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ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES  
EUDO Citizenship Observatory

DUAL CITIZENSHIP FOR TRANSBORDER MINORITIES?  
HOW TO RESPOND TO THE  
HUNGARIAN-SLOVAK TIT-FOR-TAT

Edited by Rainer Bauböck



**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**  
**ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES**  
**EUROPEAN UNION DEMOCRACY OBSERVATORY ON CITIZENSHIP**

*Dual citizenship for transborder minorities?*  
*How to respond to the Hungarian-Slovak tit-for-tat*

**EDITED BY RAINER BAUBÖCK**

EUI Working Paper **RSCAS** 2010/75

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## **Abstract**

On 26 May Hungary and Slovakia both amended their citizenship laws. Hungary removed a residence requirement for naturalisation, opening thereby the door to naturalisation of ethnic Hungarian minorities in neighbouring states, while Slovakia decided that any Slovak citizen voluntarily acquiring the citizenship of a foreign country would be deprived of her or his Slovak citizenship. Rainer Bauböck argues in his kickoff contribution that even if both laws do not violate EU law or the Council of Europe's Convention on Nationality, they ought to be seen as highly problematic and indefensible from a democratic conception of citizenship. There is a remarkable consensus among the contributors that the Slovak policy is indeed not acceptable. The controversy focuses therefore on assessing the legitimacy of the Hungarian offer of dual citizenship for its kin minorities. Peter Spiro, Andrei Stavila and Florian Bieber express various degrees of discomfort with the motivations behind the Hungarian policy, but emphasise its democratic legitimacy or potentially beneficial effects for the members of the minority, whereas Mária Kovács, Gábor Egry and André Liebich highlight the nationalist goals behind the Hungarian policy or its devaluation of a democratic conception of membership. For Joachim Blatter, a republican conception of citizenship should promote political participation across borders, while Kovács sees dual citizenship as a first step towards enfranchising an external electorate in order to entrench a nationalist majority in Hungary. Erin Jenne and Stephen Deets regard Victor Orbán's move primarily as a "dog and pony show" for domestic voters and Enikő Horváth argues that, although a policy of extending dual citizenship to transborder minorities may cause international tensions, the present law is less tainted by suspect ethnic discrimination than the 2001 Hungarian Status Law. Rainer Bauböck's concluding rejoinder argues that migrants and transborder minorities differ in their democratic claims to citizenship in an external "home country".

## **Keywords**

Dual citizenship, kin states, transborder minorities, EU citizenship, external voting

## TABLE OF CONTENTS

<b>Dual citizenship for transborder minorities?</b>	
<b>How to respond to the Hungarian-Slovak tit-for-tat.....</b>	<b>1</b>
Rainer Bauböck.....	1
<b>After dual citizenship, external voting? .....</b>	<b>5</b>
Mária M. Kovács.....	5
<b>Accepting (and Protecting) Dual Citizenship for Transborder Minorities.....</b>	<b>7</b>
Peter J. Spiro .....	7
<b>Paving the road to heaven with bad intentions. A moral point of view.....</b>	<b>9</b>
Andrei Stavilă.....	9
<b>Dual citizenship for ethnic minorities with neighbouring kin states .....</b>	<b>13</b>
Joachim Blatter.....	13
<b>Dual Citizenship can be a solution, not a problem.....</b>	<b>19</b>
Florian Bieber.....	19
<b>Political Context Matters. The Banality of Hungary’s Dual Citizenship Law and Slovakia’s Response.....</b>	<b>21</b>
Erin Jenne and Stephen Deets .....	21
<b>Why Identity Matters. Hungary's New Law on Citizenship and the Reorganisation of an Organic Nation .....</b>	<b>25</b>
Gábor Egry .....	25
<b>Dual citizenship, no problem? .....</b>	<b>29</b>
André Liebich.....	29
<b>Viewing Dual Nationality for Transborder Minorities in Context .....</b>	<b>33</b>
Enikő Horváth .....	33
<b>Dual Citizenship for Transborder Minorities? A Rejoinder.....</b>	<b>37</b>
Rainer Bauböck.....	37



## **Dual citizenship for transborder minorities? How to respond to the Hungarian-Slovak tit-for-tat**

Rainer Bauböck\*

As reported by EUDO CITIZENSHIP<sup>1</sup>, Hungary and Slovakia have both amended their citizenship laws on 26 May. In Hungary an overwhelming majority of parliamentarians voted for offering persons with Hungarian ancestry access to Hungarian citizenship without asking them to renounce their present citizenship and without requiring that they take up residence in Hungary. The addressees of this new opportunity are up to 2.5 million Hungarian linguistic minorities living mostly in Slovakia, Romania and the Serb province of Vojvodina. The Slovak law is explicitly a retaliation move. In response to the threat that the country's largest minority could become Hungarian citizens, the Slovak legislature has abandoned its previous toleration of dual citizenship. Persons who voluntarily acquire another citizenship by naturalisation (rather than automatically by birth or through marriage) will immediately lose their Slovak citizenship.

These are the facts, but what is the problem? At least seven other EU member states have laws that resemble the new Hungarian one. They offer naturalisation to persons residing abroad if these individuals themselves or their ancestors had been citizens. Moreover, seventeen EU countries allow for endless transmission of their citizenship to persons born abroad to a citizen parent. If this rule had applied continuously to the citizens of the Hungarian half of the Habsburg monarchy, then the Hungarian minorities in the near abroad of today's smaller Hungary would have been Hungarian citizens by birth. Eleven EU countries also have laws similar to the new Slovak one. They are broadly hostile towards dual citizenship and withdraw their citizenship from those who acquire another one. Take the case of Germany, where the liberal citizenship reform of 2000 introduced *ius soli* but also removed a previous ban on withdrawal of citizenship from any German national residing in Germany. As a consequence of the new law, at least 20,000 formerly Turkish citizens who had reacquired Turkish citizenship after naturalising in Germany were stripped of their German citizenship and voting rights shortly before general elections in 2005. Why should Slovakia not do the same with its ethnic Hungarians? Finally, both Hungary and Slovakia have ratified the 1997 European Convention on Nationality and have made sure that their new laws do not violate any of its core provisions. There is nothing in the ECN that would prevent Hungary from offering its citizenship to ethnic Hungarians residing abroad. And Article 7 (1) ECN contains a precise list of permissible reasons for withdrawal of citizenship that the new Slovak law complies with, since acquisition of a foreign nationality is the first reason listed.

The problem appears to be a political rather than a legal one. The new Hungarian government formed by Fidesz has played the ethnic nationalism card. This has been a long-term commitment of its leader Viktor Orbán. Already in 2004 Fidesz supported a failed referendum initiative to introduce dual citizenship for ethnic Hungarians abroad. Now Fidesz tries to win support among voters for the extreme right-wing and racist party Jobbik. The real surprise is that the defeated socialists also voted for the bill. And the most plausible explanation is their expectation that after turning ethnic Hungarians into dual citizens, the Fidesz government will soon also introduce absentee voting.<sup>2</sup> The

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<sup>1</sup> EUDO CITIZENSHIP news on 23 and 27 March 2010, <http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries>.

<sup>2</sup> Mária Kovács and Szabolcs Pogonyi, 'Ethnic Hungarians in transborder states may well be the biggest losers and victims of Hungary's dual citizenship reforms', 25 May 2010, <http://eudo-citizenship.eu/citizenship-news>.

socialists cannot hope to gain much support among this constituency, but they also cannot afford to alienate a large new pool of first-time voters.

The nationalist agenda of the Slovak Prime Minister Robert Fico is not so very different from that of his Hungarian counterpart Viktor Orbán. And Fico leads a coalition government that includes the ultra-nationalist Slovak National Party. Slovakia has always opposed Hungarian moves to strengthen its ties with ethnic Hungarians in its northern neighbour country. Now, shortly before general elections on 12 June, Fico seems keen to escalate the conflict.

The third party in this game are the political leaders of Hungarian minorities in Slovakia and elsewhere. Several Hungarian MPs in Slovakia have announced that they will take up Hungarian citizenship. If and when the new Slovak law is implemented, they would thereby cease to be citizens of the country in whom they represent the largest ethnic minority and they could no longer run in future elections. Banning political leaders of a minority from parliament is not exactly likely to strengthen sentiments of loyalty among this minority towards the Slovak state.

This conflict must be puzzling for many academic scholars and migration think tanks that have advocated the general toleration of multiple nationality and have welcomed recent European trends in this direction as indicating a move from ethnic to civic conceptions of citizenship. Dual citizenship has been interpreted as a step towards postnational conceptions of membership and the opening of new spaces for free movement and multiple identities across the borders of sovereign states. So how can we make sense of this conflict where Hungary advocates dual citizenship on purely nationalist grounds whereas Slovakia rejects it invoking the same ideology?

Historians studying sending countries will answer that there is little new about the fact that multiple nationality can generate quarrels between states. Dual citizenship was, for example, a major source of conflict between the United States of America and European states until the Bancroft Treaties at the end of the 19th century established the principle of singular citizenship, which became later enshrined in international law in the 1930 Hague Convention. Migration scholars studying sending countries are also aware of the fact that these tolerate dual citizenship in order to retain connections with their diasporas and do so often not only for economic motives, but also to please nationalist constituencies at home and abroad.

Yet international conflicts over dual citizenship of migrants have been largely overcome. Since states insist on their sovereignty in determining who their citizens are, they had to learn that their independently applied rules for birthright citizenship by *ius soli* and *ius sanguinis* inevitably produce dual citizens. Although many countries still insist on renunciation as a condition for the naturalisation of immigrants, this has become a largely anachronistic policy. So why should it not be acceptable to Slovakia that Hungary wants to turn its ethnic minorities abroad into dual citizens?

The reason is that dual citizenship has a different meaning for migrants who have moved across international borders and for minorities stranded in another states after a redrawing of international borders. In a migration context, dual citizenship means primarily an individual right of free movement between two states, whereas in the border-shifting context it can signal a lack of historical reconciliation with territorial changes. The rhetoric of building a larger nation beyond the country's borders that we find also in emigration countries, such as Mexico or Turkey, acquires a quite different significance when the Hungarian government invokes it to exploit historic grievances towards its neighbours. The claim that dual citizenship will help to protect Hungarian minorities abroad is hypocritical. Instead, Hungary worsens their situation by creating a dilemma between emigration to Hungary and assimilation in Slovakia. The third alternative, a stronger recognition of Hungarian minorities that would transform Slovakia into an officially multi-lingual and multi-ethnic democracy is undermined by dual citizenship. Territorial minorities with neighbouring kin states face a choice of either conceiving of themselves as diasporas or as ethnic minorities. They can see themselves as dual citizens of their country of residence and an external kin state who want to keep open the option of 'returning' to the latter, or as minority citizens striving for cultural rights, territorial autonomy and

special representation in their country of residence. There is an unavoidable trade-off between these choices. This was understood by Austria when it acted as a protecting power for territorial autonomy in South Tyrol/Alto Adige but refrained from offering the German speaking minorities in Italy Austrian citizenship.

Slovak worries about the Hungarian law are therefore understandable, but a law that deprives an ethnic minority of its birthright citizenship is politically and morally irresponsible. The problem is that it seems legally just as defensible as the Hungarian dual citizenship offer. The European Convention on Nationality permits withdrawal of citizenship from persons who voluntarily acquire that of another country (Art. 7(1)a) as well as from those who habitually reside abroad and lack a genuine link to the state concerned (Art. 7(1)e), but these two reasons do not seem to be combined. The genuine link of an ethnic minority with its country of birth and permanent residence thus does not protect its members from being deprived of citizenship if they voluntarily acquire that of an external kin state. The other important European Convention that one might expect to provide relevant legal norms, the 1995 Framework Convention on National Minorities, remains entirely silent on the question of citizenship affiliations of minorities.

In the absence of clear guidance through current international law, what are the principles that the political actors involved in a transborder conflict about dual citizenship should respect? There are two different concerns that can both be addressed by strengthening a principle of genuine link. The first one is with over-inclusiveness. Multiple citizenship ought to be granted only to persons with genuine links to several states. This principle would clearly condemn *ius sanguinis* transmission of citizenship across several generations born abroad or preferential naturalisation of persons residing permanently abroad whose ancestors had once been citizens. One might object that transborder minorities, such as ethnic Hungarians in Slovakia, still have a genuine link to their external kin state because of a shared language and an interest in external protection of their minority rights. Yet while these are relevant interests that ought to be taken into account, they should not determine who has a claim to membership status in a democratic state.

The second concern is with unjustified exclusion through depriving native-born residents of a citizenship that is clearly based on genuine links. The question is which criteria beyond those listed by the ECN should be considered as obstacles for citizenship withdrawal. Should, for example, a citizenship acquired at birth never be withdrawn? This would conflict with Art. 5 of the ECN that requires non-discrimination between nationalities acquired at birth and through naturalisation. It would also promote over-inclusiveness since persons born abroad who have acquired a citizenship by descent could then retain it for life and also pass it on to a next generation. A much more plausible criterion is permanent residence in the country, especially when the person concerned has also been born and raised there. The Germany conditional *ius soli* does not respect such a genuine link obstacle to deprivation, since it leads to automatic loss of German nationality unless a foreign nationality inherited at birth is renounced before age 23. An autochthonous ethnic minority, such as the Hungarian one in Slovakia, ought to be even more firmly protected. A state that hosts a national, linguistic or religious minority has a special duty to protect it that must at the very minimum include a citizenship guarantee. This principle, which is currently lacking in international minority rights instruments, would condemn the Slovak law just as much as Estonian and Latvian policies of imposing statelessness on large parts of their Russian minorities and offering them then naturalisation under conditions that were difficult to meet.

These norms can be derived from an interpretation of a genuine link principle for determining citizenship that is stronger than in current international law. If they could be coded in future protocols to the ECN or other similarly successful international conventions, this will not necessarily prevent nationalists like Orbán and Fico from provoking similar crises, but it would at least deprive them of any excuse that their policies are perfectly legitimate.

Developing stronger international legal norms is, however, no answer to the question how to resolve a current conflict. What is needed here and now is a political response that assigns ethical responsibilities to political actors while taking their legitimate interests into account. But there remains an apparent contradiction when addressing this task. How can one blame Hungary for its dual citizenship offer and simultaneously blame Slovakia for retaliating through a prohibition of dual citizenship? What this puzzle shows is that we should not only consider the responsibility of each state taken separately but see their actions as connected with each other. The Hungarian-Slovak conflict illustrates the extent to which citizenship policies of independent states have become interactive. Responsibilities for avoiding such crises as well as for resolving them depend largely on what other political actors do or fail to do.

The primary responsibility lies obviously with the Hungarian government. It ought to have refrained from abolishing a residence criterion for naturalisation of ethnic Hungarians and should now offer unconditional negotiations with its neighbours to deescalate the crisis. Such negotiations would have to include matters that all governments consider as their internal affairs: a strengthening of ethnic minority rights and the offer to modify adverse citizenship policies in return. A secondary responsibility lies with the political leaders of the Hungarian ethnic minorities. They should discourage their constituencies from applying for Hungarian citizenship and can demand in return to be included as full partners in negotiations among the states concerned. Such inclusion could help to break gridlocks between the state parties and to dispel the idea that these minorities are merely fifth columns of government sponsored pan-Hungarian nationalism. Finally, Slovakia should unconditionally retract the threat to denaturalise ethnic minority members and offer instead open talks about stronger minority rights if Hungary is willing to reintroduce a residence condition for access to Hungarian citizenship.

If all three actors behaved responsibly, the outcome of this crisis could still be a bilaterally agreed framework for the protection of ethnic minorities linked to external kin states that would serve as a model for other states and conflicts in the region. Since none of the three actors is currently likely to act responsibly, however, a fourth responsibility lies with the European Union. Even in the absence of any treaty competence in matters of nationality law, the presidents of the EU Commission, Council and Parliament could use their political weight to demand that both Hungary and Slovakia retract their laws and start to talk to each other. After initial reluctance to get involved and assertions by the Commission that questions of nationality should be decided by member states, President Barroso has changed his mind and ‘called on Viktor Orbán to discuss the measure with the Slovaks’ (Presseurop, 5 June 2010). In spring 2009, the EU Commission had already voiced concerns when Romania offered its citizenship to Moldovans whom Romania considers former citizens of Romania<sup>3</sup>. The Commission was worried that Romania might create large numbers of Union citizens who could move to any other Member State. The Hungarian law will not have this effect since the largest Hungarian minorities live now in EU Member States, but it provokes a confrontation between two Member States. EU politicians should by now have learned the lesson that nationalist citizenship policies can either affect all other Member States through opening backdoors for free immigration or unleash serious conflicts between neighbours.

There is no prospect for changing the basic architecture of EU citizenship that makes it derivative from Member State nationality. But it is time to start a serious discussion about minimal standards and good as well as bad practices in matters of citizenship.

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<sup>3</sup> Constantin Iordachi, ‘Romanian Citizenship Offer to Moldovans: Exaggerated Fears in the European Union’, 12 May 2009; ‘Romania: former citizens, new citizens, new votes?’ , 7 November 2009, <http://eudo-citizenship.eu/citizenship-news>.

## After dual citizenship, external voting?

Mária M. Kovács\*

I agree with Bauböck's narration of the conflict and I would like to comment on the problem of external EU influence with regard to the issue.

Bauböck rightly points out that the crisis escalated to its current severe stage because of the way nationalists in the various concerned states pushed the issue. If this is the case then it is hardly realistic to expect that either of the concerned states would 'retract' their legislation under the influence of the EU since nationalist are hardly likely to enter into such negotiations.

But I would like to comment on the history and possible future influence of international actors. In Hungary around 2001-2002 when external citizenship was first proposed in connection with the so-called Status Law (granting mostly cultural benefits to external ethnic Hungarians) the same Fidesz that now adopted the legislation had explicitly ruled out the possibility of granting non-resident dual citizenship and argued that the Status Law is meant to grant ethnic Hungarians in neighbouring states some important benefits without bringing Hungary and the Hungarian minorities in those states into conflict with the host states on account of external citizenship. At that time, the Council of Europe's Venice Commission (the European Commission for Democracy Through Law) reviewed the status law<sup>4</sup> and, after some proposed changes, the law went into effect.

Since then, however, the toleration by the international community of the introduction and practice of non-resident external citizenship in various European states has put the Hungarian issue in a different context. Standing out among foreign examples was the practice of non-resident external citizenship by Romania towards Moldova which prompted some Hungarian minority politicians in Romania to argue that Hungary is not doing for external Hungarians what Romania is doing for external Romanians. It is clear from the history of the past decade that the caution once exercised by Fidesz has eroded under the impact of the toleration of foreign examples of non-resident external citizenship practices in other European Union states.

Of course, in the meantime some additional implications and possible effects of the reform were also brought to light and helped Hungarian nationalists to abandon their initial sense of caution. Arguing for the reform, István Mikola, a top Fidesz politician, made a much quoted statement in 2006 according to which Fidesz should support and introduce the reform in order to gain enough voters 'to stay in power for 20 years'. This amply describes how the issue of external non-resident citizenship was gradually transformed into an issue of domestic electoral reform.

In this regard, however, there is still some space for moderation. One aspect of the dual citizenship reform has not been taken to the extreme: those entitled to external non-resident Hungarian citizenship have not yet been given the right to vote, as such a right would require changing the law on elections in order to enable those who do not possess permanent residence (and effective ties in general) to vote. However, if the electoral law were changed and external citizens given the right to vote in national elections, the size of the eligible external electorate could be as large as a third of all voters in Hungary. This would inevitably push the Hungarian internal balance between parties even further

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<sup>4</sup> 'Report on the Preferential Treatment of National Minorities by their Kin-State', adopted by the Venice Commission at its 48th Plenary Meeting (Venice, 19-20 October 2001), <http://www.venice.coe.int/docs/2001/CDL-INF%282001%29019-e.pdf>.

towards the nationalists. A comparison helps to illustrate the effects: external voters in Bosnia who possessed non-resident Croatian citizenship were instrumental in keeping Tudjman in power for years.

The issue is, as Bauböck rightly points out, primarily political in this respect, too. Fidesz has the constitutional right and parliamentary strength to change the electoral law. However, the prospect of a possible electoral reform to extend the franchise to external non-resident voters would seriously impact on the quality of parliamentary democracy in Hungary by reducing the sovereignty of Hungary's internal, resident citizens.

## Accepting (and Protecting) Dual Citizenship for Transborder Minorities

Peter J. Spiro\*

The recent controversy over Hungary's extension of citizenship to nonresident populations in neighbouring states presents a challenge to those of us with postnational tendencies who accept dual citizenship without much qualification. It's a context in which the status might appear to threaten a sensitive political, legal, and diplomatic balance. If this were my first case, I would have had a harder time reaching my ultimate destination on the issue, and if anyone were to dislodge me from my absolutist posture it would be Rainer Bauböck. I nonetheless remain unpersuaded that Hungary's move is normatively problematic.

First of all, Hungary's policy implicates autonomy at the level of the individual and the collective. If the Hungarian people want to define themselves to include those living abroad of Hungarian ancestry, that is Hungary's business. (The connections between these external populations and the Hungarian state would in my view easily satisfy the 'genuine link' threshold for the attribution of nationality set forth in the *Nottebohm* decision, which test has denied the effect of citizenship where it is pretextual.) Hungary's policy would be unsustainable if it foisted citizenship on those who did not want it, but because it is extended at the individual's option, there is no such difficulty here.

As a general matter, plural citizenship allows individuals to actuate identities, and that is as true in this context as in any other. It is rather the Slovak response that shackles individual capacity for self-definition. If persons of Hungarian ancestry want to formalize their identities as members of the Hungarian national community (and the Hungarian national community is willing to accept them as such), rights of free association are implicated. This sort of free association right might be overcome by a compelling public interest (to borrow the test for burdening associational rights under U.S. constitutional law).<sup>5</sup> In theory, there is room to account for contingency. I don't think that burden is met in this case, and I now have a hard time imagining the case in which it would.

As Rainer points out, dual nationality once figured centrally in bilateral disputes, leading even to war. But that was during an era in which national power depended on manpower. It was also before the advent of human rights. Dual nationality changed the legal playing field – states could do as they pleased with their own subjects where they were highly constrained in their treatment of nationals of other states. In that context, dual nationality was an affront to sovereignty, contradicting foundational elements of the international system, and measures combating the status were justified even as they limited autonomy.

Today, of course, states are highly constrained in the treatment of their own citizens. For some Slovaks to acquire Hungarian citizenship doesn't change the playing field in a material way. It doesn't legally empower Hungary to do anything it couldn't do before, nor does it take anything off the table for Slovakia in its territorial governance capacities. It's a symbolic gesture, important for purposes of self and collective identification but not something that necessarily affects legal relationships, at least not within the territorial polity. In other words, the extension of citizenship by Hungary shouldn't really make much of a difference. Any affront taken by Slovakia fails to trump the autonomy interests in allowing Hungary to extend its membership beyond its territorial boundaries.

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<sup>5</sup> For an elaboration, see Peter J. Spiro, 'Dual Citizenship as Human Right', 8 *International Journal of Constitutional Law* (I-CON) 111 (2010), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1489005](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1489005).

The same logic does not apply to Slovakia's response. Recent developments point to the emergence of an international norm under which habitual residents (especially those born in a territory) cannot be denied access to citizenship. Slovakia's denationalization of those Slovaks who acquire Hungarian citizenship poses an unreasonable burden on that access. (Although Germany's 2000 citizenship reform has resulted in some cases to the same effect, the regime remains unstable and has been contested in a human rights frame).<sup>6</sup> In contrast to Hungary's policy, Slovakia's is exclusionary and it is undertaken by the state of territorial administration – acting, that is, in a public capacity. In that mode, the state is constrained in its exercise of self-definition by human rights norms. Slovakia is burdening not only the exercise of free association by its ethnic Hungarian minority but also their rights of political participation within Slovakia.

In dealing with the challenges of minorities in Central Europe over the long run, dual citizenship could be part of the answer rather than part of the problem. The persistent identification of national minorities with their 'home' states will never be fully assuaged through the channel of minority rights in states of residence. Dual citizenship allows for the actuation of the home state tie within established borders, to better reflect organic social memberships; it makes it possible to redraw the boundaries of human community while living with imperfect territorial ones.

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<sup>6</sup> See Enikő Horváth & Ruth Rubio-Marin, "‘Alles Oder Nichts’? The Outer Boundaries of the German Citizenship Debate", 8 *International Journal of Constitutional Law* 72, 81-83 (2010).



## **Paving the road to heaven with bad intentions. A moral point of view**

Andrei Stăvilă\*

In approaching the conflict between Hungary and Slovakia Rainer Bauböck and Mária Kovács filled their minds ‘with ever increasing wonder and [probably less] awe’ by choosing the first Kantian strategy – that of looking at the European blue starry heaven above us. In what follows I want to take the second Kantian perspective of looking at the moral law within us. If my plan will reveal some disagreements between the two approaches, then this is only to the greater benefit for our discussion.

Let me first show the difference between the above two strategies. I agree with Bauböck’s idea according to which the whole problem can be better framed as a political, not a legal one. Nevertheless, I believe that the same issue may be best framed in normative terms. The difference is obvious: for example, the fact that both the new Hungarian law and the amendment to the Slovak Citizenship law were passed by nationalist parties may have relevance within a political approach. From the normative point of view, however, it is less important who designed and voted the law than whether this law is justified or not.

### **Partial citizens**

What I want to underline from the beginning is that the actual law does not transform Hungarian ethnics from neighbouring countries into full Hungarian citizens, as Bauböck seems to take for granted. By lacking voting rights and the right to social services, they will be at best ‘partial citizens’. In consequence, the first question may be whether we can morally accept the existence of different types of citizens. I believe the answer is affirmative: many European countries actually create this multiplicity of political subjects by making a clear distinction between citizens and non-national long-term residents. Some countries offer third country nationals the right to vote in local elections, which is conditional on a period of legal residence and registration (Belgium and Estonia). Having more or less the same requirements, other countries offer them full political rights at the local level – i.e., the right to vote and the right to stand as candidate (Denmark, Finland, Ireland, Slovakia, Sweden, UK, etc.) (Bader 1999, Gropas and Triandafyllidou 2007, Shaw 2007). The United States even make a difference between full citizens by denying foreign-born American citizens some political rights, such as the right to run for the presidency. In all these cases, the existence of different vertical types of citizens (full citizens, citizens with limited electoral rights, non-citizens with full political rights at the local level) is obvious (for other types of semi-citizenships within a liberal democracy see Cohen 2009); however, we usually do not think that these different types of citizenship are morally illegitimate or create a ‘caste-like society’ (Bosniak 2006). Writing against a unitary concept of citizenship, I have proposed elsewhere a principle of vertical multilayered citizenship, according to which different types of citizenship should be created according to different ways of structuring rights and duties various categories of citizens may have (Stăvilă 2010). In my view, the new Hungarian law is morally justified in creating partial citizens.

### **Cui bono?**

If this is correct, then we can take a further step and ask who benefits and who loses after the Hungarian law enters into force. At the level of states, the most important thing that has been

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emphasized by the media was that not only ‘ordinary’ individuals from neighbouring countries will acquire citizenship, but also Hungarian ethnic politicians, and this is supposed to create a conflict of interests and a problem of political allegiance. However, it is difficult to understand what this conflict is supposed to amount to. The conflict may be obvious if full political rights are included: in this case, one individual could be in principle a member of parliament or even a Minister in two different countries, and in case of conflicting interests her activities may be biased toward one state or another. But since political rights are not yet offered, the conflict is only in the eyes of nationalistic beholders.

Another problem could be that Hungarian ethnics from Slovakia (roughly 500,000 individuals, about ten per cent of the country’s population) would have more incentives to request autonomy or even secession. However, it is not clear why partial Hungarian citizenship would add something weighty enough in a discussion which could go on even in the absence of the new law. Slovakia does not have much to lose from tolerating dual citizenship.

At the individual level, besides symbolic advantages, the most important practical benefit of the new Hungarian law is the extension of free movement rights. Ironically enough, this does not hold in the HU-SK case, since both Hungarian and Slovak citizens can travel to the United States without a visa. However, Romanian citizens who are Hungarian ethnics cannot – and the new law will include yet another category of persons who enjoy an extended freedom of movement. From this point of view the law is not only morally justified; it is also a liberal law. Some may articulate different concerns at this point – Bauböck reminds us about the concerns expressed by the European Commission in spring 2009 regarding the way Romania offered citizenship to Moldavians. However, in spite of those fears the acquisition of Romanian citizenship by Moldavians is still going on, and we have no indication that European worries could be well-founded. What is even more, the United States have not reacted by now regarding the possibly increased numbers of EU citizens who might enter its territory after this law enters into force.

On the other hand, the Slovak amendment is clearly an illiberal one, and its consequences are more far-reaching than the bilateral relationship between Hungary and Slovakia. Not only Hungarian ethnics, but also every person who acquires another country’s citizenship (except by birth or marriage and except those covered by bilateral treaties on mutual toleration of dual citizenship) will automatically lose Slovak citizenship. As EUDO expert Dagmar Kuša observed, the Slovak opposition criticised the amendment as a mere reaction to the Hungarian citizenship amendment and pointed out that many young people who applied for citizenship elsewhere will lose employment opportunities due to the changes.<sup>7</sup> At the end of the day, at the individual level there is a lot to gain from the new Hungarian law – and nothing to lose. Conversely, at the same level there is a lot to lose from the Slovak amendment – and nothing to gain.

### **Citizenship acquisition – the ‘genuine link’ and the trade-off argument**

Bauböck seems to be in favour of a more restrictive policy regarding the acquisition of citizenship by non-resident ethnic kins, based on the principle of ‘genuine link’. However, a distinction should be made between acquisition and restitution. It is one thing to ask whether it is morally justified and politically desirable to offer citizenship to people who have renounced it in the past or to their descendents who don’t even know the language and have few ideas about their parents’ culture. But it is another thing to question the legitimacy of offering citizenship to persons who ‘were stripped of (...) citizenship against their will or for reasons beyond their control, and their descendants’ – as the 1991 Romanian Citizenship law did.<sup>8</sup> This is why I do not believe that Bauböck’s proposal can be

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<sup>7</sup> See EUDO CITIZENSHIP news on 27 May 2010, <http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries>.

<sup>8</sup> See EUDO CITIZENSHIP news on 12 May 2009, <http://eudo-citizenship.eu/citizenship-news/86-pressrelease>.

applied to Moldavians and ethnic Hungarians from Romania, Slovakia and Serbia. In the case of these minorities, the involuntary character of their loss of citizenship and their strong link with their former state's culture and language must weigh heavily in our discussion. The problem is whether language and culture count as 'genuine links'. Bauböck denies this, taking a stance against an *ius sanguinis*-based 'endless transmission of citizenship'. However, things are not that simple. Firstly, if we adopt a principle of stakeholderhood as the standard for acquiring citizenship, then we have to ask what it means for a person to hold a stake in a polity. According to Rainer Bauböck, individuals 'hold a stake if the polity is collectively responsible for securing the political conditions for their well-being and enjoyment of basic rights and liberties' (Bauböck 2009). The problem is that this criterion is not specific enough: it requires further clear conditions for a state's responsibility towards an individual. Now language and culture as genuine links may or may not be among these conditions. However, a principle of stakeholderhood alone is not able to lay down all necessary and sufficient conditions for this responsibility. Secondly, I can buy the argument against an 'endless transmission of citizenship'. However, the question still remains whether the Hungarian case qualifies or not. At the end of the day, the 1920 Treaty of Trianon was signed less than hundred years ago. Is a transmission of citizenship 'endless' when we are talking about second and third generations? A convincing argument for such a claim is still lacking.

Bauböck also believes that since transborder minorities may legitimately claim political autonomy, they cannot enjoy the transnational citizenship status to the extent migrants do. The argument is that combining external citizenship in another independent state with political autonomy within the residence country subverts the integrity of the latter (Bauböck 2007). The solution – and this can be applied to the Hungarian minority in Slovakia and Romania – is political autonomy and multilevel dual citizenship within the resident state, but not external dual citizenship involving a kin-state. I have not enough space here to deal with this argument at length; nevertheless I want to make three remarks.

Firstly, the trade-off argument takes for granted that transborder minorities have been incorporated into a 'newly formed state territory', and so political borders are contested. However, this is not actually the case with Hungary, on the one hand, and Slovakia and Romania, on the other: the process of their accession to the European Union presupposed bilateral agreements with neighbouring countries, reciprocal acknowledgement of political borders and abandonment of any territorial claim. In consequence, the argument for the trade-off between transnational citizenship and political autonomy is undermined by the fact that one of its premises (contested political borders) is missing (at least officially). It is less probable that the 'subverting effect' of combining the two will appear within the European Union than outside of it.

Secondly, the trade-off argument is further weakened if we reject, as I have proposed above, the idea of citizenship as a unitary concept. If, together with Bauböck, we accept horizontal types of multiple citizenship (in different states) and vertical types (citizenship of an autonomous region plus citizenship of the larger multinational polity), why shouldn't we go further and accept a principle of vertical multilayered citizenship, which would create various types of citizenship for all (and not only for minorities) according to various ways of structuring rights and duties different citizens may have? If we accept this, then Bauböck's *tertium non datur* between transnational citizenship and political autonomy no longer holds, and a third possibility arises: partial citizenship in one, two or three states may well be combined with full citizenship in another state without undermining any state's sovereignty.

Thirdly, and related to the latter consideration, the trade-off argument focuses exclusively on the effects of transnational citizenship and political autonomy on states; surprisingly, it does not take into account individuals, which in any liberal tradition are supposed to be prior. A principle of vertical multilayered citizenship could do this without undermining states' sovereignty. For example, Hungarian ethnics may acquire partial Hungarian citizenship (with no political rights attached to it): this cannot undermine Slovakia's or Romania's sovereignty since the effects of citizenship (access to Hungarian schools, free movement, priority of application to full citizenship, etc.) would take place on

Hungarian territory. Moreover, my principle of vertical multilayered citizenship is, at the end of the day, more realistic than the trade-off argument. On the one hand, unlike the latter, it acknowledges the fact that most of the time the quest for autonomy may be just as ‘subversive’ for a state’s integrity and can give rise to just as strong conflicts as external dual citizenship. On the other hand, it also accounts better for what individuals really feel: many Hungarian ethnics in Romania, for example, have strong links with both states; they simply feel bound to both. Proposing autonomy is begging the question, since it amounts to suggesting another, ‘third identity’. Unlike this argument, the principle of vertical multilayered citizenship acknowledges the existence of this double bond by accepting that the same individual can have different types of citizenship in various countries.

## Conclusion

In sum, I believe that the new Hungarian law (although insensitive to the actual political context) is legitimate, and its only negative effects amount to hurting Slovak ethnic nationalists’ feelings. In this context, Slovakia’s retaliation by passing an amendment to its own citizenship law, according to which every Hungarian ethnic applying for Hungarian citizenship will be automatically stripped of Slovak citizenship, may be justified in a Machiavellian perspective on politics – but it cannot be morally defended. This case is supported by the fact that all the other countries with Hungarian minorities (Romania, Serbia, Austria and Ukraine) had weak or no reaction at all to the new Hungarian law.

Unlike Bauböck, I think the primary responsibility lies with the Slovak government. As for the Hungarian part, unfortunately it is true that a good law may be sometimes used for furthering the worst (nationalist) intentions. However, the analytical distinction between the moral nature of the law and the moral intentions of its proponents must be clearly kept in mind. At the end of the day, if the road to hell is paved with good intentions, then maybe the road to heaven may conversely be paved with bad intentions. As long as no crucial moral objection may be raised against the new Hungarian law (and I do not see such an objection at the moment), then we should accept it.

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## Dual citizenship for ethnic minorities with neighbouring kin states

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The invitation to participate in the debate on the legitimacy of Hungary's extension of citizenship to non-resident populations in neighbouring states and of the legitimacy of Slovakia's retaliation law provides the opportunity to have a closer look at two important concepts and statements which Rainer Bauböck has introduced into the discourse on the normative foundations of citizenship policies: first, the stakeholder principle as a liberal criterion for defining the scope of the population eligible for the right of political participation in a nation state; second, the alleged trade-off between treating territorial minorities with neighbouring kin states either as diasporas or as ethnic minorities.

A reflection on these two topics is not only necessary in order to judge the legitimacy of the laws in Hungary and Slovakia, it helps us to make further progress in developing adequate understandings of citizenship and of legitimate citizenship policy for a world that exhibits at the same time processes of transnationalisation and of nation-building and in which the interdependency of citizenship policies of nation states is becoming, once again, obvious.

Before I address these issues I would like to lay out the foundations from which I approach the topic. My points of reference for judging dual citizenship laws and policies are theories of democracy – as I have argued elsewhere, we should take into account that there exists a plurality of theories of democracy. From most of them, we can generally deduce an endorsement of dual citizenship – at least if we assume that the socio-economic, cultural and political life-world of many people is increasingly transnational and that political decisions of nation states have increasingly transnational implications (Blatter 2010). Liberal democracy is based on the principle that all those who are subjected to law should have the right to participate in lawmaking. Rainer Bauböck has taken up this point and developed the 'stakeholder principle' as a means to determine the scope of the population that should be included in a transnationalising world and this approach leads to the endorsement of dual or multiple citizenships and to the specification of the necessary preconditions for eligible individuals.

We will come back to this principle in a moment, but first I would like to point to other theories of democracy and their core rationale for or against dual citizenship. From a republican perspective, dual citizenship has to be endorsed inasmuch as it leads to higher levels of political involvement and participation not only in the country or residence but also in other countries as well as across national borders and on a supranational level. When we look at dual citizenship from a communitarian perspective, we can discover a paradox. Although in principle communitarian thinking provides strong arguments against dual citizenship (dual citizenship causes problems of loyalty, identity and solidarity), most initiatives towards the formal acceptance of dual citizenship in migrant sending countries and in countries with kin minorities in neighbouring countries are based on a communitarian understanding of citizenship. The concept of partial citizenship can be interpreted as an attempt to circumvent the contradictions in communitarian thinking. The term 'partial citizenship' has been introduced into this debate by Andrei Stăvilă and I will come back to this as well.

From a multicultural perspective on democracy, dual citizenship has to be seen as a gesture of welcome and recognition for those who want to integrate in one political community without giving up the links to another community. It is primarily a symbolic gesture that indicates the valuation of 'also-others.' In contrast to most multicultural reasoning (which focuses on 'difference') the acceptance of dual citizenship is an expression of the recognition and valuation of 'multiplicity.' Furthermore, it is also a means which opens up the option of exit/entry as a last remedy if and when

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discrimination turns into an existential threat. Finally, from the perspective of deliberative democracy, dual citizenship is relevant because it enlarges and enriches the electorate as authoritative audiences of public deliberations. The inclusion of ‘also-others’ in the national demos makes it more likely that affected interests outside the national community (the political community subjected to national laws) are taken into account in the process of national will formation through public deliberations and elections. In other words, national politics might get more ‘other regarding’ – a primary criterion for judging the deliberative quality of democratic processes (Offe and Preuss 1991).

How should we judge the Hungarian law that offers dual citizenship to persons abroad if they have Hungarian ancestry? For liberals individual rights and interests should take priority and the Hungarian law might be justified if it leads to a better congruence between those who are subjected to Hungarian laws and those who are eligible to participate in Hungarian law-making. Surprisingly, Rainer Bauböck is discussing the issue of unjustified exclusion and overinclusiveness not with reference to his own – liberal – ‘stakeholder’ principle but with reference to the legal term ‘genuine link.’ When we look at the explanatory report to the European Convention on Nationality for an explication of what a ‘genuine link’ actually means we discover the following specifications: ‘...the genuine and effective link between a person and a State does not exist [...] [if] this person or his or her family have resided habitually abroad for generations.’ (No. 70 of the report)<sup>9</sup>. The report goes on with a very voluntaristic specification of indicators for a missing genuine link in No. 71 of the report: ‘Possible evidence of the lack of genuine link may in particular be the omission of one of the following steps taken with the competent authorities of the State Party concerned: i. registration; ii. application for identity or travel documents; iii. declaration expressing the desire to conserve the nationality of the State Party.’ Altogether, the term ‘genuine link’ inhibits two criteria for justified exclusion: (a) long-term residence outside the concerned country, and (b) missing expressions of interest by the individual. The main problem with the first criterion is the fact that it is not very specific; the term ‘over generations’ makes a judgment very difficult in our case. The Treaty of Trianon which led to the fact that many former Hungarians habitually reside abroad has been signed in 1920. 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. From a liberal point of view this is a strong argument for interpreting the term ‘over generations’ very generously – which makes the judgment in the Hungarian case very difficult.

Rainer Bauböck has introduced a term and principle for deciding who should have a right to be included in a national citizenry that is much more clearly based on a liberal philosophy than the term and definition of ‘genuine link’ – the ‘stakeholder principle.’ He argues that ‘a claim to citizenship depends on objective biographical circumstances, such as birth in the territory, present or prior residence, having a citizen parent, or being married to a citizen. [...] Individuals whose circumstances of life link their future well-being to the flourishing of a particular polity should be recognized as stakeholders in that polity with a claim to participate in collective decision-making processes...’ (Bauböck 2007a: 2421-2422). Much more than the ‘genuine link’ specifications, the ‘stakeholder principle’ points to the future and not to the past. Biographical connections to a country should only matter if there is a high probability that these connections lead to an objective and subjective interest in the policy-making in the concerned country currently or in the near future. In contrast to a libertarian perspective, which would emphasize the freedom of individuals to choose their political membership according to their subjective will, Bauböck’s stakeholder approach refers to ‘objective’ preconditions which have to be fulfilled in order to be eligible for citizenship in one or more countries. As a liberal, he combines this objectivist aspect with an emphasis that individuals who qualify should have a free choice to naturalize or not to.

Overall, we can conclude that from a liberal perspective the Hungarian law would be legitimate if it demanded evidence of objective and subjective interest in Hungarian politics. Speaking the Hungarian

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<sup>9</sup> ‘Explanatory Report to the European Convention on Nationality’,  
<http://conventions.coe.int/Treaty/en/reports/html/166.htm>.

language, having strong feelings for Hungary or family ties in the past would certainly not be enough. Instead, having family members who are currently living in Hungary, working or owning property in Hungary would be acceptable criteria for having a 'stake' in this country. I do not know the specifics of the Hungarian law, but it seems that it is not in accordance with these criteria and therefore it is over-inclusive from a liberal point of view. But the main problem from a liberal and especially from a republican perspective is a quite different one – it is the fact that it offers no right to vote (at least not yet). And for liberals and republicans the right for political participation is what granting dual citizenship is all about! If dual citizenship does not provide those who have an objective stake in Hungarian politics the right to vote, it is (almost) useless (the freedom to exit and entry is as important from a liberal point of view, but freedom of movement is guaranteed independently of dual citizenship since Hungary and Slovakia are member states of the EU).

From a republican perspective dual citizens abroad should not only have the right to vote but the Hungarian government should make efforts to make absentee voting possible in order to pave the way for political participation. Nevertheless, 'objective interest' is for liberals what 'civic virtue' is for republicans. From a republican perspective it would be perfectly legitimate and appropriate to introduce citizenship tests for those who are willing to apply for Hungarian citizenship in order to make clear that a certain level of knowledge about Hungarian society and politics is a precondition for granting citizenship. Also in this respect, the Hungarian citizenship law seems wanting. Nevertheless, the fact that the Fidesz government has introduced this law because it expects to get most votes from the new citizens cannot be an argument against the Hungarian law. Liberals and republicans should have trust in the political process. Maybe the new Hungarians in neighbouring countries do indeed vote for nationalist parties in their first elections. However, if the politics of nationalist Hungarian governments led to negative political reactions in neighbouring countries and to deteriorating living situations in their place of habitual residence, they might vote differently next time.

The same objections apply to the argument that the inclusion of the new Hungarians in neighbouring countries in the electorate would disturb Hungarian politics because of the sheer numbers of new voters. Allocating foreign voters a specific number of seats in the parliament could solve this problem. This would be a specific translation of the notion of 'partial citizenship' into republican or liberal terms because it would imply that the votes of (dual) citizens living outside Hungary count less than the votes of those who live inside the country. This would not only be justified by the fact that those who are directly subjected to law should have a stronger say in law-making than those who are only indirectly subjected or affected. It would also reduce one of the major problems of dual citizenship from a liberal perspective. The right to vote in two countries based on dual citizenship violates a core principle of liberalism – formal equality – within the European Union as long as law-making in the EU is dominated by intergovernmental negotiations and decision-making. Persons who are citizens of two states within the EU influence the composition of two governments and their policy programs. Therefore, in the aggregative process of EU-policy-making, their preferences are counted twice. Paradoxically, in respect to the criterion of formal equality dual citizenship represents less a problem between two states that are less politically integrated.

Nevertheless, in other respects, the EU integration of Hungary and Slovakia is a necessary precondition for a liberal defence of Hungary's dual citizenship law. Liberals are primarily concerned with the rights and freedoms of individuals, but they certainly accept that there are specific structural preconditions for securing these rights and freedoms. One of them is the absence of war and another one is a certain level of autonomy of political communities for collective self-determination. I deliberately avoid the notions of 'integrity of states' and 'sovereignty of nation states' because the former term is fuzzy and the latter no longer appropriate in situations in which socio-economic interdependence and supranational political integration are core features of the socio-political order. In line with Andrei Stavilă's argumentation, I think that because of the fact that Hungary and Slovakia are members of the European Union and because Hungary does not combine the steps to widen the scope of national membership with a territorial claim, dual citizenship for kinship minorities in

neighbouring countries seems acceptable in principle. Nevertheless, the strong tensions that emerged between the two nations make it obvious that we need supranational regulations to deal with the coordination of national citizenship laws. We will come back to this issue later on.

Overall, we can conclude that from liberal and republican perspectives the Hungarian law is problematic because of its wrong specifications of the necessary preconditions for the acquisition of (dual) citizenship and because it does not provide the right to vote in Hungarian national elections. The Slovak law is even more in contradiction with liberal and republican democracy because it deprives people subject to Slovak law of the right to vote in Slovakia.

We turn now to the alleged trade-off between treating the ethnic Hungarians in neighbouring countries either as diasporas or as ethnic minorities, which forms another important point of reference in judging the Hungarian law and the retaliation of Slovakia. Together with Andrei Stăvilă, I am not convinced (anymore, because in my above-mentioned publication I followed Rainer Bauböck's line of argumentation) that such a trade-off necessarily exists. Bauböck discussed this issue extensively in an earlier text (Bauböck 2007b). In that contribution I find two slightly different argumentations concerning the question whether dual citizenship is an appropriate instrument for helping ethnic minorities in situations where there is a neighbouring kin-state. First, Bauböck argues – if my interpretation is correct – that spatially concentrated ethnic minorities have better options than dual/transnational citizenship for improving their political situation: they can strive for a certain level of political autonomy within a federalized political system in the country of residence (leading to a system of vertical multiple citizenship). Political autonomy is a better remedy for the discrimination of culturally distinct groups than the offer of dual citizenships because it allows them to stay in the place they are.

Nevertheless, this argumentation ignores that there are many different reasons for providing dual citizenship (which becomes obvious when we apply a plurality of different theories of democracy in judging dual citizenship). It might well be that political autonomy is the better measure for strengthening freedom and self-determination for ethnic minorities in their place of residence. But this fails to take into account that there is a high probability that ethnic minorities with kin states in their neighbourhood have strong objective and subjective transnational ties and interests across the border. And political autonomy in the state of residence provides no means for protecting their objective interests in the neighbouring country and for stimulating political participation in all those political arenas which are important for determining their future well-being. In consequence, political autonomy and transnational citizenship are no substitutes; they address different problems and aspirations.

Later on in his 2007 text, Bauböck radicalised his position when he argued that political autonomy is not only better than transnational citizenship but that the offer of transnational citizenship by kin states is undermining the legitimate claim for political autonomy of ethnic minorities. As always, Bauböck is very carefully in specifying the conditions under which this assumption holds: 'From a liberal perspective we must not accept perceived threats as sufficient justifications for restricting minority rights. Whether these fears are reasonable and whether they justify constraints on transnational citizenship depends on how we assess the aspirations of minorities and their kin states' (Bauböck 2007b: 74). In consequence, there exists a trade-off if the dual citizenship law is drafted in such a way that it is reasonable to interpret it as a first step towards secession and not as a means to allow and stimulate political participation in the country which offers dual citizenship. There are mixed indicators in our case: as we have explained before, the fact that no territorial claim accompanies the Hungarian offer of dual citizenship strengthens the position of those who see it as legitimate. The nationalist authors of the law and the fact that its specifications exhibit a communitarian and even ethno-culturalist understanding of citizenship (in contrast to a republican or liberal understanding which would stress the right and duty of voting in Hungary) point into the other direction.



Overall, my conclusion is that there exists no trade-off between dual/transnational citizenship and political autonomy/vertical multiple citizenship in principle. Such a trade-off exists only when the specifications of dual citizenship provisions and their justifications are based on an ethno-nationalist notion of citizenship. Since this is the case with the Hungarian law, it is indeed undermining the legitimacy of the aspirations of the Hungarian minorities in the neighbouring countries for stronger regional autonomy.

This takes me to my final point: I have argued that dual citizenship can play a major role for adjusting the theory of deliberative democracy to a transnational world because it seems likely that the inclusion of ‘also-others’ in the national demos makes the discursive and aggregative processes of national will-formation more ‘other-regarding’ (Blatter 2010). Nevertheless, the Hungarian-Slovakian story seems to contradict these hopes – the very introduction of the dual citizenship law in Hungary represents an act of disregarding the others (neighbouring states and their political communities). Therefore (but not only because of this case), the international community and the European Union should recognize the strong interdependencies among national citizenship laws and develop an international regulatory framework for national citizenship policies which includes principles, norms, rules and procedures that take the strong interdependencies into account. One of these principles should be that potentially affected other states should have the right to present their position during the national procedures of citizenship law making.

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## Dual Citizenship can be a solution, not a problem

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Both the Hungarian and the Slovak changes to their respective citizenship laws can hardly be viewed without considerable discomfort: they clearly constitute nationalist and populist moves that seek to re-affirm ethno-national ownership over the state. The idea that citizenship is linked to ethnic identity, irrespective of the place of residence is not only politically troubling, considering the timing before Slovak parliamentary elections, but also in the way Hungary structures itself as a state towards its own minorities. I therefore share the concerns expressed by Rainer Bauböck and Mária Kovács.

At first glance it appears therefore difficult to conceive of potential benefits the amendment to the Hungarian citizenship law might offer. This is even more evident when considering the matter in its broader regional context. As has been mentioned earlier, a large number of European states offer citizenship on the basis of descent or identifying identification with a particular nation, often with considerable impact on bilateral relations. In addition to Romania and its citizenship offer to citizens of Moldova (based on Moldova having been part of interwar Romania rather than ethnicity, though), all ethnic Macedonians are able to acquire Bulgarian citizenship based a mere declaration (and over 50,000 of them actually have done so), Croats in Bosnia (and according to the numbers also many other Bosnian citizens) have held Croatian citizenship and Serbs outside Serbia (and hypothetically others) can become Serbian citizens by declaring that they consider Serbia as ‘their state’.

The political and normative problems of these citizenship regimes, some of which Mária Kovács has alluded to, emerge mostly in the country offering access, rather than in the country where minorities with dual citizenship live: voting rights might bolster populist nationalist political parties and these policies can be understood as defining the countries in question as ethnic democracies with a privileged core ethnic group.

Here, however, our primary concern is with the impact on the country where the minority with kin state citizenship resides. First, ethnonational citizenship for minorities is often argued to undermine their loyalty towards the state. Compelling as it may seem, this argument does not convince empirically or conceptually. Take the case of Bosnia and Herzegovina. While the vast majority of Croats hold Croatian citizenship, at least until recently only very few Serbs in Bosnia have held Serb citizenship. Nationalist parties supported by the respective kin states fought for secession during the 1990s. However, support for a common state over secession has been consistently and significantly higher among Bosnian Croats than among Bosnian Serbs. Citizenship of a kin state may be a symbol of limited identification with the country of residence, but it certainly is not the cause for it. As Andrei Stavilă has argued, the citizenship offered by a kin state is only partial, even if it includes voting rights. Health care, education and many services, as well as taxation, which define social relations, remain linked to the country of residence – the only exceptions exist in countries with contested sovereignty and parallel systems of service provisions, as in Kosovo.

Second, it is also argued that dual citizenship gives a kin state a free hand to intervene in other countries’ policies towards minorities. One example might appear to be the Russian-Georgian war in 2008 over Abkhazia and South Ossetia. Russia sought to justify its intervention by claiming to protect Russian citizens. Yet, as Peter Spiro has argued elsewhere, this argument did not gain much credence outside of Russia and there is little reason to believe that Russia would not have invaded had it not generously granted citizenship to inhabitants of South Ossetia and Abkhazia. Problems stemming from

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dual citizenship can emerge if the kin state and the country where the minority resides do not possess a channel of communication to supplement the citizenship link between the minority and its kin state. However, this only suggests that dual citizenship cannot be the only component for arranging the complex relations between minority, kin state and country of residence.

This leaves the political disputes that might arise between states and minorities over dual citizenship, as is the case in Hungary-Slovakia, as a final point of critique. However, ethnically based citizenship is less the source of contention than a trigger or marker thereof, pointing to other unresolved issues. It is telling that the changes to the Hungarian citizenship law did not trigger similar strong responses in other countries with large Hungarian minorities, such as Romania and Serbia. As a result, the offer of citizenship to ethnic Hungarians by the Orban government was certainly ill-timed and intended to provoke rather than to improve relations with Slovakia, but it does not lie at the heart of tensions.

The critique of nationalist politics should therefore not distract from considering possible benefits of dual citizenship for minorities. I would argue that holding also the citizenship of the kin state can actually help to diffuse conflicts. It lowers by implication the importance of the citizenship of the country of residence. In reducing its significance, it can diminish contestation over this citizenship and lessen the sense of having to rely on the good will of the majority (as the Slovak response appears to confirm). Diffusing and reducing sources of contestation can generally improve interethnic relations in divided societies. Not in the case of Slovakia and Hungary, but in post-conflict countries, the extra citizenship is also a sort of insurance policy, combined with an exit ticket. While one can lament the decline of certain minorities as a result (most prominently of course Germans in Central and Eastern Europe), the 'exit option' can provide a sense of security which might otherwise be absent.

In conclusion, one needs to note that the reasons for countries to offer citizenship to their ethnic kin are not always the same reasons motivating those who accept this offer. Many Macedonians who declared themselves to be Bulgarian to receive a passport certainly do not consider themselves Bulgarian but rather saw the passport as a useful way to travel. Similarly, many of 800,000 Bosnian citizens who also hold Croatian passports might just find it easier to leave Bosnia or to know that in case their country might suffer renewed conflict, they will be able to exit. Thus, ethnonationalist policies of countries are quickly subverted and citizenship becomes a practical tool for citizens who have experienced the transience of states and citizenship during their own lifetime.

## **Political Context Matters. The Banality of Hungary's Dual Citizenship Law and Slovakia's Response**

Erin Jenne and Stephen Deets\*

The commentators in this forum have principally focused on the normative implications of the Slovak-Hungarian citizenship conflict as well as general guidelines for dual citizenship based on theories of democracy. In this contribution, we follow Rainer Bauböck's lead by examining the conflict in its political context. We conclude that the dispute between Slovakia and Hungary amounts to little more than electoral shadow-boxing and that the changes to the Hungarian and Slovak laws will have few real world consequences.

Bauböck acknowledges that neither law self-evidently violates international laws on citizenship. However, given the fact that these laws are associated with past territorial conflicts, the current dust-up ought to be treated as a political conflict between two states that may be best resolved by international organisations such as the EU. Spiro and Stavilã are rather less concerned about the Hungarian law, arguing that it has all the markings of a liberal, post-modern citizenship law that offers fast-track dual citizenship to those with ties to the Hungarian state, focusing their criticism instead on Slovakia's law. They argue that stripping Slovak citizenship from those who opt for dual citizenship does have real life consequences for citizens of Slovakia as it threatens their access to social services, voting privileges and other citizenship rights within Slovakia.

It is tempting to view this flap as a return to the bad old 1990s when conflicts over Hungarian minorities threatened to destabilize relations between Hungary and its neighbours. Time and again, Hungarian politicians asserted sovereignty over ethnic Hungarians in the neighbouring states. In the early 1990s, it was Hungarian Prime Minister József Antal who declared himself responsible for 15 million Hungarians, a pledge that clearly extended to Hungarians living abroad. For the better part of a decade, European institutions worked to normalize Hungary's relationships with its neighbours. Then there was the 2001 Hungarian Status Law, which aimed to give education benefits, rights to social services, and free movement in and out of Hungary to those in the neighbouring states who could demonstrate their 'Hungarian-ness.' Given that the law discriminated on the basis of ethnicity, the Council of Europe and others European bodies induced Budapest to gut the laws in 2003 so that the Status Law of today has virtually zero import. The dual citizenship law of 2010 was, like the Status Law, the brainchild of Fidesz, which in 2004 had also put a dual citizenship law up for referendum only to see it soundly defeated due to low voter turnout.

Seen in its political context, the underlying motives of Hungary's kin policies are obvious. Formalising relations with Hungarian minorities has been a perennial project of the political right, namely Fidesz. While they may be rooted in some notion of historical justice, these efforts have coincided with national elections in which the right has pandered to its presumably nationalist base by claiming to champion Hungarians over the borders. In this view, the 2010 law is little more than an electoral gambit aimed to rally the nationalist base and fend off challenges from the ultra-nationalist Jobbik. The comments of many Hungarian politicians over the past two decades also have raised fears in Slovakia of cross-border intervention. It is therefore not surprising that the leaders of the Slovak governing party, Smer, hoped to appeal to their populist-leaning Slovak base by responding to the

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Hungarian law with an even more nationalist law of their own. Given this background, one can be forgiven for taking a dim view of the entire Hungarian-Slovak citizenship controversy.

In reality, the new amendments to the Hungarian citizenship law are arguably less objectionable than previous kin policies. Several commentators in this forum have blurred the distinction between ‘ethnic Hungarians’ and ‘descendents of former citizens,’ which we believe is conceptually important even if it leads to similar results. The 1993 Citizenship Law did require residency, but it also had special provisions for those claiming to be ethnic Hungarians. The recent changes to the citizenship law eliminated both of these elements. Instead, there are now special provisions for those who are descended from a Hungarian citizen (clearly referring to citizens of pre-Trianon Hungary) or, echoing German citizenship laws, descended from someone who ‘likely came from Hungary’ (aimed at the Csangos in Romania, who are Hungarian-speakers believed to have migrated east during the Middle Ages). The law still includes a Hungarian language test. However, as most individuals in Slovakia are descended from former Hungarian citizens, most Slovak citizens (whether Hungarian, Roma, Slovak, or other) who could pass the language test could become a Hungarian citizen under the new law. In this sense, the recent amendments make the citizenship law more civic and more liberal. Drawing on Spiro’s argument, individuals in Slovakia are now better able to actuate their own self-determined Hungarian identity. Furthermore, a standard that combines an individual’s historical and cultural ties to a community is a better proxy of Bauböck’s ‘genuine link’ than one based purely on ethnic descent.

In practice we anticipate that the laws will have very little impact on ethnic Hungarians or on bilateral relations. First, we are not convinced that dual citizenship will be attractive to ethnic Hungarians in Slovakia because of its dubious advantages. Slovak and Hungarian citizens already have EU citizenship, giving them the right to move to and work within any EU country, including one another’s countries. Thus, Slovak citizens stand to gain little from ‘second-class’, or to use Stavilá’s term, ‘partial’ Hungarian citizenship, particularly if they risk losing Slovak citizenship. As has already been mentioned, without a Hungarian residency card, dual citizens would have no right to vote in Hungarian elections nor would they have access to social services in Hungary. Moreover, the process of obtaining dual citizenship looks to be a bureaucratic hassle. Given the current state of the Hungarian economy, there are not many incentives to relocate to Hungary in any case. Because of Hungary’s residence requirement for voting, the electoral consequences are also likely to be minimal, unless Hungary changes its electoral law to expand absentee voting, an issue which Mária Kovács ably addresses in her piece.

The second reason the laws are unlikely to matter, particularly over the long-run, is that the issue of dual citizenship has limited appeal to voters on either side of the border. All evidence suggests that Fidesz would have won the most recent national election without proposing the law. The gambit may have shifted some votes from Jobbik to Fidesz, but the law does not appear to have expanded their electoral base. Given the Fidesz loss in 2002 following the Status Law and the failure of the 2004 referendum on dual citizenship due to low turn-out, there is a strong argument to be made that Hungarian voters today are relatively unmoved by kin policies. In Slovakia, changing the citizenship law may have helped the governing Smer Party in its competition with the Slovak National Party, but parties with a nationalist and/or populist hue continued to lose voter support in the most recent election. With respect to ethnic Hungarians in Slovakia, the Hungarian Coalition Party (many of whose leaders embraced the dual citizenship law and vowed to apply for citizenship) actually lost votes in the midst of the controversy to the other Hungarian party, Most-Híd, which was lukewarm on dual citizenship. On both sides of the border, therefore, the issue of dual citizenship simply failed to ignite much popular interest or concern beyond a certain core, suggesting that the issue of Hungarian kin is not relevant to most voters and may gradually disappear from election campaigns in the future.

For these reasons, the current Hungarian citizenship law, like previous kin policies, is likely to amount to naught. While it may represent a degree of historic justice to those on the right, the law is little more than a dog and pony show orchestrated by Fidesz to distinguish itself from the Socialist opposition given the profound policy constraints imposed on the government by the IMF and EU. In

short, Fidesz needs to stand for something distinct from the Socialists, if only symbolically, and it was an easy bill to pass while they tried to figure out their economic strategy. In Slovakia, meanwhile, some are already preparing legal challenges to the Slovak citizenship law. With the Hungarian party Most-Híd in the governing coalition, the Slovak government can hardly afford to maintain or enforce a law that strips citizenship from its constituents. For these reasons, Slovakia is ultimately likely to join Romania, Serbia and Ukraine in their blasé outlook toward Hungary's new citizenship law.

Despite their material inconsequentiality, we agree that the laws are of a piece of the growing disarray and reconfiguration of citizenship in the face of globalization. If, as Bauböck suggests, citizenship really is about deliberative democracy and community participation, then granting local rights based on where individuals live makes more sense than permanent citizenship at birth. If it is about the symbolic power of membership in a community and an individual's ability to actuate identities, multiple citizenships do make sense, but they in turn raise questions about individual responsibilities to the respective communities. In this respect, the real danger may be that individuals with multiple citizenships feel so tangentially connected to their multiple communities that they do not participate at all.

This discussion is not meant to imply that all such citizenship conflicts are inconsequential for individual or minority rights or even for inter-state relations. In some cases, states have extended citizenship to individuals in neighbouring states to establish claims over territory rather than merely appeal to domestic electorates; here, citizenship is more likely to be full citizenship rather than 'partial' or virtual, as in the Hungarian case. Most notably, the Russian Federation extended citizenship to the residents of South Ossetia and Abkhazia in order to weaken Georgian claims over the territory and strengthen their own. What is offered is full citizenship with voting rights in Russia as well as full access to pensions and other social services. It is important to distinguish between virtual conflicts over symbolic citizenship (the Slovak-Hungarian case) and conflicts over citizenship that have real consequences for geopolitical stability and individual and minority rights (the Georgia-Russia case). While the former highlight the changing nature of citizenship and belonging in a world of multiple overlapping identities, the latter require urgent attention and possibly intervention by the international community.





## **Why Identity Matters. Hungary's New Law on Citizenship and the Reorganisation of an Organic Nation**

Gábor Egry\*

The ongoing discussion in the EUDO CITIZENSHIP forum provides the reader with many insightful observations, comments, and useful points in assessing possible effects of the new regulation, its motives and the whole Slovak-Hungarian debate. However, despite the number of contributions, at the end they all take a rather narrow approach focusing on legal aspects, on the philosophy of citizenship, as no provision of the law would explicitly or implicitly support or establish the multi-layered and diverse, post-modern citizenship paradigm invoked by Andrei Stăvilă or Peter J. Spiro, and on an unfortunately limited understanding of politics, equating it with tactics of parties to distinguish themselves from their challengers (Stephen Deets and Erin Jenne) and to gain some rather insignificant electoral advantages. All the contributions so far fail to ask what the intentions of politicians are, even if a large amount of texts – such as interviews, programmatic articles, discourses delivered in the parliamentary debate or at rallies – would make it easy to analyse them. And all ignore almost completely the context of the history of ideas, despite the clear intellectual continuity tracing back to the interwar era on both the political left and right, and the politics of identity as one of the most important directions of action on the political right in the last two decades. I can't provide the reader in my contribution with everything left out from the earlier ones; my aim is merely to draw attention to the latter issue, the politics of identity and its role in the passing of the new law.

### **What about intentions?**

I tend to agree with those who – most notably Andrei Stăvilă, whose long and carefully elaborated argumentation is very convincing – suggest that the effects of the law will not necessarily be as envisaged by its supporters or opponents and there is a chance that at the end it will turn out to have unintended consequences and could contribute to the stabilisation of the situation of minorities, but I don't think one can neglect what the intentions of its proponents are. As the law is an act of politics too, the parties behind it must have had political intentions worth considering. Stephen Deets and Erin Jenne interpret these intentions very narrowly, looking at the legislation as a way to appease very cheaply nationalist voters. Although István Mikola's often cited remark from 2006 seems to provide evidence for this interpretation, they not only forgot to take into consideration more recent political texts but simultaneously fail to put the obvious question: what did change since 2001, when the Status Law, which they describe as an act based on ethnic principles, was passed? Are the intentions of Fidesz significantly different today? If their answer is yes, then why this remarkable turn in Fidesz's politics? One should also note that Deets and Jenne refer to József Antall's famous remark about being the prime minister of 15 million Hungarians as a fact justifying earlier suspicions regarding Hungary's intentions, but they give no explanation why they are not worried about numerous remarks by present-day politicians that convey a similar message – for example, conceiving of the Hungarian parliament as being responsible for every Hungarian around the world.

If one reads only the minutes of the parliamentary debate or Deputy Prime Minister Zsolt Semjén's most recent interviews one's inescapable impression is that the underlying motive of this action is far more profound and significant. It is not the establishment of the diverse, multi-layered citizenship, corresponding with the realities of the present world as envisioned by Spiro and Stăvilă. Semjén's

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argumentation reveals a more traditional concept of state, nation and citizenship, binding these three to the legal institution of citizenship as nationality on an individual level.

The deputy prime minister argued from the beginning that the aim of the law is to let people express their national identity in a natural way, but he always referred to citizenship as the sole expression of national identity. For him, the nation-state is the nation's state and exactly this dual identification makes it compelling to provide co-nationals living outside its borders with the possibility to acquire its citizenship. He continuously argued that even Slovaks from Hungary should apply for citizenship of Slovakia as that country is their homeland. It is important to notice that this reasoning is not based on the assumption that individual situations are diverse, quite the contrary. Semjén assumes that national identity is homogeneous, that it implies the idea of one's homeland being one's own nation-state (in an ethnic sense) and a moral obligation of both to allow everyone to have their citizenship and to ask for it. As a consequence, citizenship is a homogeneous institution; moreover, it is not allowed to differentiate people – either practically or legally – holding the same citizenship. Semjén made numerous references publicly to the fact that only one Hungarian citizenship exists and it is not allowed to deviate from this practice as citizenship is the expression of membership of the national community.

In the light of this very strict and disciplined practice of communication it is not easy to see the new law as something aimed to create the post-modern situation endorsed by Stavilá and Spiro. Even if Stavilá's ideas are attractive (and they really are), as long as the legal institution of citizenship does not reflect this diversity of situations and as long as the difference between nationals is not rooted in the structure of citizenship itself, there will always be the opportunity to conceive of these differences as unnatural, discriminatory and to act in order to eliminate them, even if they are the result of real differences stemming from place of residence or personal conduct of life. Mária Kovács rightly points to the possible future extension of voting rights to new 'Hungarians'. When will such action turn into the questionably legitimate imposition of the will of people outside a community on people inside? This is a topic for another debate, but the danger certainly exists.

Not only the concept of the national community reflected in Semjén's discourses points to intentions slightly or significantly differing from the ones implied in Stavilá's and Spiro's interpretations. Semjén also announced Hungary's intention to provide every Hungarian and Hungarian citizen with protection in their respective states, a move which is not easy to reconcile with Art. 4. of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. This move is not quite in line with the assumption that Hungary won't try to extend its rights to other states' territory or jurisdiction. Meanwhile, Zsolt Németh, Secretary of State in the Ministry of Foreign Affairs, announced the government's intention to instruct every organ of the Hungarian state to develop new policies in regard to the fact that there will be new citizens outside its borders, signalling once again an intention far beyond the assumption that the law is only a way to create a kind of post-modern state of affairs or serves for internal political chicanery. These seem to be ideas rooted in the very traditional concept of the state being the nation's state and serving the latter in its natural form of unitary and homogeneous community.

### **Curing degenerated identity, restoring the nation**

This point leads to the importance of the politics of identity and its role in the birth of the new legislation. Apart from considerations regarding the status and fate of Hungarian minority communities, which on the political right are frequently seen as doomed due to assimilation, one of the most important motives of the law was to eliminate differences revealed in interactions between Hungarians and Hungarians. For most politicians of the right national identity is homogeneous. The controversy over the otherwise redundant phrase 'unitary' or 'united' Hungarian nation was one of the aspects of the debate on the amendments of the Status Law in 2003 missed by most commentators. Doubts about the Hungarian-ness of Hungarians from outside the country are regularly seen as an

anomaly, a sign of degenerated identity. As we know from anthropological research conducted by Jon E. Fox and Margit Feischmidt, this is an almost universal feature of encounters between 'motherland' Hungarians and minority Hungarians and the phenomenon is detectable in many other cases around the world. References to instances when someone was called 'Romanian' or 'Slovak' or someone was asked how he/she could speak so beautiful Hungarian while living in another country, were also present in the debate on the new amendment, with the legislation being portrayed as the only way to prevent such unfortunate and unnatural forms of differentiation within the nation. According to this concept, as soon as Hungarians from other countries will be able to prove their Hungarian-ness with their citizenship, people from Hungary will refrain from such excesses.

One should once again note how tightly this idea binds citizenship to national identity and how strongly it conceives of national self-awareness as homogeneous. The act of recognition is implicitly conditional on every member of the nation having the same legal, ethnic and cultural attributes. Every deviation is treated as contradicting the natural order. The responsibility of the leaders of the nation is to act in order to avoid such deviations and – if they would still persist – to counteract.

In this sense, the new law is aimed to reduce differences and ruptures inside the national community. As these are mainly seen as results of an a-national (or anti-national) politics of the earlier regime that deliberately attempted to make Hungarians forget their kin in the neighbouring countries, the politics of identity is also intended as a cure for such degeneration. At the same time, the existence of Hungarian minorities is a result of the 1920 Trianon Treaty and the 'mutilation' of the nation that has led to this anomaly of the national identity. An act that could reverse both at once would be a restoration of the nation in its natural form of existence, providing it with the proper embodiment (citizenship) and eliminating internal differences. When every Hungarian will have Hungarian citizenship unity (meant as homogeneity) will be successfully restored.

This is not a novelty in Fidesz's politics. At least since the Status Law the reparation of identity and the reorganization of the nation has been one of its goals. Every politician of the party has been very coherent on this issue, promoting ideas based on an organic concept of the nation and the debate surrounding the new law can only reinforce this interpretation.

### **Possible outcomes**

However, even if the new law is aimed to create, forge and reinforce national identity, it is hard to predict its outcome. Andrei Stavilă compellingly outlined in his contribution that the uniform status of being a citizen of a given state can cover (and hide) very different personal situations, with different access to rights and state institutions and different personal self-consciousness. The events so often condemned by politicians as signs of sick national consciousness are rather the results of these differences and in this sense at least as natural as the perceived homogeneity of identity, or even more so. Therefore it is hard to believe in the new law as a solution for these internal differences, especially in the light of the fact that encounters between minority and 'motherland' Hungarians in the 1930s revealed the same differences through the same misunderstandings or insults and grievances, despite the full-fledged revisionist propaganda and the ritual commitment of every politician to the salvation of their suffering kin characteristic of that era. It is more probable that in this respect the new legislation will fail.

Nevertheless, it will have consequences, at least if the probably imperfect analogy with Romania can serve as a clue. Exactly because the new regulation was and is portrayed as a solution for these problems, every new incident involving Hungarians from different countries will be important and discussed in an indignant tone in the media supportive to the new act on nationalist grounds. Due to various factors, such as slow bureaucracy, it is hardly possible that the state administration will be able to process the initial wave of applications in the legally prescribed time frame of three months or even in a longer period of six or seven months. Such delays can easily lead to pressure on politicians with

arguments echoing their own ideas that they will not be able to reject. The consequence could very easily be a promise to ease the process and whip up the bureaucracy to higher speed. Probably it will become a recurring ritual, as it has been in Romania since 2007 when the government of that country promised for the first time an eventual solution for the applications by Moldavians for Romanian citizenship.

This kind of feedback circle is already working in the so-called Hungarian-Hungarian relations and there is no reason to expect its disappearance. However, because of the basic underlying idea of the restoration of the nation, the promoters of the idea need as many applications as possible in order to justify this act retrospectively. There will not only be a competition for people, but they will try to argue for a moral obligation of everyone considering themselves Hungarian to file an application. On the other hand, realistically it is hard to imagine 2-3 million people applying for Hungarian citizenship. In this sense the campaign may soon turn into an exercise of life or death for the nation and one can safely presume that the very same politicians will return to the idea of a lasting degeneration of the nation and will promise to fight it more effectively after facing a reduced number of applicants compared to their initial expectations.

Even if the above predictions offering a very sombre prospect turn out true, this doesn't necessarily mean that the law will cause much external complication. It is also possible that with time it will be transformed – even if unintentionally – into the post-modern paradigm so willingly embraced by Spiro and Stăvilă. Yet as part of a politics of identity it won't resolve any problem, but rather aggravate some of them, since it is really hard to put individual identities into the procrustean bed of citizenship legislation.

## Dual citizenship, no problem?

André Liebich\*

Fifteen years ago, in a book titled 'Citizenship, East and West' I quoted (approvingly) the Hungarian writer, György Konrad, who had declared, 'passports should be like credit cards, one should have as many as one can afford' (Liebich 1995: 39). True, the statement sounded rather crass but it was delivered with such panache, by someone from a part of Europe where unrestricted passports and hard-currency credit cards had only recently become accessible, that I found myself won over. Why, indeed, limit the number of citizenships an individual could enjoy?

A disclosure is in order before I go any further. I am myself one of those plural citizens: British by (accident of) birth, naturalised Canadian where I have lived longest, and, recently, naturalised Swiss where I have been living for twenty years. I have just returned from a sabbatical in England where I have been working on an English biography, my younger daughter and her two children live in Canada where I shall spend part of this summer, and I delight in voting in the countless Swiss referenda. In short, ties to all three countries are real, as is perhaps best shown by the personal exasperation I feel at some of the policies these countries pursue. Colleagues from the EUDO project tell me that I could claim Polish citizenship; producing evidence of my father's World War II military service or my mother's membership in the Resistance, in the absence of birth certificates, would probably suffice. Polish is indeed my native language and one which I hold in great affection but I have refrained from pursuing Polish citizenship for reasons which may become evident from what I shall argue below.

My commitment to plural citizenship is thus both personal and principled. However, recent events and trends have led me to think that plural citizenship is not as unproblematic as I once thought it was and as some of the contributors to this forum still seem to believe it is. Before stating the reasons why I find myself arguing this position, let me first recount an incident which may have contributed to jolting me out of my complacency.

During the Israeli invasion of Lebanon in 2006, Canada, like many other countries, organised a rescue of its citizens out of war's way. When these citizens were repatriated, it turned out that many had no home in Canada and, indeed, had never lived there. They had acquired citizenship by claiming to have lived in Canada for the requisite three years, whereas, in fact, they had alighted briefly, once to have their status as immigrants confirmed and then, a second time, to pick up their Canadian passports. The public uproar in Canada was astonishing for a country that is made up of immigrants and that prides itself on being liberal, multicultural and not 'nationalistic', in any conventional sense. I should like to think (perhaps naively) that if Canada had flown in a similar number of war refugees with no claims to citizenship the reaction would have made milder, perhaps even sympathetic. Yet, in this case, there was a deep sense of having been abused, as Canadians.

This experience is, of course, anecdotal but let it serve as a background to the three points I want to make about the problematic aspects of plural citizenship, particularly as the issue has been raised in some of the rejoinders to Rainer Bauböck's kick-off piece.

First, I am, frankly, alarmed to learn from Andrei Stavilă's contribution that the notion of partial or semi-citizenship has made such inroads. Half-citizens? quarter-citizens? two-thirds' citizens? – I am caricaturing but can one really speak of a citizen by degrees? The thrust of modern citizenship, indeed

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what makes it modern, is the notion of equality. Citizens are equal in the eyes of the state and of their fellow citizens. T. H. Marshall's differentiation of civil, political and social citizenship (Marshall 1950) does not divide citizens into one-third fragments but only makes sense cumulatively. One is truly a citizen if one possesses all three types of rights. Formal and legally defined differentiation and gradation among citizens takes us back to a *Ständestaat*, a state where membership rights and privileges vary according to personal status. This is surely not the direction in which proponents of 'partial' citizenship wish to go, but even in the most benign circumstances – and circumstances are not always benign – we would be hard put to avoid such a path.

Rest assured, I am not arguing an absolutist notion of citizenship, along the lines of Hannah Arendt or other Hellenistic nostalgics. Indeed, I am rather frightened by the far-reaching claims of some democratic states on all those who happen to be their citizens. For example, the USA expects all its citizens to file yearly tax returns regardless of where they earn their money and to observe all the numerous sanctions and prohibitions it has seen fit to decree; in return, non-resident citizens maintain voting rights. On the whole, the stakeholder principle that Rainer Bauböck and Joachim Blatter have invoked provides a good rule of thumb; for example, if a citizen does not contribute to a social fund, her claim to benefits is affected. However, the way to deal with these issues is not to define these individuals as 'partial' citizens but to suspend, temporarily, the related citizenship entitlement. Unless persuaded otherwise, I would agree with suspending voting rights for non-residents. In my own case, it is frustrating not to be able to vote in Canadian elections, especially at a time when old friends and colleagues are deeply involved in politics. I reluctantly accepted the fact that, not having been domiciled in the United Kingdom for more than twenty years, I could not vote in the last British general election which was taking place under my nose. I exercise my right to vote in Swiss elections and referenda all the more enthusiastically.

The second reservation I have about the way in which plural citizenship has been developing lies in the fact that it has, effectively, been favouring *ius sanguinis* claims to citizenship over all others. *Ius sanguinis*, let us remind ourselves, means, literally, 'the right of blood,' and, figuratively, the rights of ancestry. Of course, children should obtain citizenship or citizenships from either and both their parents, much as they receive a given name and a surname. However, '[a]n endless transmission of their citizenship to persons born abroad to a citizen parent,' to use Rainer Bauböck's formulation, is hardly a liberal conception of citizenship. No wonder that genealogy is even more popular than pornography on the internet. In the past, only Mormons who sought to baptize their forefathers retroactively and Knights of Malta concerned about their quarters of nobility would probe into their lineage. If the promise of citizenship, without further requirements or 'genuine links' to use a term that has rightly appeared in the discussion, is to be found on the family tree, one's ancestors become significant social capital and citizenship becomes an inherited commodity unrelated to actual identity, social solidarity or citizen obligations. Does this lead to the sort of conception of citizenship that we want?

My third reservation with regard to the manner in which plural citizenship legislation is being introduced, and specifically in the Hungarian-Slovak case under consideration here, is its deplorable solipsism. One would expect partisans of plural citizenship to argue from a cosmopolitan and globalist standpoint and it is therefore surprising to read in Peter J. Spiro's contribution, '[if] the Hungarian people want to define themselves to include those living abroad of Hungarian ancestry, that is Hungary's business.' To be sure, international law is on Peter Spiro's side. Determining who its citizens are is a prerogative of the state; neither international nor EU law claims otherwise. If that is our position, however, then Slovakia's decision to ban plural citizenship is equally irreproachable. And, though Peter Spiro points to an emerging 'international norm under which habitual residents (especially those born in a territory) cannot be denied access to citizenship', this is soft law at best; straightforward *ius soli*, as implied by this norm, is an exception in the EU. In strictly legal terms, therefore, if Hungary (or Slovakia or any other country) decides to withdraw citizenship from a specified group, 'that [too] is Hungary's business.'

Without pursuing such frightening implications, it is surely a matter of decent respect for the opinions of one's neighbours not to act in a way that they may consider provocative, as Joachim Blatter also suggests. This is not to say that one should heed the paranoia of small (or large) states. There are indeed situations where there is an overriding interest in disregarding the feelings or even the laws of another state. If, say, Belgium decided to grant citizenship – implying, in this case, consular protection and right to entry upon its territory – to all residents of its former colony, now the Democratic Republic of Congo, where some five million people have been killed in recent years and which has the second lowest per capita income in the world, I could think of various objections but the sensibilities of the Kinshasa government would not be one of them.

No one claims that the Hungarian-Slovak situation is this dramatic. Indeed, one of the reasons for supporting Hungary's decision and condemning Slovakia's reaction is to say, 'so what?' Both states are EU Members with all that this implies in terms of facility of travel, employment and settlement. I can understand, however, that Florian Bieber, an acknowledged expert in the area, should regard both the Hungarian and Slovak moves with 'considerable discomfort' as 'nationalist and populist moves that seek to re-affirm ethno-national ownership over the state.' Yes, both states are saying that they are not the states of all their citizens. Hungary is stating that it is a holding state for its majority ethnic group, wherever it may live, and Slovakia is saying that being Slovak is so exclusive an identity that it leaves no room for anything else.

Moreover, underneath these positions of principles lies a barely articulated historical argument that does not escape the attention of those concerned. Hungary is not demanding frontier revision but it is making the point that its present borders are unjust. These borders were imposed upon a prostrate Hungary without its consent by the victors of the First World War. They amputated Hungary of two-thirds' of its territory, much of which it had governed for a millennium, and they left one ethnic Hungarian in three outside the borders of the rump Hungarian state. For the Slovak state, whose very existence is founded on Hungary's dismemberment, to acknowledge this argument would be to negate its own legitimacy.

To be sure, Hungary has asserted a mild version of this historical claim. It is not offering citizenship to descendants of all those who once inhabited greater Hungary but only to those who continue to think of themselves as Hungarian in one sense or another. In this respect, Hungary has behaved in a much more measured (but also in a less civic) way than Romania, which offers its citizenship to all Moldovans (not just Romanian speakers) descended from those who were Romanian citizens during the interwar period when Moldova (or Bessarabia as it was once known) was in Romanian hands. Romania has explicitly justified this policy on the grounds that the province was lost to Romania through the infamous Molotov-Ribbentrop Pact. Bulgaria offers its citizenship to Macedonians on unabashedly ethnic grounds even without any historical argument based on previous possession. Bulgarians simply claim that Macedonians are, in fact, Bulgarians. The fact that many Macedonians have taken up the offer – for opportunistic EU reasons, as Florian Bieber surmises – is taken by Sofia to validate the Bulgarian claim.

Mária Kovács rightly points to 'toleration by the international community of the introduction and practice of non-resident external citizenship in various European states' (she mentions Romania in particular) as grounds for Hungarian politicians to argue that they did not deserve the opprobrium visited upon them for doing what others were doing and getting away with. That is true, but the answer is not to pass over Hungary's action but to cast a strong and critical spotlight on citizenship practices throughout the EU as a whole. Until the European Union finds the means and the will to create a consensus on citizenship norms this is all that we, as concerned scholars, can do.

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## Viewing Dual Nationality for Transborder Minorities in Context

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The Hungarian-Slovak dispute over dual nationality can – and should – be viewed as an epilogue to an earlier dispute, involving the so-called ‘Status Law’ enacted by Hungary in 2001. The stated goal of the 2001 Law was straightforward: it aimed to ensure the coherence of ‘the Hungarian nation as a whole’ by allowing Hungarian minorities to preserve their ‘awareness of national identity within their home country’.<sup>10</sup> In other words, as Egry has observed, the law centred on an articulation of the ‘unity’ of Hungarians, which it hoped to secure through the maintenance of ‘continuous contacts’ with Hungary, including ‘undisturbed cultural, economic and family relations’, the ‘free movement of persons and free flow of ideas’ and the disbursement of benefits, stipends and grants in the minorities’ home states and in Hungary.<sup>11</sup> A novel agenda, to be sure, and one which elicited considerable international criticism, including the charge that the law did not respect basic principles of international law, such as sovereignty.

The revisions made to the law in 2003 in response to such criticism, including the elimination of the reference to the unity of the ‘Hungarian nation’, were in turn viewed in certain (Hungarian and Hungarian-minority) quarters as an extirpation of the underlying logic of the law, and led to a (failed) 2004 referendum on nationality for ‘kin-Hungarians’ as an alternative, hitherto eschewed, means toward the ‘unity’ aspired to.

Having learned the lesson that a newfangled legal solution is vulnerable to international denunciation, Hungary now appears to have taken a less adventurous path. The new provisions on nationality fall back on a ‘traditional’ status through which to express the ‘unity’ of Hungarians, and one which is impervious to attack on the basis of international law and state practice. However, reliance on ‘nationality’ in this manner is in fact made possible only through the interaction of two circumstances: the traditional and exclusive prerogative of a state to determine who its nationals are, on the one hand, and the recent, growing tolerance of dual nationality by states, on the other. To the extent the symbolism of the law was viewed with disfavour by Slovakia, its response, namely the retaliatory decision to prohibit dual nationality, was thus logical, as the clearest legal path available to short-circuit the Hungarian law. (Incidentally, it would also appear that, for Slovakia, ‘status’ Hungarians are less threatening than Hungarian nationals, despite the fact that specific benefits in the territory of the home-state are linked only to the former status.)

Given the turn towards dual nationality, one could ask whether the ‘Status Law’ experiment has proved a failure. When viewed through the prism of the aspirations underlying the 2001 Law, this is certainly the case – hence the new provisions. However, since Slovakia is not the only state affected by the law to prohibit dual nationality (the Ukraine does too), the ‘Status Law’ still retains a practical (and symbolic) role.

The ‘Status Law’ experiment also had a role in paving the way for the new Hungarian provisions on nationality.

Within Hungary, the 2001 Law inaugurated an effort to de-couple the identity function of nationality – in other words, its role as a marker of effective sociological connection – from the

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<sup>10</sup> Act LXII of 2001 on Hungarians Living in Neighbouring Countries, Preamble.

Available in English at: <http://www.unhcr.org/refworld/country,,NATLEGBOD,,HUN,,3f460e764,0.html>

<sup>11</sup> Idem, Article 3.

citizenship rights that traditionally accompany that status. Henceforth, one's status as a 'Hungarian' (whether 'status' Hungarian or Hungarian national) was one issue, citizenship rights were another. The new provisions on nationality re-establish the primacy of nationality as a marker of Hungarian identity, but also perpetuate a disconnection between 'nationality' and associated citizenship rights, since new, non-resident Hungarian nationals are to be assigned only 'partial citizenship', without voting rights, from the get go.

On an international level, the 2001 Law and its aftershocks acted as a catalyst for the subsequent emergence of basic principles on the nature of the benefits that may be accorded by states to members of kin-minorities<sup>12</sup>, in the process legitimising the very idea of such benefits. Thus, the controversy surrounding the Hungarian 'Status Law' led to at least some progressive development of international norms. Indeed, the 2008 OSCE Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations even addressed nationality as one such 'benefit', and declared that states 'may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals abroad'. Hungarian politicians would surely argue that this is exactly what the new provisions on nationality do.

Viewing the recent amendment of the Hungarian Nationality Law in the context of the 2001 'Status Law' also reveals another overarching theme, namely the question of minority protection. Like the 2001 'Status Law', the new provisions on nationality have also been presented as an instrument of such protection, or a human rights issue. Dual nationality, like the 'Status Law', is thus not simply a matter of identity, but also a response to the perception, nourished by certain Hungarian-minority politicians, that the states where these minorities reside (in this case Slovakia) are not reliable parties when it comes to protecting the Hungarian minorities. In the context of Slovakia in particular, the 2009 Language Law, limiting the use of minority languages in the public sphere, allowed Hungarian and Hungarian-minority politicians to revive the ever-populist refrain of the need for Hungary to 'protect' Hungarian minorities.

As Bieber has rightly noted, dual nationality may be considered a form of 'insurance policy, combined with an exit ticket' for members of minorities in such a context. On the other hand, like the singular focus on nationality as a marker of identity, its transformation into an insurance policy devalues the concept of national citizenship as a sign of full membership in a given political community.

When viewed in a wider European context, the Hungarian-Slovak dispute is also not all that surprising. As Bauböck points out, inter-state disputes about dual nationality are not new. And they are also not historical anomalies: in the last few years, Germany and Turkey have had disagreements (as Turkey systematically reinstated the nationality of individuals who had been required to relinquish that status before naturalisation in Germany, prompting a change in German legislation to close the loophole that had made such applications possible), as have Romania and Moldova (particularly until 2003, when Moldova acquiesced to dual nationality), to name but two.

It is thus rather optimistic to state that dual nationality – or more precisely the dual loyalties it is considered to represent – is no longer a source of international tension. There may be fewer heated disputes of the kind between Hungary and Slovakia, but the policies of states aiming to maintain or raise consciousness of a collective (national, cultural, religious or other) identity, whether states of emigration or kin-states, continue to conflict with the efforts of states of residence to integrate individuals permanently resident in their territories, whether migrants or members of national minorities. Hence the growing number of states in Europe requiring ever more elaborate proof of

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<sup>12</sup> See, inter alia, 'Report on the Preferential Treatment of National Minorities by their Kin-State' (2001), issued by the Council of Europe, Commission for Democracy through Law (Venice Commission), and the 'Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations' (2008), prepared by the OSCE High Commissioner on National Minorities.

linguistic skills, civic, social or historical knowledge, and ‘integration’ by new nationals. (The idea that such issues are necessarily less problematic in the context of migration is also questionable, although historical grievances and geographic proximity are indeed apt to heighten strains in the context of kin-minorities.)

The larger questions to ask in light of the latest Hungarian-Slovak dust-up are thus twofold. First, one needs to ask whether dual nationality really is ‘a step towards postnational conceptions of membership’. Perhaps dual nationality is better perceived as a transnational, rather than a truly ‘postnational’ development. After all, individuals in such situations do not transcend the paradigm of the nation-state; they merely expand their (legal) ties to encompass more than one state. Arguably, the reliance on a state-sanctioned status even reinforces the idea that states have a special role in managing (national) identity. If the phenomenon of dual (or plural) nationality is indeed transnational, rather than postnational, however, then the extension of dual nationality to kin-minorities – and the nationalist rhetoric that accompanies it – should also come as no surprise.

Second, it is worth considering whether a legal status such as nationality should be treated as a vehicle to recognize or confirm a specific identity or group belonging (or, as Spiro puts it, to ‘actuate identities’) in the first place. The assumption that it can ‘open [...] new spaces for free movement and multiple identities’, to quote Bauböck, has certainly buttressed arguments in support of dual nationality as a matter of respect for human rights in the context of migration. Now, these same arguments are made in the context of transborder minorities.

As a practical matter, giving legal effect to individual sentiments of belonging by means of dual nationality – or any other legal status – may or may not empower individuals by publicly acknowledging their multiple attachments. It surely reinforces the idea that nationality is a sign of cultural and social attachment, however, as well as the notion that such attachments are best accounted for through official state recognition. Both assumptions are highly problematic, to say the least, whether in the context of migrants or transborder minorities.<sup>13</sup> The larger debate about dual nationality for transborder minorities thus boils down to a question about the role of nationality as a marker of identity.

Finally, with respect to possible solutions to the Hungarian-Slovak dispute, it is worth noting that the legal route advocated by some commentators could well complicate matters further. Barring fundamental changes, the existing European legal framework is simply ill-equipped to deal with the situation of kin-minorities. For instance, in the case of Hungary (and incidentally certain other EU member-states), the maintenance of citizenship rights, and specifically voting rights, differentiated by residence could – given the ever-increasing impact of EU citizenship on matters previously outside the scope of EU law – be challenged as an instance of discrimination against those who have exercised their fundamental right to move freely within the European Union. In the case of Slovakia, any attempt at finding a less exclusionary response to the Hungarian law – if, as the new Slovak government has announced, it indeed will reconsider the law prohibiting dual nationality – would need to consider a recent decision by the European Court of Human Rights, determining that Moldova may not bar dual nationals from being MPs.<sup>14</sup>

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<sup>13</sup> See ‘Conclusion’ in E. Horváth, *Mandating Identity: Citizenship, Kinship Laws and Plural Nationality in the European Union* (Kluwer Law International, 2008).

<sup>14</sup> See *Case of Tanase v. Moldova* (Grand Chamber), E.Ct.H.R. 7/08 (2010).



## Dual Citizenship for Transborder Minorities? A Rejoinder

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The questions debated in this forum are empirically complex and normatively hard. The contributions we have received and published have exceeded my expectations both in terms of quantity and quality. They have looked at the Hungarian-Slovak conflict from multiple perspectives, exploring legal aspects, comparing domestic political contexts with similar cases, digging into the history of political ideas or proposing themselves normative principles for evaluating citizenship policies or resolving conflicts over these. I have learned a lot, especially from those authors who know far more about the regional and historical background than I do. However, as becomes obvious when reading this debate, knowing more about the relevant facts does not generate greater agreement where core concepts are normatively loaded, as they are always when citizenship is at stake.

My rejoinder, which is selective and cannot do justice to the richness of the debate, will move from those questions where I see greatest consensus or misunderstandings that might be overcome to those issues where disagreement seems to run deeper.

Nobody has defended the Slovak law that threatens to withdraw Slovak citizenship from ethnic Hungarians who opt for Hungarian citizenship. This is a significant consensus, since such deprivation does not violate any recognized principle of international or European law. As several contributions have mentioned, there are quite a few countries in Europe with legal provisions similar to the Slovak one. The Slovak government can point to Germany where several thousand naturalised Germans of Turkish origin have been deprived of German citizenship after reacquiring that of Turkey. I would still insist that there are significant differences between the two cases. I do not think there is anything wrong with the Turkish policy of promoting dual citizenship, which responds to legitimate interests of a large group of recent migrant origin, and I find the German policy of selective denial of dual citizenship discriminatory and indefensible. In contrast, I believe that the Hungarian extension of dual citizenship to transborder minorities is deeply problematic. This seems to tilt the scales in favour of the Slovak law. But then we also have to consider that denaturalisation of German Turks took them back to a status quo ante when they were long-term resident Turkish citizens in Germany. Denaturalising an autochthonous ethnic minority has a quite different goal and effect. It aims at cleansing the Slovak imagined nation of a native minority and would deprive the members of this minority of political representation. I conclude therefore that there is a need to constrain the power of states to denaturalise ethnic and national minorities as long as their members reside permanently in the territory, even when they voluntarily acquire the citizenship of another state. Current international law only requires toleration of dual citizenship acquired at birth (Art. 14 (1) European Convention on Nationality). Wouldn't it be important to add a principle that protects national, ethnic, religious, linguistic and racial minorities from citizenship deprivation?

The debate about the Hungarian-Slovak conflict has raised questions about the general justifiability of dual citizenship and external voting as well as about the specific contextual evaluation of these phenomena. There is clearly disagreement on both levels. Often, people of a broadly liberal and democratic persuasion tend to agree on which policies or parties they would support, but disagree quite strongly on matters of principle. For complex and hard cases, the converse is true as well. Even those who can agree on the basic principles at stake, tend to disagree strongly on how they apply to the

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case at hand. Both kinds of disagreement are present in our debate. But I find it much easier to address the former.

So let me start with the general defence of dual citizenship and external voting. Peter Spiro and Andrei Stavilă are most enthusiastic about the proliferation of plural citizenships, while André Liebich confesses to have become more sceptical. Spiro expresses clearly the underlying principle that supports a postnational conception of citizenship. Plural citizenship allows individuals to freely 'actuate their identities' and states should provide them with opportunities for doing so. The objection Spiro considers is whether dual citizenship is likely to lead to interstate conflict. International human rights regimes, the mutual recognition of international borders and of limited jurisdiction over expatriates, plus membership in the European Union greatly diminish the likelihood of conflicts over dual citizenship. So what remains is an additional identity option for ethnic Hungarians in Slovakia, which should be welcomed by liberals who cherish freedom of choice. On the other side, Liebich looks at the goals pursued by governments and points out that the proliferation of dual citizenship is also the result of 'perpetual *ius sanguinis*' and of unconstrained national self-determination of states in determining their own citizens among populations residing permanently outside their territory.

I think that the two views need to be combined and can be reconciled. Individual choice of citizenship status is a good thing for those who have good reasons to choose or refuse another citizenship. But such choice must be constrained by answering first the question of who might have a legitimate interest in choosing. Unconstrained free choice for all has two undesirable consequences. First, individual choices based on legal opportunities can be easily manipulated and instrumentalised by governments and political entrepreneurs and may then still produce conflict even under the most favourable circumstances, which are so clearly present in the Hungarian and Slovak case. Second, offering membership status to those who have no legitimate stake in it will devalue citizenship internally in the state making such offers. Advertising citizenship for sale to large foreign investors<sup>15</sup> or offering ancestry-based citizenship to those who want to use their new passports to settle in a third country undermines the idea that citizenship is a shared bond between members of a democratic polity who have a right to hold their rulers accountable.

Stavilă thinks that the new Hungarian law is not only morally justified, but also a liberal law, because it 'will include yet another category of persons [ethnic Hungarians outside the EU and those in Romania who will gain visa-free entry in the US] who enjoy an extended freedom of movement'. But what is liberal or morally justified about privileging ethnic Hungarians by granting them free movement rights denied to other citizens of the states where they reside? Even on a purely instrumental view of citizenship as an opportunity to express individual identities or as an extension of free movement rights, liberals ought to be concerned about morally arbitrary criteria for access to these opportunities and rights.

There is a parallel controversy among the contributors to this forum about external voting rights. Mária Kovács is mainly worried about the impact that enfranchising ethnic Hungarians outside Hungary might have on domestic Hungarian politics. As she has pointed out to me in private communication, the Hungarian amendment does not only apply to ethnic minorities in neighbouring postcommunist countries, as the 2001/2003 Status Law did, but to all descendants of those who were citizens of the Hungarian part of the Habsburg monarchy or of the Hungarian state during Second World War, when parts of Slovakia, Transylvania and Serbia were reincorporated. This could amount to not just 2.5, but 4.5 million additional citizens. Kovács thinks that for Fidesz, dual citizenship is merely a first step towards granting Hungarians abroad also external voting rights in order to ensure a rock solid majority for right wing nationalist parties for a long time. Joachim Blatter calls on Kovács to have trust in the democratic process, since external voters among Hungarian kin minorities are

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<sup>15</sup> See the naturalisation of former Prime Minister of Thailand, Thaksin Shinawatra in Montenegro in 2009, because of his planned investment in Montenegrin tourism (Džankić 2010). See also "Citizenship for Sale, *The Economist* 1st February 2007, quoted in Joppke (2010: 160).

unlikely to support a party whose policies towards neighbouring countries impairs their situation. This is indeed what seems to have happened in 2006 when Italian citizens abroad could vote for the first time in national elections but did not support the right-wing parties that had campaigned for introducing the external franchise.

If the Slovak government can point to other countries that do not tolerate dual citizenship, then the Hungarian one will find many more that have introduced absentee ballots for their expatriates. Kovács and Liebich seem to be generally uneasy about such arrangements, which they see as encouraging irresponsible voting by those who will not be affected by political decisions. But then we need to explain why 115 countries and independent territories have introduced external voting rights against the interests of their domestic citizens. I find it more plausible to assume that the democratic franchise has been extended in response to a general strengthening of ties between emigrants and their countries of origin, which has supported the perception that these are no longer unaffected parts of the citizenry and therefore also not generally irresponsible voters. As with dual citizenship, the question is simply who has a good claim to be represented in a particular state's democratic decisions. I suggest that first generation emigrants do, and that André Liebich should therefore really be enfranchised in Canadian elections. Second generations born abroad might have a claim to inherit their parents' citizenship status, but not their external franchise (Bauböck 2007a).

Numbers are also relevant for the franchise in a way that they are not for determining citizenship status. Some democracies have not introduced external voting because of their exceptionally large 'diaspora' populations. In my view, external voting can be accepted as legitimate if citizens outside the territory are seen to share an interest in the common good of the polity with the domestic population living there. Where external constituencies are proportionally very large, electoral competition is likely to lead to an overrepresentation of their specific interests as expatriates that set them apart from the domestic population, at the expense of shared interests that justify their inclusion in the first place. Kovács is therefore right to worry, but this argument should not be overstated as a general objection against external voting.

Blatter defends the opposite position in this controversy. He emphasises political participation as the core of liberal republican citizenship, which sets his views apart from Stavilã's and Spiro's instrumentalist account: 'For liberals and republicans the right for political participation is what granting dual citizenship is all about!' Blatter proposes therefore that 'from a republican perspective dual citizens abroad should not only have the right to vote but the Hungarian government should make efforts to make absentee voting possible in order to pave the way for political participation.' Yet, here again, regarding political participation as good does not answer the prior question of who should be entitled to participate. The argument for the external franchise is even more demanding than that for free movement rights derived from dual citizenship. The former must pass a double test. External voting rights should not be granted on the basis of morally arbitrary criteria, such as descent from citizens, and they should not create a risk of external domination of the domestic citizenry.

Let me now turn to three questions where I see deeper disagreements and that I myself find harder to answer because they involve both contested principles and contextual judgements.

The easiest among these is the question whether granting dual citizenship to ethnic Hungarians in territories that had once belonged to Hungary is a legitimate way of acknowledging and partly rectifying historic injustice. Stavilã thinks that 'in the case of these minorities, the involuntary character of their loss of citizenship... must weigh heavily in our discussion.' Rectificatory justice is indeed an important aspect of citizenship policy in periods of transition to democracy. Central and Eastern European democracies have offered restoration to former citizens who had been driven into exile and deprived of their citizenship by communist regimes. And in these cases it was entirely justified to grant citizenship independently of whether the individuals concerned were willing to return.

Offering Hungarian citizenship to those whose ancestors had lost it three generations ago through the 1920 Trianon Treaty is a quite different matter. Not primarily because much more time has passed and the immediate victims of injustice are no longer alive. Blatter suggests that if a border has moved across individuals instead of individuals moving across a border, then a former citizenship may still count as a genuine link to an external kin state even after 90 years. The real question is whether we think that restoring an ancestral citizenship is a proper way to rectify injustices in the formation of nation-states after the break-up of multinational empires or federations. This is not only a matter of mutual recognition of international borders and territorial integrity among neighbouring states, but also of reconciliation of national narratives. As Liebich points out, Hungary is not demanding a revision of borders but, by offering citizenship to the descendants of its former citizens, it is making the point that its present borders are unjust. This is a narrative that cannot possibly be accepted by Hungary's neighbours and that questions the legitimacy of the very existence of a Slovak state that was carved out of historically Hungarian territory. The rectification defence can be just as easily invoked for the Slovak attempt to deprive its Hungarian minority of Slovak citizenship by referring to the oppression of the Slovak language and culture in late Habsburg Hungary. Liberals should avoid buying into such nationalist arguments. Rectification of historic injustice must not only be limited by an expiry date, but also by the requirements of territorially inclusive citizenship within states and mutual recognition among them. And such recognition must not only be expressed by signatures on international agreements, but also in the respective national narratives.

The second controversy is about whether the new Hungarian law represents progress from earlier ethnic towards more civic policies. The 2001 Hungarian Status Law still referred explicitly to Hungarian culture and ethnicity, whereas the 2010 Law is based on former citizenship. Erin Jenne and Stephen Deets think that this 'distinction between "ethnic Hungarians" and "descendants of former citizens"... is conceptually important even if it leads to similar results.' They point out that the new law would even entitle ethnic Slovaks to pick up Hungarian citizenship if they can demonstrate a sufficient knowledge of the Hungarian language.

So how should we judge whether a policy is ethnic or civic: by the formal criteria it uses for defining its beneficiaries, or by its proclaimed intentions and its foreseeable effects? Is the Romanian policy of offering citizenship to the majority population of Moldova and the similar Bulgarian policy towards Macedonia really more civic than the cultural and social benefits offered to ethnic Hungarians under the Status Law? Gábor Egry's analysis of the ideology and long-term goals of the Hungarian nationalist right confirms that dual citizenship is clearly a further escalation in a consistent ethno-nationalist strategy rather than a retraction towards a more civic policy.

Confusion about this quite obvious point is nourished by the second major gap in international law that bans discrimination on ground of ethnic or national origin, but does not constrain much more aggressively expansionist policies that symbolically reclaim lost territories by offering citizenship indiscriminately to the descendants of former citizens residing there<sup>16</sup>. Only from the perspective of current international law is it possible to assert that 'Hungary now appears to have taken a less adventurous path', while 'for Slovakia "status" Hungarians are less threatening than Hungarian nationals' (Ennikő Horváth).

Deets and Jenne are also less concerned about Orbán's policies because they see them as a 'dog and pony show' for Fidesz and Jobbik voters that will have few effects outside the Hungarian electoral arena. What Egry shows instead is that ethno-nationalists on both sides of the conflict may be

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<sup>16</sup> The 2008 Bolzano Recommendations of the OSCE High Commissioner on National Minorities quoted by Horváth contain the most explicit guidelines: 'States may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals abroad. States should, however, ensure that such a conferral of citizenship respects the principles of friendly, including good neighbourly, relations and territorial sovereignty, and should refrain from conferring citizenship en masse, even if dual citizenship is allowed by the State of residence' (OSCE HCNM 2008: 19).



interested in the same outcome, which all our forum contributors seem to agree would be the worst: mono-national Hungarian citizenship for Hungarian minorities in the near abroad. For the ideologues of a homogenous and unitary Hungarian nation that stretches across the unjust borders of present-day Hungary only the Hungarian part of dual citizenship counts. From there, it is just a small step to full collusion with the Slovak right-wing nationalists' attempts to deprive Hungarian minorities of their Slovak citizenship. If radical nationalists on both sides see their national unity diluted through dual citizenship, then their strategic goals no longer cancel each other out but are compatible and mutually reinforcing.

Florian Bieber offers a more qualified defence of the Hungarian law. He argues that dual citizenship for transborder minorities is not the cause of tensions between kin-states and host-states but merely a symbolic expression of deeper causes, and he seems to agree with Stavilã that ethno-nationalists' bad intentions may still lead to unintended good effects for the minorities concerned. I agree with the former and disagree with the latter statement. As James Madison put it in *Federalist 10*, if 'the causes of faction cannot be removed ... [then] relief is only to be sought in the means of controlling its effects' (Madison, 1788/1982). Dual citizenship for transborder minorities is indeed not a cause but a means of ethno-nationalist political projects. While liberals may abhor ethno-nationalist ideologies, they cannot abolish or repress them in a liberal democratic constitution. What can be legally regulated and constrained is not interests, ideas and intentions but those political means that violate domestic constitutional principles and friendly and peaceful international relations.

Our normative judgement would still have to be modified if dual citizenship had beneficial side-effects that outweigh its threat potential and subvert the ethno-nationalists' goals. The possible benefit that Bieber sees is that dual citizenship 'lowers by implication the importance of the citizenship of the country of residence.' But why should this be welcomed? Bieber's argument is that dual citizenship 'lessens the sense of having to rely on the good will of the majority (as the Slovak response appears to confirm)' and provides minorities with greater security through a strong exit option. Strengthening the exit option and external protection through kin state citizenship will, however, in turn diminish the good will of the majority and its sense of responsibility for protecting the minority (as the Slovak response also appears to confirm). So our assessment how good or bad the effect of transborder dual citizenship is for the minority concerned depends really on whether we believe a divided multiethnic society can and should be integrated through strengthening a domestic conception of citizenship that can be shared across the ethnic cleavages or whether we think the representatives of a dominant majority will never agree to this and it is better to protect the minority from the outside through its kin state. If we assume that Slovakia will always oppress its Hungarian minority, then dual citizenship may indeed be a good way of providing external protection. However, this could well be a self-fulfilling prophecy and its premise might be wrong, as the weakening of Slovak as well as Hungarian minority ultranationalists in the recent election in Slovakia seems to indicate.

This brings me to the third and most difficult problem. Is it really consistent to argue that dual citizenship is generally legitimate for immigrants but highly problematic for transborder minorities? This distinction is not primarily related to the danger of international conflict. Horváth is right that state interests may conflict in either case, and Spiro is right that an international human rights regime and supranational political integration diminish the likelihood of such conflicts, or at least of their violent escalation. The distinction has to do with the domestic problem how to integrate diverse and divided societies by making a shared citizenship more rather than less important. Let me suggest two reasons why the situation is different from migrants and for transborder minorities.

First, for immigrants, the toleration of dual citizenship removes a major obstacle on their path to acquiring the citizenship of their host country. Requiring immigrants to abandon their citizenship of origin will diminish the incentive to naturalise and increase their reliance on the external citizenship of their country of origin. For transborder minorities, by contrast, it is the offer of acquiring the external citizenship of a neighbouring kin state that will have the same effect.

Second, the full political integration of immigrants into a liberal democracy is only possible if a native majority abandons exclusionary conceptions of its national identity and embraces cultural, religious and linguistic diversity as basic features of the political community they share with the newcomers. The full political integration of ethno-national minorities, however, whether they be 'stateless' as in the case of the Catalans, Scots and Basques, or transborder minorities with neighbouring kin states, demands more than recognition of diversity at the level of individual citizenship. It requires a multinational conception of citizenship that recognises these groups as constitutive for the political community through various arrangements that range from special public recognition for their languages via devolution and territorial autonomy to multinational federal constitutions. The kind of powers which a minority claims will depend on its size, territorial concentration and political mobilisation and will often be internally contested within the group. But whatever collective rights it claims and is granted, these can be stable and safe only if they are internalised in a multinational conception of domestic citizenship that can be shared with a national majority instead of being protected by an external kin state.

From a liberal perspective, a transborder minority's claims for collective rights cannot be predetermined in advance but will vary from case to case and must be legitimised through democratic processes. The same perspective suggests that individuals who are seen to belong to a minority by virtue of their descent, religion or mother tongue should be free to opt out by assimilating into a dominant majority or by leaving the country. The offer of acquiring the citizenship of a neighbouring kin state is entirely legitimate if individuals want to leave and take up residence in a country where their language is the dominant one. This is what the Hungarian citizenship law had provided for until 26 May 2010. What is not legitimate is to turn into Hungarian citizens those who want to stay in Slovakia as members of a Hungarian minority. Although Joachim Blatter is no longer convinced of this part of my argument, I still believe there is a normative trade-off between multinational and transnational citizenship and that transborder minorities should not have both simultaneously. If their representatives want to transform Slovakia into a multinational democracy they ought to reject the Hungarian offer. And if individual members of the minority do not believe in such a future for Slovakia or for themselves, they should be free to emigrate to their kin state and become Hungarian citizens there.

In my initial contribution I had tried to avoid talking too much about general principles at the level of political theory. But Joachim Blatter has nailed me down by claiming that there is an inconsistency between the principle of 'stakeholder citizenship' that I have defended elsewhere (Bauböck 2009) and my denial that Hungarian transborder minorities have a claim to citizenship in their kin state. Indeed, if one uses a traditional interpretation of a 'genuine link criterion' as a proxy for stakeholdership, it seems plausible that a shared language and descent from former citizens who lost their citizenship involuntarily should count as genuine links that create a sufficiently strong stake in membership status.

However, stakeholdership is a principle only for determining which individual has a claim to membership in which polity. The boundaries and collective identity of the polity must have been settled before we can discuss who has a right to be included. Even *prima facie* plausible claims of individual genuine links may clash with a just settlement of contested borders. And in this case we must first decide how we conceive of the boundaries and identities of the states involved in a conflict. Although today the borders between the Hungary and Slovakia are disputed only by extreme nationalists, their collective identities are still fundamentally contested and transborder citizenship is used as a political instrument for this purpose. To paraphrase Liebich, it serves to make the claim that Slovakia can never be a state of all its citizens and that Hungary must therefore be a state for all ethnic Hungarians. If this is the core of the conflict, then the most urgent task is not to promote wider opportunities for free movement or for choosing between alternative citizenship identities, but to promote instead historical narratives and collective identities that can mutually recognize each other within and across the borders of states.

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