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Super-foreigners and Sub-citizens: Mapping Ethno-national Hierarchies of Foreignness and Citizenship in Europe

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ABSTRACT From the viewpoint of the state, a person is either a citizen or a foreigner. National citizenship laws divide people into citizens and foreigners. But citizenship laws also differentiate between categories of citizens and foreigners by granting certain foreigners (super-foreigners) preferential admission to citizenship and by restricting citizenship rights and privileges to certain citizens (sub-citizens). This article analyses comparatively current legal rules on the acquisition and loss of citizenship and on the exercise of citizenship privileges in 38 European countries in order to map ethno-national hierarchies of foreignness and citizenship. It builds a typology of ethno-national rules of citizenship and challenges widely held theses about the liberalisation and de-ethnicisation of citizenship regimes in Europe.

Conceived of as a legal status, citizenship (nationality) denotes formal membership of a state and functions as a sorting device through which individuals are allocated to states. Citizenship rules divide people into citizens and foreigners. From the viewpoint of the state, a person is either a citizen or a foreigner. Citizens and foreigners are thus ‘correlative, mutually exclusive, exhaustive categories’ (Brubaker, 1992, p. 46). But states also differentiate between categories of citizens and foreigners by granting certain foreigners (super-foreigners) preferential admission to citizenship and by restricting citizenship rights and privileges to certain citizens (sub-citizens). In this article, I question the ideal-typical distinction between citizens and foreigners and show how contemporary citizenship laws establish different hierarchies of foreignness and citizenship that are driven by ethno-nationalist conceptions of state membership.

The literature on comparative citizenship has grown impressively in recent years (Bauböck, Erbölö, Groenendijk, & Waldrauch, 2006a, 2006b; Bauböck, Perching, & Sievers, 2009; Goodman 2010; de Groot & Vink 2010; Hansen & Weil 2001; Howard 2009; Vink & Bauböck 2013; Vink & de Groot 2010a). Owing to the EUDO Citizenship Observatory of the European University Institute, we have now a comprehensive and
up-to-date database of legal rules on the acquisition and loss of citizenship in Europe (Vink, Vonk, & Honohan 2013a, 2013b). Yet, there is one aspect of citizenship regulations that has not been investigated systematically, namely the ethno-national rules of citizenship. The few studies that address the issue of ethno-national citizenship empirically and normatively deal mainly with explicit legal provisions that target co-ethnics and are thus confined geographically to areas such as Central and Eastern Europe and Southeastern Europe (Kovács, Körtvélyesi, & Pogonyi, 2010; Shevel, 2009; Waterbury, 2014; Žilović, 2012). Whereas rules of preferential citizenship for co-ethnics constitute an important aspect of ethno-national citizenship in Europe, I argue that this is not the only aspect of citizenship regulations that should be regarded as driven by ethno-national conceptions of state membership. Focusing narrowly on provisions that use explicit ethno-national categories, which are common in the citizenship laws of Eastern European countries, and disregarding more subtle rules that differentiate among citizens and foreigners on covert ethno-national grounds, which are European-wide, runs the risk of reinforcing problematic dichotomies between civic Western Europe and ethnic Eastern Europe. For example, noting the widespread use of provisions of ius sanguinis by Central and Eastern European countries, Liebich (2010, p. 3) concluded that there is a ‘gulf between conceptions of citizenship in East and West’. However, this view conceals that all countries in Europe enforce provisions of ius sanguinis and that only in a small minority of countries, rules of ius soli complement provisions of ius sanguinis.

Ethnicity and nationalism have long been at the centre of debates about the cultural basis of citizenship. The privileged inclusion and the explicit exclusion of individuals or groups on grounds of nationality, ethnicity, or race were common features of citizenship policies in the past. Along with redrawing borders, ethnic cleansing, policies on population transfer and immigration, citizenship was instrumental to modern nation-states in their quest to sort out people according to their ethno-national identity. Although citizenship matters remain largely in the domaine réservé of states, strong norms prohibiting discrimination on arbitrary grounds, such as sex, race, and ethnicity, have eroded state power in the area of citizenship. Recent comparative studies on citizenship have shown that contemporary citizenship policies have become, at least in the West, increasingly more liberal (Howard, 2009) and de-ethnicised (Joppke, 2003, 2005b). Notwithstanding these general trends, I claim that there are important areas of citizenship laws that remain linked with ethno-national conceptions on state membership. Joppke’s (2005b) complex account about the continuing fight between the forces of de-ethnicisation and re-ethnicisation over controlling membership policies stands as a warning against simplistic assumptions about the de-ethnicisation of contemporary citizenship. In this article, I further test the thesis of de-ethnicisation of citizenship by looking into the fine print of citizenship laws in Europe.

Ethnicity and nationalism are ‘essentially contested concepts’ (Gallie, 1955) and that makes any attempt of defining ethno-national things, such as citizenship, a daunting task. In this article, I assume that citizenship regimes typically contain both ethnic and civic elements and that specific rules of citizenship and combinations of such rules serve different and sometimes conflicting purposes (Vink & Bauböck, 2013). Unlike in other comparative accounts (e.g. Brubaker, 1992), I do not aim to establish or theorise general models of nationhood or citizenship. Instead, I focus on specific rules and aspects of citizenship regulations and assess whether these rules and aspects serve, alone or in combination, ethno-national purposes. I define ethno-national rules of
citizenship as those rules and aspects of citizenship regulations that are derived from or aim to reinforce ethno-national conceptions of state membership, according to which membership of a state is derivative of membership of a nation and citizenship is an instrument for achieving the coincidence between the state and the nation (Gellner, 1983). From an ethno-national viewpoint, admission to citizenship status and privileges should be determined by the existence of ethno-national ties that are best evidenced by birth in the territory of an ethno-national community or by descent from ethno-nationals. Citizenship is thus a matter of *natio* (being born) and access to citizenship is primarily determined by one’s ancestry and circumstances of birth.

This article analyses comparatively legal rules on the acquisition and loss of citizenship and on the exercise of citizenship privileges (as of 2013) in 38 European countries: Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and the UK. It analyses specific rules of citizenship and builds a typology of ethno-national rules of citizenship in Europe. Since it mainly aims to map empirically ethno-national hierarchies of foreignness and citizenship, this article does not engage directly with normative theory. It does aim, however, to provide a concrete basis for further normative investigations.

In the remaining sections of this article, I analyse five aspects of citizenship regulations: acquisition of citizenship at birth or birthright citizenship (1), acquisition of citizenship after birth or naturalisation (2), access to citizenship rights and privileges (3), loss of citizenship (4), and reacquisition of citizenship (5).

1. Birthright Citizenship

Legal provisions regarding the acquisition of citizenship are diverse and complex. The EUROPEAN CITIZENSHIP Database on Modes of Acquisition of Citizenship in Europe identifies no less than 27 ways in which citizenship can be acquired (Vink et al., 2013a). For the sake of simplicity, I distinguish between two general modes of acquisition of citizenship: acquisition of citizenship at birth (birthright citizenship) and acquisition of citizenship after birth (naturalisation). I use the terms *birthright citizenship* and *naturalisation* as umbrella terms, regardless of the terminology employed by specific citizenship laws.

Whereas birthright citizenship is the major mode of acquisition of citizenship in the world, naturalisation is only used by a limited number of people, most of whom also acquire citizenship at birth (elsewhere). Birthright citizenship can be acquired in two ways: through descent from citizens (*ius sanguinis*) and on grounds of birth in the country (*ius soli*). The preference for one of the two methods of birthright citizenship has been regarded as indicative for the normative character of a country. According to Brubaker (1992, p. 187), the two principles of birthright citizenship ‘express deeply rooted habits of national self-understanding’; whereas *ius soli* defines a (civic) territorial community, *ius sanguinis* demarcates a (ethnic) community of descent. However, this association of birthright citizenship with territorial and ethnic nationhood is historically, analytically, and normatively problematic. Although *ius soli* is widely regarded as civic or liberal nowadays, its liberal credentials have not always been evident. In post-revolutionary France, for example, the principle of *ius soli* was rejected due to its association with the feudal system.
that bound people to the land and demanded permanent allegiance to the monarch from all individuals born in the country. The French view on *ius soli* citizenship changed one century later when the country was confronted with a growing number of immigrants who refused to naturalise in order to avoid taking up military duties (Weil, 2002). The adoption of *ius sanguinis* rule by post-revolutionary France, and later by most of the continental Europe, had less to do with the spread of ethno-nationalism than with the attempt of states to modernise citizenship laws. The advantage of the *ius sanguinis* principle is that it detaches citizenship from territory, making legal status an attribute of the person that is passed on to children as easily as the family name. Unlike common contemporary views that translate *ius sanguinis* literally as the ‘rule of the blood’, in the early modern times, the principle was regarded as ‘a quintessentially modern understanding of membership’ (Joppke, 2005a, p. 53). Analytically, the principle of *ius sanguinis* cannot be seen as ethno-national because it merely prescribes the acquisition of citizenship through descent from citizen, regardless of citizen’s ethno-national identity. A case could be made that the reliance on *ius sanguinis* as the exclusive rule of citizenship acquisition in the context of long-term immigration is indicative of an ethno-national strategy to exclude non-ethnics. However, this is an argument about the ethno-national implications of the absence or inadequacy of *ius soli* and naturalisation provisions, rather than an argument about the ethno-national character of *ius sanguinis*. Finally, from a normative point of view, the two principles of birthright citizenship can be either condemned or defended regardless of their ethno-national character. Birthright citizenship has been criticised because it relies on arbitrary facts of birth and because it allocates unfairly a status of tremendous legal, political, and socio-economic importance (Carens, 1987; Schuck & Smith, 1985; Shachar, 2009). Birthright citizenship has also been defended as morally relevant because it ensures the continuity of political communities, without which there could be no project of democratic self-government (Bauböck, 2011).

Even if there is no intrinsic ethno-national quality attached to either *ius sanguinis* or *ius soli* citizenship, there are certain variations and interpretations of these principles that could be associated with ethno-national conceptions of state membership. I discuss three types of ethno-national rules of birthright citizenship: (1) unconditional *ius sanguinis* abroad, (2) external *ius soli*, and (3) unequal birthright citizenship.

Although the jury is out to settle the complex debate about the meaning of citizenship and about legitimate principles of admission, there is a wide consensus that citizenship should be, in line with the famous judgement on the *Nottebohm case* (International Court of Justice, 1955), based on a genuine link between the individual and the state. A broad agreement also exists on the idea that long-term residents and their children should be given access to citizenship in the country of residence. Linking the idea of genuine link with territorial presence, however, weakens claims to citizenship that are not backed by territorial links. This is explicitly stated in the Explanatory Report to the European Convention on Nationality (Council of Europe, 1997): ‘the term “lack of a genuine link” applies only to dual citizens habitually residing abroad [...] for generations’. The great advantage of the principle of *ius sanguinis*, which is that of dissociating citizenship from territory, becomes problematic when the principle applies unconditionally to descendants of descendants outside borders. Attributing citizenship to remote descendants of emigrants disregards ‘the genuine link quality of citizenship’ (Joppke, 2008, 29) and generates serious concerns about the ethno-national character of *ius sanguinis*. Remarkably, in 20 of 38 European countries included in this survey children of non-resident
citizens can acquire citizenship unconditionally through (external) *ius sanguinis*: Albania, Bulgaria, Czech Republic, Estonia, France, Greece, Hungary, Italy, Lithuania, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Switzerland, and Turkey (Vink et al., 2013a). In Croatia, Latvia, Macedonia, Montenegro, and Serbia, *ius sanguinis* applies automatically abroad only when both parents are citizens or when one parent is citizen and the other parent is stateless. In these countries, children born abroad to a citizen and a foreigner can acquire *ius sanguinis* citizenship after registration or declaration. In Austria, Denmark, Finland, Iceland, Malta, Netherlands, and Sweden, restrictions to the automatic application of *ius sanguinis* apply when children are born out of wedlock to a citizen father and a non-citizen mother. General restrictions to the application of *ius sanguinis* to the second generation of citizens born abroad exist in Belgium, Germany, Ireland, Malta, Portugal, and the UK. However, in all these cases, except Malta, restrictions can be bypassed through submitting formal statements. The UK is also exceptional in this regard, because citizens who acquired British citizenship through *ius sanguinis* abroad cannot register their children born abroad as citizens unless they take up residence in the country for at least three years (Sawyer & Wray, 2012).

Although *ius soli* is often regarded as a civic principle *par excellence*, it can be used to pursue ethno-nationalist goals. It must be noted that only a handful of countries in Europe have provisions of *ius soli* citizenship and that in all cases the rule comes with additional conditions, such as parents’ residence or birth in the country (Vink et al., 2013a). Whereas in Belgium, France, Greece, Luxembourg, the Netherlands, Portugal, and Spain, *ius soli* applies to children born in the country to foreigners who were also born in the country (double *ius soli*), in Belgium, Germany, Greece, Ireland, Portugal, and the UK, *ius soli* (also) applies more generally to all children born in the country. Greece has adopted *ius soli* provisions in 2010 but these rules are not yet implemented because the Greek Council of State judged them unconstitutional (Christopoulos, 2011). Apart from rules of *ius soli* that prescribe the acquisition of citizenship at birth, 18 countries in Europe have (also) provisions regarding the preferential acquisition of citizenship after birth in virtue of the fact of being born in the country (*ius soli* after birth). This leaves 15 European countries without any form of *ius soli* provisions: Albania, Cyprus, Denmark, Estonia, Iceland, Latvia, Lithuania, Macedonia, Malta, Montenegro, Norway, Poland, Sweden, Switzerland, and Turkey. The absence of *ius soli* is particularly problematic in countries such as Estonia and Latvia that have a considerable number of foreign residents.

Apart from cases of unwarranted absence, *ius soli* provisions raise concerns about ethno-nationalism when they are applied unevenly, either in restrictive or expansive manner. Firstly, the restrictive application of the principle was common in the era of decolonisation when countries with a historical tradition of *ius soli*, such as France and the UK, removed former colonies from the territorial scope of *ius soli*. Although the redefinition of citizenries was necessary in order to complete the decolonisation process and to allow the new post-colonial states to establish their own citizenship regimes, the redrawing of citizenship boundaries often involved ethnic and racial differentiation. For example, the British Immigration Act of 1971 established the category of *patrials*—persons born in the UK or persons whose parents or grandparents had been born in the UK—in order to limit immigration into the UK from the New Commonwealth. By introducing a division subjects between expatriates and their descendants and the rest, the new rules reinforced a ‘dividing line […] of race’ (Sawyer & Wray, 2012, p. 9). Secondly, *ius soli* can also be
applied in an expansive manner. This is the case when the territory that determines the application of the *ius soli* principle is wider than the one delimited by internationally recognised borders. According to the Irish Constitution, the national territory of Ireland encompasses the whole island of Ireland, its islands, and the territorial seas and ‘every person born in the island of Ireland’ is entitled to birthright citizenship. The *ius soli* provision officialised a territorial claim to the six counties of Northern Ireland (Honohan, 2010a, p. 817). Indeed, the 1956 Citizenship Act explicitly stated that *ius soli* applied extraterritorially ‘pending the re-integration of the national territory’. This explicit revisionist stance was revised after the Good Friday Agreement of 1998, which recognised ‘the birthright of all the people of Northern Ireland to identify and be accepted as Irish or British or both, as they may so choose’. People born on the island of Ireland are entitled to Irish citizenship and they can acquire citizenship by simply performing an ‘act that only an Irish citizen is entitled to do’, such as applying for a passport or seeking entry into the register of voters in presidential elections (Handoll, 2012, p. 10). Faced with an unprecedented wave of immigration and reacting to allegations about citizenship tourism, Ireland amended *ius soli* provisions in 2004. Following this reform, children born in Ireland to immigrant parents can acquire citizenship only if their parents have been resident in the country for three out of four consecutive years prior to child’s birth. This restriction does not apply to British citizens and to children born on the island of Ireland who are entitled to Irish citizenship. Maintaining an external form of *ius soli* while restricting birthright citizenship for immigrants should be seen in light of the broader constitutional commitment to the unity of the Irish nation that includes all people born on the island of Ireland (Ireland and Northern Ireland) and ‘people of Irish ancestry living abroad who share its cultural identity and heritage’.

Finally, the rules of birthright citizenship can serve ethno-national purposes when they are used in combination. Although the presence of principle of *ius soli* can generally be seen as an inclusive or liberal feature, its inclusiveness varies greatly according to the conditions attached it (Honohan, 2010b). In 1999, Germany adopted provision of *ius soli* citizenship for the first time in its history through which it recognised an entitlement to citizenship to children born on the territory under certain conditions. Similar to other countries, Germany required the parents to have resided in the country for a period of time (eight years) prior to child’s birth. But German law also demanded that persons who acquired German citizenship through *ius soli* and who possessed another citizenship to choose German and any other citizenship they might possess when reaching majority (Hailbronner, 2010). Failing to make this choice would lead to the loss of German citizenship. The problem with this ‘option model’ is that it discriminates between citizens who acquire German citizenship through birth, since the obligation to choose a citizenship applies to citizens who acquired citizenship via *ius soli* but not to those who obtained citizenship through *ius sanguinis*. Restrictions on dual citizenship generated through *ius soli* provisions also exist in Austria, Croatia, the Czech Republic, and Spain (Honohan, 2010b, p. 12).

2. **Naturalisation**

Naturalisation is a complex procedure and a privileged site where states could employ ethno-national rules of citizenship. Selectivity in naturalisation works in two ways: on the one hand, states can bar from admission people who are not sufficiently skilful, virtuous, or ethno-nationally compatible; on the other hand, states can offer preferential
admission to people who are deemed citizenship worthy. Generally, even when exclusionary naturalisation procedures are not expressed in the language of ethnicity and nationalism, one can interpret highly demanding and prohibitive requirements, such as difficult requirements regarding language and integration, as driven by ethno-national concerns with safeguarding the boundaries of the nation. There is an on-going debate about how to interpret the new restrictive naturalisation rules: as a form of ‘illiberal civic nationalism’ (Bauböck, 2008), of ‘illiberal liberalism’ (Orgad, 2010), as part of a general trend towards post-welfare state, activist citizenship, (Soysal, 2012), etc. I focus here on two more specific sets of naturalisation rules that have stronger ethno-national pedigree: (1) rules of preferential naturalisation for co-ethnics and (2) rules of asymmetric dual citizenship.

The naturalisation rules that make explicit reference to ethno-national origin or identity are by far the most obvious ethno-national rules of citizenship. Whereas countries such as Denmark, France, Germany, Greece, Portugal, and Spain provide for facilitated access to citizenship based on cultural commonality (i.e. language, education, or religious affiliation), there are a considerable number of countries that grant preferential admission to citizenship to people of particular ethnicity or ancestry: Albania (persons of Albanian origin), Bulgaria (Bulgarians by origin), Croatia (persons of Croatian ethnicity), Germany (German ethnics), Greece (persons of Greek origin), Ireland (persons of Irish descent and associations), Latvia (persons of Latvian ethnicity), Lithuania (Persons of Lithuanian origin), Poland (Persons of Polish descent), Portugal (persons of Portuguese ancestry), Serbia (members of the Serbian nation), Slovakia (persons of Slovak ethnicity), and Slovenia (persons belonging to Slovene minorities) (Vink et al., 2013a). Admittedly, these provisions do not always distinguish clearly between ethnicity and descent (from citizens) and, when they do, they often use one category as a substitute for the other. For example, in Hungary and Romania, the policies of preferential citizenship officially target former citizens, although their real aim is to reach out to co-ethnics. The range of facilitations on offer also varies greatly: from citizenship conditional upon repatriation (Germany and Poland) to naturalisation after a (reduced) period of residence (Portugal and Slovakia) and preferential extraterritorial naturalisation (Bulgaria, Croatia, and Serbia). The justifications for the preferential naturalisation of co-ethnics often combine arguments about restorative justice, positive discrimination, and national survival (Dumbrava, 2014). Nevertheless, ethno-national rules of naturalisation seem highly problematic because they use ethnicity as a criterion of admission and because they create unfair privileges. For example, Bulgaria, Croatia, Germany, Latvia, and Poland exempt co-ethnics from requirements regarding the renunciation of other citizenship. In Bulgaria Croatia, Greece, Italy, Latvia, Lithuania, Portugal, Serbia, and Slovenia, co-ethnics can acquire citizenship without having residence in the country. The ethno-national targeting of people and the privileges granted to co-ethnics in the naturalisation procedure raise questions about the fairness of the admission process and about the meaning of citizenship in the context of shared assumption about the de-ethnicisation of membership.

The rules on dual citizenship can also be used in order to pursue ethno-national goals. It is well understood in the literature that there are two major contexts in which rules of dual citizenship operate. On the one hand, the increased toleration of dual citizenship in Europe (Vink & de Groot, 2010, p. 722) and, indeed, in the world (Vink, de Groot, & Luk, 2013) can be seen as an indicator of the liberalisation of citizenship (Howard, 2009) and as ‘part of the general trend from ethnic toward territorial citizenship’ (Joppke, 2010, p. 48). On
the other hand, dual citizenship is reasserted as a means to incorporate co-ethnics across borders (Kovács et al., 2010) and further away emigrant diasporas (Joppke, 2008). I do not investigate here the liberal or ethnic character of either the acceptance or prohibition of dual citizenship. My focus falls on the ethno-national implications of the asymmetric application of rules of dual citizenship, namely concerning applicants to naturalisation (incoming naturalisation) and citizens who naturalise elsewhere (outgoing naturalisation). Countries such as Bulgaria, Croatia, Macedonia, Moldova, Poland, Serbia, and Slovenia do not accept dual citizenship for incoming naturalisation, but tolerate dual citizenship for outgoing naturalisation (Vink et al., 2013a). In the Czech Republic, Estonia, Norway, and Spain, there is a general prohibition against dual citizenship for both incoming and outgoing naturalisation, but important exceptions are made for citizens by birth who naturalise elsewhere. This means that immigrants cannot maintain other citizenship when they naturalise and, unlike citizens by birth, they cannot retain citizenship when they (re)naturalise elsewhere. Finally, in Slovakia and Ireland, the discrimination is reversed, as the two countries tolerate incoming dual citizenship but prohibit outgoing dual citizenship. These rules are equally problematic because they indirectly distinguish between different categories of citizens on ethno-national grounds. Whereas Slovakia prohibits dual citizenship in order to prevent its citizens of Hungarian ethnic origin to acquire (external) citizenship in Hungary (Bauböck, 2010), in Ireland the restrictions on dual citizenship in outgoing naturalisation apply only to naturalised citizens.

3. Citizenship Rights and Privileges

Apart from the fact that certain categories of foreigners find it easier to acquire citizenship than others, in certain countries distinctions between citizens according to the circumstances in which they acquire citizenship affect citizens’ capacity to exercise basic rights and privileges attached to the status of citizenship. This breach of the norm of citizenship equality is concealed under legal distinctions between citizens by birth or by origin and naturalised or other citizens. It is then the case that non-ethnic residents go through a burdensome naturalisation procedure only to face further discrimination as naturalised citizens.

In Bulgaria, Portugal, and Spain naturalised citizens are banned from holding certain high public offices. Naturalised citizens cannot become President in Bulgaria (Smilov, 2013) and Portugal (Piçarra & Gil, 2012) or assume the position of King’s tutor in Spain (Rubio Marín, Sobrino, Pérez, & Moreno Fuentes, 2012). Although the category of citizens by origin or by birth is not strictly an ethnic category—as it includes children of non-ethnics who receive citizenship through *ius sanguinis* or children born in the country, if *ius soli* applies—the exclusion of naturalised citizens can be seen as an attempt to prevent further denaturalisation of citizenship and to preserve, as much as possible, the originality of national membership. Apart from the naturalised, the law sometimes restricts access to citizenship rights and privileges to two other related and partially overlapping groups of citizens: dual citizens and non-resident citizens. Dual citizens cannot run for Presidency in Bulgaria and Latvia and they cannot become high-ranking army officers in Bulgaria and Croatia (Arrighi et al., 2013). In Spain, dual citizens cannot become King’s tutor (Rubio Marín et al., 2012) and in Hungary, they cannot hold certain public sector jobs (Kovács & Tóth, 2013). Similar provisions banning dual citizens from high public offices were removed from the legislation of Romania and Moldova in the last decade. Despite a
recent global trend towards upgrading citizenship and political links with non-residents (Joppke, 2008; Lafleur, 2013, Pogonyi, 2014), certain restrictions of the rights and privileges of non-resident citizens exist in several countries. With regard to external voting alone, the International Institute for Democracy and Electoral Assistance reports in 2007 that no less than 115 countries and territories granted non-resident citizens some sort of voting rights (Ellis, Navarro, Morales, Gratschew, & Braun, 2007). It is a matter of debate as to whether this indicates the emergence of transnational forms of nationalism or of a pragmatic approach through which states attempt to tap in global resources (Collyer, 2014; Gamlen, 2008; Ragazzi, 2014). I am concerned here with the significance of the distinction between resident and non-resident citizens for the purpose of the allocation of citizenship rights and privileges. Arguably, there are several possible justifications for treating these two categories of citizens differently without appealing to ethno-nationalist arguments. It has been argued that residents and non-residents are unequally subjected to law (López-Guerra, 2005), have different social ties (Rubio-Marín, 2006), or have unequal stakes in membership (Bauböck, 2007). In this view, it seems that the distinction between resident and non-resident citizens is normatively required and that rules to equalise rather than differentiate citizenship rights and privileges of residents and non-residents are problematic because, among others, they serve ethno-national goals of expanding the nation abroad.

4. Loss of Citizenship

Problematic distinctions between categories of citizens can also be found in provisions regarding the loss of citizenship. There are two main modes of differentiation: on the one hand, certain categories of citizens, such as citizens by birth or by origin, enjoy special legal protection with regard to the security of citizenship status; on the other hand, provisions regarding the non-voluntary loss of citizenship are limited to certain categories of citizens, such as the naturalised citizens.

In Bulgaria, Estonia, Romania, and Spain citizens by birth enjoy special protection against the deprivation of citizenship (Vink et al., 2013b). For example, constitutional provisions prevent the deprivation of citizenship from Bulgarians by birth (Smilov, 2013) and Spanish by origin (Rubio Marín et al., 2012). According to the Romanian law, only naturalised citizens fall under the scope of the provisions that prescribe the withdrawal of citizenship from persons who ‘work abroad against the interests of the country’ (Iordachi, 2013). In Germany, Ireland, and Slovakia only naturalised citizens face the risk of losing citizenship when acquiring another citizenship. Of those countries that provide for the loss of citizenship due to prolonged residence abroad, Cyprus, Ireland, and Malta apply this restriction only to naturalised citizens. Most countries provide for the revocation of naturalisation in cases fraudulent acquisition of citizenship, such as concealing criminal history. However, in countries such as Cyprus, France, Malta, Spain, and the UK, the naturalised citizens risk being denaturalised even after the naturalisation if they commit certain crimes. Finally, countries such as Belgium, Denmark, Finland, Iceland, Norway, Spain, Sweden, and Switzerland provide for the loss of citizenship for persons who acquired citizenship through ius sanguinis abroad and who do not demonstrated a genuine link with the country. This distinction between categories of citizens by birth (born in the country and born abroad) can be justified by referring to the principle of genuine link between the citizen and the state. In
this case, it is the lack of such obstacles to perpetual transmission of citizenship abroad, that is, conditional *ius soli* provisions or adequate rules of loss of citizenship, that raise concerns about ethno-nationalism, rather than the distinction between citizens born in the country and citizens born abroad.

5. **Reacquisition of Citizenship**

So far, I followed the silver thread of ethno-national aspects of citizenship along the entire trajectory of citizenship-making process: acquisition of citizenship at birth, acquisition of citizenship after birth, exercise of citizenship rights and privileges, and loss of citizenship. But the story does not end here. Ethno-national hierarchies of foreignness and citizenship can also be traced in rules regarding the reacquisition of citizenship. As in the case of rules of preferential naturalisation, with which they sometimes overlap, rules of preferential reacquisition of citizenship may be driven by various rationales. For example, post-communist countries such as Bulgaria, Romania, and Poland restore citizenship to persons who had been arbitrarily deprived of citizenship by the communist regimes. Spain and Portugal restore citizenship to descendants of Sephardic Jews, aiming to redress injustices that occurred more than half a millennium ago. However, certain rules of reacquisition of citizenship have more pronounced ethno-national features. I discuss two types of ethno-national rules of reacquisition of citizenship: (1) rules that restore an original national citizenry and (2) rules of unequal reacquisition of citizenship.

In several countries, rules of reacquisition of citizenship are used in order to cope with recent or historical changes of territorial borders or statehood. The Baltic states of Estonia, Latvia, and Lithuania declared independence from the Soviet Union in 1990 and reinstated the pre-Soviet citizenship laws in order to reconstitute the boundaries of their ‘original’ national citizenry. Whereas Lithuania also granted access to citizenship to long-term residents, Estonia and Latvia excluded from the initial post-independence citizenry and franchise people who immigrated during the Soviet era. This was motivated by fears of ethno-demographic decline, in the conditions in which the growth in proportion of the Russian-speaking populations—from 1/10 in the mid-1930s to 1/3 in the end of the 1980s (Linz & Stepan, 1996, p. 403)—seem to threaten the political survival and the national character of the two small republics. These policies lead to the creation of large populations of non-citizens, many of them stateless (Järve & Poleschuk, 2013; Krūma, 2013). After the fall of the communist regime, Romania granted access to citizenship to different categories of former citizens, including to former citizens who ‘were stripped of Romanian citizenship against their will or for reasons beyond their control, and their descendants’ (Iordachi, 2013). Apart from trying to redress injustices caused by the communist regime, these reacquisition provisions also aimed at restoring citizenship to former citizens and descendants who inhabited the territories lost by Romania at the beginning of the Second World War and thus to re-create the citizenry of ‘Greater Romania’ (Iordachi, 2009, p. 177). A similar strategy was adopted by the neighbouring Hungary. In an attempt to attenuate the consequences of the Trianon Treaty of 1921, which reduced Hungary’s territory to one third, Hungary reasserted links with Hungarian minorities living in neighbouring countries. After several early initiatives to create official links with external kin minorities living beyond borders (Waterbury, 2010), in 2011 Hungary adopted provisions to allow former citizens and descendants to acquire
citizenship regardless of residence (Kovács & Tóth, 2013). Legal provisions for the restoration of citizenship that make selective reference to the citizenry or territory of defunct states also exist in the citizenship laws of Austria, the Czech Republic, Germany, Italy, Slovenia, and Slovakia. As in the case of rules of preferential naturalisation, what is problematic about these rules of reacquisition of citizenship is that they grant unfair privileges of membership on problematic ethno-national grounds. Even in cases where rules of reacquisition aim to redress past injustice, certain privileges granted in the process of reacquisition are questionable. For example, Croatia, Greece, Ireland, and Italy extend privileges of reacquisition of citizenship to descendants of descendants of former citizens without a generational stopping point. Moreover, in Croatia, Macedonia, Germany, Greece, Hungary, Ireland, Lithuania, Macedonia, Moldova, Romania, Serbia, and Spain, former citizens can reacquire citizenship without having to take up residence in the country.

Finally, certain rules of reacquisition of citizenship also differentiate between categories of former citizens and descendants based on explicit or implicit ethno-national grounds. In Greece, Ireland, Luxembourg, Romania, and Spain the preferential access to reacquisition is limited to former citizens (and descendants) who had been citizens by birth or by origin. Greece, for example, has in place special provisions for preferential reacquisition by former citizens of Greek ethnicity or with Greek national conscience (Christopoulos, 2013). The Spanish Historical Memory Act of 2007 granted access to citizenship to persons who fled during the civil war and were deprived of Spanish citizenship, provided that they had been citizens by origin (Rubio Martín et al., 2012, p. 27). According to a recent amendment of the Romanian citizenship law, only persons ‘who obtained the Romanian citizenship at birth’ can now use the procedure of preferential reacquisition of citizenship (Iordachi, 2012, p. 373).

**Table 1.** A typology of ethno-national rules of citizenship in Europe

<table>
<thead>
<tr>
<th>Category</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrestricted <em>ius sanguinis</em></td>
<td>Albania, Bulgaria, Czech Republic, Estonia, France, Greece, Hungary, Italy, Lithuania, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Switzerland, and Turkey</td>
</tr>
<tr>
<td>External <em>ius soli</em></td>
<td>Ireland</td>
</tr>
<tr>
<td>Unequal birthright citizenship</td>
<td>Austria, Croatia, Czech Republic, Germany, and Spain</td>
</tr>
<tr>
<td>Preferential naturalisation for co-ethnics</td>
<td>Albania, Bulgaria, Croatia, Germany, Greece, Ireland, Latvia, Lithuania, Poland, Portugal, Serbia, Slovakia, and Slovenia</td>
</tr>
<tr>
<td>Asymmetric dual citizenship</td>
<td>Bulgaria, Croatia, Czech Republic, Estonia, Ireland, Macedonia, Moldova, Norway, Poland, Serbia, Slovakia, Slovenia, and Spain</td>
</tr>
<tr>
<td>Unequal citizenship rights and privileges</td>
<td>Bulgaria, Czech Republic, Croatia, Hungary, Latvia, Portugal, and Spain</td>
</tr>
<tr>
<td>Unequal loss of citizenship</td>
<td>Bulgaria, Cyprus, Estonia, France, Ireland, Malta, Romania, Spain, and the UK</td>
</tr>
<tr>
<td>Restoration of original national citizenry</td>
<td>Estonia, Hungary, Latvia, Lithuania, and Romania</td>
</tr>
<tr>
<td>Unequal reacquisition of citizenship</td>
<td>Greece, Ireland, Luxembourg, Romania, and Spain</td>
</tr>
</tbody>
</table>
6. Conclusion

By surveying contemporary legal provisions regarding the acquisition and loss of citizenship and the exercise of basic citizenship rights and privileges, this article unveiled ethno-national hierarchies of foreignness and citizenship in Europe. Instead of an ideal-typical view that portrays citizens to foreigners as dichotomous and exclusive categories, the analysis showed a messier picture that accommodates different categories of super-foreigners and sub-citizens. This article analysed specific citizenship provisions and identified rules and aspects of citizenship regulations that make explicit or implicit references to ethno-national ancestry or identity. It built a typology of ethno-national rules of citizenship (see Table 1) and challenged common arguments about the liberalisation and de-ethnicisation of contemporary citizenship regimes by showing that ethno-national views continue to inform various rules of citizenship in Europe. Whereas rules of preferential acquisition of citizenship that make explicit reference to ethnicity constitute the most evident case of ethno-national rules of citizenship, subtler distinctions, and contextual applications of other rules of citizenship, such as the unconditional application of *ius sanguinis* abroad and differentiated privileges regarding admission to, exercise of, loss and reacquisition of citizenship, could also be interpreted as driven by or reinforcing ethno-national conceptions about state membership.

The proposed assessment is an exercise of interpretation that relies on a rather flexible concept of ethno-national rule of citizenship. There is enough space for disagreement with regard to the interpretation of some, though not all, rules of citizenship that are diagnosed here as ethno-national. After all, citizenship regulations derive from many sources, develop incrementally, and serve various and often conflicting purposes. I argue that many problematic distinctions between foreigners and between citizens should be interpreted as evidence for a resilient ethno-national obsession with original, native, or natural citizenship. Whereas such an interpretation is up for debate, the analytical observations about inconsistent and discriminatory legal provisions concerning admission to and loss of citizenship status and privileges raise a host of legal and normative issues. Most of the citizenship rules discussed above trigger important questions about the boundaries and the nature of citizenship as membership regardless of the accuracy of the proposed diagnosis.

References


