

The Theory and Politics of *Ius Soli*

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The theory and politics of *ius soli* - outline

Introduction

The theory of *ius soli*

Forms of *ius soli*

The current position of *ius soli* and its prevailing forms in Europe

Changes and trends in the last twenty years

Explaining change

Conclusion: towards a liberal convergence?

Note: This paper was prepared with research assistance from Mary Shayne. The data used is based on provisional data collated by Maarten Vink from material provided by country experts. All errors and omissions are my responsibility. Please send corrections and comments to lseult.Honohan@ucd.ie.

The meaning of *ius soli*

Ius soli/ius sanguinis = civic/ethnic conceptions of citizenship?

Countered by

- a) their origins
- b) the fact that both are found in most regimes
- c) the modern convergence of regimes
- d) the moral arbitrariness of all birthright citizenship – whether descent *or* territory

But if citizens are those who are interdependent in their subjection to a common state authority and thus share a common future, and birth in the state is a reasonable predictor of a shared future, it provides a *prima facie* claim to citizenship, stronger than any antecedent facts about parents; birth in the state – but not infallible, so confirmation at later date justifiable

Ius soli can thus be understood as an important element of a liberal citizenship regime – as part of a constellation of citizenship laws

Its liberal impact depends especially on the admission of dual nationality

Principal modes of *ius soli* acquisition dealt with here:

A02 – at birth; A 05 – after birth

But there are different forms that these modes take which affect the degree to which *ius soli* in itself can be regarded as a liberal element of citizenship.

These are not new sub-modes, but differences of material condition and procedure

Principal forms of *ius soli* citizenship other than pure *ius soli**

At birth (A02)

After birth (A05)

(b) **Parental Residence**
(retrospective from birth)

(c) **Parental Birth**
(Double *ius Soli*)

(d) **Option/Declaration**
(prospective conditions
from birth)

(e) **Facilitated
Naturalisation**

* Note: Forms A 03 a nd b, for foundlings and stateless persons born in the state are not discussed in this presentation.

Principal forms of *ius soli* citizenship other than pure *ius soli*

At birth (A02)			After birth (A05)			
(b) Parental Residence (retrospective at birth)		(c) Parental Birth (Double <i>Ius Soli</i>)	(d) Option/Declaration (prospective conditions from birth)		(e) Facilitated Naturalisation	
<i>Years</i>	<i>Conditions</i>		Age	Residence conditions	Age	Residence, etc conditions
between 0 (= Pure <i>ius soli</i>) to 10 years	including Any form of residence Legal residence Unrestricted or permanent residence	Child becomes citizen at birth if one parent was born in the state (may include some condition re parental residence)	Any time after birth to majority or beyond May cease at some point	Varies from 5 years up to continuous since birth (may include some conditions re parent also)	Any time after birth to 18 years	1-5 years can include schooling, permanent residence as factors reducing period (may be <i>entitlement or discretionary</i>)

Characteristics of *ius soli* citizenship distinguishing different forms:

1. *Immediacy/delay*

Is citizenship acquired immediately someone is 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 or not?

3. *Unconditionality/conditionality*

To what extent is acquisition dependent on meeting conditions other than the defining one?

4. *Prospectivity/retrospectivity*

Is citizenship granted *prospectively* – conditions apply *from* birth of the person - or *retrospectively* – conditions apply *before* birth of person acquiring citizenship (normally means depending on facts re parent)?

Characteristics of *ius soli* citizenship

Form of <i>ius soli</i>	Immediate/ Delayed	Entitlement/ discretionary	Unconditional/ conditional	Prospective/ Restrospective
(a) Pure	√	√	√	√
(b) Parental residence	√	√	√/-	-
(c) Parental birth/double <i>ius soli</i>	-	√	√	-
(d) Option up to/at majority	-	√	√/-	√
(e) Facilitated naturalisation	-	√/-	-	√

A liberal scale of forms of *ius soli*?

- (a) Pure *ius soli*
- (d) Child up to/at majority
- (b) Parental residence
- (c) Parental birth (double *ius soli*)
- (e) Facilitated naturalisation

Ius soli in Europe

Examining 33 countries in the study to mid-2009

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Moldova, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom

19 with some element of ius soli

14 without any element of ius soli

**Countries with no *ius soli*
provision 2009**

Cyprus
Denmark
Estonia
Hungary
Iceland
Latvia
Lithuania
Moldova
Malta
Norway
Poland
Slovakia
Switzerland
Turkey

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**Countries with some *ius soli*
provision 2009**

Austria
Belgium
Bulgaria
Croatia
Czech Republic
Finland
France
Germany
Greece
Ireland
Italy
Luxembourg
Netherlands
Portugal
Romania
Slovenia
Spain
Sweden
United Kingdom

Forms of *ius soli* citizenship by country (excluding pure *ius soli*)

At Birth (A02)			After Birth (A05)						
(b) Parental Residence		Other conditions	(c) Par ^t Birth	(d) Automatic/Option			(e) Facilitated Naturalisation		
Country	Yrs		Country	Country	Age	Residence conditions	Country	Age	Residence conditions
Belgium	10	'Settled' status	Belgium – if parent resident 5 of 10 yrs before birth	Belgium	18	If since birth (less if older)	Austria		4 minor or 6 adult years*
Germany	8		France	Finland	18-23	6 years	Bulgaria	18	3 years
Ireland	3 of 4	Legal residence (no time restrict ⁿ)	Lu√embourg	France	18	5 yrs since 11	Croatia		5 years
			Netherlands	Italy	13	5 yrs since 8	Czech R		n/a
Portugal	5	Married parent or mother w/ perm residence	Portugal	Neth.	18-19	If since birth	Greece	18	**
			Spain	Spain	18-20	if since birth	Hungary		5 yrs instead of 8
United Kingdom				Sweden	to 5	Child with perm. res. and domiciled	Italy	18	3 years
					to 18	If parent becomes citizen or resident	Portugal		if one parent res 5 yrs; or after 4 yrs school
				United Kingdom	from 10	If res 10 yrs from birth.	Romania	18	8 year req. can be waived
							Slovenia	18	If since birth
							Spain		If resident 1 year.

Notes: * entitlement after 6 yrs; ** if permanent, 10 yr requirement can be waived

Facilitated naturalisation

Entitlement

Austria

Croatia

Portugal (some)

Spain

Hungary

Discretionary

Czech Republic

Greece

Italy

Portugal (some)

Slovenia

Romania

Bulgaria

Changes in ius soli ascription 1989-2009

Extensions and restrictions

Extensions of *ius soli*

Date	Country	Previous <i>ius soli</i>	Change
1992	Belgium	(d)	Extending upper age limit for (d)
1991998	France	(d) option	Reinstating automatic (d)
1998	Ireland	(a)	Constitutionalising (a)
1998	Austria	None	Introducing (e)
2000	Germany	None	Introducing (b)
2001	Belgium	(d)	Extending (d)
2002	Sweden	None	Introducing (d)
2003	Slovenia	None	Introducing (e)
2005	Finland	None	Introducing (d)
2006	Austria	None	Introducing (e) w/entitlement
2009	Portugal	(b) with 10 year residence req.	Introducing (c) and (e); reducing residence req, for (b)
	Luxembourg	None	Introducing (c)

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1998	Ireland	(a)	Constitutionalising (a)
1998	Austria	None	Introducing (e)
1998	Germany	None	Introducing (b)
2000	Belgium	(d)	Extending (d)
2001	Sweden	None	Introducing (d)
2002	Slovenia	None	Introducing (e)
2003	Finland	None	Introducing (d)
2005	Austria	None	Introducing (e) w/entitlement
2006	Portugal	(b) with 10 year residence req.	Introducing (c) and (e); reducing residence req, for (b)
2009	Luxembourg	None	Introducing (c)

Restrictions of *ius soli*

Date	Country	Previous <i>ius soli</i>	Change
1989	Malta	(a)	(a) removed
1994	France	(d) automatic	(d) option
1998	France	(b) with respect to those born in colonies	(b) removed
2000	Denmark	(d)	condition of public order for (d)
2003	Denmark	(d)	abolished (d) for non-Nordic
2003	Netherlands	(d)	Condition of public order for (d)
2004	Ireland	(a)	Parental residence requirement for (b)
2004	Germany	(b)	residence status restricted (b)

Explaining the changes

Functional or political explanations for changes in *ius soli* policies?

Functional explanations

- Declining populations

- International laws and norms

- Immigrant population

 - Need to integrate

 - Non-discrimination

 - Social cohesion – can favour *either* extension *or* restriction

Political explanations

- Liberalisation correlated with left of centre governments? Or elites?

- Restrictions correlated with right of centre government, right wing party or other mobilisation of anti-immigrant sentiment?

Impact of liberal citizenship policies on other EU countries

- Policy imitation in details

***ius soli* as a marker of liberalising policy?**

(e.g. Howard 2006): index based on:

- Presence of *ius soli*
- Moderate period of residence
- Admission of dual nationality

No differences or changes in form of *ius soli* affect status of countries as 'historically liberal', showing 'liberalising change' or 'restrictive continuity'

But, examining changes above, we may conclude that

- a) trajectory counts in defining whether a policy is liberal or not in context of any country
- b) if *ius soli* is to be used as a marker of liberal citizenship policy we need to differentiate among its forms
- c) liberal changes in *ius soli* may be accompanied by restrictive changes in other aspects of citizenship law

Conclusion

Ius soli has some claim to be considered a liberal mode of acquisition

- as one element of a liberal citizenship policy
- its liberal impact depends on admission of dual nationality and the form *ius soli* takes

Ius soli is not virtually universal in Europe

- and where present it is often in restricted forms

Current trends in *ius soli* are not all towards liberalisation

- and liberalising *ius soli* changes are often accompanied by restrictive changes in other areas of citizenship law

Will *ius soli* citizenship show trend towards greater conditionality as naturalisation has?

Further work

An index of *ius soli* policies based on differentiation between forms

Examine evidence from statistics where possible to assess impact of differences or changes in *ius soli* provision on numbers gaining citizenship