transmission of nationality especially difficult for women. For example, although one article of the Spanish Civil Code stated that nationality could be attributed and transmitted by Spanish parents to their children regardless of birthplace, another maintained that a Spanish woman marrying a foreigner lost her nationality and assumed that of her husband. The combined effect of these two articles was that the only Spanish women who could pass on their nationality were those with children of unions not recognized by the state (Moreno Fuentes, 2001, p. 125).

Men and women could lose nationality for different reasons. Italian and Spanish men could do so by accepting employment with a foreign government or by serving in the armed forces of another state. For any Italian or Spaniard, acquiring another citizenship also meant the loss of homeland membership. Women could lose their citizenship in two other ways: by marrying a foreign national or, indirectly, as a result of the loss of nationality by the pater familias. In contrast to US and British law, Italian and Spanish jurisprudence explicitly rejected expatriation by marriage of women living in the national territory, which is not surprising given the substantial number of women living in Italy and Spain who would have lost their nationality because of emigrant spouses’ changing state membership. The “legal unity of the family” was the operative principle in loss of nationality through marriage. To maintain this unity, Spanish law subordinated Spanish women’s nationality to that of their husbands: “the wife follows the condition and nationality of her husband” (Reino de España, 1962). Italian law did the same, and a similar principle applied in most nationality laws of the time (Bredbenner, 1998, p. 19; Bhabha & Shutter, 1994, p. 24; Stolcke, 1997).

If intent on constituting national populations, why would Italian and Spanish policymakers cede nationals to maintain an abstract principle like family unity? Essentially, this principle mirrored the logic of patriarchal kinship structures in which wealth and status were circumscribed by reckoning descent through males. In this instance, it was the valued resources of the nation or family writ large that were enclosed through codifications of belonging (Calhoun, 1997, p. 37; Eley, 2000, p. 32; West, 1997, p. xvi). It is no accident that nationality law first appeared in civil codes that defined all manner of family connections and their implications for the possession and transmission of property and wealth. As a mercantilist calculus—one in which the status and strength of a nation is proportional to its population—privileging men’s nationality to preserve the legal unity of the family involved an acceptable trade-off. While Spanish or Italian emigrant women could be lost to the “nation” by marriage to foreigners, women could also be gained by marriage to Spanish and Italian men abroad. To the extent that access to and transmission of wealth and property were contingent on state membership, this meant that resources remained in the hands of nationals.

The implementation of this principle in nationality policy and its consequences were in tension with other liberal notions of state membership. Liberal political philosophy held that no person should lack a nationality (Castro y Casaleiz, 1900), but the combined effect of sending and receiving country policies was often to leave women with no formal state affiliation. Liberal legal thought also maintained that no person should have more than one nationality and yet the joint application of sending and receiving country policies often resulted in dual nationality for men. Finally, framers of nationality policies in Spain, Italy and Argentina asserted an individual’s right to naturalize and to be protected from losing nationality without a clear expression of will. Italian policy went so far as to require an express declaration transferring residence abroad, and after 1922 Spanish policy
required affected individuals to record the loss of nationality in a citizenship registry. When it came to women, however, jurists considered that marriage implied acceptance of all its consequences, including loss of original citizenship and acquisition of a husband’s nationality.

The maintenance of Italian and especially Spanish nationality often entailed administrative procedures that were particularly onerous for women and poor men. The 1889 Spanish Civil Code required that all emigrants register at the local consulate to maintain nationality (Reino de España, 1962). Consuls were urged to “provide probative documents to emigrants who arrive in foreign countries and who wish to conserve their nationality”. To receive this service, emigrants were required to produce certificates of nationality which cost money and required yearly renewal (Martinez Alcubilla, 1894, p. 42), and to record any changes in citizenship status with a national registry (Puente Egido, 1981). This generated a situation in which emigrant Spaniards with lower social and economic capital were unwittingly deprived of nationality through bureaucratic fiat. The legal and economic dependence of Spanish emigrant women on men compounded their plight with respect to maintaining and losing nationality.

Finally, recovery of Italian and Spanish nationality was also gendered in its provisions and implementation. In the Spanish case, it required a declaration before a Civil Registry official in Spain or, for the well-connected, a royal decree, depending on the cause of nationality loss (Alvarez Rodriguez, 1990, p. 57). Women were able to recover nationality if their husbands or parents did so. Dissolution of the marriage link through death or divorce also implied recovery of nationality for native Spanish women who had married foreigners. The 1865 Italian Code and 1912 Citizenship Law contained similar measures. In both countries, but particularly in Spain, the administrative burden fell more heavily on people with less social and economic capital and in particular on women who had always to contend with their legal dependence on men.

Synchronization of Citizenship and Migration Policies After the Great War

After the Great War, the letter of migration and nationality laws in Argentina, Italy and Spain remained largely unchanged despite significant political and economic transformations. However, especially during periods of authoritarian rule, policy was substantially altered by executive order and/or administrative decree, and continued to reflect distinctly gendered understandings of who could come, go and belong. Ironically, policy configurations developed during the liberal era made military-aged men and especially women more available to administration by authoritarian regimes of the interwar period. Also, while there were episodes of intense competition over migrants, the overall, long-term dynamic was one of accommodation to the reality of dual state affiliations that entailed a harmonization or synchronization of policies. By the turn of the twenty-first century, the letter of migration and nationality policies had become gender neutral, but gendered distinctions of the past continued to weigh on the present through administrative practices.

In Argentina, the 1876 Law of Immigration and Colonization remained in force until the passage of Law 22439 in 1981, and it was replaced by a new Law of Migrations in 2003. During the military and civilian governments of the 1930s, immigration law was substantively modified by administrative decree and/or official practice. Beginning in the early 1930s, military governments required more documents from would-be immigrants in an effort to limit ideologically and/or ethnically suspect arrivals (Senkman, 1991). To the
extent that migrant women participated in political movements that challenged the reigning patriarchal order (Moya, 2002), they also became subject to official sifting. New documentary requirements affected men and women differently because they were legally and morally situated asymmetrically relative to document-granting authorities.

The 1869 Law of Citizenship has also remained in force with some modification by subsequent laws. In the interwar period, the courts were especially active in filling some of its silences concerning the naturalization of foreign women marrying Argentines or the loss of nationality by Argentine women marrying foreign men. They ruled on extending state protection to the stateless wives of Argentines (Flournoy, 1929 and Hudson, p. 11), and confirmed that Argentine women would not lose their nationality on marrying a foreigner. A precedent had also been set for the granting of citizenship letters although this did not imply full political rights for women until 1947. In addition, jurisprudence in the 1930s and 1940s took great care to enforce the fulfillment of military obligations by naturalized men.

During Domingo Perón’s tenure (c. 1943–55), which coincided with the last major migration flows from Europe, policies aimed to attract “Mediterranean” workers with the skills to sustain the industrialization process envisioned in official economic plans and/or to populate areas of the interior that still had few inhabitants (Perón, 1947). Officials made every effort to select families headed by skilled workers. While the skills desired from immigrants in the 1940s were different from those envisioned by the framers of the 1876 Law, in both instances male heads of household were viewed as legal immigrants from whom women and children derived their legal status.

In Italy, the text of the 1901 Emigration and 1912 Citizenship Laws was remarkably resilient in the face of far-reaching political changes. During the fascist regime (1922–43), substantive changes to emigration and nationality policy reflected Benito Mussolini’s populationist views, particularly his declaration of a demographic war to position Italy as a world power (Bosworth, 1979; Ipsen, 1996, Quine, 1996). From a fascist standpoint, women were important subjects to control since they were the physical and cultural bearers of future Italians (Berezin, 1999). An instructive policy was one that promised pregnant Italian women abroad compensation for travel and medical costs if they returned to give birth in the homeland (Gini, 1930, p. 694; Salvemini, 1933; Glass, 1936). Thanks to laws and administrative practices instituted during the liberal period, the fascist regime had the organizational wherewithal to pursue this course of action as well as to control the departure of women.

Beginning in 1927, Mussolini changed important aspects of the 1901 emigration regime. A series of decrees and circulars went into effect between 1927 and the early 1930s that, while not derogating the 1901 Law, restricted emigration, especially by women, through organizational restructuring and careful control over the emission of passports and other travel documents (Cannistraro & Rosoli, 1979). On the nationality front, fascist policy aimed to strengthen the principle of family unity and at the same time foster the maximum extension of Italian citizenship (Bussotti, 2002, p. 160). The implication of this modification of the 1912 Citizenship Law by Royal Decree-Law (RDL) # 628 was that there would be greater control of married women’s nationality. It also discouraged extra-national marriages, and showed a more relaxed attitude towards men who in the past might have lost their nationality while abroad.

A central thrust of Mussolini’s emigration policy during this period was to prevent migrants or their children from acquiring a non-Italian nationality. Since interwar emigration from Italy to Argentina had been considerable, he requested as much from
Argentine diplomats at the 1927 Inter-Parliamentary Conference held in Rio de Janeiro. The Argentines invoked national sovereignty, and Mussolini retaliated by limiting Italian emigration to that country (Glass, 1936, p. 105). Mussolini’s posture concerning Italians who had adopted Argentine citizenship and the Argentine-born children of Italians led to very tense bilateral relations mainly because it did not recognize their right to travel with an Argentine passport and required military service of Italians’ children (Newton, 1992). In 1938, both countries resolved their differences and formally agreed that the Argentine-born children of Italians would render military service in one country or the other, a first step in synchronizing competing demands placed on dual nationals. However, it was not until 1971 that Italians could maintain their “nationality of origin” even if they adopted Argentine nationality.12 This became a moot point with the passage of a new, more expansive citizenship law in 1992.13

Early in the postwar Republican era, the de facto policy was to allow emigration on demand. With respect to citizenship, the Italian Constitution of 1947 qualified provisions from the 1912 Citizenship Law that were still in effect by declaring absolute parity of rights and duties between men and women (Bussotti, 2002, p. 215). Subsequent jurisprudence and citizenship law maintained independent citizenship for women as well as full civil and political rights. In one respect, however, past gender distinctions continued to weigh on current citizenship policy. While the 1992 citizenship law stated that a child of an Italian father or mother was a citizen by birth, subsequent jurisprudence and regulation maintain that this would be the case only for the children of Italian mothers born after 1948, when the Republican Constitution came into effect (News Italia Press, 2004; Guillen, 2005). Calderoni (2004, p. 167) has noted that in the case of two children born to an Italian mother, one in 1947 and the other in 1949, only the younger sibling would be entitled to Italian citizenship. Whatever the reason for the distinction, over the long run women and their descendants have suffered not only the disadvantages of being deemed contingent nationals during periods of gender inequality—with all this has implied for the transmission of wealth, for instance—but also the persisting effects of gender inequities even in ostensibly neutral laws.

In Spain, emigration policy did not change substantially until the mid-1950s. The 1924 Emigration Law updated its 1907 predecessor by taking into account new conscription measures (Bayon Marine, 1975), and international conventions on the trafficking of women (Limoncelli, 2006). It also tightened the language meant to protect emigrants from unscrupulous business practices. While these changes increased the administrative capacity to control young men and women’s emigration, they did not alter policy significantly. The freedom of exit enshrined in the 1931 Constitution of the Spanish Republic applied to all Spaniards (República Española 1931, Art. 31), but was short-lived.

Francisco Franco’s creation of the Spanish Emigration Institute and accompanying regulatory framework in 1956, on the other hand, was unprecedented as an effort to organize and regulate emigration so that the economy could reap maximum benefit from Spanish workers abroad and maintain ties with them (de Blas García, 1965). And yet, despite acceptance of emigration as an important element of Spain’s economic development plan, the departure of women, especially domestic workers, was frowned on by Franco (Hernández Borge, 1998). The 1956 reforms and subsequent laws continued to support the view of emigrants as males by deferring to other measures that constrained women’s exit. As late as 1971, a decree also made it difficult for women to obtain passports ostensibly as a way to protect women from victimization in the sex trade or in domestic service.
By contrast, Spanish nationality policy oscillated noticeably during the upheaval of the 1930s and in the years that followed. The 1931 Constitution of the Spanish Republic dismantled gender distinctions in state membership policy by establishing that nationality could be passed on to children in the same way by either parent, and that marriage could not result in automatic naturalization or loss of Spanish nationality (Alvarez Rodriguez, 1990). The legal unity of the family and hence women’s contingent nationality disappeared from the law. However, as the nationalist government gained ascendancy by 1938, it reinstated the Civil Code of 1889 as the main legal norm regulating nationality. Between 1954 and 1975, “family unity” once again ruled Spanish nationality law, although some provision was made to avoid leaving women without a state affiliation. It was not until a partial reform of the Civil Code in 1975 that Spanish women could keep their nationality when marrying a foreigner. The Constitution of 1978 established full equality among citizens, but Civil Code nationality and family law provisions were not brought into line with its principles until 1982. Administrative requirements that might have hindered the maintenance of nationality were also removed. Civil Code reforms in 1990 furthered and modified some of these provisions, and additional changes in 2002 made gender-neutral nationality provisions retroactive so that the descendants of Spanish men and women could make equal claims to ancestral nationality.

The longevity of gender inequity in Spanish citizenship policy and its persistence in the Italian case challenge relatively positive assessments of contemporary citizenship law and its neutrality (Hansen & Weil, 2001, p. 9). These rosy appraisals would perhaps be more circumstantial if they trained the analytic lens on different levels of policy implementation. The differential operation of policy at different administrative levels, and locations for men and women is perhaps the most stable feature of the account undertaken here. Although beyond the scope of this paper, it also suggests the possibility of inequities along other axes of social classification being similarly enduring in law and administrative practice.

Finally, in the immediate postwar period Spain and Argentina began the process of reconciling competing claims on men eligible for military service. A 1948 agreement between these countries used much the same language as the one signed earlier by Italy and Argentina to synchronize military service obligations. A full harmonization of Argentina and Spain’s nationality law, however, did not happen until the signing of a bilateral agreement in 1969. In an interesting turn of events, once military service obligations ceased to be a conflictive issue, Spain initiated a policy of recruiting soldiers for its professional army from among the descendants of Spaniards in Latin America, particularly Argentina (Frieyro de Lara, 2004).

Conclusions

I have argued that gender distinctions in Spanish, Italian and Argentine citizenship and migration policies have reflected a dynamic of competition over migrants and subsequently of accommodation to dual state affiliations. The gendering of these policies has been evident in the letter of the law, related official practices and administrative mechanisms to regulate migration and state membership. This has had adverse consequences especially for women in the past and for their descendants in the present. While policies have tended towards equality since World War II, in some instances gender distinctions persist in the administration of nationality law.

The findings of this paper have several key implications for students of gender, and state policies regulating migration and membership.
First, the level at which one fixes the investigative gaze profoundly affects conclusions about distinctions at work in official mobility and membership policies. This point has been exhaustively argued by geographers sensitive to politics and citizenship, and who stress the analytical importance of scale and place (Agnew, 2002; Desforges et al., 2005), but bears remembering. Cross-national comparisons may want to be attentive to gender differences at the regional and local levels of regulation and/or administrative implementation since it is well documented that most contemporary liberal democratic citizenship laws at the central state level use gender-neutral language (Hansen & Weil, 2001). In addition, because the same administrative requirements may have very different practical consequences for men and women depending on their social and cultural capital, uncovering these differences requires a depth of local empirical knowledge that may only be attainable through the collaborative efforts of analysts in different national contexts at various organizational levels. A similar point could be made about ethno-cultural distinctions that are purportedly disappearing from central state level laws (see Joppke, 2005), but continue to be effective at regional and local levels of administration (Cook Martín, 2005a).

Second, it is crucial to seriously ponder the international dimensions of state policies pertaining to mobile people, and thus to consider the combined effects of sending and receiving country laws and related administrative practices by gender. In a highly feminized migration flow like that originating in the Philippines, for instance, how are migrant men and women differentially affected by the joint application of elaborate sending state policies, and those of receiving states in North America, Europe and Asia? A similar question could be posed about the primarily male stream linking North Africa and Europe, although sending state policies are more tacit by comparison to the Filipino case. In short, a benefit of considering sending and receiving country perspectives is the potential to uncover gendered effects of otherwise neutral laws.

Finally, this paper suggests the need for greater sensitivity to officially sanctioned or assumed gender categories, related roles and their effects on individuals and kinship networks. Officially legitimated categories have been documented in a small number of studies on contemporary migration and nationality law. Luibhéid (2002) has examined the official presumption of normative heterosexuality, and the use of perceived sexual deviance as a criterion for exclusion from entry to or membership in the US until 1990. Knop (2001) has noted that to pass on citizenship to their children American fathers in unions with foreign women must meet a higher burden of proof than American mothers in similar unions. Indeed, a recent US Supreme Court ruling has maintained the constitutionality of this statutory distinction adducing the potential for a substantial number of citizenship claims linked to the presence of millions of American soldiers in other countries, most of them men (Supreme Court of the United States, 2001 p. 10). In effect, this is a way to insulate US citizenship from the potentially harmful effects of having a military global presence. The role of soldier, still viewed primarily as masculine, is protected from kinship obligations that could arise from services rendered to the state. Thus, studies that take gender categories as an object of analysis, rather than an unquestioned starting point offer a fuller account of migration and membership policies.

In conclusion, this paper underscores the centrality of gender as an analytic category in studies of state membership, and international migration. Gender is not a secondary theoretical issue, the study of which may be incorporated depending on observers’ preferences or academic fad. Just as it requires consideration of ethnicity and class, a full account of migration and nationality policies cannot but take gender into account as a
fundamental axis of categorization. To the extent that policymakers have conceived of the political community as a family writ large, gender has historically conditioned levels of access to familial resources as well as roles within it. It is not enough, however, to maintain that citizenship and migration policies have been gendered. A detailed account of how this happens broadens understandings about the bases of formal inclusion in and exclusion from the polity, and their enduring effects.

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Notes

1 My use of “field” draws broadly from Bourdieu & Wacquant (1992, pp. 14ff., 94ff.). Field is a spatial metaphor the analytical power of which has been productively underscored by geographers and others (e.g. Desforges et al., 2005; Rasmussen & Brown, 2005). The metaphor draws attention to relations that span different places, and to the different levels or scales at which these operate.

2 Following common English practice, I use citizenship and nationality interchangeably primarily in the sense of the German staatsangehorigkeit and not to imply ethno-cultural membership, although people may interpret formal state membership as a prerogative of ethnic insiders (Seton Watson, 1977, p. 4; Brubaker, 1992, p. 50).

3 For a general review of the migration and gender literature, see Moch (2005). For a review of this literature that pays special attention to state institutions, see Calavita (2004).

4 Argentine immigration law did not explicitly ban the entry of specific ethnic categories of people like its Brazilian (Lesser, 1999, p. 9) or US counterparts (Lee, Catherine 2003a), but positively selected desired migrants by recruiting and subsidizing migration from Europe. Implicitly, this discriminated against prospective migrants from neighboring countries or from non-European regions, but not in the same over sense that the Chinese were barred from the US, Brazil or Mexico. Argentine political elites were, of course, steeped in racist thinking (Morner, 1967, p. 108; Solberg, 1970, p. 18), and some migrants were excluded on the basis of origins; however, national or ethnic origins were primarily used as indicators of ideologically threatening positions like socialism and anarchism which questioned the established order and especially the labor process. Interestingly, Japanese migration to Argentina began in earnest after the Great War when eugenicist thinking was in its heyday.

5 Revista de Jurisprudencia Argentina (RJA), 1918.

6 RJA, 1918, p.145.

7 This is supported by the debates of jurists and legislators in Italy (Bussotti, 2002) and Spain (Castro y Casaleiz, 1900). See also Alvarez Rodriguez (1990) on emulation of other country’s nationality laws. Hansen & Weil (2001, p. 3) make a similar argument about modern day nationality law; specifically, that massive postwar migration and the “need” to integrate a large number of third-country nationals have driven nationality law reform.

8 By laws 16081, 20835, 24533 and 24951.


11 RDL # 1997 of December 1, 1934.33

12 Convenio de Nacionalidad signed in Buenos Aires on 29 October 1971 and ratified by Law 282 of 1973 (Italy) and Law 20558 of 1974 (Argentina).


14 Law 14 of 1975.

15 Law 36 of October 8, 2002 (BOE No. 242).
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16 Convenio sobre Servicio Militar signed in Buenos Aires on 18 October 1948.
17 Convenio de Nacionalidad signed in Madrid on 14 April 1969.

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