

ZOLTÁN KÁNTOR

Re-institutionalizing the Nation – Status Law and Dual Citizenship

The redefinition and re-institutionalization of the nation and the re-configuration of the state usually accompanied breakdown of regimes, revolutions, and transitions. As Mark Beissinger notes, “the goal of nationalism is the definition or redefinition of the physical, human, or cultural boundaries of the polity.”¹ Or, as Culic states, “State building and nation building in Central and Eastern Europe are also part of a larger process re-institutionalizing and re-organizing political space and political phenomena. Both their innovative concepts and legislation are constitutive to these processes.”²

Most Central and Eastern Europe states defined themselves through their constitutions as national states. The laws and the administration of the states were nationalized, and nationalism as a discourse became legitimate. The clause regarding the support of the state for co-nationals (kin-minorities) living in other states became the rule.

Approximately one or two years after the breakdown of the communist regimes, Central and Eastern Europe completely forgot the internationalist settings of the communist world. The states of this region continued the national politics in which they were engaged before WWII. This paper presents the logic of nationalism, explains why it was so obvious that Central and Eastern European states became institutionalized on a national basis, and reflects upon the new developments at the turn of millennium, wherein we may observe a second wave of national redefinition.³

¹ Mark R. Beissinger: How Nationalisms Spread: Eastern Europe Adrift in the Tides and Cycles of Nationalist Contention. *Social Research*, Vol. 63, Nr. 1, 1996. 101.

² Irina Culic: State Building and Constitution Writing in Central and Eastern Europe after 1989. *Regio*, 2003. 58.

³ See details Zoltán Kántor: The Concept of Nation in the ECE „Status Laws.” *Central European Political Science Review*, Vol. 5, Nr. 16, 2004. 29–39.

*Ethnicization and nationalism*⁴

Constitutions, electoral laws, laws on education, and language laws in the Central and East European region all prove that the ‘nation’ and ‘ethnicity’ are of central salience for these newly formed states, both for the titular nation and national minorities. The claims of national minorities were, and are, nationally driven. Even positive recognition of the rights of minorities by the state shows the importance given to the national issue. Many people were taken by surprise by this “ethnic revival” which many believed had disappeared. Their surprise can only be explained by the ignorance of the observers, who truly believed that nationalism was not present in the communist regimes. This is not the case. From the time that nationalism appeared in the 18–19th century, societies have been organized on a national basis. This is true for both the majority and the minority. We may observe parallel nation building processes, and usually concurrent/conflictual institutionalizations on national basis.

In the early 1990s, several authors noted the replacement of communism with nationalism. Some authors even stated, “[t]he ideology that made the defeat of communism possible was nationalism.”⁵ Others argue: “nationalism is back. Across Europe, the Cold War’s end has unleashed nationalist sentiments long suppressed by bipolar competition and, in the east, by communist coercion.”⁶ These explanations are false. One may say that a nationalist rhetoric replaced the communist one. Alternatively, one may argue that certain communist leaders suddenly became nationalists. However, this change is no more than a continuation of past politics in a new – more or less democratic – framework. Nationalism, as an ideology, as a sentiment, as a principle of organizing society has been present since the 18–19 century. It is a facet of modern European history. One may also interpret the history of modern Europe as the history of national-based institutionalizations. All European states are based in some way or another on the principle of nationality. In different places, in different historical

⁴ The concept *nationalism* is used in a neutral sense meaning the process of institutionalization of societies on national basis.

⁵ Sugar, Peter F.: *Nationalism, The Victorious Ideology*. In Sugar, Peter F. (ed.): *Eastern European Nationalism in the Twentieth Century* Washington: The American University Press, 1995. 429.

⁶ Kupchan, Charles A.: *Introduction: Nationalism Resurgent*. In Kupchan, Charles A. (ed.): *Nationalism and Nationalities in the New Europe*. Ithaca and London: Cornell University Press, 1995. 1.

periods nationalism was, and is, present in various forms. The rhetoric of communism only affirmed that it is not based on the ideology of nationalism. The fact is that communism institutionalized nationalism in another manner, and often used it for the legitimation of the system (or the leaders of the system). Walker Connor observed “Marxists not only learned to accommodate themselves to an expediential coexistence with a world filled with nationalisms, but they also developed a strategy to manipulate nationalism into the service of Marxism.”⁷ The explanation is simple: communist (socialist) ideology or legitimization (backed by secret services) suddenly became vacant. No fraction of the population could have been mobilized invoking socialism or communism.⁸ Stalin and Lenin based the conception of the national issue partially on the ideas of Marx and Engels, and developed it through the Austro-Marxists Otto Bauer and Karl Renner. The underlying assumption was that socialism/communism will resolve the national question, and national values will lose their salience. This was false. Nationalism’s roots are much deeper. Thus, it is highly questionable whether European integration will create a new non-national identity.

Nationalism, as a perpetual project, institutionalizes the polity invoking the nation and involves a permanent definition and redefinition of boundaries. Since modernity, societies are institutionalized on a national basis, which is valid for both majorities and minorities. In Europe arguably everyone is nationalized. In Ernest Gellner's words: modern man is nationalist, and he/she is nationalist because he/she has to be. Nationalism is more than discourse or ideology, it is also institutionalization: a definition with consequences for the organization of society.

The modern state is the protagonist of nationalism, and minorities answer with the same means. We can hardly encounter any group in Europe that does not define itself in national terms. Tom Nairn’s remark shows how central nationalism is in the contemporary world: “[Gellner] demonstrated how industrialization produced modern political nationalities; yet did not go on to suggest that the true subject of modern philosophy might be, not industrialization as such, but it’s immensely complex and variegated aftershock – nationalism.”⁹

⁷ Connor, Walker: *The National Question in Marxist-Leninist Theory and Strategy*. Princeton University Press, 1984. 6.

⁸ It is needless to mention that, without the totalitarian or authoritarian control of society, even before 1989 the population were not enthusiastic supporters of the communist regimes.

⁹ Tom Nairn: *Faces of Nationalism: Janus Revisited*. London & New York: Verso, 1997. 1.

Nationalism, according to most scholars, came into being in the 18–19th century. Since then societies have been organized based on the principle of nationality. The invocation of the “nation” is perhaps the main legitimizing principle. Nationalism is inherently related to culture. Nationalism comes into being when culture replaces structure.¹⁰ George Schöpflin states: “All cultures are collective; they include and exclude; they give us a particular set of identities; they allow us to make sense of the world; they offer us collective regulation and collective forms of knowledge; and they are bounded. These boundaries may shift but they will not vanish. They protect the culture in question and act as a filter through which new ideas are received and integrated. In addition, all cultures rely on broadly similar mechanisms to keep themselves in being. If threatened, they will redouble their efforts to protect cultural reproduction.”¹¹

Nationalism emerged first in Western Europe as a consequence of major transformations, the explanation for which differs among major authors. Gellner considers nationalism the outcome of the transition from agrarian society to industrial society,¹² while Benedict Anderson detects the emergence of national consciousness – the nation as an imagined community – as a result of the “convergence of capitalism and print technology on the fatal diversity of human language”.¹³ In all these cases, the state gained new legitimacy by institutionalizing nationalism as a principle of organizing society. From the time that nationalism emerged, the organization of societies has also been based on the principle of nationality. In this respect, we may consider every European society nationalist. In the age of modernization, states tended to ethnically homogenize their societies by various means. Eugene Weber, in his famous book, describes the way France linguistically (and nationally) homogenized the inhabitants of the country. Similar processes can be observed in other parts of Europe.

States, societies and culture became increasingly institutionalized. The standardization of language, the creation of high culture, the introduction of compulsory education and the nationalization of culture served the titular nation. Non-dominant ethnic groups intended to create their own nation, with leaders from their particular nation, and intended for their own state. The na-

¹⁰ Ernest Gellner: *Nations and Nationalism*. Oxford UK & Cambridge USA: Blackwell, 1983.

¹¹ George Schöpflin: *Nationhood, Modernity, Democracy*: Paper presented at the Conference “Manifestations of National Identity in Modern Europe” University of Minnesota, May 2001.

¹² Gellner, op. cit.

¹³ Anderson, Benedict: *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso, 1983.

tionalists' programs and projects of nation-building/nationalizing usually were formulated and established in opposition to dominant groups/nations and other nationalizing processes. This is the reason why one can speak of ancient hatreds or old and lasting conflicts. The transformation of state authority and borders created newer and newer frameworks. The former masters became servants and received the same treatment they administered in their former positions. The breakdown of empires, the division of states and transitions reconfigured political power and offered new frameworks for nationalist politics.

According to Walker Connor, in Europe there are only two ethnically homogeneous states: Ireland and Portugal.¹⁴ All other states contain national minorities or ethnic groups. The majority of European states have co-nationals living in other states. This is due to the peculiarity of European history. Those states that have co-nationals in other states have adopted a policy that supports – financially, culturally, or even politically – their kin-minorities. The support of kin-minorities is based on the idea of the nation as an ethno-cultural entity rather than a political conception of the nation. It is assumed that co-nationals have, or should have a special relation with the external national homeland (kin-state). The historical process of nation-formation can easily explain this from the 18th century on. Nations have been formed and have been institutionalized. A sense of national identity emerged within the population, usually due to the (often painful and aggressive) process of nation-building. Forging the nation,¹⁵ nationalizing culture¹⁶ and fabricating heritage¹⁷ are the concepts scholars use to describe the process of national/ethnic homogenization. The French process of making Frenchmen from peasants,¹⁸ the Scandinavian culture-builders,¹⁹ and the politics of the Polish nationalizing state all reflect the state-driven nationalizing processes. In the 19th and 20th centuries such politics created the modern European nation-states. Through these processes a strong sense of national identity developed within the national groups. Language standardization, official culture,

¹⁴ Connor, Walker: *Ethnonationalism: the quest for understanding*. Princeton University Press, 1994.

¹⁵ Colley, Linda: *Britons: Forging the Nation, 1707–1837*. New Haven: Yale University Press, 1992.

¹⁶ Orvar Löfgren: The nationalisation of culture. *Ethnologia Eoropeaea*, 1989, XIX, 5–23.

¹⁷ David Lowenthal: Fabricating Heritage. *History & Memory*, Vol. 10, No. 1, 1998.

¹⁸ Weber, Eugene: *Peasants into Frenchmen: The Modernisation of Rural France, 1870–1914*. London: Chatto and Windus, 1979.

¹⁹ Jonas Frykman – Orvar Löfgren: *Culture Builders: a historical anthropology of middle-class life*. New Brunswick and London: Rutgers University Press, 1987.

mass-education and ethnic cleansing led to further homogenization and strengthened the significance of national identity.

The history of nationalism in East-Central Europe can best be understood if we analyze the various – i.e. of the majority and of the minority – nation-building, or nationalizing processes. An important role in the nationalizing process of the national minority is played by the external national homeland. As the state borders have often changed, different groups have experienced at different times the assimilationist or dissimilationist politics of the titular nation. In other words, they were the suffering subjects of nation-building processes, frequently with disastrous outcomes. A description of such policies is presented by Michael Mann. While John McGarry offers a theoretical account²⁰ describing the mechanisms – the settlement of majority groups in peripheral regions inhabited by minorities, relocation of minority groups within the state, and expulsion of minorities from the state.²¹ Basically, every national minority which was once a component of the majority nation expressed nation-building goals within the new state, or at least posed a threat to the nation-building/nationalizing of the majority, experienced one or several of the processes described.

One possible approach to national conflicts in Eastern Europe is to stress the parallel and often conflicting processes of nation-building. Once the ideal of the nation becomes important, there does not seem to be any sign that it will lose its significance. Nationalism may be transformed, but it remains an important organizational principle in our world. Nationalist politics are oriented partially on the strengthening of boundaries of the titular/majority nation, and by more or less hostile politics against national minorities.

Transition: Status laws and dual citizenship

After the breakdown of dictatorial regimes in ECE, it once again became legitimate to organize society on a national basis and to define the state in national terms.²² This definition is reflected in both law and political practice,

²⁰ Mann, Michael: *The Dark Side of Democracy: The Modern Tradition of Ethnic and Political Cleansing*, *New Left Review*, Nr. 235, May-June/1999. 18–45.

²¹ John McGarry: 'Demographic engineering': the state-directed movement of ethnic groups as a technique of conflict regulation. *Ethnic and Racial Studies*, Vol. 21, No. 4, 1998, 613–638.

²² It is misleading that socialist/communist societies/states did not have a national/ethnic component: the national discourse was illegitimate. The anti-nationalist, but national institutionalization in the Soviet Union and Yugoslavia (Brubaker), or the national-communist regime in Romania (Verdery, Fisher-Galati) shows the national politics in these states.

though perhaps most importantly through constitutions. Irina Culic brilliantly demonstrates the centrality of the ethno-cultural definition of the polity for the 27 ECE states the following:

In the preambles of the constitutions, as well as public, political, and cultural discourses and in the substance of other state policies, the most salient and powerful arguments are the evidence and elements of the historical existence and continuity of a Nation state and the need to emphasize its nationhood by promoting its language, traditions, cultural inheritance, heroic history and territory.²³

From our perspective, two types of law are of central interest: the so-called “status laws” and the laws on citizenship. Both types of law imply a definition of who is eligible to acquire citizenship and hence special favors or benefits. They create a distinction between citizens of other states on a national/ethnic basis wherein people considered co-nationals or co-ethnics (“kin” in ethno-cultural terms) gain favorable treatment from their kin-state. Clearly, states perceive themselves as responsible for their kin and adopt kin-state practices reflecting the perception of states themselves as representatives of the titular nation understood in ethno-cultural terms. Hence, kin-states – the “core” nation – imagine their borders beyond those of the particular state.

The constitutional developments in the early 1990s set the basis of the new political regimes, while the process of consolidating the regimes logically raised the need to refine certain aspects of the polity. This also happened in regard to the national and national minority issue.

Two reasons explain the second wave of national redefinition. On the one hand, kin-states were unsatisfied with the rights their kin-minorities enjoyed in their home-states. Kin-states largely share the view that home-states do not protect those who are seen as co-nationals by kin-states. On the other hand, the EU enlargement process did not provide the minority protection kin-states and national minorities expected. For Hungary, a third reason is present: domestic ideological differences around the official conception of the nation.²⁴

²³ Culic, 47.

²⁴ Several European states treat preferentially their kin-minorities, and in the overwhelming majority of the cases there is a domestic consensus on the underlying principles of support.

Hungary is in many respects an exception from the rule. Hungary is one of the few states that remained ambiguous on the issue of the nation in the early nineties. While most ECE states declared themselves national states (implementing a policy based on the principle of the political nation) and parallelly supported their kin-minorities (implementing a policy based on the principle of the ethnocultural nation), realizing a coherent – both internally and externally – “nation politics,” Hungary by recognizing and supporting both its internal and external minorities remained incoherent on the issue of the nation.²⁵ By incoherence I mean only that different logics apply for internal and external minorities, from the point of view of nation-building. Hungary’s position is completely coherent from the point of view of minority rights.

Following the revolution of 1989, the relationship between Hungary and the Hungarians living in the neighboring countries entered a new phase. During the communist period, official politics was characterized by the fiction of an ethnoculturally neutral state, and claimed that questions regarding nationality belonged to internal affairs, which were (or must be) solved within the framework of the state. Until the mid-1980s, Hungary did not show official interest in Hungarians living in other states. In the late 1980s, the problem of Hungarians living abroad, especially in Transylvania, was brought to the center of attention. After the breakdown of the communist regimes, the situation changed even more radically. Finally, concern for Hungarians living abroad materialized in legislation and governmental politics.

The status law framed in 2001 (amended in 2003) and the referendum on dual citizenship for Hungarians living in neighboring states are primarily an expression of the domestic debates in Hungary on the *official* institutionalization of the nation in Hungary. In short, the debate questions whether to further ethnicize the Hungarian polity or to de-ethnicize the state.

Laws similar to the Hungarian Status Law rest on two widely shared assumptions: first, the conception of the nation in ethnocultural terms, which

²⁵ For national minorities abroad the Hungarian constitution states: 6 (3) The Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary. While for national and ethnic minorities in Hungary: *Article 68.* (1) The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State. (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages. (3) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.

assumes that a group of people who have once formed a nation and developed a strong sense of national identity – regardless of the borders that separate them at present – have something meaningful in common; and second, the perception that the home state (the nationalizing state) will not adequately protect and promote the rights of that nation’s kin-minorities, and indeed – especially in East-Central Europe – that it usually seeks to assimilate them. This leads to the prevailing view that it is a legitimate right of kin-states to give special attention to their kin-minorities and to institutionalize their concern in legislation. While the practices of kin-states differ substantially, the underlying assumptions are the same. The only possible explanation for this is that the ties of nationality (understood in ethnocultural terms) are perceived by both the kin-state and the kin-minority as being stronger than other types of allegiance (notably citizenship, or the ‘political nation’).²⁶

Dual citizenship reflects the same idea, but promotes a stronger bond between the state and the citizen, which is especially acute in the case of large numbers of citizens residing in another state. This especially involves the right to vote, which in certain cases (e.g. Hungary) could decide the outcome of elections.

The theoretical debate on the status law was basically reproduced in the debate around dual citizenship. Apart from the domestic and international political implications, the Hungarian Status Law has drawn attention to the issue of how a nation is defined.²⁷ While the law was conceived on the basis of an ethnocultural definition of the nation, the domestic opposition and, to some extent, that of international organizations (Venice Commission, High Commissioner for National Minorities, Parliamentary Assembly of the Council of Europe, EU) emphasized the political conception of the nation.²⁸ The contest between the two conceptions, the ethnocultural and political, or in George Schöpflin’s terms, the particularistic and universalistic conceptions,²⁹ has surfaced on the European agenda as a result of the Hungarian Status Law.

²⁶ Zoltán Kántor: Status Laws and ‘Nation Policy’: theoretical aspects. In Zoltán Kántor, Balázs Majtényi, Osamu Ieda, Balázs, and Iván Halász (eds.): *The Hungarian Status Law: Nation Building and/or Minority Protection*. Slavic Research Center, Hokkaido University, Sapporo, 2004. 105–119.

²⁷ For further details see the analysis of Balázs Majtényi: Special Minority Rights and Interpretations of the Nation in the Hungarian Constitution, published in this review, and Zoltán Kántor: Status Laws ..., op. cit.

²⁸ As a result of international pressure, the modified law shifted from an ethnocultural to a political conception of the nation.

²⁹ George Schöpflin: Citizenship and Ethnicity: The Hungarian Status Law. In Zoltán Kántor et al. 87–96

Conclusions

The status laws and policies of dual citizenship reflect nothing more than the prolongation of nationalism. As previously stated, nationalism is the one of the basic forces of modernity. The manner in which it shapes societies differ, however, one can not find a society in Europe where nationalism, and the nation as one of its core values, is not present. Even the regimes that typically believed they could solve the national question were nationalist, or against their will, institutionalized groups on a national basis. In Western Europe, the states, more or less, succeeded in accommodating minority claims by recognizing their demands for autonomy. As a result, in both parts of the former Europe, nationalism was present before the breakdown of communist regimes. The democratizing states in ECE and the enlargement of the European Union also created new institutional frameworks to manage the issue of national minorities. One of the underlying principles of this process was – similar to that of Marxism – that the national question can be solved, and that the aforementioned processes lead in this direction. This premise was false. National politics of the region have proved that nationalism is still a force, and that the nation has remained a core value.

The domestic and the international debates around kin-state politics is now seen as a surprise for many observers. The way in which societies developed in the past few centuries has shown that there is nothing novel in the essence of these things, only the frameworks in which nationalism emerges is new.