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Ten Observations on Dual Citizenship

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(1) Dual citizenship is always the outcome of an interaction between national legal rules for the attribution of citizenship. Each of the states concerned awards its citizenship to the same person but they do so independently of each other, generally at different points in time and according to their own national laws. Only few states have concluded bilateral treaties regulating dual citizenship, and most of these agreements aim to constrain it. In this sense, no state can grant dual citizenship, but states can adopt rules that facilitate or constrain the emergence of dual citizenship. In order to understand how dual citizenship comes about and what its effects are, we need to study binary constellations of states and find out to which degree they facilitate or inhibit the emergence of dual citizenship

(2) Dual citizenship can emerge at birth in two constellations: First, if the two states involved provide for gender neutral citizenship transmission by descent (*ius sanguinis*). In this case, the child of parents with different nationalities will be born as a dual citizen. Second, if state A provides for extraterritorial *ius sanguinis*, i.e. the transmission of citizenship by descent to children born abroad, and state B awards citizenship to children born in its territory (*ius soli*). In this case, the child of two emigrant parents will acquire both their citizenship(s) and that of her country of birth. These two possibilities for dual citizenship by birth can be constrained in various ways, e.g. by phasing out extraterritorial *ius sanguinis* after the first generation born abroad, by making *ius soli* conditional on the parents' prior legal residence, or by requiring the child to choose one of the two citizenships at the age of majority.

(3) Dual citizenship can also be the outcome of naturalisation, i.e. of acquiring a new citizenship after birth through a process of application. This will be the case only if the country of previous citizenship does not withdraw its citizenship upon voluntary acquisition of a foreign one (i.e. in outgoing naturalisations) and if the country of new citizenship does not require renunciation of a previous citizenship as a condition for naturalisation or until a certain time after acquiring the new citizenship (i.e. in incoming naturalisations).

(4) There is a strong global trend towards toleration of dual citizenship. With regard to dual citizenship by birth, toleration is most widespread and now also recognized as a norm in international law (e.g. by the 1998 European Convention on Nationality). Non-Toleration is less frequent in case of naturalisation, but the number of states accepting it also in this context has been growing rapidly since the 1960s. In 2016, 66% out of 175 states whose

citizenship laws were examined tolerated dual citizenship in outgoing naturalisations and 63% in incoming ones. 48% were symmetrically tolerant in both cases and merely 18% rejected dual citizenship both for immigrants and emigrants (IOM/GLOBALCIT 2018). Among this small and shrinking group, there are still many exceptions where dual citizenship is tolerated. For example, in the Netherlands and Germany, this is the case in more than 60% of all naturalisations – in Germany, EU citizens can retain their previous citizenship, in the Netherlands, partners of a Dutch citizen can. In Spain a large majority of immigrants comes from Latin American countries, with which Spain has concluded bilateral agreements on the toleration of dual citizenship.

(5) Although the vast majority of states tolerate dual citizenship today, the two largest states in terms of population don't. China and India retain strict regimes of non-toleration. Both countries adhere to strong notions of national sovereignty and are concerned that overlapping memberships involving other states might infringe on their claims to exclusive loyalty. In the case of India, the history of acrimonious partition provides a major reason why dual citizenship is regarded as unacceptable, as it might partly undo the violent separation of populations in 1948. In order to placate its large and often economically successful diaspora, India has created a substitute for dual citizenship that is called Overseas Citizenship of India and that amounts to immigration privileges for nationals of other countries with Indian origins. A similar status of "external quasi-citizenship" has been created by Turkey in the early 1990s in response to Germany's refusal to permit dual citizenship for its largest immigrant community.

(6) Another reason why some states are wary about toleration of dual citizenship emerges in Central and Eastern Europe where Russia has pursued aggressive policies of "passportization" of regional conflicts. Prior to the 2008 invasion in Georgia, Russia handed out passports to Abkhazians and South Ossetians, which then provided a pretext for protecting its citizens through military interventions. With some variations, Russia has pursued similar policies of destabilizing former Soviet countries in Moldova and Ukraine. This helps to explain why some of these countries, and especially Baltic states that host large Russian-speaking minorities, are hostile towards dual citizenship.

(7) In Western democracies, the “war on terror” has led to a new securitization of dual citizenship. From the mid-19th to the mid-20th century, states were mainly concerned that dual citizens could pose a security risk because of split loyalties or because male citizenship could be conscripted by two states that might be potentially at war with each other. Today, paradoxically, security concerns seem to have accelerated some moves towards toleration of dual citizenship. The reason is that more and more states want to be able to strip terrorist suspects and those engaging in terrorist militias on foreign soil of their citizenship in order to export these risks to other countries. If such a person possesses only one citizenship, then depriving them of their nationality would turn them stateless, which is contrary to international law and may impede the deportation of such persons. By contrast, dual citizens can be deprived of one of their citizenships without infringing international law and responsibility for them can thus be shifted to another state.

(8) The main benefit of dual citizenship for individuals lies in freedom of movement between the two states involved, since each of these states is obliged to unconditionally admit its citizens to its territory. Dual citizenship provides therefore a functional substitute for regional free movement enjoyed by EU citizens, and the nationals of MERCOSUR and ECOWAS states. Dual citizenship allows migrants to maintain transnational ties to their country of origin while being fully integrated and enjoying political participation rights in their country of settlement. Tolerating dual citizenship for international migrants is thus supported by a norm in international law that nationality ought to be based on “genuine links” between individuals and states. As I have argued elsewhere, this norm can be defended also from a perspective of democratic inclusion of all citizenship stakeholders (Bauböck 2018).

(9) Access to additional passports is, however, also very attractive for global elites of “high net worth individuals”, such as global investors, top athletes or globally renowned artists. There are emerging markets for investor citizenship and “Olympic citizenship”(Shachar 2011). As argued in a recent book (Dzankic 2019), in the global market for investors, additional passports take on the characteristics of a luxury good more than of a necessity. Another new book shows that opportunities to acquire a foreign citizenship based on distant ancestry offered by several European states has met increasing demand among upper middle classes in countries with “second tier citizenship” where such passports are used

more as a symbol for social status and an insurance policy than as an pathway for international migration (Harpaz 2019).

(10) The future of dual citizenship remains somewhat open. On the one hand, the rapid-onset crisis of the Covid-19 pandemic and the slow-onset global climate crisis will have dampening effects on the demand and supply for global mobility, which has been strongly enabled through toleration of multiple citizenship. On the other hand, migrants are hit harder than other population groups by the pandemic and climate change is creating new sources for international migration through massive population displacements. For people who have to move across borders for the sake of maintaining their livelihoods, dual citizenship will continue to be the most attractive and secure status they can strive for, and states that depend either on immigrant labour or on emigrant remittances are likely to endorse the toleration of dual citizenship.

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DUAL CITIZENSHIP AND NATURALISATION

Global, Comparative
and Austrian Perspectives

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