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Who are the citizens of Europe?

Current citizenship laws in the European Union vary dramatically. The tension between freedom of movement and national self-determination of citizenship within the EU has the potential to create serious conflicts in the future, writes Rainer Bauböck. Taking European citizenship seriously means a shared understanding of who the future citizens of Europe are to be.

Union citizenship and free movement within the European space

There is a rumour that in late 1991, during the final negotiations of the Treaty of Maastricht, the Spanish Prime Minister Felipe González convinced the other heads of government to introduce citizenship of the European Union. González is said to have pointed out that the ambitious goals of economic and monetary union could only be sold to voters if these could see themselves as citizens of Europe.

As a public relations exercise, European citizenship has been a dismal failure. Not only did the Danes initially reject the Maastricht Treaty in a referendum, but thirteen years later the attempt to consolidate political integration through a Constitutional Treaty was rejected by the French and Dutch. It seems that Felipe González got it wrong: most citizens *in* Europe are not eager to become citizens *of* Europe and regard with suspicion any demand to shift their political allegiance and identities from the national to the supranational level. European policy-makers are quite aware of this. In the 1997 Amsterdam Treaty they affirmed that "citizenship of the Union shall complement and not replace national citizenship" and that "the Union shall respect the national identities of its member states". European law therefore does not recognize any authority of the Union in determining its own citizens. Instead, Union citizenship is simply derived from member state citizenship.

Democratic citizenship is meant to empower citizens to hold rulers accountable. In this respect, Union citizenship hardly satisfies democratic aspirations. Its most important right is the franchise to the European Parliament, but this parliament is not a sovereign legislative body. The true value of being a citizen of the Union lies not in rights one has towards the institutions of the Union, but in rights towards the other member states. Union citizenship extensively prohibits national governments from discriminating against the citizens of other EU states. The really powerful impact of Union citizenship lies thus in its contribution towards creating a common space of free movement in which citizens do not lose their rights when crossing internal borders. When twelve governments decided in 2004 against opening their labour markets to the citizens of the new member states, and when Austria, Germany, and Denmark decided in May 2006 to fully retain these restrictions,

this was a very serious breach of a core principle of European citizenship.

The present construction of Union citizenship combines thus two main features. It is derived from member state citizenship and it gives free access to the other member states. What the drafters of the European Treaties had not been aware of is that there is an inherent tension between these two aspects. Here are four illustrations:

In the 1990s Italy started to offer its citizenship to large numbers of persons of Italian ancestry living in South America without requiring them to first take up residence in Italy. Many Argentinians and Brazilians who then discovered their Italian roots were, however, more interested in a European passport than in Italian citizenship, and they used it for migrating to Spain, England, or even to the United States. Italy is, by the way, not the only state providing extraterritorial access to Union citizenship. Seven of the old member states and all new ones permit their emigrants to transfer their citizenship by descent from generation to generation without any residence requirements in the country of origin.

In 2004 the European Court of Justice upheld the claim of Man Levette Chen, a Chinese mother, to residence in Britain. Ms. Chen had lived in England without a proper residence permit. When she was pregnant with her second child, she went to Belfast to deliver there, because the law of the Republic of Ireland then extended automatic citizenship by birth to anybody born anywhere on the island, including Northern Ireland. Chen's daughter thus became an Irish and European citizen and the mother had a right to stay in England as the primary caregiver of a European Union citizen. In the Irish Republic, a referendum subsequently led to abolishing automatic citizenship by birth in the territory. The electorate had become afraid of "birth tourism" by third-country nationals.

The current regime does not, however, merely create a possibility for "European passport shopping" in those states that offer easier access; it also generates inequality and exclusion. Think of a Turkish family whose members settle in different European states. A brother who immigrates to Belgium can be naturalized there after three years of residence. As a European citizen, he can then join his sister in Austria and will be able to vote in European and local elections there immediately after arrival. His sister, however, who has lived all the time in an Austrian town, will remain excluded from democratic participation. She has to wait for ten years before she can apply for naturalization in Austria.

The tension between freedom of movement and national self-determination of citizenship also shows in the paradox that mobility within Europe may become an obstacle for access to European citizenship. Migrants who move frequently between different countries of the Union may never have a chance to become citizens of the Union, since nearly all states require a certain period of continuous residence in their territory as a condition for naturalization.

There are different ways of responding to these problems. A radical solution would be to turn the relation between supranational and national citizenship upside down, so that the former determines the latter. This would transform the Union into a federation similar to Germany or the US. The Union would have its own law for acquisition of European citizenship by birth and naturalization and every Union citizen who settles in one of the member states would automatically become a citizen of that country with rights to vote not merely in

local and European elections, but also in national ones. There is hardly any political support among European citizens and governments for building such a federation.

The alternative seems to be to hope for a spontaneous convergence of citizenship policies from below. Many national reforms have moved in similar directions over the past decades, but it would be rather optimistic to believe that member states are willing to change their laws in order to avoid burdening other states with immigration problems or in order to secure roughly equal conditions for access to citizenship across Europe.

Liberalization and backlash

Let us then look at the empirical evidence provided by a recently published comprehensive study of the rules for acquisition and loss of citizenship in the EU-15 states.¹ One remarkable change during recent decades is the pace of change itself. Citizenship laws used to be fairly stable. They were rarely at the top of the political agenda and were not often overturned when opposition parties came into government. Citizenship was also seen to be closely connected with lasting historical traditions of state-building and national identity. In 1992 the American sociologist Rogers Brubaker explained the different attitudes of Germany and France towards immigration with their conceptions of nationhood that were based on ethnic descent or republican consent, respectively. However, in 1999 Germany adopted a new law that introduced *ius soli* by giving citizenship at birth to any child born in the German territory to a parent with eight years of legal residence. This provision is formally more inclusive than French law, which gives automatic citizenship at birth only to children whose parents were born in France and optional citizenship upon reaching adulthood to those born in France with parents who were born abroad.

Today citizenship has moved to the foreground of domestic political debates in many countries and has become a volatile policy area where a change in government is likely to trigger legislative reform. After the German breakthrough, major liberal reforms have occurred in Belgium in 2000, in Luxembourg and Sweden in 2001, in Finland in 2003, and in Portugal in 2006. These liberalizations have strengthened *ius soli*, have reduced residence and other requirements for naturalization, or have permitted applicants to retain a previous nationality.

The Portuguese reform passed in February 2006 is a particularly interesting showcase. All Mediterranean EU states have adopted citizenship laws that are fairly exclusive towards other newly arrived groups but generous for emigrants and for those immigrants who are regarded as linguistic or ethnic relatives. This attitude can be partly explained by a history of nation building shaped by massive emigrations. As in western and northern European countries that had pursued guest-worker policies in the 1960s and 1970s, immigrants who do not fit into the cultural conception of national identity have not been regarded as future citizens. The new Portuguese law, however, introduces automatic citizenship at birth for the third generation, in other words, for children whose parents were born in Portugal, and acquisition by simple declaration for the second generation if one parent has legally resided in Portugal for five years. It creates an entitlement to naturalization for first-generation immigrants if they can speak Portuguese and have a clean criminal record. Naturalization no longer requires sufficient income or other proofs of integration. Finally, by reducing the general residence requirement to six years, the new law abolishes

a former privilege of Lusophone citizens by extending it to all immigrants.

Soon after being sworn in, the Italian government headed by Romano Prodi has also announced a far-reaching reform of Italian citizenship. Greek citizenship policies are among the most restrictive in Europe and seem unlikely to change. It remains to be seen whether the Spanish government, which has promoted integrative legislation for immigrants in other areas, will eventually follow the Portuguese and Italian examples. In the "old immigration" countries of western, northern, and central Europe, waiting periods for naturalization vary from between three and four years (Belgium and Ireland) to ten years (Austria). The trend towards toleration of dual nationality is not without exceptions and reversals. Five states (Austria, Denmark, Germany, the Netherlands, and Luxembourg) still require that a previous nationality must be renounced in naturalizations, although many exceptions are made in Germany and the Netherlands, and Luxembourg is considering abolishing this condition. In Germany, the Red-Green coalition failed in 1999 in its attempt to include dual citizenship in its reform of naturalization. Germany now has a peculiar and probably unsustainable regime with three different categories. Those who have inherited dual citizenship from parents of different nationality can keep it forever. Those who have acquired it through birth in Germany from foreign parents must by the age of 23 choose one of their citizenships. And those who want to naturalize can retain their prior citizenship only if their state of origin refuses to release them or makes renunciation difficult, which has the illogical effect of rewarding illiberal citizenship policies, especially in Arab countries of origin.

The most pronounced liberal trend concerns the introduction of *ius soli*. Traditionally, nearly all continental European citizenship laws have been exclusively based on *ius sanguinis*, that is, on citizenship inherited from parents. In countries of immigration, a pure *ius sanguinis* regime means that second and third generations of immigrant descent will grow up as foreign nationals in their country of birth and may even be deported to their ancestors' country of origin. Today, the majority of the EU-15 states combine *ius sanguinis* with conditional rights to citizenship derived from birth on the territory. Unlike the pre-2005 law in Ireland, *ius soli* is nowhere unconditional. Most often, one parent must have been a legal resident for a certain time or must himself or herself have been born in the country. In some cases, citizenship acquired by *ius soli* cannot be claimed at birth but only later.

Whether *ius soli* is the most adequate principle for countries of immigration is an interesting question. On the one hand, birth in a particular territory may be the result of biographical accident or, as in the Chen case, of a strategic choice that does not reflect a genuine tie to the country concerned. On the other hand, *ius soli* does not include the so-called "generation 1.5", in other words, children born abroad who immigrate together with their parents or follow them at an early age. Should one not complement *ius soli* and *ius sanguinis* with a right to citizenship in the country where a person has actually grown up? A good example is Sweden, where the parents of minors who have lived in the country for five years must simply notify the authorities if they want their children to become Swedish citizens.

Deviating from the past trend towards liberalization, we find a number of countries, such as Austria, Denmark, and Greece, where restrictive citizenship laws have been retained or have been made harsher despite growing numbers of settled immigrants. The Netherlands is the most dramatic example of a turnabout of a previously liberal naturalization policy. These divergent trends

of liberalization and restriction in Europe have little to do with the size and composition of immigrant populations and much more with political party systems and the impact of populist anti-immigrant agitation on mainstream politics.

Especially interesting is a new trend to add citizenship tests to the already widespread requirement of learning the dominant language. Such tests have recently been introduced in Austria, Denmark, Germany, Greece, the Netherlands, and the United Kingdom. They include questions about the country's history, constitution, and everyday culture. There is a danger that difficult tests will make it harder for immigrants without secondary or university education to become citizens. While language skills are certainly useful for social and political integration, the usefulness of the often far-fetched questions asked in citizenship tests is much less obvious.

This new approach to naturalization need not signal a return to an exclusionary ethnic conception of citizenship. Instead, it indicates a shift in public philosophies of integration. Governments in countries with established immigrant communities are worried about "ethnic enclaves" (Britain), "*communautarisme*" (France), or "parallel societies" (Germany). And these worries are today strongly associated with immigrants of Muslim origin. Perceived dangers range from structural unemployment and segregated urban poverty to clashes of cultural values, urban riots, and terrorist violence. The new naturalization policies emphasize integration as a precondition for access to citizenship and they define integration as an individual effort and achievement rather than as a structural condition of equal rights and opportunities. Citizenship is no longer attached to ethnic identity and descent, but neither is it accepted as an individual entitlement and a tool for integrating societies of heterogeneous origin. Instead, citizenship becomes a reward for those who do not pose a threat to the wider society because they have sufficient income, can communicate in the dominant language, identify with the history of their host society, and subscribe to its public values. The question that remains unanswered is why denying citizenship to long-term immigrants who fail to meet these criteria should diminish the presumed threats. Isn't it more likely that frustration and alienation will become stronger when a socially marginalized group remains excluded from political membership and representation?

These questions about the proper interpretation of integration will, however, be inevitably brushed aside when access to citizenship becomes defined as a matter of state security in a similar way as irregular migration and asylum have now been "securitized". In the fight against globalized terrorism, governments are considering how they could deprive suspects of their citizenship in order to make them deportable. Dual citizenship used to be a major asset for migrants with strong ties to sending and receiving countries. Now it may become a trap for some of them. If their citizenship in the country of residence is revoked, the country of second citizenship will be obliged to take them back.

Citizenship conflicts in the new member states

The panorama of citizenship is quite different in the new member states that joined in May 2004. In contrast with nearly all EU-15 countries, none of the new ones have existed as independent states within their present borders since the beginning of the twentieth century. Hungary and Poland experienced dramatic changes of their borders after World War I and World War II, respectively; Cyprus and Malta gained independence in the 1960s; the three

Baltic states were restored after the end of annexation by the Soviet Union in 1991; and Slovenia, the Czech Republic, and Slovakia were newly established as independent states when the socialist federations fell apart in 1991 and 1992.

These dramatic breaks of state continuity raised a problem that is largely unknown or forgotten in the older countries: who should be included and excluded when determining the country's initial citizenship population? In Latvia and Estonia, the restoration of citizenship from 1940 meant that large numbers of Russians who had settled in the country during Soviet annexation were suddenly turned stateless and had to apply for naturalization under conditions that made it very difficult for them to acquire citizenship. Likewise, in Slovenia, bureaucratic obstacles for the acquisition of citizenship by persons originating from other Yugoslav republics created at least 18 000 "erased", who were transferred from the registry of permanent residents to that of foreigners.

Another specific problem in the new member states are transborder relations between "kin states" and external populations that are regarded as part of a larger cultural nation. These external minorities have more often emerged from borders moving across people than from people moving across borders. Calls for external protection of minorities by kin states have reinvigorated historic fears in those countries where such minorities live. Since 2001, Hungary, Slovenia, and Slovakia have introduced so-called status laws, which create a quasi-citizenship status for external minorities that are regarded as belonging to a larger cultural nation. In December 2004, a referendum for introducing dual citizenship for up to 3 million ethnic Hungarians in Romania, Slovakia, and Serbia was defeated because of low turnout. If it had won, this initiative would not merely have exacerbated international tensions but could also have led to external voting rights and a permanent majority for nationalist parties in Hungarian elections.

A need for common European standards

What we can learn from this brief survey of citizenship policies in the European Union is that these are increasingly contested in domestic politics and may become a source of conflict between member states. Spontaneous convergence towards liberal norms is no longer a plausible expectation. Fourteen years after formally creating a citizenship of the Union, it is time that European policy-makers take the initiative of introducing common European standards for the citizenship laws of the member states. This does not require imposing a single European citizenship law. The process might start with an open method of coordination and could result in an authority of EU law to regulate those aspects of national legislation that violate principles of European solidarity or amount to arbitrary discrimination and exclusion of third-country nationals. Taking European citizenship seriously calls for shared understanding about who the future citizens of Europe are to be.

¹ Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (eds.) *Acquisition and Loss of Nationality. Policies and Trends in 15 European States*. 2 volumes, Amsterdam University Press, September 2006. Data and additional analyses are available at: www.imiscoe.org/natac.

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