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# Altneuländer or the vicissitudes of citizenship in the new EU states

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# Altneuländer or the vicissitudes of citizenship in the new EU states\*

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*Altneuland* is the title of a novel written over a century ago by the Zionist leader Theodore Herzl. The old-new land Herzl had in mind was Palestine but the term seems to me to be apposite for the lands with which this paper is concerned, the former communist states that have recently joined the European Union. As I shall try to argue, from the point of view of our concern here, that is, the issue of citizenship, these countries display a peculiar blend of antiquity and novelty which may justify a certain claim to distinctiveness.

In this paper I therefore propose to look at the preconditions and conditions of citizenship in the new EU member states through the prism of "old" and "new." Applying these terms, I shall first consider the specificities of East Central European statehood; I shall then look at the evolution of principles of political membership; finally, I shall consider efforts to incorporate the past in present citizenship provisions.

## **1. new states and old concerns, or why there is not much plural citizenship in the Altneuländer**

When the First World War broke out, less than a century ago, not a single one of the eight new post-communist members of the EU enjoyed statehood. Three of these countries (Slovenia, the Czech Republic and Slovakia) have only become states in the last fifteen years (though Slovakia had a brief and not very happy experience as a state during the Second World War). Of the five other states (Poland, Hungary, Lithuania, Latvia, Estonia) only one (Hungary) has enjoyed uninterrupted statehood since 1918 and, in the case of the Baltic states, their statelessness in this period has lasted longer than their statehood (Annexe 1).

To be sure, at least two countries, Poland and Hungary, have long been acknowledged, even when absent from the map and even by such sceptics as Marx and Engels, as sometime historic states.<sup>1</sup> Other countries, notably Lithuania and the Czech Republic, might make weaker claims to a distant statehood in a more or less misty past. The contrast with the situation of the "old" fifteen EU members could not be more striking. Although the "old" EU does also number three countries which only arose after the first World War (Finland, Austria, Ireland) and one whose existence was interrupted (Austria), twelve

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<sup>1</sup> A classic discussion of "historic" and "non-historic" nations is Roman Rosdolsky, *Engels and the "Non-Historic" Peoples: The National Question in the Revolution of 1848*. Translated, edited and with an introduction by John-Paul Himka. Glasgow: Critique Books, 1986 [1934]. See also, Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy*. Princeton: Princeton University Press, 1984.

of the fifteen old EU countries have known uninterrupted statehood for periods running from well over a century (Germany, Luxemburg, Italy, Belgium, Greece) to many hundreds of years (United Kingdom, Netherlands, Spain, Portugal, Sweden, Denmark, France).

I would suggest that the recent and discontinuous statehood that characterises the new EU states has broad implications for political attitudes and identity. The Hungarian public intellectual, Istvan Bibo, has spoken of the "distress of the small states of Eastern Europe" by which he means "anguish at the perspective of the disappearance of one's own people and country."<sup>2</sup> This anxiety is based on the historical realities noted above but it is re-enforced by demography. Though there are smaller states in the old EU, some of the new members are very small indeed (Slovenia, Estonia, Latvia and Lithuania together are smaller than Belgium or Portugal) and all of them combined, excepting Poland, have a smaller population than a middle sized EU member like Spain. Even Poland, whose population is larger than all the other new EU adherents put together, is itself only about the size of Spain. And, as if to underline that in East Central Europe even thirty eight million nationals does not spare one from brooding on the survival of the state, Poland's hymn still begins, somewhat ominously, "Poland has not yet perished while we are alive."

The fragility of statehood in East Central Europe drives all these countries in the direction of a state-re-enforcing over-compensation. The preambles to their constitutions or other foundational documents (Annexe 2) evoke ancient genealogies and historical continuities. Moreover, the Baltic states' insistence on the legal fiction of uninterrupted statehood, despite a half century of statelessness, leads them to adopt constitutional and legislative dispositions that transform a fixed date into a marker of timelessness. Legitimacy, apparently, reposes, at least in part, upon antiquity and continuity and the search for these is a serious task.<sup>3</sup>

One would imagine that such tenacious attachment to a recent and therefore tenuous statehood would find reflection in the philosophy and provisions regarding plural citizenship.<sup>4</sup> One could advance the hypothesis that fragile states with unstable borders might accept or even favour plural citizenship to reflect the variability of historical conditions they had experienced. One could also put forward the proposition that such precarious states would be reluctant to dilute or share attributes of statehood by tolerating plural citizenship for its citizens.

In fact, it is the latter proposition that holds more strongly. All the post-Communist states considered here, with the exception of only Hungary and Slovakia, are reticent about authorizing their citizens, especially their naturalised citizens, to carry another passport. This reticence is subjected to pressure in the opposite direction, especially from émigrés who are keen to maintain or re-establish formal ties with their country of origin without giving up membership in their country of adoption. The result is a

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<sup>2</sup> Istvan Bibo, "The Distress of the East European Small States (1946)," in his Democracy, Revolution, Self-Determination, edited by Karoly Nagy, Boulder: Atlantic Research and Publications, 1991, pp. 13-69.

<sup>3</sup> Further on the specificities of East Central Europe, especially on the sequence of nation/state creation, as opposed to state/nation creation in Western Europe, Andre Liebich, "Nations, States, Minorities: Why is Eastern Europe Different?" Dissent 42:3 (1995) pp. 313-318.

<sup>4</sup> For an overview, see Andre Liebich, "Plural Citizenship in Post-Communist States," International Journal of Refugee Law 12:1 (2000) pp. 97-107.

considerable amount of incoherence. For example, an Estonian citizen may not be a citizen of another country; any Estonian citizen who acquires another citizenship by birth must renounce either that citizenship or Estonian citizenship. The same law, however, states that no person may be deprived of Estonian citizenship acquired by birth.<sup>5</sup> In the well documented case of Poland, the only state considered here that has not adopted a new citizenship law since the fall of communism, the relevant formulation is ambiguous. It states that a person who is a Polish citizen under Polish law cannot be recognised at the same time as a citizen of another state. This provision was interpreted restrictively in the communist period but is now understood liberally.<sup>6</sup> Arbitrary application of the prohibition on plural citizenship was the rule in Czechoslovakia after 1949 as well. Today, in the Czech Republic "there is a long list of discretionary exemptions from the requirement to renounce one's [previous] nationality" upon naturalisation.<sup>7</sup> The upshot of the matter throughout the area appears to be a continued tendency towards formal rejection of the principle of plural citizenship, though with varying degrees of severity and consistency (Annexe 3).

The two exceptions to such prohibition, Hungary and Slovakia, confirm the first hypothesis presented above according to which states may accept plural citizenship as a reflection of their historical experience. These two countries authorise plural citizenship with (virtually, in the case of Slovakia) no reservations.<sup>8</sup> If one were to search for the causes of their exceptionalism in this regard, one would have to take account of the fact that these two countries show particular concern for their diasporas and that they have also known a sudden change of borders (Hungary) or status (Slovakia) leaving a number of their nationals outside the state.<sup>9</sup> In historical terms, it might be noted that Hungary was not always open to plural citizenship – indeed, at the time of the Austro-Hungarian monarchy it specifically excluded dual citizenship with Austria – and that Slovakia, long integrated into Hungary, might be expected to have based some of its own conceptions of statehood on the Hungarian example.<sup>10</sup>

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<sup>5</sup> As Pritt Järve put it at the Vienna workshop, Estonian citizenship is practically a genetic determinant, an innate trait that cannot be removed. Apparently, Estonia has not followed the reasoning of the Czech Constitutional Court which distinguished between "deprivation of nationality" and "loss of nationality." See Andrea Barsova, "Nationality Legislation: Country Report from the Czech Republic," Workshop on Citizenship Policies, p. 10 note 34.

<sup>6</sup> Efforts to adopt a new law have failed, in part because of the litigious issues of plural citizenship. The official Polish position is explained in the following tortured terms: "Polish law does not recognize dual citizenship of its citizens. While Polish law does not forbid Polish citizens from becoming the citizen [sic] of a foreign state, that citizen will lose their [sic] Polish citizenship once approval has been granted by the proper Polish authorities." Consulate General of the Republic of Poland, Los Angeles. <http://pan.net/konsulat/law/dualct.htm>. Consulted 9 March 1999. See the very thorough study by Agata Gorny, Aleksandra Grzymala-Kazlowska, Piotr Korys, Agnieszka Weinar, Multiple Citizenship in Poland. Institute for Social Studies. Warsaw University. Working Papers. Series: Prace Migracyjne nr. 53. December 2003. At [www.iss.uw.edu.pl/osrodki/cmr/wpapers](http://www.iss.uw.edu.pl/osrodki/cmr/wpapers). Consulted 1 June 2005. With respect to loss of Polish nationality, the 1962 law was amended in 1998 to remove the provision that "the acquisition of foreign citizenship automatically results in the loss of Polish citizenship." Dziennik Ustaw nr 106, 17.08.1998.

<sup>7</sup> Citation from Andrea Barsova, "Country Report from the Czech Republic," p. 9. My thanks also to Andrea Barsova for her further comments to me on this subject, personal communication 25 July 2005.

<sup>8</sup> The Slovak provision that renouncement of former citizenship is "in favour" of naturalisation is so weak a formulation as to be self-negating.

<sup>9</sup> The proposition that ethnic Hungarians abroad should also enjoy Hungarian citizenship, without any reservations about their other citizenship status and without any residence requirement in Hungary, was only narrowly defeated in a December 2004 referendum. The issue is discussed in Maria Kovacs, "Country Report: Hungary (part 2). Current Political Debates on Dual Citizenship," Workshop on Citizenship Policies, Vienna.

<sup>10</sup> Austrian and Hungarian citizenship laws (the legal regimes were entirely separate, there was no Austro-Hungarian citizenship) did not

There is, clearly, a tendency towards relaxation of the injunctions against plural citizenship. One might imagine that such relaxation would be by way of compensation for the strict refusal of these countries to countenance anything in the order of federal arrangements or even regional autonomies (Annexe 4).<sup>11</sup> In fact, this is not the cause of greater tolerance of plural citizenship. Rather, pressure comes from the desire to prove one's eurocompatibility by following European trends, as evidenced by the most recent European Convention on Nationality (1997) which encourages plural citizenship as much as earlier conventions discouraged it. Above all, the element referred to above, émigré pressure in favour of plural citizenship is becoming ever stronger. First, as a consequence of the fall of communism these countries have reconciled themselves with their historical émigré communities, just as these communities abroad have reconciled themselves with their countries of origin. Second, these countries are producing a significant new wave of emigration. Part brain drain, part cheap labour, stimulated by globalisation as well as by EU enlargement, this new emigration is even more interested in maintaining ties with its home country than were its predecessors.

To date, the move in the direction of plural citizenship has not occasioned sweeping changes in citizenship laws. States have abrogated the communist era bilateral conventions on elimination of cases of dual nationality.<sup>12</sup> This should be seen as a rejection of a communist heritage rather than endorsement of plural citizenship. Only Lithuania has specifically removed the clause in article one of its 1991 and 1997 citizenship laws that stated, "A citizen of the Republic of Lithuania may not at the same time be citizen [sic] of another state, except in cases provided for in this law."<sup>13</sup> In some cases (Latvia, Slovenia) restrictions on plural citizenship now apply only to those who choose to naturalise into the citizenship of the country concerned and therefore concern immigrants rather than emigrants. Inasmuch as immigration (initially, at least, from the East) may be expected to become an evermore frequent phenomenon in the new EU states, pressure will mount to remove these restrictions as well.<sup>14</sup>

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require candidates for naturalisation to prove that they had lost their previous nationality but, as of 1870, they did require such proof for Hungarians seeking to become Austrians and vice versa. Ivan V. Soubbotitch, *Effets de la dissolution de l'Autriche-Hongrie sur la nationalité de ses ressortissants*. Paris: Rousseau et cie., 1926, p. 15.

<sup>11</sup> Rainer Bauböck, "Overlapping jurisdictions and transnational citizenship," Paper prepared for the CSPT Conference on the State, Columbia University, New York, April 2005, has suggested that claims to transnational or plural citizenship are weaker where a minority enjoys significant political autonomy, such as that obtained in a federal state.

<sup>12</sup> For Hungary and Poland see, Kinga Gall, "Staatsangehörigkeit in Ungarn heute," *Osteuropa* 52:6 (2002) p. 748. Gorny et al, *Multiple Citizenship*, p. 15, 18-21. The country reports presented to the Vienna workshop confirm that this is the case elsewhere.

<sup>13</sup> The authorisation of plural citizenship applies only to those (and their descendants) still resident in Lithuania who held Lithuanian citizenship before June 15 1940 as well as persons who are of Lithuanian descent and who consider themselves Lithuanian (article 18.1.2). More on this in section 3 below.

<sup>14</sup> Extension of authorized cases of plural citizenship is under discussion in the Czech Republic, see Andrea Borsova, "Diskuse o dvojm obcanstvi," *Literarni Noviny* 31, 28 July 2003. I imagine that similar discussions are going on in other countries. I am not researching popular attitudes towards plural citizenship but these appear to be differentiated. In the, already complex case of Poland, "the negative attitude to dual citizenship in Poland does not extend to persons whose second citizenship is other than German," Tomasz Kamusella, "Dual Citizenship in Opole Silesia in the Context of European Integration," *Facta Universitatis. Series: Philosophy, Sociology and Psychology* 2:10 (2003) p. 709.

## 2. old categories and new principles, or how ethnicity has trumped other grounds of citizenship

The classic distinction between civic and ethnic conceptions of citizenship, as well as that between citizenship founded upon *ius soli* and *ius sanguinis*, apply to the countries under discussion here too.<sup>15</sup> Interestingly, what might be considered the more enlightened variant of citizenship, civic citizenship (or, at least, a prototype of civic citizenship), as well as the more progressive principle of membership, *ius soli*, belong to the past of these countries rather than to their present.<sup>16</sup>

In the two countries of this area that have the strongest state tradition, Poland and Hungary, a medieval conception of political citizenship prevailed well after it had disappeared elsewhere. In both countries, as in some other parts of Europe, the noble or equestrian estate was seen as constituting the nation, that is, the politically enabled and active part of the population. If "citizenship in Western liberal democracies is the modern equivalent of feudal privilege," then feudal privilege may well be the medieval equivalent of citizenship.<sup>17</sup> The originality of the Polish and Hungarian cases was that this estate, largely made up of the landowning gentry or even the landless petty nobility, though still only a small minority, comprised a far broader section of the overall population than it did, for example, in Western Europe.<sup>18</sup> Here, as in pre-modern Western Europe, estate identity overrode linguistic or ethnic criteria. In the vast multiethnic entities that were the Polish and Hungarian kingdoms, referred to as the Polish-Lithuanian Commonwealth and the Lands of the Crown of Saint Stephen, social status thus trumped the multitude of potentially competing blood connections. The Polish *szlachcic* (noble or gentleman) was proud to declare himself "natione polonus, gente ruthenus (or lituanus)" thus affirming that Polish political identity was compatible with Ruthenian (that is, Ukrainian, in modern terms) or Lithuanian primordial ties. As these terms may recall, a neutral dead language, Latin, was the political *lingua franca* of this class, well into the eighteenth century in the case of Poland and into the middle of the nineteenth century in Hungary.<sup>19</sup>

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<sup>15</sup> I take the point that the civic-West/ethnic-East stereotype "when true is only weakly true, and according to several measures is false." With respect to conceptions of citizenship, however, the civic/ethnic distinction seems to me a useful heuristic device in tracing a historical evolution. Stephen Shulman, "Challenging the Civic/Ethnic and West/East Dichotomies in the Study of Nationalism," *Comparative Political Studies* 35:5 (2002) p. 554.

<sup>16</sup> The latter point, regarding *ius soli*, may well apply to Germany as well. See Andreas K. Fahrmeir, "Nineteenth-Century German Citizenships: A Reconsideration," *Historical Journal* 40:3 (1997) pp. 721-752. The point was made already by Franz Massfeller, *Deutsches Staatsangehörigkeitsrecht von 1870 bis zur Gegenwart*. Frankfurt/Main: Alfred Metzner, 1953.

<sup>17</sup> Joseph Carens in *Engaging Cultural Differences*, p. 139.

<sup>18</sup> In Poland, 11-13% of the population belonged to the equestrian estate in the 16th century, 9-10% in the 18th century. In France under the July Monarchy (1830-1848), 1.5% of the population was enfranchised. In Britain, the corresponding figure at that time (1828) was 3.2%. Figures cited by Andrzej Walicki, *Philosophy and Romantic Nationalism: The Case of Poland*. Oxford: Clarendon Press, 1982, p. 16. In Hungary, the gentry numbered 3-5% of the population by the 15th century. Pat Engel, "The Age of the Angevines, 1301-1382," in Peter F. Sugar et al. (eds.), *A History of Hungary*. London: I. B. Tauris, 1990, p. 43

<sup>19</sup> On Poland, Andrzej Walicki, "Poland between East and West: The Controversies over Self-Definition and Modernization in Partitioned Poland," Harvard University. Ukrainian Research Institute, 1994. On the replacement of Latin by Hungarian in 1844 and the ensuing replacement (in protest) of Latin with Croatian in the Croatian Diet in 1847, George Barany, "The Age of Royal Absolutism, 1790-1848," Sugar et al. (eds.) *History of Hungary*, p. 160

Estate membership in Poland and Hungary implied important political capabilities. In Hungary the crown was theoretically elective, in Poland it was effectively elective until the disappearance of the Polish state, the Commonwealth or First Republic, in 1795. The electorate consisted of the noble estate, making its members citizens in the modern understanding of the term and imparting dignity to the notion of political membership.<sup>20</sup> In spite of huge disparities of wealth and power, members of the noble estate cultivated a formal equality, to such an extent that in Poland all titles of nobility were outlawed.<sup>21</sup> In both countries, diets made up of members of the nation met regularly, deliberated vociferously, and exercised power to various degrees

In Bohemia, an estate system originally prevailed as well but it proved weaker and decayed earlier than in Hungary and Poland. As in these two countries, the estate system in Bohemia did not originally differentiate among ethnic or linguistic identities, in this case, between Germans and Slavs.<sup>22</sup> Only in the middle of the nineteenth century, in the wake of the seismic events of 1848, did Bohemian and local identities change into ethnic ones. Bohemians and Budweisers became Czechs or Germans, to quote the title of a recent study of the issue.<sup>23</sup> However, in Bohemia territorial-based identity remained strong. During the First World War, Thomas Masaryk originally founded his case for Bohemian independence on the state rights of the historic Kingdom of Bohemia. He put aside this argument only when he saw that it did not impress British decision-makers, indifferent to antiquarian constitutional niceties in countries other than their own. He also downplayed it in the realisation that it did not further the project of uniting Slovakia to the Czech lands in a future Czechoslovak state.<sup>24</sup>

The territorial demarcation of political membership, intimately connected to citizenship based on *ius soli*, was firmly anchored elsewhere in East Central Europe as well. From the early Middle Ages, the Hungarian *comitat* gave local territorial content to the principle of gentry self-government.<sup>25</sup> After 1848 the *comitat* remained a fundamental and prestigious administrative unit. The Polish *dietines*, assemblies of local gentry, were the effective units of government in pre-partition Poland from the fifteenth century to the late eighteenth century.<sup>26</sup> Polish exiles after 1830, having abandoned the now

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<sup>20</sup> The Polish Constitution of 1791, celebrated as the first modern European constitution (it beat out the French Constitution by a few months), even while abolishing its exclusive political privileges still paid homage to the "Nobility, or the Equestrian Order" stating (article II): "It is in this order that we repose the defence of our liberties and the present constitution: it is to their virtue, valour, honour, and patriotism, we recommend its dignity to venerate, and its stability to defend, as the only bulwark of our liberty and existence."

<sup>21</sup> On this principle and its exceptions Norman Davies, *God's Playground: A History of Poland*, vol. 1, *The Origins to 1795*. New York: Columbia University Press, 1982, pp. 239 ff.

<sup>22</sup> On Bohemian "Land patriotism .. the patriotism of our aristocracy" see Derek Sayer, *The Coasts of Bohemia: A Czech History*, translated from the Czech by Alena Sayer. Princeton: Princeton University Press, 1998, pp. 57 ff.

<sup>23</sup> Jeremy King, *Budweisers into Czechs and Germans: A Local History of Bohemian Politics 1848-1948*. Princeton: Princeton University Press, 2002, emphasizes that "Ethnicity was only one form of nationhood among several in Habsburg Central Europe, yet one that came to dominate the others ..." p. 10.

<sup>24</sup> Hugh LeCaine Agnew, "New States, Old Identities? The Czech Republic, Slovakia and Historical Understandings of Statehood," *Nationalities Papers* 28: 4 (2000) pp. 619-650. Jan Galandauer, "30 kvetna 1917: slovensko poprvé v programu legitimní české politiky representace (jak cesi překročili reku litavu)," *Cesi a Slovaci ve střední Evropě ve 20. století Sborník vojenské akademie v Brně* (1993) pp. 135-142.

<sup>25</sup> Janos Bak, "The Late Medieval Period, 1382-1526," in Sugar et al. (eds.), *History of Hungary*, p. 66. See J. Holub's essay in *The Studies presented to the International Commission for the History of Representatives and Parliamentary Institutions*, Tenth International Congress of Historical Sciences at [sic] Rome in 1955. Louvain: Edition Nauwelaerts, 1958.

<sup>26</sup> Davies, *God's Playground*, vol. 1, p. 323.

obsolete idea of a Polish gentry nation, defined the Polish nation in territorial terms, as consisting of all those who lived on the territory of Poland before the first partition of 1772.<sup>27</sup> Restoration of the Polish state within these borders was still the demand of Polish activists at the time of the First World War.<sup>28</sup> Finally, until 1918, throughout the whole territory of the Austro-Hungarian empire (with the partial exception of Bosnia-Herzegovina), Heimatrecht (indigénat, pertinenza) an original form of communal citizenship, was the basic building block of state citizenship.<sup>29</sup> This institution which deserves the attention of historians of citizenship, appears to have survived unto the present day only in Switzerland.<sup>30</sup>

The Allied and Associated Powers, victors in the First World War, had fought, purportedly, for the rights of small nations and for the principle of national self-determination. Their objective was the creation of national states, that is, states which were, if not ethnically homogeneous, at least responsive to the aspirations of ethnic nations in East Central Europe. In setting down the rules for acquisition of citizenship in the successor states, however the victorious power resorted to territorial criteria. Anyone habitually resident (in the case of former German or Russian territory) or possessing communal Heimatrecht (in the case of former Austria-Hungary) within the new frontiers of a state was entitled to that citizenship.<sup>31</sup> This was perhaps the last time that a territorial principle predominated over ethnic criteria in determining citizenship in the countries with which we are concerned. Henceforth, territoriality, like social status in an earlier period, became a criterion of the past and ethnicity took the lead in regards to citizenship.

Already in the post-First World War peace treaties the victors were obliged to make concessions to the principle of ethnicity, at least as an alternative criterion for the determination of citizenship. The treaties allowed for a right of citizenship option. In the case of the Treaty of Versailles with Germany, individuals could determine their citizenship not only on the basis of habitual residence but also by virtue of their place of birth, on condition that their parents were domiciled in that place at the time of

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<sup>27</sup> Marian Kuciel, *Czartoryski and European Unity 1770-1861*, Princeton: Princeton University Press, 1955. More specifically on this issue, Andre Liebich "Czartoryski and the Quest for Polish Statehood," ASN and Studjum Europy Wschodniej Conference Paper, Warsaw, July 2004.

<sup>28</sup> According to Soubbotitch, *Les effets de la dissolution*, p. 55, many (unnamed) Polish jurists argued that Poland had never ceased to exist because the partitions were in fact occupations. The analogy with present-day Baltic positions is striking (see section 3 below). I have not found examples of such Polish arguments but their existence is confirmed, a contrario, through a vehement attack on such arguments by Walter Schätzel, "Polens Untergang und Wiedererrichtung vom völkerrechtlichen Standpunkt," *Archiv des öffentlichen Rechts* 40:1 (1921) pp. 73-86.

<sup>29</sup> The connection between Heimatrecht and commune as territorial citizenship was spelled out long ago by Joseph Redlich, "The Municipality. I. Austria. The Commune System," *Journal of the Society of Comparative Legislation*, New Series 8:1 (1907) pp. 12-40. The institution was also known historically in Bavaria though the use of the term today, say, by Sudeten expulsees in Bavaria has nothing to do with its historical meaning

<sup>30</sup> A recent reference source refers to indigénat as a "Nationalité de second degré conservée aux nationaux d'une entité fédérale" - which neither Hungary or Austria ever was - and describes it as "vieilli," *Dictionnaire de droit international public*, edited by Jean Salmon. Bruxelles: Bruylant, 2001. Even today, however, "Etre citoyen(ne) suisse implique un indigénat cantonal et un droit de cité communal. Les trois degrés sont inséparables. Nul ne peut être ressortissant(e) d'un canton sans droit de cité communal, ou Suisse sans indigénat cantonal. état.geneve.ch/diae/intereieur/naturalisations. Consulted 1 June 2005. The same document refers to "nationalité (indigénat) genevoise." In addition to a "droit de cité communal" there is also a concept in some localities of "bourgeoisie communale" that implies a co-proprietorship of communal assets.

<sup>31</sup> Citizenship conundra for individuals who were not of the majority "race and language" and who did not possess or could not prove present or past Heimatrecht in their state of residence - for example, some Hungarians in Slovakia - are discussed in Walter Napier, "Nationality in the Succession States of Austria-Hungary," *Transactions of the Grotius Society* 18 (1932), pp. 1-16.

their birth. As one commentator stated, "it [was] impossible that there be any question of *race* or *language* [italics in original]" in setting criteria for optants "since Poland counts masses of Jews among its nationals [ressortissants] speaking a special jargon, and Czechoslovakia has more than one-third of its citizens who are of the German language."<sup>32</sup> In fact, race and language were precisely the criteria applied for the successor states of the Habsburg empire: Individuals having Heimatrecht anywhere in the former Austro-Hungary could choose, instead of the citizenship of the state in which their commune now lay, the citizenship of the state where the majority of the population was made up of people speaking their language and was of their "race" (article 80 of the Treaty of Saint Germain and article 64 of the Treaty of Trianon).<sup>33</sup>

One is tempted to see in the differential dispositions with regard to Germany and Austria Hungary an expression of different perceptions of these two countries, Germany being seen as governed by more civic and Austria-Hungary by more ethnic considerations. Confirmation of such an approach might be sought in the fact that the Treaty of Versailles does speak of Czechoslovaks (article 85) and Poles (article 91) who are German nationals but it does not define a Czechoslovak or a Pole, unlike Trianon and Saint Germain which specifically evoke "race and language." It may be simply the logic of Heimatrecht that leads in this direction. As Heimatrecht replaces birth place and encourages the cult of a "petite patrie" or a spirit of subjective belonging it may be expected that Heimatrecht-based citizenship on a state scale would edge away from a strictly impersonal basis of citizenship, such as birthplace, and seek out other criteria for belonging.

Since 1918, the prevailing conceptions of identity in all the countries in question have led them to look toward ethnic criteria in defining those entitled to citizenship.<sup>34</sup> These ethnic criteria do not, as a rule, appear explicitly in citizenship laws themselves, though they often linger just beneath the surface.<sup>35</sup> Formally, the governing principles of citizenship laws are descent without reference to ethnicity, though in the case of the Baltic states with a strict time reference; rules of naturalisation in these citizenship laws generally follow well-established criteria familiar to students of citizenship elsewhere. Underlying conceptions of citizenship can be found, notably in ancillary documents, that attempt to establish a quasi-citizenship or a special connection with co-nationals abroad.<sup>36</sup>

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<sup>32</sup> Alfred Brustlein, "La Notion de l'indigénat dans les traités de paix de Versailles, de Saint Germain et de Trianon," *Journal du droit international* 49 (1922) p. 35.

<sup>33</sup> Provisions of the Treaty of Versailles (Germany), Treaty of Saint Germain (Austria), Treaty of Trianon (Hungary) discussed in Soubbotitch, *Effets de la Dissolution de l'Autriche-Hongrie sur la nationalité de ses Ressortissants*. Also, Brustlein, "La Notion de l'indigénat," pp. 34-54. In a sort of counterpart to the Treaty of Versailles' provision that citizenship could also be based on one's place of birth in addition to one's current place of residence, the Treaties of Saint Germain and Trianon allowed citizenship to be claimed on the basis of an earlier Heimatrecht just previous to one's current Heimatrecht

<sup>34</sup> The main remnants of *ius soli* are to be found in standard international provisions regarding children born on the territory of the state who would otherwise remain stateless. Even so, Latvia only adopted such provisions in 1998, restricting them to children born on Latvian territory after 21 August 1991, the date of the Moscow coup that might be seen as the last gasp of the USSR. It might be noted that Latvia has maintained an element of *ius soli* in qualifying the principle of citizenship by descent with the provision that if only one parent is a Latvian citizen the child must be born in Latvia or the responsible parent must be permanently resident in Latvia for the child to qualify as Latvian.

<sup>35</sup> They do appear, for example, in Slovenian and Hungarian citizenship laws where the schedule of residence requirements for naturalisation goes from ten and eight years respectively to one year for ethnics. Judit Toth, "Country Report: Hungary (part 1)," and Felicita Medved "Slovenia: material prepared for the Workshop on Citizenship Policies, Vienna, June 30 and July 1, 2005."

<sup>36</sup> Lithuania's citizenship law (2002) provides for a certificate of indefinite "retention of the right to citizenship" for pre June 1940 Lithuanian

The most famous recent case of such an attempt at quasi-citizenship – "fuzzy" citizenship as one scholar has called it – is that of the Hungarian Status Law (2001).<sup>37</sup> This measure provoked an enormous storm in the states concerned, the countries of the Hungarian diaspora. The question was examined by international bodies, notably the Venice Commission and the Council of Europe. The Hungarian status law was finally adopted in significantly modified form, having served as a reminder of the passions that issues of citizenship can arouse.<sup>38</sup>

The Hungarian Status Law provides a certain number of advantages to its beneficiaries. When in Hungary status holders enjoy the same cultural and educational benefits as Hungarian citizens, as well as subsidised travel, and some social security and health service benefits. They can work for up to three months a year in Hungary without restriction. The Law provides additional advantages to Hungarian teachers living abroad (not just teachers of Hungarian but those teaching in Hungarian) and subsidies to families abroad that send their children to local Hungarian schools. State subsidies are guaranteed for Hungarian-language institutions and for Hungary community organisations abroad.

The Hungarian Status Law is not unique. Poland attempted to promulgate similar legislation but the initiative failed or stalled for bureaucratic and internal political reasons.<sup>39</sup> Slovenia has adopted a Resolution on the Position of Autochthonous Slovene Minorities in Neighbouring Countries and the Related Tasks of State and Other Institutions in the Republic of Slovenia (1996). This mostly concerns support for Slovene minority organisations abroad; it does not attempt to define an expatriate Slovene. Slovakia, however, has adopted a full-fledged Law on Expatriate Slovaks (1997). The beneficiaries can reside in Slovakia "for a long period" and can be employed – apparently, for an unlimited period – without working permit and without permanent residence status. They receive assistance "to maintain their Slovak identity," wherever they may be. There is some alleviation of provisions governing social security contributions and elderly expatriates receive travel subsidies within Slovakia

Why did the Hungarian status law provoke a storm abroad whereas there does not appear to have been any such adverse reaction to the corresponding Slovak law? The answer seems to lie in the respective definitions of prospective beneficiaries. Significantly, and perhaps paradoxically, the Slovak law has not caused international concern because it defines its beneficiaries in ethnic terms whereas the Hungarian law is vague on ethnic requirements and precise on territorial conditions.

Slovak expatriate status may be granted to an individual without Slovak citizenship who has "Slovak nationality or Slovak ethnic origin and Slovak cultural and language awareness." Slovak ethnic origin is obtained if at least one ancestor "up to the third generation had Slovak nationality." "Cultural and language awareness" depends on "at least passive knowledge of the Slovak language and basic

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citizens as well as "persons of Lithuanian descent" – the term is unspecified – residing abroad

<sup>37</sup> Brigid Fowler, "Fuzzing citizenship, nationalising political space. A framework for interpreting the Hungarian 'status law' as a new form of kin-state policy in Central and Eastern Europe." *Working Paper* 40/02. ESRC "One Europe or Several?" Programme, Brighton: Sussex European Institute, 2002. [www.one-europe.ac.uk](http://www.one-europe.ac.uk). Consulted 14 June 2005. Reprinted in publication noted below, footnote 38.

<sup>38</sup> A selection of articles from the abundant literature on the subject is to be found in Zoltan Kantor, Balazs Majtenyi, Osamu Ieda, Balzs Vizi, Ivan Halasz, *The Hungarian Status Law: Nation building and/or Minority Protection* 21 Century COE Program Slavic Eurasian Studies. Hokkaido: Slavic Research Centre, 2004. Consulted at [http://src-h.slav.hokudai.ac.jp/coe21/publish/no4\\_ses](http://src-h.slav.hokudai.ac.jp/coe21/publish/no4_ses). Consulted 14 June 2005.

<sup>39</sup> The text is available at [www.senat.gov.pl/K4/DOK/UCH/34/147UCH.HTM](http://www.senat.gov.pl/K4/DOK/UCH/34/147UCH.HTM). My thanks to Piotr Korys for this reference.

knowledge of Slovak culture or declar[ing] himself/herself actively for the Slovak ethnic [sic]." I do not propose to ponder the ambiguities of the expression "declaring [oneself ] actively for the Slovak ethnic." Rather, let me cite, for purposes of comparison, the definition contained in the Hungarian Status law: "This act shall apply to persons declaring themselves to be of Hungarian nationality, who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine and who have lost their Hungarian citizenship for reasons other than voluntary renunciation" (Article 1.1). Simply declaring oneself to be "of Hungarian nationality," as certified by a recognised Hungarian community organisation abroad, is sufficient to obtain the "Certificate of Hungarian Nationality" provided for in the status law.<sup>40</sup>

Underlying the difference in reactions provoked by the Hungarian Status Law and the (non) reaction to the Slovak Expatriate Law, is historical experience. For almost a millennium, Hungary, even when its own sovereignty was impaired, dominated the Danubian basin and outlying areas. All or parts of the countries mentioned in the Status Law belonged to the Crown of Saint Stephen. For centuries, the Hungarian nobility – the Hungarian nation in the feudal sense, as we have seen above – owned and governed these territories. After having long magyarised local elites, in the nineteenth century the Hungarian state also launched a sweeping campaign of general magyarisation. The Slovaks have been, in contrast, a dominated nation par excellence (dominated, in fact, by Hungarians). The subjects of the Slovak Expatriate Law are, above all, Slovak emigrants in America and elsewhere. The law also concerns Slovaks in the Czech Republic – the largest minority in that state since the dissolution of Czechoslovakia – as well as the small, and much assimilated, Slovak minority in Hungary, sometimes invoked by Bratislava to counter Budapest's complaints about treatment of the Hungarian minority in Slovakia.

The overwhelming importance of history in determining reactions to the respective status and expatriate laws is confirmed by the Polish example. Although the project of a Polish Charter for Poles abroad was not adopted, Poland did promulgate a law on Repatriation of Poles (2000). I shall deal with other aspects of this law in the following section but here let me point out that although the Polish law does dwell on ethnicity, like the Slovak law, it also has a determining territorial component, like the Hungarian statute. Interestingly, however, the territorial scope of the Polish law is defined in a way to *exclude* any former Polish territories. It concerns Poles (however defined) "in the Asian part of the former Union of Soviet Socialist Republics."<sup>41</sup> The Polish Sejm (Lower House of Parliament) specifically rejected the Senate's proposed amendment that repatriation provisions be extended to Poles in all states of the former socialist bloc.<sup>42</sup> The Repatriation Law thus excludes Ukraine, Byelorussia and Lithuania, all of which were integrated in the pre-1795 Polish Monarchical Republic or Commonwealth (Rzeczpospolita) and parts of which were still included in the Polish "Second

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<sup>40</sup> Note also that by referring only to persons of Hungarian nationality rather than Hungarian ancestry or descent the Status Law might be seen as thinking in terms of a state of affairs that disappeared in 1920.

<sup>41</sup> "The East" includes the three Caucasian Republics, the Asian part of the Russian Federation and the Central Asian Republics (article 9:1).

<sup>42</sup> "Polish repatriation to focus 'mainly' on compatriots from Kazakhstan," [RFE/RL Daily Report](#), 9 November 2000.

Republic," i.e. the interwar Polish state. Although there is a considerable number of Poles in these countries and, at least in the case of Byelorussia, they may have not only economic but serious political reasons for seeking repatriation, Poland seems to be bending over backwards to avoid suspicion that it is thinking in terms of its imperial past or historical boundaries. In the case of Hungary, the suspicion is strong that this is precisely the thinking behind the Status Law.<sup>43</sup>

### **3. old wrongs and new rights, or how to use citizenship to correct history**

A peculiarity of the new EU states is that citizenship laws and related provisions are formulated with the intention of redressing past wrongs. The compensatory or restitutive function – *Wiedergutmachung*, in the literal sense of the term – is particularly strong with respect to the recent communist past, though it extends to earlier periods as well.

The Polish Repatriation Act mentioned above is a prime example of an attempt at such historical redress. The preamble to the Act begins by "recognising that the duty of the Polish state is to allow the repatriation of Poles who had remained in the East ... due to deportations, exile and other ethnically motivated forms of persecution." Repatriates enjoy significant benefits. They acquire Polish citizenship on the day they cross the Polish border (article 4). Their costs of resettlement are underwritten by the Polish state.

Repatriates are of "Polish extraction [and] declaring Polish nationality." Polish extraction is defined as having at least one parent or grandparent or two great grandparents who held Polish citizenship or who cultivated "Polish traditions and customs" (article 5). Polish nationality is ascertained by demonstrating "links with Polish provenance, in particular by cultivating Polish language, traditions, and customs." Knowledge of Polish is, obviously, an advantage but it is not a requirement to the same degree as "traditions and customs" since the latter suffice to confirm the Polish nationality of one's forbearers. These traditions and customs remain undefined, allowing wide latitude for consular officials who, according to the law, decide whether an individual meets criteria for repatriation. One supposes that some of the most evocative traditions for the vast majority of today's Polish population would be religious; for example, celebration of Christmas in the Polish style. This might encompass non-Catholic Christian Poles and even non-believers but it would exclude members of other faiths, such as observant Jews.

In spite of what one might expect from the preamble and spirit of the law, proof of deportation, forced exile or persecution are not conditions for obtaining repatriate status. The law also covers, perhaps inadvertently, those individuals (and their descendants) who emigrated willingly to some of the peripheries of the Russian Empire or of the USSR; for example, as employees in Siberian development projects or in the military or civil service of the Russian or Soviet state.<sup>44</sup> The primary target of the

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<sup>43</sup> Countering the claim that Hungary defines the scope of its Status Law in terms of its historic boundaries, one might note that the Status Law does not extend to Austria, though part of historic Hungary today lies within Austria. This exception is not sufficient to alleviate suspicions. In fact, it nourishes other grounds for resentment: the Status Law does not cover Austria because one of the tacit intentions of the Law is to minimize the effects for expatriate Hungarians of Hungary's entry into the EU. The resulting inequality of status for citizens of Romania, Ukraine etc. was one of the principal grounds for international reservations vis-à-vis the law.

<sup>44</sup> Some such individuals would be covered by the provision that repatriation cannot be offered to anyone who "during stay outside the

law, however, are those families who were deported in 1939-1940 from Soviet-occupied Eastern Poland (even though these areas are no longer part of Poland) as well as earlier exiles and deportees; members of the Polish minority in the USSR transferred in the Stalinist era to areas far from the Polish border; Polish nationalists and revolutionaries exiled under the tsar, especially after the 1905 Revolution in the Russian Empire and the 1863 Insurrection in the Polish and Lithuanian lands, but perhaps even earlier and under other circumstances. The number of persons concerned by the Repatriation Act is insignificant: In the three years preceding the adoption of the Act fewer than 2000 people were repatriated from the East.<sup>45</sup> Its symbolic significance as an affirmation that conferral of citizenship may be used to right the wrongs of history is enormous.

Although attempts to replace the communist-era Polish citizenship law (1962) bogged down in legislative paralysis, the bill proposed by the Sejm to the Senate in 2000 gives further insight into the hypothesis formulated above regarding the objective of righting historical wrongs through citizenship law.<sup>46</sup>

According to the proposed bill, the President may confer Polish citizenship, upon his (her) own decision, on foreigners who did military service during the 1939-1945 war in the Polish Army or in Polish military formations attached to Allied forces on all fronts or who served in Polish underground formations and organisations, including these in partisan units attached to such organisations. These individuals do not need to have possessed Polish citizenship in the past (article 17.1.1; 17.1.2; 17.2). The bill also provides for restitution of citizenship, without presidential intervention and simply on the basis of a declaration before a consular official within a specified time period, for some individuals who left Poland between 1 September 1939 and 4 June 1989 – the latter date being identified as the beginning of the end of Communist rule. These reinstated include individuals who, in order to leave Poland, were forced to renounce their citizenship under threat of "repressions and chicaneries," including arrest, loss of work or dwelling, expulsion from schools including universities (article 28.1.1.b). The specific victims of Communist persecution covered in this provision would seem to be, above all, those students, intellectuals and others purged as "Zionists" in 1968. Reinstatement is not to be granted to those who left Poland voluntarily on the basis of a declaration that they belonged to a non-Polish ethnic group and who "have obtained the citizenship of the native country of their nationality" (article 28.2.4.). This provision is aimed at preventing ethnic Germans or others from benefiting from the reinstatement granted to the victims of the 1968 purges. Finally, the bill offers restitution of citizenship to those who had lost it by enlisting in the Armed Forces of Great Britain, the USA or France after (!) 9 May 1945. In a sense, the bill appears to be saying that Poland – the real Poland which is now able to express itself – had not taken a stand against its wartime allies during the Cold War.

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Republic of Poland acted against the vital interests of the Republic of Poland or participated or participates in human rights violations" (articles 8.3 a and b). The law also excludes those who repatriated from Poland between 1944 and 1957 to some Soviet Republics. Presumably, however, descendants of all these individuals are still eligible for repatriation if they meet other requirements.

<sup>45</sup> This includes some 200 non-Polish spouses who do not benefit from a repatriation visa but who are treated like foreign spouses of Polish citizens and thus granted temporary residence permits.

<sup>46</sup> Ustawa z dnia 29 czerwca 2000 r. o obywatelstwie polskim, Tekst ustawy przekazany do Senatu zgodnie z art. 48 regulaminu Sejmu (nie zakończony proces legislacyjny). <http://ks.sejm.gov.pl>. Consulted 26 May 2005.

The Czech Republic, also keen to underscore and correct the injustices of the Communist era, adopted restitution laws. The law on "the citizenship of some former Czechoslovak citizens" (1999) opens with the following, somewhat grandiose declaration

*„Parliament, in order to assuage the legacy of certain wrongs that occurred in the period 1948 to 1989, and realizing that Czechs living abroad and compatriots contribute to maintaining and cultivating the national cultural heritage as well as to deepening ties of common belonging with the Czech Republic and realizing that Czech exile developed in emigration notable spiritual, political and cultural activity in favour of renewal of freedom and democracy in its homeland and that this activity deserves extraordinary recognition...”.*

In fact, however, the law benefits all individuals and their descendants who lost their Czechoslovak citizenship during this period for whatever reason, including by virtue of the prohibition on plural citizenship in Czechoslovakia or by virtue of naturalisation in a state that prohibited dual citizenship but, presumably, no longer prohibits it. Restitution of citizenship here may thus be seen as a favour or as a sort of citizenship-amnesty offered to all Czechs, whatever the circumstances of their loss of citizenship.<sup>47</sup> With regard to the numerically significant and politically vocal Czech-American lobby, the bilateral convention dating back to 1928 between the United States and Czechoslovakia prohibiting dual citizenship had already been invalidated by a government decree in 1997, without reference to the 1993 Czech citizenship law article (article 17) prohibiting dual citizenship in general. In practical terms the 1999 law on former Czechoslovak citizens would therefore be superfluous for this important group. This law, as well as other legal dispositions, takes care to include some categories of Slovaks among its beneficiaries and dual Czech and Slovak citizenship is authorised, again as an exception to a general prohibition. One could argue, however, that such provisions are no longer prompted by considerations of historical justice but, rather, amount to housecleaning operations dealing with some of the messy aspects of the Czech-Slovak divorce.

In the case of the Baltic states, the very re-emergence of these countries is itself seen as a redress for historical injustice. Naturally, citizenship laws too serve here the purpose of correcting past iniquities and they do so largely by legally abolishing the time period during which injustice was perpetrated. The Estonian Nationality Law (1995) does not mention dates but this does not mean that it is neutral with regard to them. At the time of registration for Estonian citizenship in 1989, only those individuals had an a priori legal claim to citizenship who themselves or one of whose forebearers was an Estonian citizen on 16 June 1940, the date of the Soviet ultimatum leading to occupation. In accordance with the thesis of state continuity, in 1992 the Estonian Parliament voted to re-apply the citizenship act of 1938, as amended up to 16 June 1940.<sup>48</sup> The latter qualification deprived a number of resident non-Estonian nationals of eligibility for facilitated naturalisation. Like certain other countries, Estonia specifically states that it will not grant or restore citizenship to those who have acted against the interests of the state (article 21.3). Independently of this provision, the Estonian law also denies

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<sup>47</sup> The law did have a cut off period which expired in 2004 but there is now some question of prolonging it. Jitka Seitlova, "Senat navrhuje otevrit ihutu pro navraceni obcanstvi," *Verejna sprava* 16:6 (2005) p. 11.

<sup>48</sup> Carmen Thiele, "Staatsangehörigkeit in den baltischen Staaten: Das Beispiel Estland," *Osteuropa* 52:6 (2002) pp. 729-742.

citizenship to individuals and spouses of individuals who entered Estonia "in conjunction with the assignment of military personnel into active service, the reserve forces or retirement" (article 21.6).<sup>49</sup> Apparently, historical injustices may be righted not only by conferring citizenship but also by denying it.

Latvia's Citizenship Law (1994) also identifies citizens, in the first instance, as those who were citizens on 17 June 1940 and their descendants, unless they had become citizens of another state after 4 May 1990 (article 2.1). Naturalisation by Latvians abroad during the period of occupation, is thus distinguished from naturalisation since the re-acquisition of independence. This is in accordance with the idea that since the occupation was illegal no change of a citizen's legal status could occur in that period and thus those who were citizens in 1940 continued to be citizens in 1990, whatever they had done in the meantime. The law also considers as citizens women and their descendants who lost Latvian citizenship by virtue of a law of 1919 concerning women who married foreigners. This provision too, variants of which may be found in other citizenship laws, represents correction of a historical injustice, though one not related to communist rule. Restrictions on who can obtain Latvian citizenship are more severe in some respects than those in Estonia. Citizenship will not be granted to those whom courts have identified as propagating, after 4 May 1990, racist or totalitarian ideas, the latter comprising communist ideas, as well as those who, after 13 January 1991, acted against the Republic of Latvia through participation in the Communist Party (CPSU[LCP]) or front organisations, including the Organisation of War and Labour Veterans. In Latvia too, retired Soviet military and police personnel, but only those who came to Latvia directly after demobilisation, as well as former employees and even informants of the Soviet security services are not eligible for citizenship. Unlike Estonia, military personnel who came to Latvia on active service, as well as their spouses, do not seem to be ineligible for naturalisation. Brief mention is made of persons who entered Latvia in accordance with the Mutual Assistance Pact between Latvia and the USSR of 5 October 1939, the follow-up to the Molotov-Ribbentrop Pact, but this only seems to exclude the possibility of exceptional rather than regular naturalisation (article 13.1.3).

Lithuania adopted the most liberal policies of naturalisation among the Baltic states. All persons who had been resident for at least ten years in the Soviet Republic of Lithuania before November 1989 could opt for citizenship within two years. Nevertheless, even the most recent Lithuanian citizenship law (2002) begins by defining a first category of citizens resident in Lithuania who held citizenship before 15 June 1940 and their descendants.<sup>50</sup> The aim of historical redress comes through in an article (14.2) granting easier conditions of naturalisation to deportees or political prisoners who married

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<sup>49</sup> An exception is made in the law for individuals who have retired from the armed forces of a foreign state and have been married for at least five years (and are still married) to a natural born Estonian citizen. One wonders how many such cases there may be.

<sup>50</sup> The 2002 law qualifies this category by adding, "providing [they] did not repatriate." The 1991 law is clearer stating "unless [they] repatriated from Lithuania." I would take this to mean that only individuals in this category who continue to reside in Lithuania are covered. This would be confirmed by the following clause in both laws that declares as Lithuanians those who "permanently resided in the present day territory of the Republic of Lithuania from 9 January 1919 to 15 June 1940" as well as their descendants and who would otherwise be stateless.

Lithuanian citizens as well as to their children born in exile.<sup>51</sup> Here too legislators cannot resist introducing historical memory into citizenship law.

## **Conclusion**

In concluding an article a few years ago on plural citizenship in post-communist states, I wrote that citizenship law was in flux.<sup>52</sup> In fact, over the last decade it has remained more stable than one might have thought. In the close future, however, one can perhaps cautiously predict a peculiar new pattern of interaction between the old and the new. Citizenship laws, founded on historical concerns about statehood, ethnicity and past injustices, as well as the societies that have made these laws their own, will have to confront new realities defined by mobility, immigration and social heterogeneity. One can therefore expect the "Old" and the "New," as categories of analysis, to continue providing a suitable template for understanding citizenship issues in East Central Europe.

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<sup>51</sup> Individuals married to a Lithuanian citizen and residing in Lithuania already enjoy facilitated naturalisation (article 14.1). In this case, naturalisation is facilitated even further by shortening the period of residence from five to three years.

<sup>52</sup> Liebich, "Plural citizenship."

**Annexe 1: Acquisition of Statehood**

**"OLD" EU MEMBERS**

**"NEW" EU MEMBERS**

<p>France (5th century) Denmark (9th century) Sweden (10th century) Portugal (12th century)</p> <p>Spain (1492) Netherlands (1581) United Kingdom (1707)</p> <p>Greece (1830) Belgium (1831) Italy (1861) Luxemburg (1867) Germany (1871)</p> <p>Finland (1918) Austria (1919) Ireland (1922)</p>	<p><i>Poland (1918)</i> <i>Hungary (1918)</i></p> <p><i>Cyprus (1960)</i> <i>Malta (1964)</i></p> <p><i>Lithuania (1991)</i> <i>Latvia (1991)</i> <i>Estonia (1991)</i> <i>Slovenia (1991)</i></p> <p><i>Czech Republic (1992)</i> <i>Slovakia (1992)</i></p>
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## **Annexe 2: Constitutional Preambles (extracts)**

**Czech Republic** (1993) We, the citizens of the Czech Republic in Bohemia, Moravia, and Silesia, at the time of the renewal of an independent Czech state, being loyal to all good traditions of the ancient statehood of Czech Crown's Lands and the Czechoslovak State.

**Estonia** (1992) Unwavering in their faith and with an unswerving will to safeguard and develop a state which is established on the inextinguishable right of the Estonian people to national self-determination and which was proclaimed on February 24, 1918 [...] which shall guarantee the preservation of the Estonian nation and its culture throughout the ages, the Estonian people adopted, on the basis of Article 1 of the Constitution which entered into force in 1938, by Referendum held on June 28, 1992 the following Constitution.

**Hungary** (2003) In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted.

**Latvia** (1990)\* The independent state of Latvia, founded on 18 November 1918, was granted international recognition in 1920 and became a member of the League of Nations in 1921. The Latvian Nation's right to self-determination was implemented in April 1920, when the people of Latvia gave their mandate to the Constituent Assembly chosen by universal, equal, direct and proportional elections. In February 1922, the Assembly adopted the Constitution of the Republic of Latvia, which is still in effect de jure.

\*Declaration on the Renewal of Independence.

**Lithuania** (1992) The Lithuanian Nation having established the State of Lithuania many centuries ago ...having for centuries defended its freedom and independence [...] having preserved its spirit, native language, writing, and customs.

**Poland** (1997) Recalling the best traditions of the First and the Second Republic [...] Obligated to bequeath to future generations all that is valuable from our over one thousand years' heritage, bound in community with our compatriots dispersed throughout the world.

**Slovakia** (1992) mindful of the political and cultural heritage of our forebears, and of the centuries of experience from the struggle for national existence and our own statehood, in the sense of the spiritual heritage of Cyril and Methodius and the historical legacy of the Great Moravian Empire.

**Slovenia** (1991) [Proceeding ...] from the historical fact that in a centuries-long struggle for national liberation we Slovenes have established our national identity and asserted our statehood.

## **Annexe 3: Provisions on Plural Citizenship**

### **Czech Republic (1992)**

*art. 7.1.b* [citizenship by conferment (= naturalisation) for persons who] can prove that they were released from citizenship of another state, or will by gaining citizenship of the Czech Republic lose their previous foreign citizenship, unless the persons concerned are stateless.

*art. 17* Citizens of the Czech Republic shall lose citizenship of the Czech Republic instantly upon gaining at own request foreign citizenship, with the exception of cases of gaining foreign citizenship in connection with entering into marriage, or birth.

### **Estonia (1995)**

*art. 1.2* An Estonian citizen may not simultaneously be the citizen of another country.

*art. 3* Any person who by birth in addition to Estonian citizenship acquires citizenship of another state must within three years after attaining the age of eighteen years renounce either Estonian citizenship or citizenship of another state.

*art. 5.2* No person may be deprived of Estonian citizenship acquired by birth.

### **Hungary (1993)**

*art. 2.2* The Hungarian citizen who is simultaneously a citizen of another state – if law shall not regulate contrarily – is considered to be a Hungarian citizen in the application of Hungarian law.

### **Latvia (1994)**

*art. 9.1* The granting of Latvian citizenship to a person shall not lead to dual citizenship.

*art. 9.2* If a citizen of Latvia simultaneously can be considered a citizen (subject) of a foreign country in accordance with the laws of that country, then the citizen shall be considered solely a citizen of Latvia in his/her legal relations with the Republic of Latvia.

### **Lithuania (2002)**

*art. 12.1.5.* [person may be granted citizenship if ...] is a stateless person or is a citizen of a state under the laws of which he loses citizenship of the said state upon acquiring citizenship of the Republic of Lithuania and notifies in writing of his decision to renounce citizenship of another state.

*art. 18.1.2* Citizenship of the Republic of Lithuania shall be lost upon acquisition of citizenship of another state.

### **Poland (1962)**

*art. 2* A person who is a Polish citizen under Polish law cannot be recognised at the same time as a citizen of another state.

*art. 8.3* Granting Polish citizenship may be dependant on submitting evidence of loss of or release from foreign citizenship.

### **Slovakia (1993)**

*art. 7.2.b* The following is in favour of a person requesting the grant of citizenship of the Slovak Republic .. [if the person] can prove, that under the law of the state of which this person is a citizen, this person has lawfully renounced his/her citizenship.

*art. 9.1* The citizenship of the Slovak Republic can be lost only at own request.

### **Slovenia (1991)**

*art. 2* The citizen of the Republic of Slovenia, being as well the citizen of a foreign country, is treated as a citizen of the Republic of Slovenia, while being on the territory of the Republic of Slovenia, unless othewise stated by an international agreement.

*art. 10.2* [a person can obtain citizenship] when he/she is dismissed from previous citieznship or is certain to obtain such a dismissal when obtaining the citizenship of the Republic of Slovenia.

## Annexe 4: Federalism and Autonomy

### "OLD" EU MEMBERS

### "NEW" EU MEMBERS

<p style="text-align: center;"><i>Federal</i></p> <p style="text-align: center;">Austria Belgium Germany</p>	<p style="text-align: center;"><i>Federal</i></p> <p style="text-align: center;">- - -</p>
<p style="text-align: center;"><i>Unitary States with regional autonomies</i></p> <p style="text-align: center;">Italy Spain Finland Portugal United Kingdom Denmark (France)</p>	<p style="text-align: center;"><i>Unitary States with regional autonomies</i></p> <p style="text-align: center;">- - -</p>
<p style="text-align: center;"><i>Unitary States</i></p> <p style="text-align: center;">Luxembourg Ireland Sweden Greece Netherlands</p>	<p style="text-align: center;"><i>Unitary States</i></p> <p style="text-align: center;">Poland Czech Republic Slovakia Hungary Lithuania Latvia Estonia Slovenia Cyprus Malta</p>