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Title	Citizenship attribution in a new country of immigration: Ireland
Authors(s)	Honohan, Iseult
Publication date	2010-05-27
Publication information	Honohan, Iseult. “Citizenship Attribution in a New Country of Immigration: Ireland.” Taylor and Francis, May 27, 2010. https://doi.org/10.1080/13691831003764359.
Publisher	Taylor and Francis
Item record/more information	http://hdl.handle.net/10197/7921
Publisher's statement	This is an electronic version of an article published in Journal of Ethnic and Migration Studies 36(5): 811-827 (2010). Journal of Ethnic and Migration Studies is available online at: www.tandfonline.com/doi/abs/10.1080/13691831003764359.
Publisher's version (DOI)	10.1080/13691831003764359

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Citizenship Attribution in a New Country of Immigration: Ireland

Iseult Honohan (University College Dublin)

[This is a pre-print version. The definitive version was published in *Journal of Ethnic and Migration Studies* 36 5: 811-827 DOI: 10.1080/13691831003764359]

Abstract

This paper examines how the change in Ireland's demographic condition from a country of emigration to one of large-scale immigration has affected citizenship attribution. The paper outlines the origin of Irish citizenship laws, with particular reference to the pure ius soli system applied to those born on the island of Ireland until 2005. While significant changes in citizenship attribution have emerged in response to increasing immigration, the specific character of these changes has been shaped also by other forces including the issue of Northern Ireland, the relationship of the Republic of Ireland to the UK, and the development and expansion of the European Union. These have influenced recent notable changes in the attribution of citizenship at birth and on the basis of marriage, and proposed changes in requirements for naturalisation. The paper examines whether and to what extent these changes represent a convergence towards a European norm and whether they signify a changing conception of citizenship in Ireland

Keywords: citizenship, nationality, ius soli, Ireland, immigration

1 Introduction

This paper examines how the change in Ireland's demographic condition from a country of emigration to one of large-scale immigration has affected citizenship attribution. The paper outlines the origin of Irish citizenship laws, with particular reference to the pure *ius soli* system applied to those born on the island of Ireland until 2005. While significant changes in citizenship attribution have emerged in response to increasing immigration, the specific character of these changes has been shaped also by other forces including the issue of Northern Ireland, the relationship of the Republic of Ireland to the UK, and the development and expansion of the European Union. These have influenced recent notable changes in the

attribution of citizenship at birth and on the basis of marriage, and proposed changes in requirements for naturalisation. The paper examines whether and to what extent these changes represent a convergence towards a European norm and whether they signify a changing conception of citizenship in Ireland.1

In outlining the origin and development of these laws, rather than attempting to provide an exhaustive account of all aspects of citizenship law (for which see Bauböck *et al*. 2006), I focus on some key dimensions of citizenship attribution and their particular features, namely how citizenship is attributed at birth by *ius soli* and *ius sanguinis*, the conditions for naturalisation, and the acceptance of dual citizenship.

Perhaps the most striking feature of Irish citizenship laws has been the lengthy dominance, late constitutionalisation, and subsequent sudden retreat of pure *ius soli*. Until 1998 the right to citizenship through birth in Ireland was a statutory entitlement tied up with the territorial claim to Northern Ireland embodied in the constitution. It then, as one of the provisions of the Northern Ireland settlement ratified by a referendum in 1998, became a specific constitutional right to membership of all born on the island.

The place of *ius sanguinis*, on the other hand, has been relatively secondary, compared with some other emigrant and divided states. Thus Irish citizenship policy seemed to run counter to two observed trends - for countries with unstable national borders to favour *ius sanguinis*, and for *ius soli* to be restricted in the face of immigration pressures (Weil, 2001: 33). So, whereas other states in which *ius soli* was not constitutionally established have limited it, Ireland took the step of establishing it constitutionally for the first time over seventy years after the foundation of the state. Immigration-related concerns led to the restriction in 2004 of this entitlement itself, though it still applies to Northern Ireland, a territory that extends beyond the strict jurisdiction of the state.

I argue here that Ireland's citizenship laws came to approximate a civic republican conception of citizenship, though this was often at odds with the ethno-cultural conception of the nation that otherwise prevailed. Recent changes in these laws appear to move towards a contemporary Western European norm best characterised as one of liberal nationality.

2 The evolution of Irish citizenship in the context of nation-building 1922-1998

Irish citizenship laws first evolved under the influences of the British legal inheritance, republican ideas of political membership expressed in the state's founding documents, the territorial claim over Northern Ireland, and the fact of emigration. The first three influences contributed to the centrality of *ius soli*, the last to the place of *ius sanguinis* in these laws.

At the foundation of the state in 1922, the Constitution of the Irish Free State claimed as its initial citizenry those 'domiciled in the territory in the area of the jurisdiction of the Irish Free State, at the time of coming into operation of this Constitution', who were either born in Ireland or had been resident for seven years before (Art. 3) This constitution and the succeeding 1937 Irish Constitution until 1998 provided for citizenship otherwise to be determined by law. It may be noted that no ethnic distinctions were made in this original constitution of membership of the state (though many of British birth and Irish Protestants did not feel included, and left the country in the years after 1922). The area of the state's jurisdiction, however, was both contentious and ambiguous. The aim of the independence movement had been an independent island of Ireland, but, following the settlement granting independence in 1921, six counties of Ulster had exercised the option to remain part of the United Kingdom as Northern Ireland. While this territory was claimed as part of the national territory by Irish governments up to 1998, just what constituted the 'area of jurisdiction' for the attribution of citizenship at the point of independence was ambiguous until 1933, when a lower court ruling deemed this to have been the whole island.

Legislation on citizenship attribution was slow to be determined, partly because the British government saw Irish (as other Commonwealth) citizenship as only a local status, and Irish citizens at the international level still as British subjects. The foundations of Irish citizenship legislation for the twentieth century were eventually laid down in 1935, with additional significant legislation in 1956, and further amendments in 1986 and 1994.

The legislation of 1935 deliberately repealed the inherited British nationality legislation, but still followed the British model closely. Irish citizenship was to be available to all born in Ireland, including those who left before 1922 (under certain conditions). It thus applied *ius soli* retrospectively, and established unconditional *ius soli* for those born in Ireland in the future. This was more explicitly applied to the whole island in 1956, while requiring declaration for those in Northern Ireland 'pending the reintegration of the national territory'. The central place of *ius soli*

here was consistent with British tradition (that prevailed in Britain until the British Nationality Act of 1981), and the rest of the Commonwealth. This was not done simply in imitation, but to take account of the views and interventions of the British government, whose approval was needed, on whose consular services Irish citizens depended, and with whom there existed a common travel area that provided opportunities for Irish citizens to live and work in Britain (and originally the Commonwealth) (Daly, 2001: 385). At the same time, in what Irish governments saw a reciprocal arrangement, British citizens in Ireland were not subject to alien controls.

Citizenship through *ius sanguinis* applied to those born outside the state after 1922 to Irish citizen fathers. After one generation born abroad, a person became an Irish citizen only if registered. In 1956 the time limit for registration was removed, and *ius sanguinis* citizenship was extended to descent through the mother, to further facilitate citizenship for those with Irish origins (though this was restricted from 1986 to children born after the parent's registration).

Naturalisation was available under conditions initially derived from and similar to British legal practice. In principle this was relatively easily acquired by adults with legal residence in five of the previous eight years, and the intention to live in the country. While there was a requirement of 'good character', there were no ethnic or cultural criteria of linguistic or cultural assimilation. In 1956 an oath of 'fidelity to the nation and loyalty to the State' was introduced, replacing the oath of loyalty to the King removed in the legislation of 1935. In all of this there was however a high level of ministerial discretion to refuse or award, including the power to dispense with conditions on the basis of Irish descent or associations (that were broadened in 1956).

Women could naturalise after marriage without residence from 1935 to 1956, and from 1956 by post-nuptial declaration, while male spouses could naturalise after two years residence. In 1986 the conditions were made gender neutral, though more stringent, requiring a three-year period of marriage before declaration, and (from 1994) evidence of a subsisting marriage.

While under the 1935 Act, a citizen taking up another nationality would lose Irish citizenship, decreasing concerns about dual citizenship and consideration of emigrant connections led to voluntary acquisition of another citizenship no longer constituting grounds for loss of citizenship from 1956.

In the system that broadly prevailed to the end of the twentieth century, citizenship was granted on the basis of *ius soli* to those born on the island as a whole, and on the basis of *ius sanguinis* to the children and grandchildren of 'natural born' citizens. Thus, alongside a conception inclusive of the resident population, the children of emigrants were granted citizenship on a medium term basis, and immigrants could in principle naturalise relatively easily.

It may be noted that citizenship legislation was not significantly politically divisive, even if Fianna Fáil governments adopted a slightly more independent tack than Cumann na nGaedheal and their successors, Fine Gael. Indeed the substance of both the Acts of 1935 and 1956 was drawn up while one party was in government and passed largely unchanged under another (Daly, 2001: 285; Handoll, 2006: 318).

It has been argued that it is mistaken to look for conceptions of citizenship underlying citizenship laws, since, rather than constituting systematic programmes, these tend to consist of a patchwork of historical accretions influenced by different legal traditions, local social and political circumstances, levels of immigration pressure, and international conventions. In particular the significance of the balance of *ius soli* and *ius sanguinis* has been questioned, in light of their variable historical origins and meanings (Weil, 2001; Joppke, 2003). It may be true historically that the genesis of existing citizenship regimes cannot be explained entirely in terms of consciously intended and systematically realised conceptions of citizenship, and that the same provision may function differently in different circumstances. But public institutional provisions do carry meaning, and, as with texts and works of art, this depends on their public interpretation as much as their creators' intentions. This is particularly true of constitutional provisions, which have special symbolic value. Moreover, citizenship laws constitute a legal norm that shapes the reality of citizenship. Thus *ius soli* (although originally an expression of monarchical sovereignty) came over time to represent the openness and accessibility of citizenship both in the French republic and in immigration countries such as USA and Canada, and gave rise to a citizen body that was diverse in origin, whatever other pressures to conform may have existed.

While European policies on citizenship and immigration in practice are a patchwork of historical accretions, influenced by specific local circumstances, and now also by rising immigration pressures, international conventions or European Union directives, yet the

ensemble of policies adopted may embody a conception of citizenship with a life of its own. Citizenship laws often combine ethnic, cultural or civic elements, but in practice tend to incline towards one or another (Honohan, 2007). In this context, Ireland, along with the UK, France and Belgium, has been identified as a 'historically liberal' citizenship regime in its granting of *ius soli* citizenship, its moderate residence period for naturalisation, and its acceptance of dual citizenship (Howard 2006, 2008).

However, these criteria leave considerable latitude for different citizenship regimes. We may in fact currently distinguish two broadly 'liberal' constellations, both of which avoid the exclusive or oppressive character of racial and ethno-cultural citizenship regimes, and allow for the inclusion of citizens of diverse origins. These have important common features (some kind of *ius soli*, moderate residence requirements for naturalisation; and acceptance of dual citizenship). But these common features are grounded somewhat differently in the two models, which are distinguishable on two substantive grounds – the absence or presence of cultural requirements for admission to citizenship, and a prospective or retrospective approach to the grant of citizenship.

The model which is currently in the ascendant in liberal Western European citizenship laws is the model of *liberal nationality*, where citizens are united by a *public culture*, history or institutional practices (rather than ethnicity or pre-political communal values). While citizenship is bounded because of the inherently limited possibilities of extending such a binding political identity (Miller 1995: 188, 2000: 88-9), this allows for some degree of diversity of culture and values. Some kind of *ius soli* is appropriate here, if we can assume that, by adulthood, citizens will have been socialised into the public culture (as in France, where, in addition to the rule of 'double *ius soli'*, naturalisation is available by choice at age thirteen.to those born in France) *Ius sanguinis* citizenship, by contrast, is quite limited, since emigrants are likely to lose connection with the public culture and politics more quickly than with the wider culture. The condition for naturalisation is not full cultural assimilation, but evidence of commitment to the society and state, and competence in the public culture, including a grasp of language and history. While inclusive in many ways, this conception encounters the difficulty of distinguishing clearly where public and private culture begin and end, which tend to make it less liberal in practice than in theory. In addition, the grounds for citizenship attribution here are predominantly retrospective.

A *civic republican* conception by contrast sees citizens as, at most, semi-voluntary members of a political community, rooted in a common predicament of subjection to a common authority (which ideally they may be able to call to account to constitute a self-governing community). On this view membership is defined in terms neither of pre-political nor public culture; culture and values emerge in exchanges among citizens, are provisionally embodied and open to change (Honohan, 2002) *Ius soli* forms a fundamental part of the ensemble of citizenship laws, in which citizens are seen as sharing a common present and future rather than a common origin. Conversely, the element of *ius sanguinis* will be limited in duration and depend on continued interdependence and connection. (This accords with the intuition underlying Shachar's '*ius connexio'*, while granting greater weight to the fact of birth in the state in citizenship attribution (Shachar, 2003: 29).)

This account favours relatively generous conditions of naturalisation, whereby long-term residents, who share the predicament of citizens, become citizens, after, say, three to five years, on a virtually automatic basis. Knowledge of language, history or institutions may be desirable, but here promoting the capacity for political interaction will be more central than requiring achievement of a fixed level of cultural assimilation. More important will be the forward-looking intention to remain, rather than acquiring citizenship as a badge of identity or a flag of convenience. This reflects the distinctly *prospective* dimension of this account of citizenship. Here and in *ius soli* citizenship at birth, the grant of citizenship is justified in so far as it represents participation in a common future life. (If it not an infallible predictor, and arbitrary in certain cases, *ius soli* citizenship may be confirmed later for those who have continued to live in the state (during minority or at majority).

In practice today the liberal national model tends to be in the ascendant. While citizenship laws in a number of countries display elements common to liberal nationality and civic republicanism, they tend to place more weight on the retrospective than the prospective grounds for citizenship, and increasingly require evidence of assimilation in which it is difficult in practice to distinguish the public requirements of language and culture from private.

Applying this analysis to the Irish case, it must first be acknowledged that Irish citizenship laws are a patchwork, responding to a variety of forces, and were not systematically designed to reflect a particular conception of the Irish citizenry. They often appear to have been

drafted in a rather short-sighted fashion, requiring amendment when their unexpected effects became apparent.

However, Irish citizenship laws in principle embodied quite an open conception of membership, and the combination of *ius soli*, relatively limited *ius sanguinis*, naturalisation available mainly on grounds of a medium past and future residence, and acceptance of dual nationality, came broadly to embody a *civic republican* conception of citizens as those subject to a common authority, rather than those sharing a common ethnicity, values or public culture.

Ius soli provided a foundation for this relatively open conception of citizenship, although it sat uneasily with the more firmly bounded and exclusive ethno-cultural conception of the nation that prevailed in the public consciousness and influenced many areas of policy. Indeed there has been a continuous tension between what we may loosely term ethnic and civic conceptions of membership, encapsulated in James Joyce's debate in *Ulysses* between 'the citizen', who defines the nation in ethno-cultural terms, speaks of 'our greater Ireland beyond the sea', and says 'we want no more strangers in our house' and the Jewish Bloom, who defines himself as Irish because he was born in Ireland, and the nation as 'the same people living in the same place' (Joyce, 1971 [1922]: 328, 322, 329) .

The conception of the Irish nation was never identical with the citizenry of Ireland, being both more inclusive – of those who had left Ireland, and more exclusive – of those who did not share a Catholic and Gaelic background. What it means to be Irish, and who is and is not Irish, is a subject that continues to be debated exhaustively, and, although there has been some development, there is no consensus.

This alternative sense of what it is to be an Irish citizen, an idea as much defined by as defining citizenship laws, is associated with what has been called a 'twenty-six county state patriotism', expressed, for example, in an ambivalence about the Irish credentials of Northern Irish Catholics or 'Nationalists', and of second generation Irish emigrants to Britain or North America, (sometimes referred to as 'plastic paddies') who are attached to green beer, shillelaghs and outmoded ideas of Ireland (Coakley, 2001; Massie, 2006).

In contrast, the prospective nature of this conception of Irish citizenship expressed by Ireland's first Muslim TD (member of parliament) -and a naturalised citizen - Mosajee

Bhamjee, when he said ‘I am an Irish citizen - of course in one way I will never be Irish, but I will die in Ireland’(Bhamjee, 2002)

It is undeniable that these relatively generous provisions owed their origin and continued existence to the imperial legal inheritance, Ireland’s dependence on Britain and interest in retaining access to Britain for Irish emigrants, administrative underdevelopment, the absence of immigration pressures before the 1990s, and some degree of lip-service to republican ideals of equality. It may be argued that, above all, it was the territorial claim to the six counties of Northern Ireland that maintained the central position of *ius soli*.. Moreover, this relatively open conception of citizenship, was, it must be stressed, vitiated by an official hostility to immigration, discretionary admission processes, and exclusionary traditions and practices at the administrative level. Official resistance to admitting immigrants to Ireland was reinforced by the existence of the British-Irish travel area, which gave the Irish government responsibility for monitoring admission to the British Isles (Meehan, 2000: Ch 3). Naturalisation applications and approvals were small in number

Nonetheless, whatever brought this constellation into being, these laws can be seen as inclined towards a civic republican conception of citizenship, and expressing an alternative conception of membership of the Irish polity that persisted over more than seventy-five years. The question was whether they could survive the challenge of increasing immigration.

3 From emigration to immigration

Even without immigration into Ireland itself, it was likely that with increasing European immigration pure *ius soli* would come under pressure, given Ireland’s proximity to Britain, Irish citizens’ privileged position there, and the mobility of Irish citizens in the rest of the EU.

For over a hundred and fifty years up to 1995, Ireland experienced almost continuous net emigration. The population in 2006 stood at around four million (five and a half million on the island), while, for example, there are almost a million first generation Irish emigrants in Britain, and more than 30 million Americans claim Irish ancestry of some kind. Low immigration made Ireland one of the most homogeneous countries in Europe, with only two per cent of residents being foreign-born in 1990. With economic growth in the 1990s, immigration grew rapidly, initially significantly based on high levels of return migration, when almost half

of all immigrants were returning emigrants, and the remainder dominated by the UK, other EU and the United States, by 2006, the proportion both from the other EU countries and the rest of the world had risen, ten per cent of the population was foreign born, and the rate of inward migration was roughly two per cent per annum.

Asylum seeker numbers were at one point a significant source of immigration, rising from negligible levels in the early 1990s to over 10,000 in each of the years 2000 to 2002 (at that stage the third-highest rate per head of population in the EU), but fell to around 4000 in 2004 and following years, as restrictive maintenance policies were introduced, and processing was speeded up. The predominant countries of origin of asylum seekers in these years were Nigeria and Romania.

As the Irish economy continued to boom, immigration was encouraged through the increasing use of temporary but renewable work-permits and visas. These rose to over 40,000 per year before Ireland (with the UK and Sweden) opened its labour market to citizens of the new EU accession states in 2004. By 2007, the largest inflows were from these states, especially Poland and the Baltic states. (Ireland has not opened its labour market to Romania and Bulgaria.) In addition, since early 2007 there has been a system of entry for skilled workers, giving access to the first scheme of permanent residence status, though the numbers involved are still low.

What sorts of challenges did immigration put to the Irish regime of citizenship laws, and how did these play out against other forces?

The numbers of immigrants have been significant in proportion to population, and have grown with great rapidity in just over ten years. But the facts of the economic boom and of low unemployment rates, that immigrants were either in high-skill occupations or those in which there were labour shortages, tended to limit the political impact and the propensity for anti-immigrant mobilisation. Nonetheless the high visibility of asylum seekers led to considerable anti-asylum seeker sentiment, sometimes blurring into anti-immigrant feeling, and increasing the number of racist incidents, from verbal abuse to physical assaults. The official view of the challenge for government and society has been expressed mainly in terms of regulating immigration and facilitating integration. Priorities in immigration policy have been selecting those immigrants needed in the labour market and processing asylum seekers

efficiently. The focus for integration of the new cultural and ethnic diversity has been a strategy of 'interculturalism', contrasted to the assimilation or segmented multiculturalism identified in other countries (Watt 2006). But this is in early stages of implementation, and it is regularly remarked that there has not been a major debate on the kind and extent of immigration, or the future shape of Ireland towards which policy should aim.

4 Changes in citizenship law 1998-2007

Since 1998, there have been two major changes in Irish citizenship law. Both concern *ius soli* citizenship. The first of these reflects the importance of the position of Northern Ireland to the Irish state. The second (along with some smaller changes) reflects the challenge of immigration.

a) The constitutionalisation of pure ius soli 1998

The first change arose in the context of developments in the Northern Ireland peace process, and, in particular, of the dimension of North-South reconciliation in this process. As part of the Good Friday (or Belfast) Agreement, the article embodying the territorial claim to Northern Ireland was removed from the Irish constitution. 2 It was replaced by the following article, passed (with the rest of the Good Friday Agreement) by referendum in 1998:

> It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified by law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage. (*Irish Constitution* 1998 Article 2.)

This amendment was intended to establish constitutionally what had previously existed on a statutory basis. It granted the right to Irish citizenship to those born in Northern Ireland independently of the claim to territorial sovereignty over Northern Ireland. At the same time, it made a gesture towards Irish descendants that fell short of any explicit constitutional right to citizenship. As noted earlier, this measure ran directly counter to the observed trend for countries with pure *ius soli* to restrict it, and actually gave *ius soli* citizenship additional symbolic recognition by raising it from a statutory to a constitutional right. 3

Some argued that this formulation represented a move from a territorially based notion of citizenship. But it was rather a move from a territorially defined *sovereignty claim* to a

territorially defined *entitlement to citizenship*. Others have argued that it represented a move from an organic notion of the nation towards a voluntarist, consent-based citizenship. Thus the agreement stated that 'the two governments recognise the birthright of all the people of Northern Ireland to identify themselves, and to be accepted as Irish or British or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both governments and would not be affected by any future change in the status of Northern Ireland' (British-Irish Agreement. Art.1 (vi)). Indeed, the law is worded in terms of entitlement rather than automatic citizenship. Thus those born in Northern Ireland who do not want to be Irish citizens are not claimed as such. Those who do want to be citizens may realise their entitlement by 'performing an act which only an Irish citizen can do' (Coakley, 2001; Ryan, 2003)

This was welcomed by many, not only as bringing settlement to the Northern Ireland conflict, but also more generally as reflecting a move to embody in the constitution a broader conception of what it means to be Irish.

b) the restriction of ius soli in 2004

A separate train of events led to the restriction of *ius soli* citizenship in 2004. This measure was introduced in the context of increasing immigration, particularly of increasing numbers of asylum seekers. Following the tightening up of procedures in the late 1990s, asylum claims decreased in number, but increasing numbers of applications for residence based on parenthood of an Irish born citizen were received, 4 and increasing numbers of mothers were reported as presenting to maternity hospitals for the first time in late stages of pregnancy or even in labour. When, in January 2003, the Supreme Court ruled that parentage of an Irish citizen gave no automatic right to remain, the government stopped processing claims to remain (Lobe v. Minister for Justice, Equality and Law Reform [2003] IESC 1 (23 January 2003)). Some, however, expressed continuing concern about the number of late maternal arrivals and the proportion of pregnant female asylum seekers. Even if parentage of a citizen no longer guaranteed residence in Ireland, it still provided grounds for a claim in other EU countries. Forecast before the referendum, this was later confirmed by the European Court of Justice's Chen case ruling, granting the right of residence in the UK to a Chinese woman with a child born in Belfast. 5 Thus the Irish government introduced a proposal to restrict *ius soli* as a technical change necessary to remove a perverse incentive to give birth in Ireland. The restriction was defended on a number of grounds that included: preserving the integrity of Irish citizenship,

coming into line with other European Union member countries, reducing pressure on maternity hospitals, and protecting the health of mothers induced to travel in late pregnancy, and their babies.

Rather than removing or amending the recently introduced Article 2, the proposal inserted a provision in Article 9 (on citizenship), as follows:

> Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and its seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or entitled to be an Irish citizen, is not entitled to Irish citizenship or nationality, unless otherwise provided for by law.6

This returned the allocation of citizenship on the basis of *ius soli* to a legislative matter. But constitutionally it retained an element of effective *ius sanguinis* in making constitutional *ius soli* citizenship dependent on the citizenship of a parent. The legislation subsequently introduced (Irish Citizenship and Nationality Act 2004) grants *ius soli* citizenship otherwise only to a child whose parent has been legally resident for 3 of the previous 4 years, focusing thus on the *parent's* status and length of prior residence. 7 (This condition does not apply to those born to British citizens or with no restriction on residence in Ireland or Northern Ireland). Both these features strengthen the retrospective dimension of the attribution of citizenship. Not just a technical adjustment, this change effectively tilted the conception of citizenship embodied in the constitution towards *ius sanguinis*, with all the symbolic implications that entailed (Doyle, 2004, 118).

It could be argued that the implications for other EU countries removed the option for the government (allowed by the Lobe judgement) simply to refuse to grant residence to parents of citizen children. But a number of alternatives with less radical significance presented themselves; for instance, removing the element of *ius sanguinis* from the constitution to level the symbolic balance; and, more substantially, requiring shorter periods of prior parental residence and, above all, giving an entitlement to citizenship for children born in Ireland, who continue to live in Ireland until the age of, say, ten or fifteen.

This was a more controversial change in citizenship law than any hitherto introduced, and one widely considered unlikely after the constitutionalisation of 1998 (Symmons, 2001). It was accompanied by extensive criticism in the media. Critics cited the lack of any consultation

process and of public deliberation, and drew attention to the radical nature of the change, and the possibility of alternative approaches (e.g. Costello, 2005). There was, however, less substantial opposition among the political parties. Introduced by the coalition government of Fianna Fáil and the Progressive Democrats, it was opposed only on procedural grounds by the main opposition party, Fine Gael. Only the smaller Labour, the Greens and Sinn Féin parties campaigned against it. Although no right-wing party with an anti-immigrant stance exists, the referendum was passed by an overwhelming majority of 79 per cent, widely interpreted as, at least in part, expressing anti-immigrant sentiment.

c*) Other changes in naturalisation and post-nuptial citizenship*

While naturalisation was in principle available on fairly generous terms since 1956, in practice until recent years the numbers applying were rather limited (rising from 500 in 1995 to 4000 in 2004, when grants numbered only 1135, due to slow processing). This reflected not only the low rate of immigration, but also the fact that many immigrants were from Britain, and enjoyed many rights and privileges of citizenship or *'de facto'* citizenship (including from 1985 voting in national elections); and subsequently from the rest of the EU, for whose citizens also there are limited additional benefits to be gained from taking out Irish citizenship.

Other changes have been associated with concerns about fraudulent claims to citizenship. After being stretched to include a dubious passports for cash programme in the late 1980s and 1990s, in 2004 access to citizenship on the basis of 'Irish connections' was limited to 'persons related by blood, affinity or adoption to an Irish citizen'. Since 2001 spouses are required to meet all the conditions of naturalisation, with the exception of a shorter residence period of three of the previous five years.

After the citizenship referendum of 2004, a specific provision was introduced for the naturalisation of minors; there is no provision for entitlement to citizenship at a certain age for those born in the state.

Naturalisation does not appear to be seen in official circles as particularly important or desirable, and certainly has not been encouraged. The weight of proof of meeting the requirements is put on the applicant, rates of processing are slow, and the minister has extensive discretion to grant or refuse. Grounds for refusal are given only since a freedom of information

judgement of 2003. Even since the recent increase in the rate of immigration, naturalisation does not figure in the official discourse as an important aspect of integration.

As in other countries, access to naturalisation procedures is becoming increasingly interconnected with immigration policy and the range of status and duration of residence available to immigrants. Ireland is also following other European countries in introducing a language test for naturalisation.

All these changes in Irish citizenship legislation mirror an observed tendency for citizenship legislation in contemporary states to become more frequent and more complex.

5 The end of Irish exceptionalism?

Before evaluating the extent to which this represents a significant change in the conception of Irish citizenship, it may useful to reconsider the factors that supported the previous regime. While critics of the change from pure *ius soli* saw its removal as a major step, outside observers may be more likely to ask why it survived so long in Ireland.

First, as we have seen, Irish governments had a long-standing interest in paralleling British nationality laws in order to maintain the advantages for Irish citizens in Britain, and up to 1981, there was no reason on this ground to abandon *ius soli*. In the 1980s Ireland was not under the immigration pressure that made changing this legislation a priority in Britain, and there was a high degree of administrative inertia. But perhaps the most important point is that *ius soli* represented the claim to the whole island, and applied the same conditions for citizenship in Northern Ireland as applied in the Republic. It was, finally (though in an altered political framework of settlement with Britain and Northern Ireland) the concern for Northern Ireland that led to its constitutional entrenchment. Finally, to many, having been long established in Ireland, and more familiar from the Irish experience of emigration to the USA and Canada than other models of citizenship attribution, pure *ius soli* had come to represent to many the basic equality of citizens.

Ius sanguinis was more limited than might be expected in the context of both a divided territory and large scale emigration. Yet *ius sanguinis* citizenship opportunities have been significant. Parents can pass citizenship to their children born abroad. Original restrictions were

deliberately reduced, allowing citizenship to be passed through the mother and abolishing the time limit for registration for the second generation. Thus it remains possible to extend citizenship by descent outside Ireland by registration from generation to generation.

But, in contrast to the claim on *ius soli* grounds of Northern Ireland citizens, for whom requirements were progressively relaxed (allowing registration in Dublin, and then removing this virtually unused requirement in 1956), the attribution of citizenship by *ius sanguinis* to those born outside the island has been somewhat restricted, in requiring registration for the second generation born outside the state, applying only to children born abroad after the parent's registration, and reducing the discretion to offer citizenship to people 'with Irish connections'. Such restriction was broadly within, if more generous than, the parameters set by British legislation, which had no tradition of indefinite automatic transmission of citizenship, and for which, up to 1981, *ius soli* was more important.

Limits on *ius sanguinis* may reflect a limited concern for emigrants. Economic conditions made large scale emigration seem essential to the survival of those who remained. Rather than being viewed as a loss of resources, they were the source of remittances that played a prominent part in GNP figures. Emigrants were portrayed as successful, and there was silence on the fate of the unsuccessful. Thus, compared with, for example, Portugal, there was little official provision for emigrant support, and little political attention before President Mary Robinson's putting a lighted candle in a window of the President's house, and addressing a special meeting of the legislature on 'cherishing the diaspora' in the 1990s. This impression appears to be confirmed by the fact that, although dual citizenship is accepted, there is still no system of representation or political rights for emigrants, perhaps because of their potentially overwhelming numbers.

And we may note that up to 1986 the numerical salience of citizenship claims on the basis of *ius sanguinis* alone was rather low – only 16,500 between 1936 and 1986, and from Northern Ireland almost zero (Daly, 2001). It appears that many identified with the Irish nation without taking out citizenship. Demand for citizenship by *ius sanguinis* jumped from 1968, when the access of Commonwealth citizens to the UK was limited.. It was further boosted when Irish citizenship gave access to the EU after 1973. The highest numbers before 1986 were from the British ex-colonies in Africa. There was a rush to register, when from 1986 citizenship was available only to those born after the parent's registration. Thus it may appear that, except in

small numbers, Irish citizenship on *ius sanguinis* grounds was claimed primarily as a means of access to the UK, the rest of the EU, and only more recently to Ireland itself.

The obverse of naturalisation, loss of citizenship, has not been an issue in Ireland. Given the acceptance of dual citizenship, there are very few conditions under which citizens have stood to lose their citizenship, except when required to surrender it by the country in which they are naturalising, and when access through descent has been lost through the failure of eligible foreign-born persons to register as citizens before the birth of their children.

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I have suggested that by the end of the twentieth century, Irish citizenship laws, always a hybrid, embodied significant elements of a civic republican conception of citizenship. This was more open than the ethno-cultural citizenship laws found in some other European states, and than the ethno-cultural conception of the nation that prevailed in other areas of Irish political and social practice.

This was also somewhat more open and prospective in character than the liberal national model currently in the ascendant. If some measures needed to be taken to remove perverse incentives for people to give birth in Ireland, the balance of citizenship need not so have been so swiftly tilted towards retrospective criteria. A more measured approach could have left the constitutional positions of *ius soli* and *ius sanguinis* more evenly balanced, legislation could have required a shorter period of prior parental residence, or more importantly, granted *ius soli* citizenship to children of immigrants on a prospective basis (realised as they grow up).

The system of citizenship attribution brought about with the 2004 amendment and subsequent legislation is less inherently racist, as some commentators have argued (Lentin, 2004) than nationalist; it affects all 'non-nationals' (the term applied to non-citizens), without constituting a systematic and enduring exclusion on racial lines (Fanning, 2007). But it represented a more radical change than a technical adjustment, as it significantly shifted the symbolic balance of citizenship away from the civic republican model. This leaves us at the beginning of the twenty first century with citizenship laws that, as Handoll points out, effectively mean that the predominant means of accessing citizenship henceforth will be on the basis of *ius*

sanguinis (Handoll, 2006: 309). For those born to Irish citizens in Ireland, it will be semi-voluntary, while it will be voluntary for those born in Northern Ireland or British citizens. In its treatment of Northern Ireland, in maintaining *ius soli* across a border, it continues to be an outlier.

Here we can identify neither any re-ethnicisation of citizenship for the diaspora, already fairly generously treated, nor any de-ethnicisation of citizenship for immigrants (Joppke, 2003). It may be claimed that the changes will not make a great difference in practice. But the direction of the constitutional reversal and the current constitutional provision have clear symbolic significance that may well make a concrete difference to the integration of the increasing number of immigrants living in Ireland. In the case of young people, where having foreign parents, a different language or accent, skin-colour or dress previously implied nothing about their citizenship, these now give a reasonable basis for assuming that they are not members of the political community - one important way at least in which they could claim to be Irish.

It may appear that Ireland's citizenship laws now look more similar to those of the mainstream of other European countries than before. Citizenship is awarded by *ius soli* with a residence requirement; by *ius sanguinis* for one generation, or longer with registration, naturalisation requires only medium term residence, is granted to spouses with a shorter period, and dual citizenship is accepted. On this basis, it may be seen to retain its classification in the group of most liberal citizenship regimes in the EU (Howard, 2008).

But there are two considerations to be taken into account here. Many of these 'liberal' states, while retaining restricted forms of *ius soli*, have come to apply cultural conditions of integration in addition to existing periods of residence as requirements for naturalisation. In this way the character of such citizenship regimes is best understood as one of liberal nationality. The extent to which such conditions may be considered compatible with liberalism is a matter of debate, and depends at least on the varying stringency of these conditions, and the ease with which aspiring citizens may be able to fulfil them. More generally, the emphasis in criteria for citizenship is strongly retrospective, whether this concerns prior residence for naturalisation or of parents for a child to qualify for *ius soli* citizenship, or the degree of achieved cultural integration.

The limitation of *ius soli*, as well other changes on naturalisation, may represent a convergence towards a European norm of liberal nationality, but it also represents a move away from a civic conception of citizenship. If, as is now proposed, Ireland introduces a language test for naturalisation, it will converge further with such liberal nationality. But this convergence does not extend to providing an entitlement to citizenship for children born and growing up in the country even on retrospective grounds, as in the UK and France, which have represented up to now the more liberal end of the liberal national spectrum. Furthermore, the debate, well-rehearsed in, for example, Britain, France and Denmark, is only beginning - about just what is the core of the public culture to which immigrants should conform, and how to resolve the difficulty in distinguishing the common public culture from private life and practices.

While the specific character of Irish citizenship laws has been influenced by forces including policy with respect to Northern Ireland, the relationship with Britain, and the development and expansion of the European Union, the challenge of immigration has thus already led to significant changes in Irish citizenship attribution.

1. Acknowledgements removed.

2. Article 2 previously read: 'The national territory consists of the whole island of Ireland, its islands and the territorial seas.'

3 Membership of the *nation*, not of the state, is specified, leading some to argue that it does not guarantee citizenship (MacEochaidh, 2004). But the prevailing view, and the Government's legal advice, took this to constitute a guarantee of citizenship and to require restriction through the 2004 amendment.

4 This was based on the Fajujonu judgement (1989). Applications for leave to remain on the basis of citizen children numbered 3,153 in 2001and 4,027 in 2002; 11,000 applications were outstanding after January 2003. In early 2005, it was announced that applications to remain with respect to children born before January 1 2005 would be considered individually..

5 This effectively gave a right to reside in European countries other than the Republic of Ireland, though under conditions of economic independence (Zhu and Chen v Secretary of State for the Home Department (Case C-200/02 (2004)).

6 Subsection 2.2 applied this restriction only to persons born after the date of the enactment of the amendment.

7 Exceptions include children who would otherwise be stateless, and foundlings.

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