Chapter 2

Ties that Bind: Views of Nationality, Citizenship, Ethnicity and Identity

For almost a quarter century he was the conscience of Germany, and that this conscience resided on Swiss soil, in a republic and in a city that is a kind of polis, is surely no mere coincidence. He was born for the ways of a democratic republic, and he took the greatest of pleasure in human exchange that was conducted in that spirit. Nothing, in any case, pleased him so much in recent years as the conferring on him of Swiss citizenship. He used to say that for the first time he could be in agreement with a state. That was no rejection of Germany. He knew that citizenship and nationality did not need to coincide – for he was and remained a German – but he knew too that citizenship was not merely a formality either.

Hannah Arendt, public memorial service for Karl Jaspers, Universität Basel, 4 March 1969

A. DEFINING NATIONALITY AND CITIZENSHIP

The terms nationality and citizenship are perhaps so often confused precisely because they are so closely connected. O’Leary warns that “their present legal significance

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and content are of recent origin and are closely linked to a series of historical and political developments which have varied from place to place.\(^2\) The words are often used interchangeably, depending on the language in which a text is written, an author’s concept of the underlying relationship or status being described, and the legal system within which a particular commentator works.

Aside from their historical significance, Arendt’s words are cited here as an illustration of popular usage of the terms nationality and citizenship which does not accord with their usage in international law.\(^3\) Arendt uses the term “citizenship” to characterise Jaspers’ connection to the Swiss state, and the term “nationality” to point to his ethnic German background and subjective identity. For the purposes of international law, the connection that links individuals to a particular state is labelled a link of “nationality”, notwithstanding a particular individual’s ethnic background or origin, or identity. The word “citizenship” on the other hand should not strictly be used to denote that an individual belongs to a state for the purposes of international law, but that an individual possesses particular rights under a state’s municipal law. In this case, Jaspers had become, by virtue of his naturalisation in the City and Canton of Basle (Basel), a Swiss national for the purposes of international law, and a Swiss citizen for the purposes of Swiss law. Because Germany withdrew its nationality from Jaspers as a consequence of his naturalisation in Switzerland (in any case, Swiss law at the time required applicants for naturalisation to undertake to renounce any previous nationality), Jaspers ceased to be both a German national and a German citizen, while remaining German in ethnic terms.

Some authors writing on subjects related to international law use the word citizenship to denote the conceptual and practical status or relationship which has traditionally been labelled nationality.\(^4\) In terms of municipal and international law, such usage is imprecise, and it behoves us to maintain a theoretical distinction because the practical legal consequences of these statuses can still be distinguished.\(^5\) This is true


\(^3\) The author in no way wishes to maintain or imply that her use of the terms is incorrect, simply that their use is not the same in international law.

\(^4\) The reader is cautioned to take care when referring to texts cited herein, as authors may define these terms differently and in competing ways.

\(^5\) In her comprehensive work on nationality in international law, Donner chooses to use the terms synonymously, stating that “nationality confers membership of the community, also called political status”. Ruth Donner, *The regulation of nationality in international law*, 2nd ed. (Irvington-on-Hudson (USA): Transnational Publishers Inc., 1994), xv. O’Leary specifies that the tie of nationality reflects a relationship between the state and an individual, whereas citizenship is a specific status. O’Leary, *The evolving concept of community citizenship – from the*