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THE THEORY AND POLITICS OF IUS SOLI

Iseult Honohan

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The Theory and Politics of Ius Soli

Iseult Honohan¹

1 Introduction

Amid the current political interest in the integration of immigrants, naturalisation is the aspect of citizenship policy that has recently received most attention among political scientists. In debates about the extent to which conditions for access to citizenship are becoming more or less restrictive, citizenship at birth has taken a back seat. In this paper I aim to throw the spotlight on *ius soli*, the form of birthright citizenship based on birth in a territory, and to examine some of the assumptions and claims that have been made in recent years about its place in liberal-democratic citizenship regimes, with particular reference to thirty three European countries dealt with in the EUDO-Citizenship study.²

While naturalisation policies have recently shown some tendency to become more restrictive, it is not immediately clear that this has occurred in the case of policies on *ius soli* citizenship. As Joppke puts it: ‘The irony is that the liberal, inclusive aspect of citizenship is today invested more on its ascriptive side, in terms of *ius soli* provisions for second-generation immigrants, which have generally remained unaffected by the trend towards stricter naturalisation rules’ (Joppke 2008: 24).

The use of the term ‘liberal’ to denote policies making citizenship available to individuals on a non-discriminatory and inclusive basis is already well-established in recent debates. While I am not convinced that it is the clearest or most appropriate term to employ in discussing the openness of citizenship policy, I will follow this usage for the purposes of the discussion here.³ Accepting that *ius soli* broadly constitutes a ‘liberal’ mode of access to citizenship in this sense, I go on to identify a variety of forms which may be judged to be more or less inclusive.⁴ I then examine the extent to which *ius soli* prevails in European regimes. I consider changes in policies in this area between 1989 and 2010 to inquire whether

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² This paper studies 33 countries that were covered by the study by mid-2009: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom. The data is based on information collated by Maarten Vink from material provided by country experts, available at <http://eudo-citizenship.eu/modes-of-acquisition>, with additions from the EUDO Citizenship country reports and the Citizenship News section. All errors and omissions are my responsibility.

³ See e.g. Joppke 2008: 3, Howard 2009: 28 note 21.

⁴ This more general use does not address which citizenship policies are compatible with or required by liberalism, depending how this is defined. In addition to non-discrimination, different strands of liberalism will hold, for example, that particular citizenship should not award arbitrary advantage, that it should be a matter of individual choice, or that there are no grounds for bounded citizenship. I do not attempt here to address what kind of citizenship policy might be required by a more specifically liberal account. I have elsewhere identified alternative normative conceptions of citizenship and their relationship to citizenship regimes, defined as ethnic, value-community, liberal national, civic voluntarist and civic republican respectively (Honohan 2007). My thanks to Adina Preda for discussion on this and other conceptual points.

we can observe a liberalising trend, and how this coexists with other more restrictive citizenship policies.

The paper is structured as follows: I first discuss whether or not we can attribute any particular normative significance to the institution of *ius soli* (section two). This is followed by an analysis of key characteristics of this mode of acquisition, which allows us to differentiate and to evaluate forms of *ius soli* citizenship (section three). I set out the current state of play in thirty three European countries, analysing changes in *ius soli* citizenship regimes since 1989 and some recent proposals (sections four and five). In section six I analyse the forces underlying these changes, and the political processes through which they were introduced. Finally I assess the extent to which these changes may be seen as part of a liberalising trend in European citizenship regimes.

I argue that *ius soli* is an important mode of citizenship acquisition, which, in conjunction with other elements, can contribute to an inclusive citizenship regime. But differences between forms of *ius soli* with respect to the extent to which they are characterised by delay, discretion, and retrospective requirements in their definition, as well as the range of additional conditions applied in each case will determine how liberal or inclusive in effect we should judge these to be. The analysis of the current state of *ius soli* citizenship shows that it is by no means the uncontested norm in Europe; where present it is often in quite weak forms, and there are pressures for its restriction as well as for its extension. Thus we should not thus exaggerate the liberalising effect on any European country's citizenship regime of the mere presence of *ius soli* citizenship, or conclude that there is convergence towards an inclusive norm in this respect.

While this paper focuses on *ius soli* citizenship, this is always only one part of a citizenship regime, whose character as a whole is determined by the ensemble of citizenship policies with respect also to *ius sanguinis*, naturalisation and dual citizenship. The liberalising effect of *ius soli* citizenship depends in particular on whether or not it is accompanied by an acceptance of dual citizenship. There can be contrary trends in each of these areas. In addition, the perceived fairness of access to *ius soli* citizenship depends on the extent to which *ius sanguinis* citizenship is awarded to those with limited concrete connections with, or stake in, the country.

2 *Ius soli*: origins and implications

Ius soli is one of the two principal ways that most people acquire their citizenship – on the basis of birth in a territory, as distinct from descent from a citizen (*ius sanguinis*). In the past, *ius soli* has sometimes been seen as a more civic and inclusive principle, in offering citizenship to all born in the state, as in countries such as the USA and Canada. But it is not so simple to identify in this way.

There is the objection that there are no good grounds for identifying the grant of citizenship through *ius sanguinis* or *ius soli* with 'ethnic' and 'civic' conceptions of citizenship respectively, and thus there is no reason to see *ius soli* as normatively superior. First, its origins in many countries lie in a legacy of British law, where it represented the claim of the monarch to sovereignty over all born in the territory rather than any egalitarian intent. *Ius sanguinis* replaced it in revolutionary France to represent the right of citizens to pass citizenship to their children; while *ius soli*, often identified as quintessentially republican, became part of the French system again only from the 1880s, when it was designed to incorporate the children of France's increasing immigrant population; it then took the

particular form of double *ius soli* (awarding citizenship at birth to children of those themselves born in the state), which focused on generational socialisation rather than feudal allegiance as the rationale for granting citizenship through this mode (Weil et al. 2009).⁵

Secondly, existing citizenship laws, rather than constituting systematic programmes, tend to consist of a patchwork of historical accretions influenced by different legal traditions, colonial experience, local social and political circumstances, levels of immigration pressure, and international conventions. So, Joppke argues, ‘Rather than reflecting particular visions of “nationhood”, *jus soli* and *jus sanguinis* are flexible legal-technical mechanisms that allow multiple interpretations and combinations, and states (or rather the dominant political forces in them) have generally not hesitated to modify these rules if they saw a concrete need or interest for it’ (Joppke 2003: 435-436). On this view, then, it is not surprising that most western countries – with the exception of the USA and Canada – have either withdrawn or restricted *ius soli* as a mode of access to citizenship.

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. Moreover, citizenship laws constitute a legal norm that shapes the reality of citizenship. Thus *ius soli* 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.

There is at least a symbolic difference between native-born citizens with citizen parents in a traditional *ius soli* regime – where they are considered as having gained citizenship from their birth in a territory – and in a traditional *ius sanguinis* regime – where they are considered as having gained citizenship by descent, even if in practical terms these are the same.⁶

A third objection to identifying citizenship laws with different conceptions of citizenship notes an observable tendency towards convergence among nationality laws today. Since both *ius sanguinis* and *ius soli* can be over-inclusive, there has been a tendency to limit both to cases where there is some significant connection with the country. Indeed in every regime where *ius soli* exists, *ius sanguinis* is always also present (though not all *ius sanguinis* regimes include an element of *ius soli*). There is no regime based purely on *ius soli* anywhere.

Thus systems formerly based predominantly on *ius sanguinis* have progressively, as in Germany in 2000, introduced elements of *ius soli*, granting citizenship to children born to immigrants (either at birth or at majority). Conversely, under immigration pressures, countries formerly applying pure *ius soli* have almost all restricted its application in some way, as in Britain in 1981, Australia in 1986 (Weil 2001), and New Zealand in 2005. On this view, the retention of pure *ius soli* in a country such as the United States is an exception to be explained largely by its constitutional position in the Fourteenth Amendment, and its symbolic and historic role in establishing the equal rights of black people to citizenship. Where states retain a greater emphasis on *ius sanguinis*, this reflects either particular problems of territorial integrity or unstable borders, which leave significant populations of potential citizens outside the current

⁵ It should be noted in addition that *ius sanguinis*, though based on descent, cannot be simply identified as an ethnic principle. In conjunction with relatively generous naturalisation laws, it can provide for quite an open system of acquisition. Regimes that give explicit preference in citizenship to co-ethnics or ‘kin nations’ are more clearly ethnic in conception and effect.

⁶ This point was clarified for me by Rainer Bauböck.

territory, or a history and self-conception as countries of emigration with a desire to maintain links with co-ethnic diasporas (Weil 2001: 33-34). Another element of such a pattern of convergence is an increasing level of acceptance by states of dual citizenship.

But we should not exaggerate the extent of this convergence, nor see it as an inevitable or one-way process of evolution. Individual states remain sovereign in determining citizenship laws. There are many countries without any mode of *ius soli* citizenship, and others where forms of *ius soli* are as important as *ius sanguinis*. While roughly half the countries of the world now allow dual citizenship, it has also recently been the object of renewed distrust and debate in the light of concerns about terrorism and divided loyalties among immigrants.

Finally, a more radical normative argument, suggesting that there is no good reason to see *ius soli* as superior to *ius sanguinis*, points to the fact that all attributions of citizenship at birth are arbitrary - *ius soli* no less than *ius sanguinis*, since both are based on the accident of birth, whether of place or parentage. Indeed, even place of birth always depends in some sense on parentage.⁷ Birthright citizenship awards an unearned privilege (analogous to inherited property) to those who happen to be born in one situation rather than another (Shachar 2009).⁸ This is a crucial privilege, since most people continue to hold the citizenship they acquire at birth. Thus, on this view, we should not exaggerate the egalitarian credentials of *ius soli*. As a supplement to, or even in the place of birthright citizenship of all kinds, Shachar recommends what she dubs '*ius nexi*', or the law of connection, that takes into account all kinds of real connection with the country in giving people options for citizenship. This would make a process rather like naturalisation much more central to the award of citizenship (Shachar 2009: 166 ff).⁹

In response to this, it may be argued that, if citizenship is to rest on genuine connections, *ius soli* has a role to play. Living in a state places people in a shared predicament of political interdependence in subjection to a common authority. This gives residents a significant claim to citizenship.¹⁰ Those without the possibility of participating in shaping their common future life run the risk of domination. Birth in the state may be taken as a reasonable predictor of a shared future in the political community, and thus as providing a *prima facie* claim to citizenship. But it is not infallible; thus, if granting citizenship at birth by *ius soli* is seen as arbitrary in certain cases where other connections with the state are absent,

⁷ It is going too far, however, to say that 'A state qua membership is fundamentally an ethnic institution, because membership is usually ascribed at birth' (Joppke 2003: 435).

⁸ While *ius soli* and *ius sanguinis* as typically presented as antipodes, it is important to note that both rely on, and sustain, a conception of bounded citizenship... It is tempting to think that a rule that makes citizenship "contingent on the place of a child's birth is somehow more egalitarian than a rule that would make birthright citizenship contingent of the legal status of the child's parents." But this distinction can easily lead us astray. Both criteria for attributing citizenship at birth are arbitrary: one is based on the accident of birth within particular geographical borders while the other is based on the sheer luck of descent' (Shachar 2009: 7, quoting Eisgruber 1997: 59)

⁹ This is in fact approached by some of the qualified forms of *ius soli* that currently prevail, taking account, for example, of the residence of parents or of a candidate's residence and education in childhood.

¹⁰ The analysis here is based on the idea of citizenship as based on interdependence in subjection to a common state authority and sharing a common future. If those subject to coercive authority have no say, they are subject to domination - that is the constant threat of arbitrary interference by government. Citizenship implies some possibility that such domination may be institutionally limited, and that citizens (rather than subjects) may potentially call their governments to account. In a state those who are not citizens are particularly at risk of domination, notably with respect to their continued residence and re-entry, and lack a voice in the process of self-government and symbolic equality (see Pettit 1997, Honohan 2002).

it may be reasonable to provide for a confirmation of citizenship at some point for those who continue to live in the state as adults.¹¹

Even if *ius soli* and *ius sanguinis* cannot be directly mapped onto particular conceptions of citizenship then, *ius soli*, construed as a reasonable predictor of a common future life, in conjunction with fair immigration policies and possibilities of naturalisation, may constitute a distinct and less arbitrary basis for citizenship than extended *ius sanguinis*. Thus it is reasonable that the presence of *ius soli* is often taken to be a sign of a more civic citizenship (or its absence a negative sign) (e.g. Liebich, 2007), or as one key element of a liberal citizenship regime (Howard 2006, 2009). It is widely agreed that *ius soli* has had an important practical effect on integrating long-term residents and a significant symbolic effect on the possibility of inclusion. So, while pure *ius soli* has increasingly been limited on the grounds that it is over-inclusive in times of extensive mobility, and gives citizenship to those without substantial connection with the country, some form of *ius soli* remains a significant element of citizenship regimes. It is seen as a way of incorporating residents over time, and avoiding the persistence of a large proportion of non-citizens who may be at risk being alienated from the society in which they live.

While *ius soli* can then be seen as an important element of an inclusive citizenship regime, the degree to which a citizenship regime is inclusive depends not on the mere presence of *ius soli*, but on the form that *ius soli* takes. We next distinguish different forms of *ius soli* citizenship that achieve this result to a greater or lesser extent.

3 Forms of *ius soli*

Ius soli provisions are based on place of birth rather than descent or other connections. However, these may apply *at* birth, or at some point *after* birth. This difference is the basis on which the two principal modes of acquisition by *ius soli* in the EUDO Citizenship classification (A 02 and A 05 respectively) are distinguished.¹² But some further distinctions are highlighted here for the purpose of evaluating the inclusive credentials of *ius soli* attribution. These are not additional modes, but sub-modes which can be analytically distinguished by differences of material conditions and procedural requirements, and appear as independent forms as well as in combination with others.

The principal forms of *ius soli* at birth include:

- a) pure *ius soli*, where all children born in the state become citizens automatically,
- b) *ius soli* conditional on some period of prior *parental residence* in the country,
- c) double *ius soli* (automatic citizenship at birth for the third generation, based on *parental birth* in the country).¹³

¹¹ I have argued elsewhere that *ius soli* will form an essential element of a citizenship regime that embodies a civic republican conception of citizenship (Honohan 2007).

¹² This classification was introduced first in the NATAC project (Bauböck et al. 2006). See also Vink & de Groot 2010, forthcoming. *Ius soli* may also be applied to more specialised cases of foundlings or children who would otherwise be stateless, classified as mode A 03a and A 03b respectively in the EUDO-Citizenship system. This paper does not analyse these important but specialised modes.

¹³ The term 'double *ius soli*' is not particularly appropriate; given the delay to the *third* generation, it might better be described as '*half ius soli*'. Indeed 'double *ius soli*' introduces a condition that amounts in effect to an

Table 1: Principal forms of ius soli citizenship (A 02 and A 05)

At birth (A02)			After birth (A05)	
(a) Birth in the country (pure ius soli)	(b) Parental Residence (retrospective at birth)	(c) Parental Birth (Double ius Soli)	(d) Automatic/Option (prospective conditions from birth)	(e) Facilitated Naturalisation

The principal forms of ius soli after birth are:

- d) citizenship acquired automatically or, more commonly, by option/declaration at a point in childhood or at majority for those born in the country.¹⁴ Form (d) by option is sometimes considered to provide a middle course between automatic citizenship and naturalisation.¹⁵
- e) facilitated naturalisation, whereby the conditions for naturalising are less demanding for those born in the country than those required of other candidates.¹⁶ As with other forms of naturalisation, this may either be an absolute entitlement once the specified conditions are fulfilled, or, as is more common, be subject to official discretion in the award of citizenship.

The crucial difference between forms (d) and (e) is the need to go through an application process that is present in (e) but not in (d).

We will see that all of these forms can be subject to a range of additional conditions other than the defining ones, which may be more or less closely related to the criterion itself, and may be more or less onerous. For example, if citizenship is granted as option at majority (d), there may also be a schooling requirement, or if it is based on parental residence (b), that the status of permanent residence may be required. The more conditions there are, or the more difficult to meet, the less liberal will be the award of ius soli citizenship through that form. Of course more than one of these forms can be and often are available simultaneously, as in a number of countries in the study.

element of ius sanguinis, since it requires both birth in the country *and* descent (from a parent born in the country, if not a citizen).

¹⁴ A wide variety of terms, varying between countries, is used to convey shades of distinction from automatic, *ex lege*, subjective right, option, voluntary declaration, and so on.

¹⁵ A discussion of liberal criteria that focused on choice would distinguish between automatic grant of citizenship and option at majority. As the focus here is inclusion rather than choice, I do not significantly distinguish these here. This paper also leaves aside the question of children who immigrate at a young age, who might appear to have similar claims under form (d) on the basis of their socialisation in the country (which are recognised in a number of countries). These are sometimes called the 'one and a half' generation, to distinguish them from second generation immigrants narrowly defined as those born in the country to immigrant parents.

¹⁶ Unlike Howard (2009), who includes this under naturalisation rather than ius soli provision, I include facilitated naturalisation (e) as a form of ius soli citizenship, because the award is based specifically on birth in the territory.

3.1 Evaluating these forms

We can isolate the following characteristics as the basis on which to evaluate forms of ius soli: it can be 1) immediate or delayed; 2) a matter of entitlement or of administrative discretion; and 3) subject to conditions that apply prospectively or retrospectively at birth.

1. Immediacy/delay: Is citizenship acquired immediately by anyone born in the country, or only after some period of delay?
2. Entitlement/discretion: Is citizenship automatic or voluntary if all conditions are met; or does the state have discretion to award?¹⁷
3. Prospectivity/retrospectivity: At birth, is citizenship granted prospectively – do conditions apply *from* the birth of the person acquiring citizenship and apply to them? Or retrospectively – do conditions apply *before* the birth of the person acquiring citizenship (which normally means that the award depends on facts about the parent rather than the child)?

While the third characteristic, prospectivity, is a more or less clear cut *either/or* criterion, the others function on a spectrum of the length of delay and the degree of discretion involved. So in these cases the degree will need to be taken into account. We might also want to weigh characteristics differentially.

Table 2 provides a summary of the characteristics of different forms of ius soli, on which I draw to evaluate these forms. It should be noted from the table, first, that not all forms awarding citizenship at birth (A 02) are necessarily more inclusive than those awarding it later or at majority (A 05). Modes of ius soli which award citizenship only after birth, although delayed, fit with the idea that a continuing connection with the country may need to be confirmed rather than depending only on the child's location at the moment of birth. Thus individual forms (a) to (e) are ranked independently.

Table 2: Characteristics of ius soli citizenship

Form of ius soli	Immediate (+) Delayed (-)	Entitlement (+) Discretionary (-)	Prospective (+) Retrospective (-)
(a) Pure	+	+	+
(b) Parental residence	+	+	-
(c) Parental birth/double ius soli	-	+	-
(d) Option up to/at majority	-	+	+
(e) Facilitated naturalisation	-	-/+	+

¹⁷ In addition to being defined as a matter of entitlement or discretion, the way in which any form is implemented and administered can be more or less discretionary. But some forms seem to lend themselves more to additional conditions and discretion. See also Howard 2009: 22 note 10. Even in cases where naturalisation is described as an entitlement or a subjective right, the conditions required may inherently involve a discretionary dimension in the conditions to be fulfilled (e.g. sufficient knowledge of language, good conduct, etc).

Thus the most inclusive form of *ius soli* will be immediate and non-discretionary. This is (a) *pure ius soli*. We have seen that there are reasonable arguments that immediate *ius soli* access to citizenship is not always required. But it is important that those who are born and continue to live under the authority of a state have some secure possibility of becoming members of the polity. Whether citizenship is awarded immediately at birth is less important than that it is securely attainable – and to be inclusive, this ought to be either automatically or by declaration.

So next in order is form (d) *citizenship given automatically or by option* during childhood or at majority. This is somewhat delayed but non-discretionary. It can be conditional on additional conditions prospective from birth, relying on the child's continuing residence and other socialising experience such as schooling. Such prospective conditions are more appropriate to determining the status of the child than the retrospective condition of prior parental residence.

Thus, if we consider prospective conditions about the individual to be more appropriate to a system that treats individuals in a non-discriminatory way than retrospective conditions about their parent, and see the delay between birth and the award of citizenship at or before majority as a reasonable requirement to confirm a continuing connection with the state, there is reason to consider (d) option or declaration as stronger than *ius soli* based on parental residence (b). The latter is non-discretionary and immediate for the child, but it is retrospectively conditional. A period of prior parental residence may reasonably be thought to constitute evidence for a continuing link with the country, but it depends more on facts about the parents than about the child, and it introduces a condition that the child cannot fulfil. Moreover, especially when permanent or unrestricted residence status is required, this makes citizenship by *ius soli* more substantially subject to immigration conditions, which have tended to change more often and in more restrictive directions than citizenship policies in most European states.

Next in order of evaluation is double *ius soli* (c), which is delayed and retrospectively conditional on a parent's birth in the country. Though immediate for the child who is awarded it, it delays the acquisition of citizenship from the person originally born in the country – the parent – to what is referred to as the 'third generation' of immigrants. Accordingly, given the same volume of immigration, it makes *ius soli* citizenship available to a much smaller number of people than the forms previously considered. In practice, however, it has tended to carry few other conditions and to be non-discretionary. Conditions of continuing parental residence have been introduced in some countries (e.g. Belgium and Greece), but this too may be interpreted as consistent with the logic of the original provision. Thus it may constitute an element of a moderately liberal citizenship regime, especially where pure *ius soli* is seen as too generous; and it lays down a marker that the state does not envisage relegating generations of immigrants to outsider status.

Finally we come to facilitated naturalisation (e), which is delayed and conditional. It is based on conditions that are by definition somewhat less demanding than those of regular naturalisation. In a limited number of cases this may be provided as an entitlement once the specified conditions are met; in some these specified conditions are few, but in others it requires applicants to meet a significant range of conditions; as with other forms of naturalisation, it lends itself to a proliferation of conditions. More often it is subject to the discretion of the state authorities. In any case the term 'facilitated' can be misleading; it still involves an application process, which in itself is more demanding than a simple declaration. More practically, even if an entitlement or generously awarded, the application process itself creates a cost which can be significant enough to create a disincentive. Thus facilitated naturalisation is the weakest form of *ius soli* citizenship.

Thus, while all five forms fall under the heading of ius soli citizenship, it should be noted that the degree to which they can be considered inclusive in their impact varies greatly. In assessing whether current citizenship regimes are inclusive, or are liberalising or becoming restrictive, we will take these distinctions into account, ranking them in descending order from (d), (b) and (c) to (e).

In the case of all the forms, the acceptance of dual citizenship makes a significant difference to the impact of ius soli, which will be less if citizenship cannot be taken up, or can be taken up only by renouncing another citizenship.

Table 3: Range of conditions for the principal forms of ius soli citizenship

At birth (A 02)			After birth (A 05)				
(a) Child's birth	(b) Parental residence		(c) parental birth	(d) automatic/declaration		(e) facilitated naturalisation	
Years	Conditions			Age	Conditions	Age	Conditions
0	Between 0 and 10 years	including any form of residence or legal residence or unrestricted/permanent residence		Child becomes citizen at birth if one parent was born in the state (sometimes with some condition of parental residence)	From some time after birth to majority or beyond	Residence between 5 years and continuous since birth (sometimes with conditions re parent or schooling)	From some time after birth to 18 years or beyond

4 Ius soli in European citizenship regimes

As of early 2010, of the 33 countries studied here nineteen have some element of ius soli citizenship, and fourteen have none at all. This position follows considerable change in the last twenty years. There have been in total 20 sets of significant legislative changes with respect to ius soli across twelve of these countries since 1989; twelve of these changes involved introducing or broadening access by this mode, and eight limited it in some way.

The fourteen with no element of ius soli in 2010 are: Cyprus, Denmark, Estonia, Iceland, Latvia, Lithuania, Moldova, Malta, Norway, Poland, Slovakia, Switzerland, Sweden and Turkey.¹⁸ Most of these never had any element in recent times, with the exceptions of the

¹⁸ This does not include provisions for foundlings or to avoid statelessness under mode A03a and A03b respectively, which now exists in many of these countries. A03b is provided by all the states studied here except Germany, Estonia, Malta, Norway and Switzerland. It should be noted that, in Sweden, children who have lived in the country for five years can become citizens without further conditions simply by notifying the authorities, which is more inclusive than some countries ius soli provisions.

case of Malta, which had pure *ius soli* (a) up to 1989, and Denmark, which had forms of *ius soli* up to 1976.¹⁹

We can see that those without any form of *ius soli* citizenship include a range of different categories – large and small countries, those with significant numbers of immigrants and those without. Nine are members of the EU. Four are countries that might be thought of as ‘old’ Europe (Denmark, Norway, Sweden and Switzerland); seven are post-communist countries sometimes described as ‘new’ Europe (Estonia, Latvia, Lithuania, Moldova, Poland and Slovakia).²⁰ Two are smaller states on the southern periphery of Europe (Cyprus and Malta), and two might be described as ‘further Europe’ (Iceland and Turkey).²¹ So, even in Europe (and among EU Member States), this gives us a significant number of countries, rather than just a ‘few outliers’ in which *ius soli* is entirely absent, as has been suggested (Joppke 2008: 4).²² As we will see, in a number of the remaining countries the forms which it takes are quite limited.

Nineteen countries have some form of *ius soli* citizenship, either at or after birth.²³ Ten award citizenship by *ius soli* at birth (A 02):

Zero by (a) pure *ius soli*

Six based on (b) parental residence (second generation): Belgium, Germany, Greece, Ireland, Portugal, United Kingdom²⁴

Seven based on (c) parental birth (third generation) – double *ius soli*: Belgium, France, Greece, Luxembourg, Netherlands, Portugal, Spain²⁵

(both forms (b) and (c) are available in Belgium, Greece and Portugal)

¹⁹ Here in order to achieve some level of consistency, the dates cited throughout are as far as possible the years in which the provisions came into effect, rather than the introduction or passage of legislation.

²⁰ Of the new post-communist EU Member States only Bulgaria, the Czech Republic, Hungary, Romania and Slovenia provide *ius soli* citizenship; in each of these cases only as facilitated naturalisation (e). Lithuania, Moldova and Slovenia adopted the ‘zero option’ at transition, which made it possible for those then permanently resident to take up citizenship, a provision which seems congruent with a regime oriented towards *ius soli*. There was considerable continuity of citizenship in Poland and Slovakia. In a number of states which did not grant citizenship on this basis, the extension of *ius soli* faces a specific issue with respect to the status of the non-citizen population who are former citizens of the Soviet Union and their children. Latvia provides a special status and non-citizen passport for this category; while Estonia still has a large stateless population, it introduced in 1991 the opportunity for a minor’s stateless parents to apply for their naturalisation; this does not constitute facilitated naturalisation (e) or a form of *ius soli*, as classified here. It seems that this situation is liable to promote policies in line with Weil’s argument that *ius sanguinis* is normally dominant in states which have not completed nation-building or have uncertain borders (Weil 2001).

²¹ Thus we should not overemphasise the contrast between East and West in Europe. See Liebich (2010) and the responses in the EUDO Citizenship forum. As pointed out by Bauböck and Perchinig (2006: 15), this difference applies to a wide variety of countries on the periphery of Europe.

²² ‘With the exception of a few outliers, across Europe there is now a legal entitlement to citizenship on the part of second and third generation migrants, especially through the introduction of conditional *ius soli* citizenship’ (Joppke 2008:4).

²³ In order to simplify somewhat, I do not here provide a full listing of all special provisions for certain categories or conditions for award of citizenship that are less central to this analysis. Full details for modes A 02 and A 05 acquisition are available at <http://eudo-citizenship.eu/modes-of-acquisition>.

²⁴ This requires conditions of unlimited residence status in all except Portugal, though how this is defined, and the difficulty of obtaining it varies considerably among states.

²⁵ In Belgium and Greece, continuing residence of the parents is required for double *ius soli* (c).

Table 4: Forms of ius soli citizenship by country in Europe (excluding pure ius soli)

At birth (A 02)			After birth (A 05)						
(b) parental residence		(c) parental birth	(d) automatic/declaration				(e) facilitated naturalisation		
Country	Years	Other conditions		Country	Age	Residence +	Country	Age	Residence
Belgium	10	Permanent resident status	Belgium (parent res 5 of 10 yrs before birth)	Belgium	18 12	since birth (less if older) parents res 10 yrs	Austria E		4 minor or 6 adult yrs *
Germany	8	Settled status	France	Finland	18-23	6 years (perm res + conduct)	Bulgaria D	18	3 years*
Greece	5	Legal, permanent	Greece (parent perm. resident)	France	18 13	5 yrs since 11 (aut) 5 yrs since 8 (decl.)	Croatia E		5 years*
Ireland	3 of 4	Legal residence w/o time limit	Luxembourg	Greece	to 21	completed 6 yrs school	Czech Republic D		If perm, can waive 5 yr req*
Portugal	5		Netherlands	Italy	18-19	Cont. legal res, finished Intl. school	Hungary D		5 yrs not 8*
United Kingdom		Married parent/mother w/perm residence	Portugal	Netherlands	18-19	If since birth (ceremony, fee)	Italy D	18	3 years*
			Spain	Spain	18-20	If since birth	Portugal E/D		parent res 5 yrs; or 4 yrs school*
				United Kingdom	From 10	If since birth (+ character)	Romania D	18	Can waive 8 year req.*
							Slovenia D	18	since birth*
							Spain E		resident 1 yr*

E = Entitlement once conditions met;

D = Discretionary;

*Includes language or conduct conditions as with ordinary naturalization

Sixteen countries award citizenship by ius soli after birth (A 05) (including all those with ius soli at birth except Germany, Ireland, and Luxembourg):

Eight as (d) either automatically, by declaration or as option: Belgium, Finland, France, Greece, Italy, Netherlands, Spain, United Kingdom²⁶

10 based on (e) facilitated naturalisation: Austria, Bulgaria, Croatia, Czech Republic, Hungary, Italy, Portugal, Romania, Slovenia, Spain²⁷

²⁶ This may include conditions of e.g. continuous legal residence, schooling and conduct. Full details for each instance of form (d) can be found at <http://eudo-citizenship.eu/modes-of-acquisition>.

²⁷ Characteristically 'facilitation' involves reduced conditions, mainly of length of residence, while still requiring other conditions including conduct, and tests of language and civic knowledge. For further detail and discussion

(Italy and Spain provide for both forms (d) and (e))²⁸

To consider these in the order of evaluation outlined earlier, we start with the fact that no country has had pure *ius soli* since 2004. But nine award citizenship automatically, by option or declaration (d), seven have double *ius soli* (c), and six award citizenship on the basis of parental residence (b). Several have more than one form; in fact eight countries with two or more account for a substantial number of the instances noted. In contrast, of the twelve countries with only one form there is a significant propensity to cluster on facilitated naturalisation (e), which I identified above as inherently the least liberal form, and which is the only form provided by seven countries. While there is an entitlement in cases of *ius soli* citizenship once the (relatively substantial) specified conditions are met in Austria, Croatia, Portugal²⁹ and Spain, in the other six countries offering facilitated naturalisation, this is on a discretionary basis.

4.1 *Ius soli* and dual nationality

As indicated earlier, the inclusive impact of these policies will depend significantly on whether or not dual citizenship is permitted. The countries which allow dual nationality at least in cases of *ius soli* citizenship now number fourteen: Belgium, Bulgaria, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Slovenia and the United Kingdom.

Those that do not systematically admit dual nationality even in cases of *ius soli* citizenship are: Austria, Croatia, Czech Republic, Germany, and Spain. The inclusive impact of *ius soli* provisions is reduced in these five countries in which citizenship is conditional on relinquishing any other citizenship (either initially or at majority). In some cases this is part of a broad prohibition on multiple citizenship (Czech Republic, Germany and Austria). It must be noted, however, that both Germany and the Czech Republic provide significant exemptions for cases where it would be impossible or unreasonable to demand renunciation of another citizenship.³⁰ In other cases, however, there is a specific prohibition on dual citizenship for immigrants, including *ius soli* candidates, that does not apply to emigrants applying for another citizenship (Croatia and Spain), or to immigrants from particular origins or countries (as Spain with respect to Latin America and some other regions).³¹ This differentiation has more serious effects on equality of access to citizenship for those of different origins.

Thus if we take as a first indicator of a moderately liberal policy the provision of either or both of forms (d) or (b) and acceptance of dual citizenship, we find that only nine

of naturalisation conditions and the relationship between facilitation, entitlement and dual citizenship, see Goodman: 2010.

²⁸ Up to the reform of 2010, Greece also provided facilitated naturalisation (e). From the information currently available, it appears that this will be superseded by the forms offered in the new legislation.

²⁹ In Portugal this requires that certain parental residence conditions are met.

³⁰ Germany provides exemptions for EU and Swiss citizens and refugees, and for foreigners who cannot renounce their previous nationality, or only under particularly difficult conditions. In the Czech Republic, exemptions are granted to applicants who are permanent residents, have been in the territory legally for 5 years, have a genuine link to the Czech Republic, if renunciation would not be legally possible or expensive, and a number of other conditions. Relevant here also is the fact that 20 years residence also removes the renunciation requirement. It may be considered that many acquiring citizenship by form (e) will, in or around the time that they reach majority, qualify for exemption on this basis (Baršová 2010: 10).

³¹ In Austria, the prohibition on dual citizenship also applies to emigrants, but they can apply for permission to retain Austrian citizenship if they have special reasons (e.g. family or job opportunities).

countries achieve this level.³² If we weaken this to include form (c), this adds only one country to make ten.³³ It should be noted that this does not take account of the range of ancillary conditions for these forms in any of these countries; Table 4 indicates the range of such conditions, which suggest that this assessment should be qualified in a number of cases.

Thus only a handful of the 33 countries operate what we might identify as a moderately liberal *ius soli* policy. Where present it is often in quite weak forms, subject to multiple or onerous conditions, or attenuated by other provisions of citizenship law. Citizenship policy in this area is by no means static, however. A fuller understanding of the state of play requires us to examine the changes that have been made in *ius soli* policies in recent years.³⁴

5 Recent changes and trends in Europe since 1989

There have been substantial developments with respect to *ius soli* in the last twenty years. Since 1989 there have been two divergent sets of movements – extending and limiting *ius soli* respectively. In this section I note the nature of these legislative changes.

5.1 Extensions of *ius soli*

Twelve changes have involved the introduction or extension of *ius soli*. These are represented in table 5. In this analysis I concentrate on the most significant changes. Thus in 1992 Belgium introduced double *ius soli* (b), *ius soli* with ten years parental residence (c), and *ius soli* by option (d); and in 2000 the upper age limit for claiming Belgian *ius soli* citizenship by form (d) was raised. *Ius soli* (form b) was introduced in Germany (2000), forms (c) and (e) in Portugal (2006), and form (c) in Luxembourg (2009) –and, most recently, in 2010 forms (b), (c) and (d) were introduced in Greece.

The well documented change in Germany, which came into force in 2000, for the first time introducing *ius soli*, made a significant change to German citizenship, formerly based on *ius sanguinis* and naturalisation with strict conditions. But, as noted above, this change was not accompanied by the recognition of dual citizenship, requiring a choice of citizenship at adulthood by those qualifying under form (b), although substantial numbers of exceptions are made (Hailbronner 2010: 7, 16).

³² Belgium, Finland, France, Greece, Ireland, Italy, Netherlands, Portugal and the UK.

³³ Luxembourg.

³⁴ A fuller picture of the real impact on access to citizenship of these provisions would be gained from a systematic analysis of the statistics of citizenship attribution by *ius soli*. But this is not easily done; apart from the cases of option (d) and facilitated naturalisation (e) and other cases where formal registration occurs, there are generally no specific records of *ius soli* citizenship. This contrasts with the case of naturalisation; in which it is possible for Howard, in his analysis of the impact of naturalisation, to combine legal provisions with rates of naturalisation to obtain a naturalisation index (Howard 2009: 17-36). Nonetheless comparisons of naturalisation rates as indicators of inclusiveness have to be treated with care, since, as we see here even with respect to *ius soli*, those who are eligible to become citizens by naturalisation in some states may become citizens automatically or by declaration in other states, which may thus be equally, or more inclusive, though their naturalisation rates may seem lower. See Waldrauch (2006), especially pp.279-80.

Table 5. Extensions of ius soli

Date in force	Country	Previous ius soli	Change
1992	Belgium	(d)	Introducing (b) and (c); extending upper age for (d)
1998	France	(d) option	Reinstating automatic (d); and (b) for Algerian born.
1998	Ireland	(a)	Constitutionalising (a)
1999	Austria	None	Introducing (e)
2000	Germany	None	Introducing (b)
2000	Belgium	(b) (c) and (d)	Removed upper age limit for (d)
2002	Slovenia	None	Introducing (e)
2003	Finland	None	Introducing (d)
2006	Austria	(e)	Introducing entitlement for (e)
2006	Portugal	(b) with 10 year res. req.	Introducing (c) and (e); reducing res years for (b)
2009	Luxembourg	None	Introducing (c)
2010	Greece	(e)	Introducing (b) (c) and (d) (instead of (e))

Note: (a) automatic acquisition at birth, (b) parental residence condition, (c) parental birth condition, (d) automatic/declaration, (e) facilitated naturalisation

In Portugal in 2006 ius soli (which had been radically restricted in the 1970s, prior to which pure ius soli applied to all born on any Portuguese territory) was reintroduced in forms (c) double ius soli and (e) facilitated naturalisation, based on parental residence of five years and four years of the child's schooling. This also reduced the period of prior parental residence for (b) and did away with distinctions in this respect between parents from lusophone countries and others. The effect of this will be substantial, since Portugal has recognised dual nationality since 1981. Luxembourg introduced double ius soli (c) in 2009 (including for those under eighteen in 2009), and, as dual nationality was admitted at the same time, this constituted a significant change with an almost immediate effect (Scuto 2010a, b).³⁵

The most recent extension of ius soli is that brought about by legislation passed in the Greek parliament on March 11 2010. This grants (b) ius soli citizenship at birth on the basis of parental residence, (c) double ius soli (provided parents are resident) and provides for (d) declaration at majority (also on the basis of conditions of parental residence and the child's education in Greece) (Christopoulos 2010). Dual citizenship has been accepted in Greece since 2004.

Other extensions in the twenty year period included: In Ireland in 1998 pure ius soli (a) (formerly long-established in legislation) was made a constitutional right.³⁶ In 1998 France restored automatic ius soli at majority (d), and access by double ius soli (b) to children of those born in Algeria.³⁷ In 1999 Austria introduced a form of ius soli citizenship for the first time by offering facilitated naturalisation (e) at age eighteen to those with four minor years of

³⁵ This will also have clear immediate effects on numbers (Scuto 2010a: 15-17, 2010b)

³⁶ In Ireland ius soli extends beyond the territory of the state to include the whole island. Thus, unusually, unstable borders have gone along with an extension of ius soli rather than ius sanguinis (Weil 2001, Honohan 2010). This change was associated with the removal of the territorial claim to Northern Ireland undertaken as part of the Good Friday Agreement of 1998.

³⁷ This access had been removed when double ius soli for children born to those born in former colonies was removed; the right was reinstated only for children of those born in Algeria. (See restrictions below)

residence, and from 2006 this became a legal entitlement after six adult years (Çinar 2010: 15).³⁸ In 2002 Slovenia introduced facilitated naturalisation at age eighteen by form (e) for children resident since birth. In 2003 Finland introduced an option at majority (d). In all of these countries with the exception of Austria dual nationality was either already accepted or was introduced at the time.³⁹

Most recently, a series of bills in Italy culminated in the Sarubbi Granata bill, introduced in October 2009, which, among other reforms, proposed to strengthen the provisions for ius soli citizenship, but this was first superseded by a more restrictive amendment, proposed by a member of the government coalition, and subsequently debate was postponed until the spring of 2010 (Zincone & Basili 2010).

5.2 Changes in dual nationality for ius soli citizenship

Dual nationality, on which the inclusive effect of ius soli significantly depends, has shown a tendency to be more widely available. Dual nationality has been accepted as far as ius soli provision is concerned since the following dates: in France since the Second World War, the United Kingdom 1948, Ireland 1956, Portugal 1981, Belgium 1984, Hungary 1989, Slovenia (since the break up of Yugoslavia), Romania 1991, Italy 1992, Bulgaria 2001, Finland 2003, Greece 2004, Luxembourg 2009.

Table 6. Restrictions of ius soli

Date	Country	Previous ius soli	Change
1989	Malta	(a)	Removing (a)
1992	Italy	(d) and (e)	introducing legal continuous res req. for child (d) and (e)
1994	France	(b) and (d) automatic	changed (d) to option; (b) removed for those born in colonies; and res req of 5 yrs introduced for Algerian born parent
2003	Netherlands	(d)	introducing condition of public order for (d)
2004	Ireland	(a)	abolishing (a) introducing (b)
2005	Germany	(b)	restricting residence status for (b)
2006	Belgium	(b) and (d)	restricting residence status for (b)

Note: (a) automatic acquisition at birth, (b) parental residence condition, (c) parental birth condition, (d) automatic/declaration, (e) facilitated naturalisation

³⁸ This was in the context of more restrictive moves with respect to citizenship policy generally. The 2006 'reform' led, moreover, to a reduction in naturalisations on the basis of ius soli: 'In 2004, 12,278 out of the 41,645 foreign nationals granted Austrian citizenship were born in the country, while in 2008 fewer than 4,000 out of 10,258 persons granted citizenship were native-born. At first sight, this development appears paradoxical as the reform of 2005 introduced for the first time an individual legal entitlement to naturalisation after six years of residence for persons born in Austria. ... The reforms of 1998 and 2005 granted native-born persons a legal entitlement but did not amend the requirement that the long list of general conditions for discretionary naturalisation still needed to be fulfilled. In addition, the costs of naturalisation by legal entitlement amount to at least € 700 (Çinar 2010: 14-15).

³⁹ Many of the grants of ius soli forms A03 a and b were also introduced in this period.

Restrictions have been fewer, but not without significance. Malta abolished all *ius soli* citizenship in 1989. In Italy in 1992 a requirement of continuous legal residence to qualify for forms (d) and (e) was introduced. In France, in 1994 second generation *ius soli* at age eighteen or before became optional rather than automatic at majority (though this was reversed in 1998). At the same time, a child born in France to someone born in a former French colony was no longer awarded double *ius soli* (c) citizenship.

In Ireland in 2004 the constitutional entrenchment of pure *ius soli* introduced in 1998 was abolished for all those without a citizen parent. Subsequent legislation restricted *ius soli* citizenship to those with three of previous four years parental legal residence of unrestricted duration.

In Germany access to *ius soli* citizenship was restricted from 2005 by the change in the qualifying parental residence to the requirement that parents have a settlement permit, newly defined in the Immigration Act of 2004, and which requires reaching a certain linguistic standard (or holding EU right to free movement) (De Hart & Van Oers 2006, Hailbronner 2009). This has a significantly restrictive effect, as Hailbronner explains: ‘Since the settlement permit requires a higher level of knowledge of the German language than previously and the possession of an unlimited residence permit, which until 2004 had been sufficient for naturalisation, *ius soli* acquisition will only take place in the case of a high degree of integration of a foreign parent’ (Hailbronner 2009: 15). A similar change to require permanent residence status for form (b) was made in Belgium in 2006. Thus the majority of countries offering this form do not count all legal residence, but only unlimited residence status, as qualifying for the citizenship of children under *ius soli* (b). Portugal is currently the only country that counts all legal parental residence for this purpose.⁴⁰

Netherlands made the option of *ius soli* citizenship at majority dependent on the absence of a criminal record in 2003. Most recently a proposal was introduced in 2010 by the out-going government in Belgium which would restrict *ius soli* by providing that children born in Belgium to foreign parents are entitled to Belgian citizenship at eighteen only if they can prove three years of residence, instead of one year at present.⁴¹

From looking at these changes alone we do not arrive at a definitive judgement as to whether the trend is more expansionary or restrictive, or reflects a convergence to a liberal European norm. Although there has been a significant number of extensions, these by no means represent a universal triumph with respect to this mode. These were often quite strictly conditional, were more restricted than originally envisaged, were not always accompanied by a recognition of dual citizenship for this mode, or were accompanied by other changes of a restrictive nature with respect, for example, to naturalisation.⁴² Finally not all survived without subsequent restriction. While restrictions were fewer in number than extensions, in conjunction with other changes these suggest that there are also significant tendencies towards limiting the impact of *ius soli* provision. By examining the political processes through which these changes came about, we will be in a position to offer a more rounded judgement on the nature of trends in this area.

⁴⁰ Portugal includes even documented periods of irregular residence for this purpose.

⁴¹ In the Netherlands in 2008, a proposal was introduced to require renunciation of previous citizenship for facilitated naturalisation for those who arrived up to the age of four, but not for those born in the Netherlands. This proposal has not yet been passed, but could well in time be extended to *ius soli* facilitated naturalisation.

⁴² For full details of changes in naturalisation conditions, see Goodman (2010a).

6 Explaining these changes

Citizenship attribution is an area of policy in which it is still generally agreed that state governments are sovereign, so that in principle individual states can develop their citizenship policy independently of others. But a wide variety of forces favouring more liberal or more restrictive policies have been identified in other areas of citizenship law; here we identify the forces that may appear to favour extensions or restrictions of *ius soli* citizenship.

We do not have to see these policy changes as inherently linked to particular conceptions of citizenship or national identity.⁴³ There are many possible forces underlying changes in *ius soli* citizenship. These include: declining populations, large numbers of immigrants (for reasons of justice, social cohesion and/or security); international conventions and norms of anti-discrimination, and states learning from, or competing with one another. Thus Weil identifies the forces for convergent liberalisation as significant immigration, consolidated borders and completed nation-building, and the consolidation of democratic values (Weil 2001). These forces are sometimes distinguished into two kinds: the functional – seen in terms of the logical or practical rationale for the policy, and the political – seen in terms of domestic political dynamics (e.g. Joppke 2008, Vink 2001). Here I consider some of these briefly in order to identify patterns that emerge.

6.1 Functional reasons for changes to *ius soli* citizenship

There are several international conventions that bear on *ius soli* citizenship – for example the European Convention on Nationality (1997), which accepts multiple nationality, and holds that the state should facilitate naturalisation of children born in the state, and/or who have been brought up there (Art 6). This would go some way towards explaining the significant number of countries seen here allowing dual citizenship and as offering facilitated naturalisation (e) (often as the only form of *ius soli* citizenship). Other treaties also have led to most countries' regimes operating to avoid statelessness, so provide *ius soli* citizenship to foundlings (modes A 03(a) and (b) in the classification). Furthermore norms of non-discrimination have been diffused that militate against discrimination among persons on grounds of race and religion, and so forth. But not all European countries have ratified these conventions, and others have entered reservations, or do not always adhere systematically to convention articles or wider norms.

Even among EU Member States there are wide divergences, suggesting that EU membership has had quite a limited effect on *ius soli* policies. There does appear, however, to be some degree of policy diffusion through imitating or following the current practice in other states (e.g. the increasing popularity of (c) double *ius soli*, adopted by Portugal, Luxembourg and Greece in the last five years) and (b) parental residence with an increasing focus on a requirement of unlimited residence status.

More concrete forces, such as increasing immigration flows and the presence of large immigrant populations in a state provide clear reasons for extending some kind of *ius soli* citizenship. The introduction and extensions of *ius soli* are fairly explicitly based on recognition of the need to incorporate significant immigrant populations, whether on the

⁴³ Thus, 'political exigency, partisan ideology as well as perceived "best practice" in the club of western states are a better guide to the evolution of citizenship than static "national identities"' (Joppke 2008: 6).

grounds of equity or prudential concerns about the alienation of generations of non-citizens in the current international political climate.

It should be noted that some of these forces can work both ways, and can be used as grounds to justify restrictions as well as extensions. For example, Joppke sees the removal of unconditional *ius soli* citizenship as one of four patterns at work in citizenship policy which involve ‘adjusting old legacies to a new world of massively increased cross border movement’ (Joppke 2008: 6).⁴⁴ Indeed many of the more restrictive measures with respect to *ius soli* (as well as of naturalisation) reflect concerns about the failure of integration, and aim to avoid granting citizenship to those who it is thought may not be fully integrated, for example, by requiring explicit application, or introducing conditions of the absence of criminal behaviour or the completion of schooling.

Many of these are congruent with the kinds of restrictions on adult naturalisation that have been introduced in recent years, including as they do elements from behaviour to length and kind of residence status, and in some cases language and other tests. Some of these changes are relatively minor and have not always been highly politicised, but they are nonetheless significant.

However, the most significant categorical change in a restrictive direction, that made in Ireland in 2004, which removed pure *ius soli*, was not driven principally by the need to integrate immigrants.⁴⁵ It was rather a move to limit the strand of immigration that was primarily motivated in search of Irish and EU citizenship – in the government’s terms, to maintain the integrity of citizenship. This highlights the fact that, specifically within the EU, there is at least latent pressure from other Member States on any state that is perceived as offering national, hence EU citizenship, and allowing freedom of movement throughout Europe too generously. A similar concern may be seen as in part underlying current restrictive proposals, for example in Belgium (Foblets & Yanasmayan 2010).

6.2 Political reasons for changes to *ius soli* citizenship

An alternative explanation for changes in citizenship law may be found in national political dynamics, and the actions of political parties, interest groups and judicial actors.

Given what is at stake, citizenship law has remarkably often not been a highly politicised area. In that context citizenship policies are often seen as more likely to be steered by elites (who are seen as more favourable to immigrants than popular opinion) rather than to be politically driven. But it has tended to become more politicised in Europe in recent years.

Some political scientists have identified the processes of change in citizenship policy as being significantly driven by the ideological position of governments. In particular it has been argued that the introduction of more restrictive policies with respect to naturalisation depends on there being a right of centre party in government (Joppke 2003), or, more specifically, on the public mobilisation of immigration as an issue by a far right party, even if

⁴⁴ The other three patterns Joppke identifies are changes to the conditions connected with a) acquiring citizenship through marriage; b) shared competences and cohesion, and c) links with expatriates (Joppke 2008: 6-7).

⁴⁵ The constitutionalisation of 1998 had not been motivated by immigration factors either, being part of the rapprochement with Northern Ireland in the Good Friday agreement.

this is not in government, as mainstream parties seek to capture the votes at stake (Howard 2006, 2009).⁴⁶

To what extent are there similarly clear patterns in extensions or restrictions of ius soli? Thus we may ask whether liberalisations in ius soli citizenship have come from left of centre governments or elites, and restrictions from right of centre governments, or those seeking to prevent a drift towards or to regain votes from right wing parties who have mobilised immigration as an issue. While it is not possible to provide a complete and systematic analysis here, some initial comparative analysis allows us to identify certain trends. As in the case of changes in the conditions for naturalisation, there are some strong indications that domestic political dynamics underlie changes in ius soli policies.

6.3 Extensions

In general extensions of ius soli have happened in countries with long-established migration, where the exclusion of many residents from citizenship has come to be seen as a problematic anomaly. This was the case in Germany, Portugal and Luxembourg, all of which have large numbers of migrants. Equally there seems to be a strong correlation between the extension of ius soli and the return to power of a left-wing government, and/or elite driven policy formation. For example, the reinstatement of automatic ius soli (d) in France in 1998 followed the election of a socialist government; in Germany the extension of ius soli in 2000 was introduced by the Red-Green coalition that came to power in 1998. The reintroduction of ius soli in Portugal in 2006 was proposed by the Socialist party government elected in 2005. Likewise in Greece, the reform of 2010 followed the election of a socialist government in 2009. The recent proposals to extend ius soli in Italy reflect changes spearheaded by socialists, though now advanced by a cross-party alliance.

In Luxembourg, however, the introduction of double ius soli fits better with a theory that liberalising changes are more likely to be elite- than politically-driven. The measure was formulated not by the government party but by the Council of State, reflecting an elite-led belief in the importance of the integration of the roughly 40 per cent of the population who were not citizens of Luxembourg and thus not eligible to vote (Scuto 2010: 17).

Other extensions do not fit the right-left division so well. In Belgium (1992), consistent with the character of Belgian politics, where regional and linguistic issues are more central, the extensions were passed without significant political left-right colouring. In Ireland (1998) the rationale for extension was not connected with immigration, but with the relationship with Northern Ireland, and the measure was passed without political contestation. In Finland (2003), while a left-wing government led the reforms, this was part of a wider reform supported broadly across society (Howard 2009: 77-80).

Even in the case of extensions, and left wing governments, change was not always a unidirectional process.

An examination of many of these cases shows that liberalising ius soli changes have been the subject of considerable debate. They have met opposition from conservative parties

⁴⁶ It is not clear that this is always required, since in the UK, for example, the introduction of more restrictive citizenship and immigration legislation is not correlated with the rise of a far right party. See Howard (2009: 160-161).

proposing restrictions on the initial proposal on *ius soli*, while further left parties have argued for more inclusive forms of *ius soli*.⁴⁷

In some of these cases the *ius soli* proposal itself was successful but at the cost of being accompanied by more restrictive provisions in other areas of citizenship law. Such cases, where *ius soli* reforms were accompanied by restrictions in other areas may be termed '*mixed outcomes*' with respect to citizenship reform. In Austria (1999) the extension granting *ius soli* by facilitated naturalisation (e) was part of a measure that was restrictive in most other respects, adding, for example, a number of conditions for other naturalisations; this resulted from a compromise between the left wing SPÖ and its coalition partner, the ÖVP, which was in competition with the rising far right Freedom Party. In Germany (2000) the package enacted after much debate included *ius soli*, but not dual citizenship; in Finland (2003) the extension was accompanied by a number of additional conditions for naturalisation; in Luxembourg (2009) double *ius soli* was passed only when accompanied by a more restrictive requirement of knowledge of the Luxemburgish language, increased residence requirements for naturalisation, and in view of a reduced liability of loss of citizenship by emigrants through the acceptance of dual citizenship for emigrants (Scuto 2010: 12).⁴⁸

In other cases conservative opposition was strong enough to prevent reform; thus we can see a number cases of countries of '*failed extensions*'.⁴⁹ Thus a series of proposals have not succeeded in bringing about any extension in Spain (even with a left wing government in power, the absence of a far right party, and the presence of a number of other conditions that have elsewhere favoured reform). Likewise in Italy, left wing governments have not succeeded in passing extensions, and consideration of the latest Italian proposal has been postponed by the dominant right wing *Popolo della Liberta* party. In both cases this has been explained by a continuing emphasis on facilitating expatriates, by specific provisions for a number of other countries, and by an anachronistic self-image as an emigrant rather than immigrant country (Zincone 2010: 14; Rubio Marin & Sobrino 2010: 25)⁵⁰ Attempts to introduce some forms ((c) and (e)) in Switzerland, where popular endorsement by referendum is necessary to change citizenship law, have failed.⁵¹

Thus we may see some relationship between left wing governments and the introduction or extension of *ius soli*, weaker forms of which may be accepted by centre right or right wing parties, especially in conjunction with measures that benefit emigrants and their descendants, moves towards more restrictive or conditional naturalisation policies, and, sometimes, a prohibition on dual citizenship for immigrants.

⁴⁷ For example, in Portugal 2006, the proposals were supported by all parties except the conservative CDS-PP and the Left Block (BE) who had alternative contrasting proposals (the latter supporting the return of unconditional *ius soli*); in Austria (1999) the left proposed the introduction of double *ius soli* (Howard 2009: 97).

⁴⁸ See also Joppke 2008: 36.

⁴⁹ To have a still clearer idea of the role of parties and domestic political forces in the extension or restriction of *ius soli* legislation, we would also need to consider and understand cases where changes were not made because citizenship reform has not really been on the agenda. These 'absences of extension' in the thirteen countries with no *ius soli* do seem to bear out the political importance of expatriate issues, unstable borders and kin populations. In particular, we might also ask why no *ius soli* provisions (or extensions where these are limited) have been introduced in countries, especially EU Member States, where there might seem to be normative pressures towards convergence.

⁵⁰ '[T]he various bills submitted over the last decade before the 2002 reform and again in 2003 by the socialist party include the recognition of Spanish nationality for those born in Spain from foreign parents if at least one of them is a legal permanent resident at the time of birth' (Rubio Marin & Sobrino 2010: 12)

⁵¹ 'The second reform bill, which failed in 2004, reached further: The bill... envisaged that second-generation immigrants could gain facilitated access to citizenship, and it envisaged automatic naturalisation on a *ius soli* principle for third-generation immigrants. This important and ambitious reform bill failed to gain a majority in the population' (Achermann et al. 2010: 8).

This would seem to provide some support for extending – with exceptions – the application to *ius soli* reform of the view expressed with respect to citizenship policy more widely that ‘while citizenship liberalisation is more likely to occur when the left is in power, the most important factor is the relative strength of far right parties, which can serve to mobilise latent anti-immigrant public opinion and thereby ‘trump’ the pressures for liberalisation’ (Howard 2010 :736).

6.4 Restrictions

The politics of restrictions of *ius soli* may be more complex. While the more restrictive policies with respect to naturalisation that have been introduced in recent years may be correlated with right-wing governments or the mobilisation of immigration as a political issue by a far right party, in the case of *ius soli* the factors at play seem more various.

In general restrictions of pure *ius soli*, as in the UK in 1983, in Malta in 1989, France in 1994, and to a lesser extent in Ireland in 2004 can be seen as correlated with centre-right or right of centre governments. In Italy (1992) a coalition of right and left passed the restrictive act, notably at the time of the rise of the Lega Nord. There is not such a strong correlation in Germany in 2004, where the immigration act that affected *ius soli* citizenship was introduced by a red-green coalition; but it should be noted that a more restrictive change advanced by the opposition was on the cards, proposing that *ius soli* based on parental residence (b) should be replaced by double *ius soli* (c) was defeated (Hailbronner 2010: 9). Thus this restriction was itself limited.

It is not always the case that restrictions can be distinguished from liberalisations on this basis. In Ireland, for example, the 2004 restriction was introduced by a centre-right government very little different from that of 1998 which had constitutionalised it. It was opposed by parties of the left and by civil society groups. This restriction did not depend on the strength of a right wing anti-immigrant party, or independent mobilisation of anti-immigrant sentiment. Arguably the referendum required to make this change can be construed as a mobilisation process itself, but this claim dilutes the argument considerably (Howard 2006, 2009: 67-68).⁵²

Furthermore, this change is not best classified, as Joppke does, as a matter simply of ‘adjusting old legacies’ of pure *ius soli* to a world characterised by large-scale crossing of borders. In this new world, *ius soli* has been maintained in countries that see themselves as immigrant countries (USA and Canada), and simultaneously limited in other countries that receive large numbers of immigrants (Australia, New Zealand).

This Irish change was not exactly the removal of an old legacy, or ‘an anachronistic anomaly within the European context’ as Joppke claims (Joppke 2008: 8). It involved the reversal of a constitutional principle introduced only five years earlier in the context of rapprochement with Northern Ireland. Both of these changes required a referendum; only the

⁵² Howard argues that the process itself mobilised latent anti-immigrant sentiment: ‘Although Ireland does not have an organized far right movement, proponents of restrictions on citizenship acquisition succeeded in implementing a controversial referendum, which passed overwhelmingly (with 80 % support) in June 2004, to limit the *jus soli* rights of the children of non-citizens... This remarkable development shows the tremendous salience of this issue when it becomes publicly mobilized—and the result is almost always change in the direction of restrictiveness’ (Howard 2009: 67-68). He argues that ‘public referenda and other forms of social mobilisation, which are not captured by the far right measure, can in some ways result in more rapid and decisive restrictions than the standard process of elite and party politics’ (Howard 2010: 748).

second and not the first may be thought of as mobilising anti-immigrant opinion. But, even if we were to accept that the Irish case might be considered as the correction of an anomaly, the changes that came into force in Germany in 2005 and Belgium in 2006 (and other changes proposed in a number of countries) constitute restrictions on policies adopted only in the last twenty years. Thus they represent stronger evidence against a hypothesis of a liberalising, if uneven, convergence than does the mere absence of reform in other European countries.

Even if we can see the rationale for limiting pure *ius soli*, we should not conclude simply that the change in Ireland ‘folded Ireland back into the liberal European mainstream that other countries – such as Germany – moved up to from illiberal exit positions’ (Joppke 2008: 8-9). This highlights another point. It is reasonable to consider these policy changes in the light of the country’s history and current trajectory rather than just comparing policies *tout court*. The significance of any changes depends not only on the similarity of the legislation and policy to those of other countries, or whether it approaches an EU average, but also the direction and extent of change in the country itself. As Kymlicka has noted in the context of debates about stricter naturalisation conditions in the UK, what matters is not just the outcome arrived at, but also the trajectory it represents for that country (Kymlicka 2003: 200-202). If a policy appears to be part of a new turn towards greater restrictiveness in immigration, its significance is different from that of legislation longer established in another country, however similar that may be. Thus to propose the introduction of double *ius soli* may be a liberalisation in one context (Luxembourg 2008) but a restriction in another (the German opposition proposal of 2004). This applies also to the direction in which we should think of the ensemble of laws beyond *ius soli* as moving.⁵³

In cases of restriction, there can also be a degree of imitation and of aiming to meet the expectations of other EU Member States to which citizens gain mobility when they gain the citizenship of any Member State. As noted earlier, such forces can be identified in the Irish change of 2004 and in current Belgian proposals to restrict *ius soli* and other naturalisation provisions seen as some of the most liberal in Europe (Foblets & Yanasmayan 2010: 24).

6.5 *Ius soli* as an indicator of a liberal citizenship regime?

To what extent then can we see the current state of *ius soli* in citizenship regimes in Europe as indicating an inclusive citizenship policy, and observe an overall trend towards liberalisation in this area?

Classifying states as liberal or liberalising on the basis simply of whether some form *ius soli* is present as an element of citizenship law would be to adopt too broad-brush a criterion with respect to *ius soli*. In Howard’s comparative analysis of citizenship regimes in the EU, he creates a Citizenship Policy Index based on three elements: the presence of *ius soli*, the conditions for naturalisation, and the admission of dual nationality as indicators of a liberal citizenship regime. Comparing the countries in question between the 1980s and 2008,

⁵³ Thus in the EUDO Citizenship country reports, written by experts who are for the most part also citizens of the countries on which they report, the limits of such extensions, the significance of restrictions on *ius soli*, and the opportunities forgone for more liberal policies are regularly noted.

this leads him to allocate them to categories of ‘historically liberal’, ‘liberalising change’ and ‘restrictive continuity’ (Howard 2006, 2010).⁵⁴

While Howard differentiates to an increasing extent among forms of ius soli citizenship, I suggest, on the basis of the analysis in this paper, that ius soli provisions and changes needs to be analysed in more detail in each case in assessing whether we can see a trend towards liberalisation.⁵⁵ We should be wary of identifying the presence of weaker forms of ius soli as a sign of liberal citizenship laws. We need a more nuanced measure of forms of ius soli even than that of Howard’s progressively more sophisticated scales. On his classification Ireland, for example, remains as liberal as before despite its move from pure ius soli to ius soli based on prior parental residence of unlimited duration in 2004 (Howard 2009: 26-28, 164). Even if some restriction was reasonable, this constituted a significant limitation, which should lead to the registration of some difference.

An index weighting the forms of ius soli differently could produce different results with respect to liberal continuity, liberalising change and restrictive continuity, and might also be better placed to identify restrictive change, a category Howard recognizes only as a possibility.⁵⁶

7 Conclusion

Ius soli may be seen as a liberal or inclusive element of citizenship –but this depends on the forms in which it is made available, and the corresponding extent to which it is delayed, discretionary or dependent on retrospective conditions, as well as the range of additional conditions that must be fulfilled, and the wider context of citizenship laws in which it features, in particular the acceptance of dual citizenship.

Ius soli citizenship is by no means as firmly established in European citizenship regimes as is often assumed. Of those twenty countries in which it is available, the nearest to common norms towards which there may appear to be some convergence are ius soli at birth, based on specifically legal permanent parental residence (b) or after birth, as an option at majority (d), with some notable recent moves towards double ius soli (c) – in particular in the recent cases of Luxembourg and Greece. Thus the propensity for countries to cluster on the minimal form of facilitated naturalisation (e) may be diminishing.

Yet while changes with respect to ius soli citizenship have been predominantly in a positive, liberal direction, in many of these manifestations it exists in considerably restricted forms, and not all countries with any form of ius soli citizenship accept dual citizenship. Thus we have seen that only ten or eleven countries can be judged to have even a moderately liberal ius soli citizenship policy overall, and that ius soli provision is still entirely absent in thirteen countries, a significant number.

⁵⁴ These are: (1) Belgium, France, Ireland and UK (2) Finland, Germany, Luxembourg, Netherlands, Portugal, Sweden (3) Austria, Denmark, (pre 2010) Greece, Italy, and Spain. Germany is classified separately as ‘partial liberalisation with a restrictive backlash’ (Howard 2009: 119-47).

⁵⁵ In the latest version of his index, Howard does not take the mere presence of ius soli as definitive, but rightly gives different scores to different forms: 1 for double ius soli; 1.5 – or 2 for less restrictive residence requirements – for parental residence; and 2 for automatic or option entitlement after birth, without distinguishing (d) and (e). This is roughly in line with some of the evaluation above. But he does not factor in degrees of conditionality more systematically than by awarding a score of zero for forms with too great perceived conditionality to specific countries (Howard 2009: 20-22). This is not entirely surprising as, unlike this paper, he has a number of dimensions of citizenship policy to deal with at once.

⁵⁶ Howard does identify one country (Denmark) as having moved in a restrictive direction (Howard 2010: 739).

There is no guarantee that there will be a convergence towards more liberal policies, especially in view of doubts about the limits of commitment derived simply from birth and residence. Trends in *ius soli* policies are not all in the direction of liberalisation, and in many cases the conditions attached have the effect of making *ius soli* citizenship depend increasingly on immigration law. It is true that *ius soli* has not been subject to the same focus of attention or range of restrictions as naturalisation, but there is a tendency for conditions with respect to *ius soli* to parallel or follow those of naturalisation, including longer residence for parents, or of children, and tests of language and civic knowledge. In addition, as studies of naturalisation policies have shown, the total packages of citizenship laws in which *ius soli* features have shown some tendency to become more restrictive.

Furthermore, if further extensions of *ius soli* depend on the coming to power of left of centre governments, or the absence of right wing anti-immigration parties, it would be difficult to predict a continuous period of extensions in the near or medium-term future. If there is increasing conditionality about *ius soli* citizenship (as has happened with naturalisation), and if these changes take place in the context of more stringent immigration and naturalisation conditions, the power of *ius soli* to shape an inclusive citizenship regime will be diminished.

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