

THE INVENTION OF
THE PASSPORT

Surveillance, Citizenship and the State

John Torpey

University of California, Irvine



CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge CB2 2RU, UK <http://www.cup.cam.ac.uk>
40 West 20th Street, New York, NY 10011-4211, USA <http://www.cup.org>
10 Stamford Road, Oakleigh, Melbourne 3166, Australia
Ruiz de Alarcón 13, 28014, Madrid, Spain

© John Torpey 2000

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2000

Printed in China by Colorcraft

Typeset in New Baskerville 10/12 pt

A catalogue record for this book is available from the British Library

National Library of Australia Cataloguing in Publication data

Torpey, John C.

The invention of the passport: surveillance, citizenship and the state.

Bibliography.

Includes index.

ISBN 0 521 63249 8 (hbk).

ISBN 0 521 63493 8 (pbk).

1. Passports – Europe – History – 19th century. 2. Passports – History.

3. Passports – France – History – 18th century. 4. Citizenship –

History. I. Title. (Series: Cambridge studies in law and society).

323.67

Library of Congress Cataloguing in Publication data

Torpey, John C.

The invention of the passport: surveillance, citizenship, and the state

John Torpey.

p. cm.

Includes bibliographical references and index.

ISBN 0-521-63249-8 (hardback: alk. paper). — ISBN 0-521-63493-8 (pbk.: alk. paper)

1. Passports—United States. 2. Freedom of movement—

United States. 3. Passports—Europe, Western. 4. Freedom of

movement—Europe, Western. I. Title.

K3273.T67 1999

99-33083

342'.082—dc21

ISBN 0 521 63249 8 hardback

ISBN 0 521 63493 8 paperback

CONTENTS

<i>Acknowledgments</i>	ix
Introduction	1
1 Coming and Going: On the State Monopolization of the Legitimate “Means of Movement”	4
Monopolizing the legitimate means of movement	6
Modern states: “penetrating” or “embracing”?	10
Getting a grip: institutionalizing the nation-state	14
The prevalence of passport controls in absolutist Europe	18
2 “Argus of the <i>Patrie</i> ”: The Passport Question in the French Revolution	21
The passport problem at the end of the Old Regime	21
The flight of the King and the revolutionary renewal of passport controls	25
The Constitution of 1791 and the elimination of passport controls	29
The debate over passport controls of early 1792	32
A detailed examination of the new passport law	36
Passports and freedom of movement under the Convention	44
Passport concerns of the Directory	51
3 Sweeping Out Augeas’s Stable: The Nineteenth-Century Trend Toward Freedom of Movement	57
From the emancipation of the peasantry to the end of the Napoleonic era	58
Prussian backwardness? A comparative look at the situation in the United Kingdom	66
Freedom of movement and citizenship in early nineteenth-century Germany	71
Toward the relaxation of passport controls in the German lands	75
The decriminalization of travel in the North German Confederation	81
Broader significance of the 1867 law	88

CONTENTS

4	Toward the “Crustacean Type of Nation”: The Proliferation of Identification Documents From the Late Nineteenth Century to the First World War	93
	Passport controls and state development in the United States	93
	Paper walls: Passports and Chinese exclusion	96
	The “nationalization” of immigration restriction in the United States	101
	Sovereignty and dependence: The Italian passport law of 1901	103
	The spread of identification documents for foreigners in France	105
	The resurrection of passport controls in late nineteenth-century Germany	108
	The First World War and the “temporary” reimposition of passport controls	111
	“Temporary” passport controls become permanent	116
	The United States and the end of the <i>laissez faire</i> era in migration	117
5	From National to Postnational? Passports and Constraints on Movement from the Interwar to the Postwar Era	122
	The emergence of the international refugee regime in the early interwar period	124
	Passports, identity papers, and the Nazi persecution of the Jews	131
	Loosening up: Passport controls and regional integration in postwar Europe	143
	Conclusion: A Typology of “Papers”	158
	International passports	159
	Internal passports	164
	Identity cards	165
	<i>Notes</i>	168
	<i>References</i>	191
	<i>Index</i>	203

INTRODUCTION

In an obscure paragraph of a package of immigration reforms adopted in 1996, the United States government committed itself to developing “an automated system to track the entry and exit of all non-citizens, thus providing a way of identifying immigrants who stay longer than their visas allow.” At the time that the legislation was supposed to be put into effect, however, some in the government came to regard this measure as likely to cause undue complications for millions of border-crossers, and the implementation of the law was postponed for two and a half years. The postponement was also deemed advisable in part because the Immigration and Naturalization Service, the agency mandated to design the system, was far from having amassed the technology “to process information estimated to be so vast that in one year it would exceed all the data in the Library of Congress.”¹ Clearly, this program would be an enormous and unprecedented undertaking.

This book examines some of the background to such efforts to identify and track the movements of foreigners. The study concentrates on the historical development of passport controls as a way of illuminating the institutionalization of the idea of the “nation-state” as a prospectively homogeneous ethnocultural unit, a project that necessarily entailed efforts to regulate people’s movements. Yet because nation-states are both territorial and membership organizations, they must erect and sustain boundaries between nationals and non-nationals both at their physical borders and among people within those borders.² Boundaries between persons that are rooted in the legal category of nationality can only be maintained, it turns out, by documents indicating a person’s nationality, for there simply is no other way to know this fact about someone. Accordingly, a study that began by asking how the contemporary passport regime had developed and how states used documents to control movement ineluctably widened to include other types of documents related to inclusion and exclusion in the citizen body, and to admission and refusal of entry into specific territories.

I argue that, in the course of the past few centuries, states have successfully usurped from rival claimants such as churches and private enterprises the “monopoly of the legitimate means of movement” – that

is, their development as states has depended on effectively distinguishing between citizens/subjects and possible interlopers, and regulating the movements of each. This process of “monopolization” is associated with the fact that states must develop the capacity to “embrace” their own citizens in order to extract from them the resources they need to reproduce themselves over time. States’ ability to “embrace” their own subjects and to make distinctions between nationals and non-nationals, and to track the movements of persons in order to sustain the boundary between these two groups (whether at the border or not), has depended to a considerable extent on the creation of documents that make the relevant differences knowable and thus enforceable. Passports, as well as identification cards of various kinds, have been central to these processes, although documentary controls on movement and identification have been more or less stringently developed and enforced in different countries at various times.

This study focuses on the vicissitudes of documentary controls on movement in Western Europe and the United States from the time of the French Revolution until the relatively recent past. I begin with the French Revolution because of its canonical status as the “birth of the nation-state.” Yet the transformation of states inaugurated by the French Revolution turns out to have had much more to do with the gradual process of inclusion of broad social strata in the political order than with the construction of an ethnically “pure” French population, although I examine efforts along these lines as well. The shift toward broader incorporation of the populace in political decision-making is reflected in the controversies chronicled in Chapter 2, where I recount how the French revolutionaries publicly debated the issue of passport controls on movement for the first time in European history. Because I was intrigued by the question of who supported and who opposed documentary controls on movement in various contexts and why they did so, I have discussed subsequent debates over these matters in other countries wherever I have been able to find source materials. The narrative addresses the legal history of passport controls in these countries until shortly after the Second World War. I have said relatively little about the postwar period, mainly because others have analyzed the process of European unification and its attendant relaxation of documentary restrictions on movement in greater detail than I could hope to do.³ Instead, I have said only enough about the postwar era to indicate some doubts about whether we have entered into a period of “post-national membership,” as some commentators have recently suggested.⁴

The geographical frame of the study derives from my belief that the dominance of Western states in the period examined has been relatively clear-cut, and that the imposition of Western ways on most of the rest of

the world has been one of the most remarkable features of the era. Here I am only echoing what I take to be common wisdom about the rise and dominance of the West during the modern age. This should not be taken to imply any denigration of non-Western cultures, but only the recognition that those societies have not been sufficiently powerful to impose their ways upon the world. Indeed, I would be delighted if this study were to stimulate studies of systems of documentary controls on movement and identity in other parts of the world and in other periods.⁵ For now, however, it seems worthwhile to begin to make sense of the processes that spawned the world-girdling system of passport controls on international movement that arose from the gradual strengthening of state apparatuses in Europe and the United States during the past two centuries or so.

Because the passport system arose out of the relatively inchoate international system that existed during the nineteenth century, I have not undertaken strong, systematic comparisons of one country versus another. I argue that the emergence of passport and related controls on movement is an essential aspect of the “state-ness” of states, and it therefore seemed to be putting the cart before the horse to presume to compare states as if they were “hard,” “really-existing” entities of a type that were more nearly approximated after the First World War. Moreover, what is remarkable about the contemporary system of passport controls is that it bears witness to a cooperating “international society” as well as to an overarching set of norms and prescriptions to which individual states must respond.⁶ This does not mean, as some seem to think, that there is no such thing as “sovereignty,” but only that this is a *claim* states make in an environment not of their own making. To paraphrase Marx, states make their own policy, “but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly found, given, and transmitted” from the *outside*.

The following study seeks to demonstrate that passports and other documentary controls on movement and identification have been essential to states’ monopolization of the legitimate means of movement since the French Revolution, and that this process of monopolization has been a central feature of their development *as* states during that period. The project has been motivated in considerable part by the uneasy feeling that much sociological writing about states is insupportably abstract, failing to tell us how states actually constitute and maintain themselves as ongoing concerns. By focusing not on the grand flourishes of state-building but on what Foucault somewhere described as the “humble modalities” of power, I hope to contribute to a more adequate understanding of the capacity that states have amassed to intrude into our lives over the last two centuries.