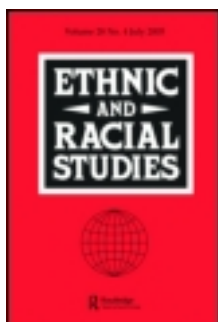


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## External citizenship in EU countries

Costica Dumbrava

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Citizenship laws often contain provisions regarding preferential acquisition of citizenship by certain categories of foreigners, such as provisions that allow for the possibility to acquire citizenship without the obligation to reside in the country. The practice of external acquisition of citizenship poses important challenges to the modern paradigmatic view of territorially bounded citizenship. This article surveys the legal rules allowing for external acquisition of citizenship in EU countries, and examines three justifications for such rules, namely, the principles of just restitution of citizenship, democratic continuity and national solidarity. The article argues that the principle of just restitution of citizenship offers the strongest, albeit partial, contextual justification for external acquisition of citizenship.

**Keywords:** external citizenship; external voting; restitution of citizenship; democratic continuity; nationalism; EU countries

### Introduction

Citizenship laws often contain provisions regarding preferential acquisition of citizenship<sup>1</sup> by certain categories of foreigners. These provisions are based on various grounds, such as the existence of family bonds between foreigners and citizens, the special status of vulnerability of certain foreigners, the special contribution of certain foreigners to the state, or the existence of ethno-national ties between groups of foreigners and the state. Such foreigners could be granted citizenship through faster, less cumbersome or less discretionary procedures. One of the most important kinds of facilitation in this respect is the possibility to acquire citizenship without the obligation to reside in the country. The practice of external acquisition of citizenship poses important challenges to the modern paradigmatic view of territorially bounded citizenship. The challenge is even greater when privileges regarding external acquisition of citizenship are combined with comprehensive entitlements to external voting<sup>2</sup>.

The issue of external acquisition of citizenship can be approached from the broader perspective of transnational citizenship. This perspective deals with 'changing and increasingly overlapping boundaries of membership in political communities' (Bauböck 2003, 703) mainly in relation to international migration. Although transnational citizenship has been associated with the development of post-national forms of membership (Soysal 1994) or with the increasing de-territorialization of the state (Basch, Schiller, and Blanc 1994), the proliferation of extra-territorial citizenship does not indicate the dismissal of the territorial state or of national citizenship (Collyer 2013). Despite the development of pervasive human rights norms, states continue to enjoy wide discretion with regard to granting citizenship status and citizenship rights. Rather than merely reacting to global

markets or to transnational social networks, states play a major role in transnationalism through pursuing policies that institutionalize ties with people beyond borders (Barry 2006; Gamlen 2006).

The literature on transnational citizenship is mainly concerned with international migration. But external citizenship occurs also in contexts where, although people stay put, international borders move across people (Bauböck 2007a, 2438). For example, after the fall of the Iron Curtain, most post-communist countries from Central and Eastern Europe (CEE) reaffirmed their national character and pledged to protect co-ethnics living outside borders. Among other nationalizing measures, they adopted special provisions for preferential (re)acquisition of citizenship by co-ethnics living in neighbouring countries (Iordachi 2004; Kovács, Körtvélyesi, and Pogonyi 2010; Žilović 2012). Due to restrictive naturalization rules and to, admittedly, low numbers of immigrants, the preferential acquisition of citizenship for co-ethnics has been the most important channel of acquisition of citizenship in the region. It is estimated that the pool of potential external citizens in CEE countries amounts to about 20% of the total population or roughly 28 million people (Kovács, Körtvélyesi, and Pogonyi 2010, 8).

In this article, I first survey citizenship rules of EU countries that allow for external acquisition of citizenship and then I discuss several justifications for such rules. I also provide an overview of entitlements to external voting in EU countries in order to underline the political significance of external acquisition of citizenship. The comparative analysis of citizenship regulations uses data provided primarily by the EUDO Observatory on Citizenship (2012a) of the European University Institute.<sup>3</sup> Data on legal provisions regarding external voting were taken from several existing comparative studies (Collyer and Vathi 2007; Ellis et al. 2007; Collyer 2013). The empirical scope of the comparative framework is limited to twenty-eight EU countries for two main reasons. First, this is due to constraints related to access to reliable data. Second, the EU region includes a relatively large number of states that, despite a general commitment to constitutional-democratic principles, maintain distinct citizenship policies, according to different legal traditions and particular socio-demographic and political contexts. In this perspective, a cross-European survey of citizenship regulations allows us to test established theoretical dichotomies, such as the ‘gulf between conception of citizenship in East and West’ (Liebich 2010, 3).

Through exploring normative justifications for external citizenship that are sensitive to but not strictly confined to particular contexts, this article attempts to bridge two perspectives on external citizenship. On the one hand, emigrant citizenship is often explained in terms of pragmatic strategies employed by ‘emigrant states’ (Gamlen 2006) in order to tap emigrants’ resources. On the other hand, co-ethnic citizenship is typically understood as driven primarily by ethno-nationalist ideology (Brubaker 1996a). In Europe, this dichotomy tends to follow closely the division between Western and Eastern models of citizenship (Liebich 2010). However, initiatives of emigrant and co-ethnic citizenship are sometimes driven by comparable goals and sustained through similar strategies. According to Joppke (2003), the extension of entitlements to external citizenship to emigrants in Western Europe is part of a broader trend of re-ethnicization of citizenship. Appeals to nationalist ideology are not limited to cases of co-ethnic citizenship. Emigrant states also engage in processes of transnational nation building, for example by depicting

emigrants as 'heroic citizens contributing to the national project by undertaking the great sacrifice of living abroad' (Barry 2006, 34).

The premise of this study is that legal provisions allowing for external acquisition of citizenship pose important normative challenges to common understandings of citizenship as political membership. Although it also surveys entitlements to external voting across EU countries, the article is primarily concerned with the empirics and normative aspects of external acquisition of citizenship. In this respect, it deviates from mainstream approaches to political transnationalism that focus on transnational political rights and external participation. The main question here is whether particular categories of non-residents should be granted citizenship in the first place.

The discussion starts from the difficulty to identify criteria of admission to citizenship that are independent of residence. Citizenship is often described as a special link between individuals and the state. According to the famous judgement of the International Court of Justice in the *Nottebohm Case*, citizenship (nationality) is 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties' (1955, 23). In this view, a person who had lived only briefly in a country and who failed to develop social ties in that country could not be considered to have a genuine link to the country. The difficulty, of course, consists of spelling out what a genuine link actually means and how a criterion of membership based on genuine link would apply in various contexts.

In response to increased immigration into Western countries, many have argued for the extension of rules of *ius soli* and for easier conditions of naturalization for long-term residents. In this context, residence and the expectation of future residence in a country is interpreted as a major indicator of a genuine link between individuals and the state. Political theorists also take residence in the country as a key criterion for applying normative principles of inclusion, such as subjection to law, social membership and stakeholder citizenship. According to Robert Dahl's (1989, 120) principle of democratic inclusion, democracies should include 'all adults subject to the binding collective decisions of the association', except transients and the mentally defective. Although it can be argued that subjection to binding decisions is not strictly bounded by territorial borders (Owen 2010) or that the very existence of coercive borders generates duties of justification towards outsiders (Abizadeh 2008), 'it is hard to see their [non-residents'] subjection as equivalent to that of residents' (Honohan 2011, 548). Joseph Carens (2010) argued that long-term residents have a strong moral claim of inclusion even if they entered the country illegally. Similarly, Ruth Rubio-Marín (2000) made the case for the automatic naturalization of immigrants after a certain period of residence due to the fact that they have developed social ties in the country. In line with his principle of stakeholder citizenship, Bauböck (2007a) argues that admission to membership should be based on three main factors: dependency on the community for the protection of basic rights; subjection to the political authority for a significant period of time; and a declared interest in membership. In this view, 'objective biographical circumstances, such as birth in the territory, present or prior residence, having a citizen parent, or being married to a citizen' constitute 'indicators for a presumptive interest in membership' (Bauböck 2007a, 2421).

Proponents of democratic principles of membership have generally rejected non-residents' claims of (full) inclusion. For example, debating about external voting,

López-Guerra (2005, 217) argued that democracy is not compatible with external franchise. Rubio-Marín (2006, 129) rejected the democratic inclusion of non-residents in virtue of the fact that they are not ‘directly and comprehensively affected by the decisions and policies that their participation would help to bring about.’ She contended that first-generation emigrants could retain citizenship status for instrumental and identity-related reasons. According to Bauböck (2009, 483), external citizenship should be seen as a ‘privilege’ granted by countries of origin in view of past subjection and of the likelihood that emigrants return to the country. Although Bauböck accepted the right of first-generation emigrants to transfer citizenship to their children, he argued that descendants of emigrants should not be entitled to external voting.

In the second part of this article, I look into arguments for external acquisition of citizenship that do not rely on reinterpretations of democratic principles of membership, such as subjection to law, social membership or stakeholder citizenship. I examine three alternative justifications derived from claims about: (1) just restitution; (2) democratic continuity; and (3) national solidarity.

### **Rules of external acquisition of citizenship in EU countries**

There are two major modes of acquisition of citizenship: (1) acquisition of citizenship at birth through descent from citizens (*ius sanguinis*) or through birth in the country (*ius soli*); and (2) acquisition of citizenship after birth through various procedures of naturalization. Rules of birthright citizenship based on descent constitute the major source of external citizenship because they de-link citizenship status from territory. Despite the strong connection between naturalization and residence, certain special procedures of naturalization allow applicants to acquire citizenship without obliging them to establish residence in the country. In this first part of the article, I identify rules of citizenship that allow for the external acquisition of citizenship in EU countries. In order to grasp the political significance of such rules, I also survey entitlements to voting rights enjoyed by non-resident citizens.

### ***External birthright citizenship in EU countries***

The vast majority of people in the world acquire citizenship at birth. Moreover, the rule of *ius sanguinis* is the most widespread contemporary rule of acquisition of citizenship by birth. All EU countries have provisions of *ius sanguinis*. Fourteen EU countries provide for unqualified rules of *ius sanguinis*, meaning that children of citizens receive citizenship automatically from their parents regardless of their place of birth. These countries are Bulgaria, the Czech Republic, Estonia, France, Greece, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia and Spain (see Table 1). The other countries apply the rule of *ius sanguinis* in a qualified manner. In Austria, Denmark, Finland, Malta and Sweden children born abroad and out of wedlock to a citizen father and a non-citizen mother do not acquire citizenship automatically. In several countries, children born abroad to either one or two citizen parents are granted citizenship only if they are registered with the competent state authorities. Whereas in Croatia, Cyprus, Latvia, Portugal and Slovenia this rule applies to all children born abroad, in Belgium, Germany and Ireland the registration of children born abroad is required only starting from the

Table 1. External birthright citizenship in EU countries

Country	Ius sanguinis abroad	Loss of citizenship
Austria	Automatic	
Belgium	Automatic	
	Declaration (second generation)	
Bulgaria	Automatic	
Croatia	Automatic	
	Registration (one non-citizen parent)	
Cyprus	Automatic	Residence abroad
	Registration	
Czech Republic	Automatic	
Denmark	Automatic	
Estonia	Automatic	
Finland	Automatic	Lack of genuine link
France	Automatic	Residence abroad
Germany	Automatic	
	Registration (second generation)	
Greece	Automatic	
Hungary	Automatic	
Ireland	Automatic	Residence abroad
Italy	Automatic	
Latvia	Automatic	
	Registration (one non-citizen parent)	
Lithuania	Automatic	
Luxembourg	Automatic	
Malta	Automatic	
	Scope limitation (one generation)	
Netherlands	Automatic	Residence abroad
Poland	Automatic	
	Declaration	
Portugal	Automatic	
	Registration	
Romania	Automatic	
Slovakia	Automatic	
Slovenia	Automatic	
	Declaration (one non-citizen parent)	
Spain	Automatic	Residence abroad
Sweden	Automatic	Lack of genuine link
UK	Automatic	
	Registration (second generation)	

second generation. Only in Malta and the UK is the transmission of citizenship through *ius sanguinis* abroad effectively limited to one generation. Maltese law does not provide for facilitated acquisition of citizenship for children born abroad to citizens by descent – persons who had acquired citizenship through *ius sanguinis* abroad. In the UK, children of citizens by descent could be registered if their parents reside in the country for at least three years. Although generational limitations to *ius sanguinis* exist also in Belgium, Germany and Ireland, these limitations can be easily overcome by way of formal registration.

There are certain legal rules regarding loss of citizenship that generate indirect limitations to the transmission of citizenship abroad. Several EU countries, for example, provide for the retention of citizenship acquired via *ius sanguinis* abroad only if the person shows proof of a genuine link with the state when he or she reaches a certain age. In Denmark, Finland, Sweden and Spain, citizenship lapses if the person was born abroad and has never resided in the country, unless he or she requests to retain citizenship before reaching the age twenty-two. In all these cases, states maintain full discretion in assessing the requests for the retention of citizenship. Several EU countries also provide for loss of citizenship after a certain period of residence abroad. In Cyprus, Ireland and Malta, however, only naturalized citizens may lose citizenship after seven years of residence abroad. In France, citizenship may be withdrawn from citizens born abroad who have never resided in the country and who have never registered to vote in French elections if their parents had resided abroad for at least fifty years. In the Netherlands, dual citizens residing in a non-EU country for more than ten years lose citizenship, unless they are in the service of the country, take up residence in the country for at least one year or apply for identity documents.

### *External naturalization in EU countries*

In this section, I analyse legal provisions of special naturalization that allow applicants to acquire citizenship without establishing residence in the country. I focus on two categories of persons: (1) former citizens and descendants; and (2) ethno-national relatives or people who are regarded as sharing ethnic or national ties with the state.<sup>4</sup> These categories of special foreigners may enjoy various exceptions and privileges in the process of naturalization. I address here only the privilege of external acquisition of citizenship.

It is common that countries offer facilitated access to citizenship to former citizens. In fourteen EU countries certain categories of former citizens and descendants can (re)acquire citizenship without establishing residence in the country (see [Table 2](#)). Several countries use these provisions in order to undo historical wrongs. Austrian law, for example, provides for facilitated reacquisition of citizenship by survivors of the Holocaust and by political emigrants of the Third Reich. Germany facilitates the reacquisition of citizenship by former nationals persecuted during the Nazi rule. Greek and Spanish laws provide for facilitated reacquisition of citizenship by refugees of their civil wars. Spain also adopted special provisions for restoring citizenship to descendants of Sephardic Jews who were expelled from the country in the late fifteenth century. Citizenship laws of post-communist countries, such as Bulgaria, the Czech Republic, Hungary, Poland and Romania, provide for the restoration of citizenship to persons who were deprived of citizenship by the communist regimes.

In several cases, the restitution of citizenship status has played a crucial role in the determination of the citizenry of new or restored states. Following the declaration of independence, the Baltic states of Estonia, Latvia and Lithuania restored citizenship to persons who were citizens of their republics before the Soviet incorporation. Whereas in post-independence Lithuania most of the permanent residents were granted citizenship (Kūris 2010), in Latvia and Estonia, citizenship was granted only to persons who held the citizenship of the pre-Soviet states, thus



Table 2. External naturalization in EU countries

Country	Target groups
Austria	Political emigrants
Belgium	–
Bulgaria	Persons deprived of citizenship; Bulgarians by origin
Croatia	Persons of Croatian ethnicity; emigrants and descendants
Cyprus	–
Czech Republic	Persons deprived of citizenship; former citizens of Czechoslovakia who failed to acquire Slovak or Czech citizenship
Denmark	–
Estonia	Estonian citizens before 16 June 1940 and descendants
Finland	–
France	–
Germany	Former citizens and descendants; co-ethnics from Polish Silesia
Greece	Political emigrants and descendants; former citizens and persons of Greek origin
Hungary	Persons deprived of citizenship; former citizens and descendants
Ireland	Former citizens by birth
Italy	Persons of Italian descent
Latvia	Latvian citizens before 1940 and descendants
Lithuania	Former citizens and descendants; persons of Lithuanian descent
Luxembourg	Former citizens of origin
Malta	–
Netherlands	–
Poland	Persons deprived of citizenship
Portugal	Descendants of former citizens; members of communities of Portuguese abroad
Romania	Former citizens stripped of citizenship against their will and descendants
Slovakia	–
Slovenia	Persons of Slovenian descent; persons belonging to Slovene minorities in neighbouring states
Spain	Former citizens by origin
Sweden	–
UK	–

creating a great number of non-citizen residents, many of them stateless (Järve and Poleshchuk 2010; Krūma 2010).

Several countries use citizenship rules in order to counteract the effects of territorial changes. Romania has a policy of restoration of citizenship to former citizens who were stripped of Romanian citizenship against their will or for reasons beyond their control (Iordachi 2009). Despite the fact that the restoration of citizenship concerns all former citizens irrespective of their ethnicity, the provisions can be interpreted as a nationalist attempt to recreate the citizenry of Greater Romania – the pre-war Romanian state that included the provinces of Bessarabia and Northern Bukovina that were annexed by the Soviet Union in 1940 (Iordachi 2009, 177). Similarly, Hungary allows for the reacquisition of citizenship by former citizens and descendants, regardless of their place of residence. An Italian ministerial circular of 1991 allowed for the restoration of citizenship to descendants of Italian



emigrants, provided their ancestors did not renounce voluntarily Italian citizenship. This led to an odd situation in which ‘even a person who can prove descent from an Italian who emigrated before the unification of Italy in 1861 is entitled to Italian nationality, provided that the Italian ancestor was alive at the time of the unification’ (Margiotta and Vonk 2010, 8).

In Greece, Ireland, Italy and Luxembourg, the provisions regarding the reacquisition of citizenship apply without a generational stopping point. In Croatia, Lithuania, Portugal, Romania and Spain, descendants of citizens up to three generations can benefit from the entitlement to the restoration of citizenship. Several countries distinguish between different categories of former citizens (and descendants) according to their ethno-national origin. In Greece, Italy, Ireland, Lithuania, Luxembourg, Slovenia and Spain, the preferential access to external citizenship is reserved for former citizens who had been citizens ‘by birth’ or ‘by origin’. Greece grants preferential citizenship to former citizens of Greek ethnicity. Irish law provides that former citizens who were citizens by birth and have renounced Irish citizenship could reacquire Irish citizenship by declaration. The Spanish Historical Memory Act of 2007 provides for the restoration of citizenship only to persons who are descendants of Spanish exiles ‘by origin’.

Several EU countries, including Denmark, Germany and France, offer privileged access to citizenship to (resident) persons from specific regions or who possess certain cultural or linguistic competences. Countries like Germany, Greece and Poland adopted special repatriation policies for certain groups of former citizens or co-ethnics. In certain cases, ethnicity provides the primary grounds for preferential acquisition of citizenship that is not conditioned by residence in the country. The Bulgarian Constitution (1991) provides that Bulgarians ‘of origin’ can acquire citizenship through a facilitated procedure. The Bulgarian citizenship law defines a person ‘of Bulgarian origin’ as a person ‘whose ascendants (or at least one of these) are Bulgarian’ (2010, 11). When assessing the ‘Bulgarian-ness’ of candidates to preferential naturalization, authorities take into account whether the persons descend from citizens, speak Bulgarian as their mother tongue, or belong to Bulgarian churches or Bulgarian cultural associations. According to Smilov (2010, 21), the primary aim of these provisions is to ‘restore the Bulgarian Exarchate through some modern surrogate, which would institutionalise links with the ethnic Bulgarians abroad.’

Greek citizenship law distinguishes between persons of Greek Orthodox descent and other persons. The law grants descendants of Greek citizens and ethnic Greeks automatic or preferential access to citizenship, with the possibility to (re)acquire citizenship from abroad. If descent from a Greek citizen or origin from a particular ‘Greek’ territory cannot be proven, applicants should demonstrate their Greek national consciousness (Christopoulos 2010). When establishing if a person has Greek national consciousness, authorities pay particular attention to whether the person speaks Greek, respects national traditions and, most importantly, whether he or she is orthodox Christian.

Cases of external acquisition of citizenship based on ethnic origin can also be found in Croatia, Germany, Italy, Lithuania, Luxembourg, Portugal and Slovenia. Croatia grants preferential citizenship to ethnic Croats from neighbouring countries, including to Croats living in Bosnia-Herzegovina who make up one of the three constituent people of that country (Ragazzi and Štiks 2010, 13). Germany has long

granted preferential citizenship to co-ethnics from post-war Eastern Europe who fled persecution, but access to citizenship was preconditioned by repatriation (Hailbronner 2010). After the Cold War, however, Germany offered preferential external citizenship to co-ethnics from Polish Silesia (Kovács and Tóth 2009, 163). Italian law provides for the acquisition of citizenship by simple declaration by ethnic Italians who reside in the territories assigned to the former Yugoslavia after the 1947 treaty. Lithuania offers facilitated access to citizenship to persons of Lithuanian origin. According to Luxembourg law, persons born in the Grand Duchy before 1 January 1920 and their descendants can reacquire citizenship through a facilitated procedure, regardless of their place of residence. Portugal offers privileged access to citizenship to persons with Portuguese ancestry or members of Portuguese communities abroad. Finally, Slovenia grants special admission to citizenship to persons of Slovenian descent and to persons belonging to Slovene minorities in neighbouring countries.

### *External voting in EU countries*

The number of countries that allow non-resident citizens to vote from abroad has increased remarkably in the last decades. According to the report of the International Institute for Democracy and Electoral Assistance, in 2007, 115 countries and territories in the world had provisions regarding external voting (Ellis et al. 2007).

All EU countries except Cyprus have legal provisions allowing non-residents to cast votes from abroad in one or more types of elections. Greece is also an exceptional case because, despite a constitutional provision in this respect, external voting is not implemented. In Denmark, Ireland, Malta, Sweden and the UK, only certain categories of non-residents enjoy entitlements to external voting. In Denmark, access to external voting is limited to temporary absentees, although this category has been gradually expanded to include all employees of the state abroad on official business, employees of Danish firms, international organization, students and so on (Grace 2007, 43). In Ireland, external voting is limited to members of diplomatic corps and the army. Maltese law provides for entitlements to external voting only to temporary absentees. Swedish law grants access to external voting only to citizens who were at some point resident in the country. In the UK, the entitlement to external voting is conditioned by the period of time spent abroad, which cannot be longer than fifteen years. Until recently, German citizens living abroad could vote in German elections only if they had resided in Germany for three consecutive months at any time in their lives. In 2012, the German Constitutional Court ruled that this condition violated the constitutional principle of the universality of the vote (EUDO Observatory on Citizenship 2012b).

Combining the two surveys on external acquisition of citizenship and on external voting, we arrive at an overall picture of external citizenship in EU countries. As Table 3 shows, the great majority of EU countries allow for both external acquisition of citizenship and external voting. The question that arises is how these rules and practices of external citizenship fit with common understandings of citizenship as membership in a territorial political community.

Table 3. External acquisition of citizenship and external voting in EU countries

	Extensive external voting	Restricted external voting	No external voting
Extensive external birthright and naturalization	Bulgaria, Croatia, Czech Republic, Estonia, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia, Spain	Ireland	Greece
(Mainly) extensive external birthright	Austria, Belgium, France, Netherlands, Poland, Slovakia		
Restricted external birthright and/or naturalization	Finland	Denmark, Malta, Sweden, UK	Cyprus

**Mapping justifications for external citizenship**

Democratic principles of membership cannot easily justify the inclusion of non-residents. In this second part of the article, I discuss three arguments for external acquisition of citizenship that do not rely directly on democratic principles, such as subjection to law, social membership or stakeholder citizenship. According to the first argument, claims of external acquisition of citizenship derive from special duties towards people who had been deprived of membership in the past. The second argument defends external citizenship as a means to ensure democratic continuity across generations. Finally, according to the third argument, external citizenship is a legitimate way to discharge special duties towards co-nationals.

***Just restitution***

States often grant preferential access to citizenship to individuals who were wrongfully deprived of their status in the past. For example, post-authoritarian states restore citizenship to persons who lost citizenship on arbitrary grounds. Despite the relative simplicity of arguments about just restitution of membership, rules of restoration of citizenship are often contested. Should, for example, ex-citizens or subjects of former empires or colonial states be granted citizenship in the post-imperial states? According to Rogers Smith (2011, 13, emphasis omitted), membership is owed to ‘all persons whose identities have been pervasively constituted, even if not wholly determined by democracy’s coercively enforced governmental measures.’ Smith refers explicitly to cases of extensive colonial governance, insisting that membership should be made available only to persons who ‘wish to be citizens’. The strategies of some ex-colonial states to carefully redraw boundaries of citizenship in order to exclude former subjects from ex-colonies could be interpreted as a form of ‘institutionalized racial discrimination’ (Margiotta and Vonk 2010, 8).

Another point of contention concerns the generational scope of entitlements to restitution of citizenship. As in the case of external birthright citizenship, the endless transmission of entitlements to restitution of citizenship is problematic. But when are these entitlements endless? For example, Hungary adopted provisions that allow

former Hungarian citizens (and descendants) of the pre-1920 Hungarian state to reacquire citizenship without moving to Hungary. According to Joachim Blatter (2010, 14), ‘90 years usually would count as “over generations” but we have to take into account the fact that the boundary moved and not the individuals.’ Hungary also amended its electoral law in order to allow non-resident citizens to vote in national elections. In this case, the controversy is not only about the merits and scope of restitution of citizenship but also about the kind of membership on offer. How could duties of restitution of citizenship be made compatible with the idea that citizenship should be based on genuine link? My suggestion is to limit the generational scope of entitlements to restitution and, as it is argued in the debate about external voting, to disconnect access to the legal status of citizenship from access to full political rights. Former citizens who were abusively deprived of citizenship status should be entitled to reacquire full citizenship, regardless of whether they are resident in the country or not. Although direct descendants of former citizens could also be offered preferential citizenship on the grounds of restorative justice, they should be granted full political rights only if they take up residence in the country. Extending entitlements to either legal status of citizenship or political rights to further generations of non-resident descendants of citizens is much harder to justify, notwithstanding claims of just restitution of citizenship.

### *Democratic continuity*

Debates about birthright citizenship focus almost exclusively on rules of *ius soli*. On the one hand, there seems to be a wide consensus about the obligation of states to grant citizenship to children of immigrants. On the other hand, there are concerns about the opportunistic uses of *ius soli*. In the meantime, the most widespread rule of birthright citizenship – *ius sanguinis* – has received little theoretical attention (Vink and de Groot 2010, 5).

There are several justifications for rules of *ius sanguinis* even for cases when they generate external citizenship. First, these rules may provide an additional safeguard against statelessness. Second, the transmission of citizenship to descendants may be seen as ensuring the continuity of meaningful personal or communal intergenerational projects. Third, *ius sanguinis* may be regarded as instrumental to securing viable levels of democratic continuity. After I briefly consider the first two arguments, I will focus in more detail on the third.

The argument about avoiding statelessness seems pertinent if one takes into account that only a handful of countries have comprehensive rules of *ius soli*. However, it cannot justify provisions that lead to the perpetual transmission of citizenship abroad. Protection against statelessness can be best guaranteed by way of adopting adequate rules of *ius soli*. In fact all EU countries have legal provisions of exceptional *ius soli* for foundlings and all EU countries, except Estonia, Germany and Romania, have provisions of exceptional *ius soli* for children who are stateless of birth. The second argument for intergenerational citizenship regards state membership as a vehicle for meaningful personal or communal projects. The main problem with this argument is that it subordinates citizenship to the task of preserving contested or contestable intergenerational projects. In the next section, I discuss several nationalist arguments that take a similar perspective.

The third argument for intergenerational citizenship is that such rules ensure the continuity of democratic community. According to Bauböck (2007a, 2420), democracy ‘requires a clearly bounded demos that is stable over time in the sense that its composition does not change with each decision.’ The allocation of citizenship at birth is morally defensible because it underpins the ‘formation of stable political communities with a potential for comprehensive self-government’ (Bauböck 2011, 667). Political communities that are reproduced through rules of intergenerational citizenship are more likely to appreciate and preserve their projects of democratic self-government. On the contrary, ‘a general demise of intergenerational citizenship would radically change the conditions for building and sustaining liberal democracy’ (Bauböck 2011, 667). This is because, unlike ‘intergenerational’ citizens, temporary migrants and free movers are less likely to develop the ‘sense of belonging’ necessary for democratic self-government. Bauböck (2011, 668) imagines a scenario of global hyper-migration in which ‘the majority of citizens would be non-residents and the majority of residents would be non-citizens at any given point in time.’ In such a world, the most plausible rule of membership will be *ius domicilii*, by which citizenship is acquired after short periods of residence. Citizens will not be able to develop strong social ties and the state will most probably take the form of either a libertarian or semi-authoritarian government. Ties of solidarity will not follow the contours of legal citizenship, but personal, ideological, cultural or ethnic lines. In other words, this will be the end of territorially structured democratic citizenship. I agree that this is a disturbing picture, even though it may be dismissed as unrealistic. However, if structural factors transform people into restless movers, then, maybe, it is time to change our ways of thinking about membership. Maybe these perpetual temporary residents would become genuine citizens in a global community of free movers. Will this arrangement be democratic? We can only hope. Suffice it to say that for many classic democrats the idea of a democratic state counting a few hundred millions citizens, as several contemporary democracies do, would have sounded like Bauböck’s cautionary tale.

Even if one acknowledges the importance of democratic continuity, one can still doubt whether birthright citizenship is the best means to achieve it. For example, a reasonably long time of residence in a country may provide the sense of belonging necessary for democratic self-government. The point is that if a short residence is insufficient for persons to develop a sense of belonging, ancestry and lifelong membership is more than enough. Moreover, the argument about democratic continuity is not very useful when it comes to the issue of perpetual transmission of citizenship through rules of *ius sanguinis* abroad. It does not make sense to argue that granting citizenship to grandchildren of emigrants who have never resided in the country will strengthen the democratic community. Indeed, Bauböck (2009) argued for limiting the transmission of citizenship to one generation abroad and for withholding external political rights from descendants of emigrants. Nevertheless, I worry that the instrument of intergenerational citizenship may play quite a different tune in the hands of ethno-nationalists.

### *National solidarity*

According to ethno-nationalist views, the state should serve the nation and should look after its survival and flourish. The nationalist toolbox includes policies of

selective access to citizenship based on ethno-national grounds (Brubaker 1996b). Selective admission implies both the discretionary exclusion of some people and the preferential inclusion of others.

The case of post-communist Baltic republics is illustrative here. In the early 1990s, the newly independent states of Estonia and Latvia adopted a set of nationalizing policies in order to regain control over the state and its major institutions. The new leaders reinstated pre-Soviet constitutions and, in order to bar non-native speakers from access to citizenship, introduced difficult language requirements for naturalization. These policies resulted in more than one third of the resident populations being left without citizenship (Gelazis 2000). In the meantime, former citizens of the pre-Soviet Estonia and Latvia and their descendants could acquire citizenship without taking up residence in the country. In these two cases, the claim to restore original membership went beyond a legitimate right to restore citizenship. It supported a more controversial right to recover the national community that had been altered during the Soviet time. This argument is grounded in a problematic nationalist doctrine about the nation owning the state.

Apart from serving the nation in its homeland, the state is also called to protect co-ethnics living abroad. Granting access to external citizenship becomes a legitimate way to protect and recognize ties with co-ethnics living abroad. According to Michael Walzer (1983, 41), the 'kinship principle' of membership justifies states policies of preferential admission to membership for 'ethnic relatives' and to 'children and grandchildren of emigrants'. Claims for the protection of external co-ethnics often make reference to traumatic historical moments. These claims derive their strength from combinations of arguments about general duties to assist people in need and special duties of nationality. For example, a Hungarian foreign minister once justified the proposal to grant special benefits to Hungarian co-ethnics living outside Hungary by arguing that people belonging to Hungarian minorities 'do not get the benefits because they are Hungarians, but because they have problems, stemming from their Hungarianness, to which they expect solutions from Hungarian state' (Horvath 2008, 182).

Rules of preferential citizenship based on ethno-national grounds are problematic because they generate multiple discriminations. According to international law, distinctions between non-citizens are legitimate if they do not discriminate against particular groups or if they enable policies of positive discrimination.<sup>5</sup> It is my contention, however, that there are at least two types of discrimination generated by rules of preferentialism citizenship for co-ethnics: discrimination against non-ethnic citizens, and discrimination against non-ethnic non-citizens. In the first case, preferential co-ethnic citizenship discriminates against citizens who do not share the ethno-national identity officially endorsed by the state. As Christopher Wellman (2008, 139) argued, preferential admission (immigration) 'would wrongly disrespect those citizens in the dispreferred category.' The second type of discrimination regards non-ethnic foreigners. In the context of tightening border control, admitting some on preferential grounds would inevitably discriminate against all others willing to enter. According to Bauböck (2009, 484), 'inherited external citizenship is a morally arbitrary criterion for allocating opportunities among the pool of potential immigrants.'

Initiatives to grant co-ethnics preferential access to citizenship may also prove to be self-defeating. If co-ethnics are granted residential citizenship, the worry is that



this policy will weaken the communities and the prospects of self-government of those who do not move (Bauböck 2007b). The problem does not disappear if co-ethnics are offered external citizenship. Formal membership in an external polity for ethnic minorities could be seen with suspicion by the host state, which might pause efforts to accommodate minority claims (Bauböck 2007a). Such worries are confirmed by the recent Hungarian–Slovak conflict over dual citizenship. In order to prevent the Hungarian minority population from acquiring Hungarian external citizenship, Slovakia outlawed dual citizenship and threatened to withdraw citizenship from Slovak citizens who acquire another citizenship. According to Bauböck (2010, 2), ‘the claim that dual citizenship will help to protect Hungarian minorities abroad is hypocritical’ because it leaves members of Hungarian minorities stuck with ‘a dilemma between emigration to Hungary and assimilation’. Zsolt Simon, a political leader of the Hungarian minority in Slovakia, complained that the Hungarian government ‘does not understand’ the situation of Hungarian ethnics in Slovakia. In his view, the Hungarian offer of external citizenship for co-ethnics living in neighbouring countries is intended to bring political advantages to the governing Fidesz party and it does not serve well the interests of the Hungarian minority in Slovakia (Popławski 2012).

## Conclusion

The citizenship laws of EU countries include various provisions that allow for external acquisition of citizenship. The great majority of EU countries also have very inclusive rules regarding external voting. In this article, I have outlined the scope of legal provisions regarding external acquisitions citizenship in EU countries and I discussed three justifications for such provisions. I found that arguments about the restitution of citizenship to persons who were unjustly deprived of status could justify some forms of external acquisition of citizenship. However, there are important difficulties relating to the nature and scope of entitlements to restitution of citizenship. The argument about democratic continuity defends birthright citizenship because it creates an intergenerational community that is likely to generate stable membership and a shared sense of belonging. Due to its democratic features, however, the intergenerational perspective cannot be easily disconnected from the idea of territorial citizenship. Alternatively, nationalists argue that special bonds of ethnicity and culture should inform rules of admission to citizenship. Apart from problems related to discrimination on ethno-national grounds, nationalist arguments have difficulties in showing why bonds of ethnicity and culture should translate into preferential access to citizenship. There are also concerns that policies of external citizenship based on ethno-national grounds not only jeopardize the democratic integrity in the home country, but also the prospects of welfare and self-government of co-ethnics whom they aim to protect. Of the three arguments under consideration, the principle of just restitution of citizenship offers the strongest, albeit partial, contextual justification for external acquisition of citizenship.

## Notes

1. I use the term of ‘citizenship’ as synonymous to ‘nationality’ in order to describe the status of legal membership in a state.



2. The analysis covers the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.
3. I use various resources provided by the EUDO Citizenship Observatory, including online databases, country reports, comparative analysis and news items. When I do not provide specific references in the text, the data are taken from the online databases of the EUDO Citizenship Observatory.
4. For reasons of space, I do not discuss legal provisions regarding preferential acquisition of citizenship by children and spouses of citizens, or provisions regarding preferential acquisition of citizenship by people with exceptional achievements or who brought special contributions to the state, which may, in some cases, lead to external citizenship. For an overview of such rules, see EUDO Citizenship Observatory.
5. According to the International Convention on the Elimination of all Forms of Racial Discrimination, certain racial or ethnic groups can be treated more favourably if such treatment serves a legitimate goal, respects the principle of proportionality and is temporary.

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