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(Transversal theme ; 1)



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Lungarno Pacinotti, 43

56126 Pisa

Tel. 050 2212056 – Fax 050 2212945

info-plus@edizioniplus.it

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# Citizenship in the English State in Renaissance Times

STEVEN G. ELLIS

National University of Ireland, Galway

*Ag teacht as forbairt an Aontais Eorpaigh mar ollstát cónasctha, bhí claonadh ann le gairid chun dlíthe na saoránachta i measc ball-stáit an Aontais Eorpaigh a chur i gcombréir le chéile. Céad bliain ó shin, in Eoraip na náisiún-stát, níor gha agus níor samhlaíodh an cur i gcombréir seo. Ní raibh cearta agus dualgaí na saoránach i bhfeidhm ach taobh istigh de theorainneacha na stát a bhí san iomaíocht le chéile san Eoraip. Níor samhlaíodh go mbeadh líon mór de stráinséirí ó stáiteanna eile na hEorpa ina gcónaí taobh istigh den náisiún-stát le cearta acu ab ionann agus cearta an tsaoránaigh. Is imeacht réasúnta nua é seo, ag teacht as laghdú teorainneacha traidisiúnta na hEorpa go dtí críocha inmheánacha na hEorpa cónasctha nua.*

*In Eoraip na náisiún-stát, áfach, ba mhór na difríochtaí idir chearta na saoránach sna stáiteanna éagsúla. I gcoitinne, tharla na difríochtaí seo mar gheall ar stair dhifriúil na stát éagsúla ó thaobh dhlíthe na saoránach de. Ar an taobh amháin, d'éirigh coincheap an tsaoránaigh i stáiteanna áirithe as cearta an tsaorchathróra i gcaithreacha áirithe – an tseanRóimh, mar shampla, nó cathair-stát na hIodáile sa mheán-aois – agus sa dóigh seo d'fhás coincheap an tsaoránaigh sa stát nua-aimseartha. Os a choinne seo, d'éirigh coincheap an tsaoránaigh i stáiteanna eile as cearta a bhain le saor-ghéillsínigh phrionsa na meán-aoise, níos maille cearta na ngéillsíneach sa phrionsacht sin, agus fá dheireadh cearta na saoránach sa stát áirithe sin. Sna haistí seo thíos déantar staidéar ar bhunús stairiúil na saoránachta i stáiteanna éagsúla na hEorpa idir ré na meán-aoise agus tús an Aontais Eorpaigh.*

## INTRODUCTION

In June 2004, a change was made in the Irish constitution by referendum in regard to the constitutional right of people born on the island of Ireland to Irish citizenship. The reason for the change was an unforeseen consequence of the British-Irish Agreement of 1998. Before the Agreement, the Republic of Ireland had maintained a constitutional claim on Northern Ireland as part of its national territory, which in turn meant that the inhabitants of Northern Ireland were entitled to Irish citizenship. In accordance with the terms of the Agreement, however, articles 2 and 3 of the constitution which had asserted this claim were replaced by an aspiration to unity and a provision that anyone born on the island of Ireland was entitled to Irish citizenship<sup>1</sup>. At the time, however, it was not foreseen that this would mean that children born in Ireland to any foreign national would thereby have a right to Irish citizenship. Subsequently, a Chinese national had travelled from one part of the United Kingdom (Wales) to another (Northern Ireland) where she had given

birth to a son who, in accordance with Irish law, could claim Irish citizenship – although neither mother nor baby had ever set foot in the Irish Republic. And as the mother of an Irish citizen, she was then entitled, in accordance with the law in other EU states, to residence in any EU state – except, ironically, for Ireland which, by a recent judgment of the Supreme Court, had decided that the parents of Irish citizens were not automatically entitled to residence in Ireland. This statement of the law in regard to citizenship and residence was upheld in a preliminary judgment in May 2004 of the European Court of Human Rights in an appeal by the Chinese citizen against the British government which had threatened her with deportation. Accordingly, the Irish constitution was amended by referendum to remove this automatic constitutional right of citizenship to those born in Ireland and to allow parliament to regulate citizenship by legislation<sup>2</sup>.

This case, I think, highlights both the need for, and the recent tendency towards, harmonization of citizenship laws among the EU states. A century ago, in the Europe of the nation-states, harmonization was neither envisaged nor necessary because, by and large, the rights and duties of citizens began and ended at the frontiers of the rival states. In some cases special provision was made for particular ethnic groups whose territory was acquired by a neighbouring power. For instance, much of the German population of what is now Namibia (formerly the short-lived Germany colony, Deutsch Südwestafrika, until its conquest by the British in 1915) retains German citizenship, although they are in many cases now fourth-generation Germans<sup>3</sup>. Yet the idea of large numbers of foreign nationals from other parts of Europe living within another European nation-state and enjoying there what are tantamount to citizenship rights is something relatively new. It is a consequence of the recent reduction of Europe's traditional frontiers to the status of internal borders within the new federal Europe.

This section on the nature of citizenship from the perspective of frontiers and identities comprises three parts. The first part includes some general remarks about the origins of citizenship in the modern sense, preceded by a sketch of the means by which citizenship may now be acquired and transmitted. There follows in the second part three case studies exploring its meaning in medieval and early modern times. Finally, there is a discussion of aspects of citizenship in modern times, notably an extended study from different perspectives of the multi-national experience of the final phase of the Austro-Hungarian empire.

A brief survey of the modern citizenship laws in present-day EU states (viz. who is a citizen and how citizenship is acquired)<sup>4</sup> highlights the relative sameness of state law in regard to the acquisition and transmission of citizenship, notwithstanding detail differences and minor variations. There is in each case provision for the acquisition of citizenship from parents (*ius sanguinis*), normally through either or both parents and regardless of place of birth, with only minor exceptions. Almost as common is citizenship acquired through birth within the state (*ius soli*), although very often with a proviso that the child only acquires citizenship if he/she does not acquire a foreign citizenship through birth. Normally, too, there is provision for the acquisition of citizenship by naturalization through long residence in the state, commonly five years, or by marriage to a citizen. Behind the relative uniformity of the modern laws on citizenship, however, there was clearly in the

past considerable variation, if only because the conferring of individual rights and duties in particular European states had developed in very different ways. Generally, the various European citizenship laws seem to have followed two broad patterns of development. On the one hand, there was the concept of the citizen as the enfranchised inhabitant of a particular city, ancient Rome, for instance, or a medieval Italian city-state, and so by extension of the modern state. In the following section, the essays by Anna Maria Pult and Brendan Osswald explore aspects of this pattern of development in medieval and early modern times. On the other hand, there was the idea of the citizen as the privileged subject of a particular prince, and so by extension of his principality, and later of the state, a tradition which is explored further below and in many of the modern contributions to this section. Within this tradition, it has been suggested that the French and German patterns of development in regard to citizenship and nationhood represent binary poles: allegedly, the German pattern was ethnocultural and restrictive towards non-Germans, while the French pattern was institutional and expansionist towards immigrants<sup>5</sup>. Be that as it may, we may note that hints of older more individualistic concepts of citizenship sometimes survive in particular state laws. For instance, dual citizenship may be prohibited (in the Czech Republic or, until 2003, in Romania, for instance) because no man can serve two masters. Persons of Greek origin may acquire Greek citizenship by joining the Greek armed forces, no doubt because of the earlier close connection between citizens and military service. The illegitimate children of British fathers do not enjoy citizenship by *ius sanguinis* and until 1981 a person could not claim British citizenship through the mother: these provisions look like fossils of English feudal land law and inheritance customs. The collapse of the Soviet Union also led to the issuing by the Estonian government of the so-called 'grey passports' (alien passports) held by large numbers of Russian-speaking Slavs residing in Estonia. Some were born there, but most migrated there during the Soviet era, and following the loss of USSR citizenship have yet to determine their citizenship identity. A similar situation occurred in Latvia. Likewise, not all Romanian nationals are Romanian citizens<sup>6</sup>.

Nevertheless, in the Renaissance period concepts of citizenship were unsurprisingly very different, reflecting both the less developed character of state power and the quasi-feudal ties between prince and subject. Citizenship, in the sense in which it is now used, is of course a modern concept. In England's Renaissance monarchy, citizenship referred to something rather different, the enfranchised, or privileged, inhabitants of major cities like London, Dublin, or York, those who had the freedom of the city and the right to trade there. The origins of those rights and duties which we should now describe as pertaining to a citizen lay rather, in an English context, with the status enjoyed by the free subjects of the English crown, those who had the right to reside in the English dominions, to possess land and goods there, and to plead in the king's courts. In 1500, not all the king's subjects possessed these rights: alongside freeborn Englishmen, there were still serfs, or villeins, and also the native Irish or Welsh. In that sense, Renaissance English concepts accorded more with the perceived German pattern, in that they were *völkisch*<sup>7</sup>, but with the significant difference that England's relatively centralized monarchy offered the possibility (soon embraced – see below) of alternative patterns of development. Even within a late

medieval English context, moreover, it is occasionally possible to glimpse something akin to the other city-state concept of citizenship: the city of Limerick, for instance, situated in the south-west of Ireland, was an English outpost virtually surrounded by Irish enemies (see below). There, the king's English subjects were the citizens of Limerick, rather in the manner of an Italian city-state. More generally, however, what is particularly revealing of the character of Renaissance concepts of citizenship is the interaction or creative tension between these various historically-different concepts of citizenship which commonly occurred on the margins of state power, the frontier. The second part of this section aims to illustrate this point by offering three case studies of the development of the concept of citizenship in medieval and Renaissance times.

### CITIZENSHIP IN THE ENGLISH STATE IN RENAISSANCE TIMES

By and large, English historians have not discussed the origins of citizenship in terms of tensions between *ius soli* and *ius sanguinis*. Citizenship *per se* in the English state was something which related to cities, not kingdoms and nations. Yet many aspects of the modern concept of citizenship were already inherent in the rights and duties of freeborn subjects of English kings. These rights were, in some respects, quite specific: freeborn subjects had from later medieval times the right to sue and plead personally in the king's courts; the freedom to trade as an English subject, paying the preferential customs rates; and the right to inherit, own, buy and sell land in the territories of the English crown – rights which were all denied to aliens<sup>8</sup>. If we ask how subjects were distinguished from aliens, the lawyer Thomas Littleton replied confidently in the mid-fifteenth century: “alien is he who is born out of the allegiance of our lord the king”<sup>9</sup>. In practice, however, the situation was rather less clear cut. Not only did doubts arise as to who was an alien, but at least until the 1530s there was also an intermediate category of peoples who were clearly born under the king's allegiance but were denied the rights of freeborn English subjects. In practice, therefore, English monarchs faced serious problems in developing a consistent policy towards those peoples born under their allegiance and so entitled to their protection.

Allegiance in this context was intimately related to place of birth and referred to those territories that were held of the English crown: not just England, but Wales, the lordship of Ireland, and Calais which (to English eyes) had been transferred from the kingdom of France to England by the treaty of Brétigny in 1360<sup>10</sup>. This suggests that, overall, the principle of *ius soli* was paramount. In the 14th century, doubts had arisen about the status of children born to English parents in foreign lands, including those of the royal family, and a statute of 1351 confirmed that children of English subjects born outside the king's allegiance should be enabled to succeed to their inheritances within the king's allegiance<sup>11</sup>. The priority of *ius soli* was also underlined by the position in the Anglo-Scottish marches where a clear border line had been established by the treaty of York in 1237. The immediate frontier districts were largely inhabited by the border surnames, semi-independent clans of English and Scottish surnames who were not answerable to law. English officials classified them as English or Scots depending on which side of the border line they resided, and so were presumed to have been born. Yet in the 16th century at least, there were separate English and Scottish branches of the same surname, Armstrongs or Grahams for

instance, and in any case classifying one branch as English subjects and the other as Scots enemies did not make them behave any differently. At the battle of Flodden in 1513, the English surnames waited until the two sides had dismounted to fight and then plundered both sides indiscriminately and made off with the English horse and baggage<sup>12</sup>.

Nonetheless, there were two major restrictions on *ius soli*. The first related to those parts of France in the English allegiance down to 1453: those Gascons, Normans, and Picards who were subjects of King Henry VI as of his crown of France remained aliens in England, because the French realm was a separate kingdom; and those who fled to England or Ireland after the collapse of Lancastrian France had to seek letters of denizenship (or naturalization) from the king<sup>13</sup>. This restriction, however, merely illustrates the circumscribed character of *ius soli*. The other is perhaps more far-reaching. The westward expansion of the English monarchy through Wales and into Ireland in the two centuries to 1300 had left the king with a subject population of native Irish and Welsh. These were regarded as subjects but were disabled by statute from the normal rights of freeborn English subjects (from holding land or office, for instance). In practice, therefore, they were second-class subjects, and their status was viewed as analogous to that of unfree serfs or villeins in England<sup>14</sup>. This remained the position at least until the 1530s when, as we shall see, the privileges of English subjects were extended by statute to the mere Welsh and Irish. Broadly, therefore, the basis of distinction was ethnic: only English subjects (as the English were then defined) enjoyed the full range of rights and protection, but particularly outside the realm of England itself, English monarchs had other subjects, Welsh, Irish and French, whose rights as subjects were less ample. These were the ethnic minorities of the English state.

Even so, the frontier conditions in Ireland during the three centuries or so down to 1603 led to a situation in which something akin to *ius sanguinis* applied. The partial character of the medieval English conquest meant that Ireland was divided between a series of independent lordships inhabited by an alien Gaelic population viewed as ‘the king’s Irish enemies’ and those parts under English rule inhabited by ‘the king’s loyal English lieges’. Yet in practice there were no agreed frontiers: English kings claimed the whole of Ireland as their lordship but denied ‘the wild Irish’ the benefits of English law. Those Irish who wished to enjoy the rights of English subjects had to purchase what were called ‘charters of English liberty and freedom from Irish servitude’, viz. letters of denizenship<sup>15</sup>. Otherwise, their lands and goods would be confiscated. But how could the king’s officials tell Irish and English apart, when they lived side by side along contested frontiers? Medieval legislation tried to insist, without much success, that the king’s English subjects dress like Englishmen, adhere to English customs, and prohibited intermarriage with the Irish. Yet where intermarriage did occur, the offspring of English fathers were accounted English. Nonetheless, the status of the marchers had frequently to be determined in the royal courts: for instance, an inquisition might find that “Thomas McKannyn, vicarius de Gyrle, Hibernicus est, de lez McKannynnez, Hibernicis inimicis domini Regis”. The defendant’s reply, “quod nominatur Thomas Kannyng, de Anglici sanguine et natione, et natus apud Mochlone in parochia de Rathmore in comitate Midensis”, would either

be accepted, as in this case, or a jury summoned to decide<sup>16</sup>. In such circumstances, *ius sanguinis* was clearly the deciding factor: Kannyng's defence was that he was "of English blood and nation" (even though he may well have been Irish by descent), but he implied additionally that he was born under the king's allegiance, in Co. Meath. Where frontiers were fluid and shifting, officials were driven back on secondary criteria of nationality.

In the 1530s, however, the crown began an administrative reorganization of the Tudor territories as part of which the status of English subjects was gradually extended to non-English peoples, and the old ethnic distinctions between Tudor subjects gradually disappeared. Concurrently, however, the uneven progress of the Reformation in the Tudor territories laid the foundations for new forms of discrimination between subjects based on religion. By 1600, at the latest, those enjoying full rights as subjects had to be English in religion, members of the established church: their ethnic background was increasingly less important. In short, the Tudor period saw the gradual incorporation of one minority group into the body politique, but at the same time the creation of another.

The early Tudor period witnessed the last stages in the assimilation of a residual minority, those of servile status. Serfdom, or villeinage, had been in steep decline since the collapse of demesne farming in the 14th century. In 1485, there were still serfs on 400 manors scattered throughout lowland England, with marked concentrations in East Anglia and the West Country. By 1560, however, continuing manumissions had reduced these to 104 manors, and the last reference to villain status so far found is 1635. Serfs were personally unfree, were not allowed to leave the manor without their lord's consent, and were non-persons so far as the common law and royal courts were concerned<sup>17</sup>. The heyday of English villeinage, however, had coincided with a period of marked territorial expansion by English kings, with the acquisition of dominions beyond the frontiers of their realm. These dominions were mostly annexed and united to the kingdom of England, being described as 'parcels' of the English crown; but the English king was not king of them, nor were they incorporated into the kingdom, and so their inhabitants did not enjoy an unequivocal status as English subjects. This was the case in Ireland, of which the English king was described as lord, and also in Wales, of which the king's eldest son was normally prince; and there were other scraps of territory like Calais, the Channel Isles, and the Isle of Man. Instead, the status of the native inhabitants of these newly-acquired territories was ambiguous<sup>18</sup>. Although 'born under the English allegiance', as the phrase ran, they did not enjoy the same rights as Englishmen.

In these territories, moreover, a wave of English settlers had also been introduced to underpin the medieval English conquest, and these English of Wales and Ireland enjoyed much the same status as the English of England. Thus, the colonial settlement of Wales and Ireland had the effect of establishing miniature 'Englishries' in these conquest lordships, in which the descendants of the English settlers enjoyed the rights and privileges of Englishmen, while alongside them were 'Welshries' and 'Irishries' in which the status of the native population under English rule was analogous to that of serfs in England. (In addition, the population of the independent Gaelic lordships of Ireland was treated as aliens: the English lordship was, in practice, restricted to parts of the east and south, plus

some isolated port-towns.) Overall, therefore, those classed as the king's subjects in the late middle ages included sizeable minorities who suffered discrimination on grounds of birth or race. In Ireland, the Statutes of Kilkenny (1366) which codified earlier legislation forbade any alliance by marriage or fosterage between English and Irish, the use of march law or Gaelic law among the English, or the admission of Irishmen to public office or ecclesiastical benefice in the English parts. Likewise, in Wales a statute enacted in 1401 excluded the 'mere Welsh' from public office, from buying land in England or in English boroughs in Wales, and an Englishman marrying a Welsh woman lost his privileged status<sup>19</sup>. While this type of legislation has occasionally been likened to a system of apartheid, it was of course possible for the 'mere Welsh' and 'mere Irish' to obtain their freedom, normally by purchasing a charter. Similarly, Scots who came to reside in the north of England might be 'sworn English'<sup>20</sup>.

Essentially, therefore, by 1500 the rights and privileges of the king's subjects were increasingly being confused with those of freeborn Englishmen. This was so for two reasons. In the first place, the English settlers of the conquest lordships of Ireland and Wales claimed the same rights and privileges as Englishmen in England. As a result, the legal definition of an Englishman in early Tudor times was of a freeman, of English blood and condition, born within the territories under the allegiance of the king of England, not necessarily someone born within the realm of England<sup>21</sup>. Second, the recent loss of the English possessions in France had eliminated the one major exception to this emerging pattern. English kings had, at various times in the later middle ages, acquired large territories in France, notably in Gascony and Normandy. Yet these territories were generally held of the crown of France and not in full sovereignty. So, for instance, Gascon merchants were almost always taxed as foreigners in England, whereas merchants from Ireland paid the same rates as Englishmen. The position changed in 1422, when Henry VI claimed the French crown as Henry II of France, and by then most of northern and western France adhered to King Henry. Yet those of his French subjects who came to England continued to be treated as aliens there; and the collapse of Lancastrian France (1449-53) left only small enclaves under English rule – Calais, which had meanwhile been incorporated into England and was in any case lost to the French in 1558; and the Channel Isles which Queen Elizabeth II still rules as duke of Normandy and which is not part of the United Kingdom<sup>22</sup>.

By the later fifteenth century, therefore, the Yorkist and early Tudor kings had very few subjects who were not either freeborn Englishmen or the Celtic natives of conquest lordships whose status at English common law was analogous to that of serfs and villeins. This increasing identification of subjects and Englishmen was also reinforced by other pressures. The English had long been in the habit of classifying the various nations of Europe in terms of material culture: towns and tillage were marks of 'civility'; pastoralism and certain quasi-nomadic practices denoted more primitive and barbarous peoples like the Irish and the Welsh. And particularly after the English had made the happy discovery in the late 14th century that God was actually an Englishman, English officials increasingly tended to assume that the way to turn the 'mere Welsh' and the 'mere Irish' into good subjects was by a policy of cultural imperialism, that is by adopting measures to eradicate aspects of their indigenous cultures (customs, law, and language), and to promote instead 'English civility' (customs, law and language) in these savage lands<sup>23</sup>. Thus the extensive



grants by Henry VII, between 1504 and 1508, of denizen privileges to whole communities in north Wales, by which Welsh subjects were allowed to inherit land according to English law and to hold land and office in England or in English boroughs in Wales, seemed to be part of this policy, as well as being a significant money-raising device. Hitherto, grants of denizen privileges, in Wales and Ireland, had generally been made only to individuals, though again for money<sup>24</sup>. In England, moreover, there was a parallel drive to raise money by emancipating the remaining serfs<sup>25</sup>.

From the 1530s, however, the earlier piecemeal measures to rationalize the status of the king's subjects gave place to more radical change. The most important development was the so-called Act of Union with Wales, that is, two statutes passed by the English parliament in 1536 and 1543 which, in effect, incorporated the principality and marches of Wales into England as the kingdom of England and Wales. By the terms of these statutes, the Welsh marcher lordships and Welsh law and custom were abolished, English law and structures of local government were extended throughout Wales, and the English language was made compulsory for administrative and judicial business. In regard to the status of subjects, the result was that the native Welsh were now accorded the same rights and privileges as freeborn Englishmen<sup>26</sup>. In Ireland, too, a similar strategy – following legislation by the Irish parliament in 1541 which, in effect, erected Ireland into a separate kingdom – supplied a mechanism (the so-called 'surrender and regrant' strategy) whereby the independent Gaelic lordships could be incorporated into this new kingdom; Gaelic chiefs, clansmen, and their dependents would become English subjects; and Gaelic law, customs and speech would be replaced by the English counterparts which would gradually be extended throughout the island. This was intended as a rolling programme of Anglicization, which was only completed – and even then in very different circumstances – in 1603; but in the first phase three Gaelic chiefs, O'Neill, O'Brien, and Mac Giolla Phádraig, became peers of the realm as earls of Tyrone and Thomond, and lord of Upper Ossory respectively, and particular groups of native Irish likewise acquired the rights and privileges of freeborn English<sup>27</sup>.

The result was that, for the first time, large numbers of non-English were accorded the same rights as English subjects. In the case of Wales, the changes amounted in effect to an emancipation of Welsh natives who were already the king's subjects; but in Ireland the broad thrust of the policy was to accord the rights of English subjects to peoples who had previously been treated as aliens, not subjects. This whole topic requires much more detailed research and analysis, but it would appear that, by the mid-Tudor period, villeinage in English Ireland was effectively dead: some villeins survived on the manors of the archbishop of Dublin into the 1530s and royal commissioners in 1540-41 laboriously inquired concerning the existence of natives and villeins on manors formerly belonging to the monasteries: they uncovered just the one native, who was living in New Ross<sup>28</sup>. Yet, in the case of Irishmen migrating to live within the Englishry, the king's courts in Ireland continued into the 1560s to enforce discriminatory medieval legislation against those of Irish birth and blood. Accordingly, native Irish were still at that time purchasing charters of English liberty even though the progress of 'surrender and regrant' meant that many Irish in regions which had only recently come under English rule now enjoyed the rights of English subjects<sup>29</sup>.

By the mid-Tudor period, however, other forces were at work in reshaping English senses of identity. With the extension of English law and the rights of freeborn Englishmen to non-English, and the concurrent spread of English customs and speech among the natives, earlier ethnic perceptions of English nationality were gradually eroded. Increasingly, all the king's subjects enjoyed English privileges and law. Yet, the phenomenon known as the cartographical 'discovery' of England also meant that Englishmen were now more conscious of the distinction between lands and peoples lying within the English realm proper and the inhabitants of so-called 'English ground' elsewhere – the English Pale in Ireland or Calais, for instance – in territories which were 'parcels' 'annexed and united to the crown' of the realm. The result was that English identity acquired a sharper geographical edge to it. The English were those of the king's subjects born within the realm of England: the king's subjects in Wales or Ireland, notwithstanding that they were of English 'blood', English in speech and customs, and also enjoyed the same rights and privileges as Englishmen, found themselves increasingly categorized with the native populations as Welsh and Irish. Of course, the English 'by birth' had long viewed these English settlers as in some sense Irish, or 'Irlandais de la langue anglaise', and so on; but hitherto their formal recognition by the courts as freeborn English subjects, as opposed to Welsh or Irish natives who also differed from them in speech and custom, was fundamental<sup>30</sup>.

At the same time, the impact of the Reformation on the English territories was also exercising a formative influence in reshaping English senses of identity. With the growth of Protestantism in England and the establishment of a Protestant regime under Queen Elizabeth, propagandists like John Foxe began to argue that not only was God an Englishman, but that the English were an elect nation, chosen by God to save the world from popery. Increasingly, therefore, Englishness was identified with Protestantism<sup>31</sup>. True Englishmen were also English in religion: that is, they accepted that Queen Elizabeth was supreme governor of the Church of England, and they rejected the claim of any foreign potentate (meaning the pope) to the spiritual allegiance of her subjects. By the end of the Tudor period, processes of confessionalization had created new religious minorities among the queen's subjects, particularly the Roman Catholics. This had a particular impact on the situation in Ireland where the advance of the Tudor conquest and mounting resistance to the Tudor Reformation had created a large Irish Catholic majority. Among these were the self-styled 'Old English of Ireland', the descendants of the medieval English settlers, who loudly insisted on their rights and status as English subjects. Notwithstanding these claims, however, Tudor officials increasingly saw them as 'Irish papists' who were no different from the native Irish: they were neither English by birth, nor English by religion. The process of confessionalization, moreover, ensured that Catholics were increasingly excluded from local government or major office and faced a number of other disabilities known as the Penal Laws<sup>32</sup>. During the 16th century, therefore, the Tudor state had exchanged a system of discrimination based on ethnicity to one based on religion.

## NOTES

<sup>1</sup> *Bunreacht na hÉireann: Constitution of Ireland* (ed. Dublin 1999), pp. III, X, 4-6; *An Reifreann um Shaoránacht Éireann: the Referendum on Irish citizenship* (The Referendum Commission, Dublin 2004).

<sup>2</sup> Case reported in "The Irish Times", 19 May 2004. Subsequently, the government enacted legislation that at least

one parent of a child born in Ireland to non-nationals should have been resident there during at least three of the preceding four years.

- <sup>3</sup> See, for instance, the recent controversies about reparations for atrocities committed in German colonial times and the compulsory repurchase of 'White Farms' in Namibia presently owned by German citizens: [http://www.int.iol.co.za/index.php?set\\_id=1&click\\_id=68&art\\_id=qw1132994882437B255](http://www.int.iol.co.za/index.php?set_id=1&click_id=68&art_id=qw1132994882437B255).
- <sup>4</sup> For this purpose, my colleagues in Thematic Work Group 5: Frontiers and Identities obliged by providing short statements of citizenship laws in Bosnia-Herzegovina, Britain, the Czech Republic, Greece, Ireland, Italy, Poland, and Romania.
- <sup>5</sup> See esp. R. Brubaker, *Citizenship and nationhood in France and Germany*, Cambridge 1992.
- <sup>6</sup> For the UK, see [http://www.workpermit.com/uk/citizenship/born\\_outside\\_uk/british\\_nationality\\_act](http://www.workpermit.com/uk/citizenship/born_outside_uk/british_nationality_act); <http://www.uniset.ca/naty/BN1981revd.htm>. For Estonia, see *Estonian Citizenship and Migration Board*, Yearbook 2003, p. 8 (available also as <http://www.mig.ee/downloads/37/MIG-aastaraamat%202003%20final%20screenL.pdf>); R. Brubaker, *Citizenship struggles in Soviet succession states* in "International Migration Review", XXVI(2) (1992), pp. 269-289. For Latvia, see [http://www.ocma.gov.lv/?\\_p=75&menu\\_\\_id=13](http://www.ocma.gov.lv/?_p=75&menu__id=13); <http://www.am.gov.lv/en/policy/4641/4642/4651/>. I am grateful to Ms. Helen Hohtmetts, University of Tartu, Estonia, for this information and the references. On Greece, see esp. I.D. Michailidis, 'Frontiers and identities in 19th-century Greece', *infra*, pp. 155-162; for the Czech Republic and Romania see *infra*, pp. 115-140; 163-179.
- <sup>7</sup> Cf. Brubaker, *Citizenship and nationhood* cit.
- <sup>8</sup> R.A. Griffiths, *The English realm and dominions and the king's subjects in the later middle ages* in J. Rowe (ed.), *Aspects of government and society in later medieval England: essays in honour of J.R. Lander*, Toronto 1986, p. 97.
- <sup>9</sup> Quoted, Griffiths, *The English realm and dominions and the king's subjects* cit., p. 89.
- <sup>10</sup> *Ibid.*, pp. 86-7; P.L. Hughes - J.F. Larkin (ed.), *Tudor Royal Proclamations*, 2 vols., New Haven 1964, 1969, I, 93; S.G. Ellis, *Crown, community, and government in the English territories, 1450-1575* in "History", LXXI, 1986, pp. 187-204.
- <sup>11</sup> Griffiths, *The English realm and dominions and the king's subjects* cit., p. 89.
- <sup>12</sup> S.G. Ellis, *Tudor frontiers and noble power: the making of the British state*, Oxford 1995, pp. 25, 26, 60-64.
- <sup>13</sup> S.G. Ellis, *From dual monarchy to multiple kingdoms: unions and the English state, 1422-1607* in A.I. Macinnes - J. Ohlmeyer (eds.), *The Stuart kingdoms in the seventeenth century: awkward neighbours*, Dublin 2002, pp. 42-3; Griffiths, *The English realm and dominions and the king's subjects* cit., p. 96; H.F. Berry (ed.), *Statute rolls of the parliaments of Ireland, reign of King Henry VI*, Dublin 1910, p. 386.
- <sup>14</sup> See below, p. 91.
- <sup>15</sup> S.G. Ellis, *Reform and revival: English government in Ireland, 1470-1534*, London 1986, pp. 129-30, and the references there cited.
- <sup>16</sup> National Archives of Ireland, *Record Commissioners Calendar of Memoranda rolls*, RC8/43, pp. 213-14 (Memoranda roll, 23 Henry VII m. 4). Cf. Ellis, *Tudor frontiers* cit., p. 75; Griffiths, *The English realm and dominions and the king's subjects* cit., p. 90.
- <sup>17</sup> D. MacCulloch, *Bondmen under the Tudors* in C. Cross - D. Loades - J.J. Scarisbrick (eds.), *Law and government under the Tudors: essays presented to Sir Geoffrey Elton on his retirement*, Cambridge 1988, pp. 93-8.
- <sup>18</sup> Griffiths, *English realm and dominions and the king's subjects* cit., pp. 85-7.
- <sup>19</sup> G. Williams, *Recovery, reorientation and Reformation: Wales c. 1415-1642*, Oxford 1987, pp. 10-14, 242; Griffiths, *The English realm and dominions and the king's subjects*, pp. 91-2; G.J. Hand, *Aspects of alien status in medieval English law, with special reference to Ireland*, in Dafydd Jenkins (ed.), *Legal history studies, 1972: papers presented to the Legal History Conference, Aberystwyth, 18-21 July 1972*, Cardiff 1975, pp. 129-35; S.G. Ellis, *Ireland in the age of the Tudors, 1447-1603: English expansion and the end of Gaelic rule*, London 1998, pp. 22-4, 146, 192.
- <sup>20</sup> Ellis, *Tudor frontiers* cit., pp. 32-3, 95-6. Cf. Nicholas Canny, *Protestants, planters and apartheid in early modern Ireland*, "Irish Historical Studies", XXV, 1986, pp. 105-15.
- <sup>21</sup> Ellis, *Crown, community, and government in the English territories* cit., pp. 187-204.
- <sup>22</sup> Griffiths, *The English realm and dominions and the king's subjects* cit., pp. 86-7, 92, 96, 98.
- <sup>23</sup> R.R. Davies, *The first English empire: power and identities in the British Isles 1093-1343*, Oxford 2000, ch. 5; J.W. McKenna, *How God became an Englishman*, in D.J. Guth - J.W. McKenna (eds.), *Tudor rule and revolution*, Cambridge 1982, pp. 25-43; S.G. Ellis, *Centre and periphery in the Tudor state* in R. Tittler - N. Jones (eds.), *A companion to Tudor Britain*, Oxford 2004, pp. 133-50.

- <sup>24</sup> Williams, *Recovery, reorientation and Reformation: Wales* cit., pp. 242-3; Griffiths, *The English realm and dominions and the king's subjects* cit., p. 97; Ellis, *Reform and revival* cit., p. 130.
- <sup>25</sup> MacCulloch, *Bondmen under the Tudors* cit., pp. 100-09.
- <sup>26</sup> G. Williams, *Wales and the Act of Union*, Bangor 1992, passim.
- <sup>27</sup> B. Bradshaw, *The Irish constitutional revolution of the sixteenth century*, Cambridge 1979, pt. 3; Ellis, *Ireland in the age of the Tudors* cit., pp. 149-55, 175-6.
- <sup>28</sup> C. McNeill (ed.), *Calendar of Archbishop Alen's register c.1172-1534*, Dublin 1950, p. 279; N.B. White (ed.), *Extents of Irish monastic possessions, 1540-41*, Dublin 1943, p. 86.
- <sup>29</sup> Ellis, *Ireland in the age of the Tudors* cit., pp. 175-6.
- <sup>30</sup> Griffiths, *The English realm and dominions and the king's subjects* cit., pp. 85-6; Ellis, *Crown, community, and government in the English territories* cit., pp. 187-204. Cf. C.S.L. Davies, *Tournai and the English crown, 1513-1519*, "Historical Journal", XLI, 1998, pp. 6-7.
- <sup>31</sup> W. Haller, *Foxe's book of martyrs and the elect nation*, London 1963.
- <sup>32</sup> C. Lennon, *Sixteenth-century Ireland: the incomplete conquest*, Dublin 1994, ch. 11; Ellis, *Ireland in the age of the Tudors* cit., pp. 238-42, 257-64; U. Lotz-Heumann, *Die doppelte Konfessionalisierung in Irland: Konflikt und Koexistenz im 16. und in der ersten Hälfte des 17. Jahrhunderts*, Tübingen 2000, sect. B, C.

