

CHAPTER 2

Citizenship of the European Union. A Critical View

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Our problem is that so far we have not found a framework for building citizenship beyond the nation-state (Ralf Dahrendorf)¹

Introduction

Historically, the European integration process was from the outset the exclusive matter of small bureaucratic, political and intellectual elites which were in charge both of the European decision-making and of the production of knowledge about the construction of Europe. The citizens of the various Member States did not show a deep interest in what was going on and, in any case, they were rarely consulted by the European elites.

However, during 1992, the year before the official completion of the European internal market, the various themes related to the process of the European Community's construction, and especially the Treaty on the European Union, were given widespread public attention, among other things, in the media. The important newspapers and journals periodically gave space to a more or less enlightened "essayism" originating from the work of leading intellectuals in the field of European integration, and brought their thoughts to a large audience as seen in, for example, the recurrent interventions of Maurice Duverger or Edgard Morin in the prestigious French daily, *Le Monde*. For the first time, the European integration process was massively discussed in several Member States (Wolton, 1993). This interest to the press and public started to decline after the French referendum on

the Maastricht Treaty and 1993 was characterized by a worrying silence on Europe which expressed a growing Euro-pessimism. Again, experts within the European institutions tended to claim a monopoly of the knowledge about the European Community by using a kind of juridical and economical technocratic jargon. In their view, nobody outside the European institutions was better suited than they were to understand what was going on with European integration.

Despite many difficulties, the Treaty on the European Union was ratified and came into force on 1 November 1993. According to several observers, the Maastricht Treaty buried the old technocratic, economic and elitist Europe and opened the way for a new political Europe where the citizens were to play a central part in the making of it. In other words, the Treaty of the European Union was supposed to mark a complete change in the nature of the integration process (Wolton, 1993; Cloos, Reinesch, Vignes and Weyland, 1993).

It is beyond doubt that this drastic change was effectively the aim of the constructors of Europe when they thought of going beyond the Single European Act. Nevertheless, the effective achievements of the Treaty of the European Union could be questioned in order to avoid any type of wishful thinking and in order not to replicate the official discourse on European integration.

One of the academic duties of the political sociologist is therefore, to raise the following questions: Is post-Maastricht Europe effectively less economic and significantly more political? Is it effectively less technocratic and elitist and more a construction of committed European citizens? In other words, is post-Maastricht Europe significantly more democratic than pre-Maastricht Europe? The main aim of this article is precisely to address and to start answering these questions. More specifically, it should be read as an attempt to make sense of the concepts of "Citizenship of the European Union" and "European identity" within the debate concerning the dynamics of exclusion and inclusion affecting migrants and ethnic categories.

Six central issues will successively be examined in order to reach some understanding of the current debates on the European political Union, Citizenship of the European Union, European identity and issues of migration and to analyse the perspectives in terms of the emergence of a post-national social and political era. The first deals with the discussion of the Citizenship of the Union as an evolutionary process. Secondly, the idea that this is of minor concern for the constructors of Europe is presented. The third part of the article addresses the question of the connection between the Citizenship of the European Union and the renewal of nationalism. Fourthly, the Citizenship of the Union is related to the process of the construction of a European identity. The last two items respectively discuss the short- and long-term implications of the Citizenship of the European Union with particular attention paid to the inclusion-exclusion processes affecting migrants and ethnic categories.

Citizenship of the European Union, an Evolutionary Process

The first attempt to put the idea of a Citizen's Europe² into concrete form, dates back to the summit of the heads of states or governments of 1974, soon after the report on European identity of 1973 and in parallel with Tindeman's report on the European Union. However, it was not until the realization of the Maastricht Treaty initiated in 1991, that some juridical basis was to be given to the notion of Citizenship of the European Union, provided a solution could be found to the problem of the ratification of the Treaty. This had to be done either through national parliamentary processes or through a referendum, like for instance in Ireland, France and Denmark.³ In October 1993, Germany, the only Member State which had not yet, ratified the Maastricht Treaty which opened the way to its entry into force on 1 November 1993.

The Maastricht Treaty sets out Citizenship of the Union exclusively for the nationals of one of the Member States of the European Union (Heading II, Part 2, Articles 8, 8A, 8B, 8C, 8D, 8E). It consists of the following set of rights: the rights to the freedom of movement and residence on the territory of the Member States (article 8A), the right to vote and to be elected in the local elections and in the elections of the European Parliament in the Member State of residence (article 8B), the right to diplomatic protection in a third country (article 8C), the right to petition the European Parliament as well as the possibility to appeal to an ombudsman (article 8D). The question of the Citizenship of the Union is also dealt with elsewhere in the Treaty,⁴ though in a more indirect way.

It should be underlined that the concept "Citizenship of the European Union" and the expression "Citizens' Europe" do not cover the same realities. The former deals predominantly with civil and political rights leaving aside social and economic rights. The latter included the free movement of persons as well as "special" political rights for the European citizens. But it also adopted a broad conception of the well-being of the individual by stressing the importance of culture, communication, public health and the protection of privacy (Cloos, Reinesch, Vignes and Weyland, 1993: 163).

Besides, in legal terms, the Citizenship of the Union is undoubtedly only a minimal novelty which could perhaps develop in the future (Mira, 1991: 169). Article 8E mentions the possibility of the extension of the Citizenship of the European Union but it seems to be more concerned with an extension of the rights granted to the citizens of the European Union than an extension of the Citizenship of the European Union to other categories of citizens established in Europe (for instance, nationals of third countries), even though the latter are not explicitly excluded. There are opinions in favour of such an extension of the European Citizenship on the basis of residence. As Ann Dummett points out in her contribution to this volume, the Economic and Social Committee and the Migrants Forum

advocate such an evolution and so does the Italian Socialist member of the European Parliament, Renzo Imbeni, in his report on Citizenship of the European Union. In his view, the Intergovernmental Conference of 1996 which will review the Maastricht Treaty should modify Article 8 in order to include residents who are not nationals of one of the Member States, under specific conditions.⁵ In her report on the status of third country citizens in the European Union, the French Ecology Party member of the European Parliament, Djida Tazdait, advocates the granting of voting rights at the local level to third country citizens on the basis of a period of five years of legal residence in the European Union.⁶ Both the Economic and Social Committee and the Migrants Forum are not powerful enough to impose their views. In addition, both the Imbeni report and the Tazdait report were rejected at the plenary session of the European Parliament of January 1994⁷ for "going too far" in terms of Citizenship of the European Union, amongst other reasons. Therefore, it seems difficult to be optimistic, as Dummett seems to be, in so far as the prospects for the extension of the European Citizenship to non-European Union citizens is concerned. Nothing excludes this extension juridically, but politically nothing allows us to envisage a common agreement in either the short or medium term.

Nevertheless, the concept of citizenship in general, has certainly entered into a process of change and development – as is notably witnessed by the introduction of a Citizenship of the European Union – but it is very contentious to predict how and in which direction it is going to evolve (Turner, 1990; Meehan, 1993). Could it develop by analogy with the US federal citizenship (Closa, 1992)? Could it replicate the multidimensional Commonwealth citizenship? What are the prospects for a new imperial model of citizenship in Europe (Leca, 1992)? Should the Citizenship of the European Union be entirely new? Can we imagine a multicultural model of citizenship for the European Union (Castles and Miller, 1993)? These questions are, and will be very difficult to answer. Therefore, it is essential to underline that any reflection, any thoughts of Citizenship of the European Union still remain largely prospective.

Citizenship of the European Union, A Minor Concern for the Constructors of the European Union

As its name suggested, the European Economic Community has mainly been an economic construction since its inception. The cultural, political and social aspects have been neglected for a long time. The permanent primacy of the economic dimension in the process of the construction of the European Community was again highlighted by the fact that during the Maastricht summit of 1991, the most significant results were reached in the field of the economic and monetary union, and

with a move from the European Economic Community towards a broader European Union, the priority is, as in the past, to complete the internal market as soon as possible and to assure the conditions of its efficiency. The other dimensions, that is the cultural, social and political aspects, are still mainly thought of in the framework of supporting measures aimed at facilitating the realization of the central economic and monetary goals. The title of a report on social Europe published in 1988 by the interservice group of the European Commission, gives a good example of the permanent subordination of non-economic dimensions to economic ones in the process of European integration: "The Social Dimension of the Internal Market" (Commission of the European Communities, 1988). Furthermore, the question of a Citizenship of the European Union was only briefly mentioned at the Edinburgh summit of December 1992 in a discussion on Article 8A concerning the free movement of people. This is the only dimension of the Citizenship of the European Union in the framework of the broader debate on immigration control which has been regularly paid attention to since then.

Therefore, Citizenship of the European Union, which is part of the political union, does not seem to be a major concern of the constructors of a more integrated Europe. The political union as well as the Citizenship of the European Union are both required only to the extent that they are considered to be necessary for a more efficient completion and functioning of the internal market.

If this analysis were incorrect, it would be difficult to understand why such a dramatic European crisis as the war in former Yugoslavia has not stimulated a rapid development of a strong political Europe. When facing questions of pure international politics, most European nation-states still show a strong tendency to hold on to their autonomy and to take more individual standpoints. This is the main explanation for the weakness of the political union, even after eventually having tested the hypothesis of the ratification of the Maastricht Treaty.

In conclusion, the present minimal political union and Citizenship of the European Union seem to be just a means to achieve economic goals and nothing more. Therefore, they are not an objective in their own right and hence, they are of relatively minor concern to the institutional constructors of Europe. This is increasingly the case since the monetary turmoil of summer 1993, and the growing recession tends to challenge the economic and monetary agenda settled in Maastricht.

Citizenship of the European Union and the Renewal of Nationalism

It is clear that a discussion on Citizenship of the European Union and European identity implies a debate about the nature of European political society and its laborious construction. At present, the European Union is "neither a federative Empire, nor a nation-state elevated to the rank of a continental power: the European Union is an economic entity which could perhaps become political"⁸ (Lafont,

1991: 27). Many classical elements of the state are present or announced in the Treaty (a territory, a currency, a foreign policy, a citizenship) but the European Union, which has no juridical personality, does not replace the state (Cloos, Reinesch, Vignes and Weyland, 1993: 116). The type of European polity to be construed determines both the content and the shape of the Citizenship of the European Union. There is no unanimously shared conception of a future European political Union. Without going into the details, there is opposition between the Federalists and the Confederalists. The communitarian Federalists were led, at least before the Maastricht summit, by Jacques Delors himself; and the Confederalists led by John Major fear that the European project will entail the dissolution of the nation-states.

In this context, the agreement achieved in Maastricht as far as the Citizenship of the European Union is concerned, must be considered as the smallest common denominator between the two main conceptions of a political Europe. It is a compromise which does not irreversibly commit the Member States in one way or the other and which leaves the gate open to both options. In other words, the Citizenship of the European Union introduced in the Maastricht Treaty allows the Federalists to pursue their objective, provided that they do not openly refer to the word "federation". At the same time, it also gives the Confederalists the opportunity to stick to their position which gives the nation-states the exclusive power to decide what should or should not be unified in a supranational political Union. Only a resolution of this conflict in favour of the Federalists could logically bring about a new discussion and new substantial developments in terms of the Citizenship of the European Union. However, events like the monetary turmoil within and around the European Monetary System during summer 1993, seem to indicate that the federal option is losing ground significantly. This situation is without any doubt profitable to the Confederalists and to the nationalist forces.

Therefore, it is not surprising in the present state of affairs that Citizenship of the European Union, as designed in Maastricht, is nothing more than a "functional" citizenship as opposed to a "substantial" one. It merely formalizes a set of pre-existing rights in the same "chapter" of the Treaty adding in some novelties along the way. For instance, some Member States had to introduce the right for European citizens to vote and to be elected in the country of residence both at the local and European elections (Callovi, 1993).

The granting of these political rights is sometimes presented as a critical step towards the defeat of the nation-state, in the sense that it apparently dissociates the possession of a nationality, that is the belonging to a nation on the one hand, and the possession and exercise of citizenship – understood as a set of rights and duties linked to the state – on the other (Meehan, 1993; Tassin, 1991). In my view, this is not yet the case. The concept of Citizenship of the European Union introduced in Maastricht is still largely derived from the national concept of citizenship

(O'Keefe, 1992). As a matter of fact, it does not create any new juridical and political subject. The main condition to be recognized as a citizen of the Union is to be a citizen of one of the Member States, that is a national of one of the Member States. This idea was already present in a Spanish proposal of September 1990. According to President Felipe Gonzales, Citizenship of the European Union should "develop without weakening in any manner the national citizenship to which it should be a complement and not a substitute".⁹

Therefore, Citizenship of the European Union as introduced in Maastricht can at present be analysed in terms of a renewal of the nationalist logic in the Gellnerian sense (Ferry, 1990). Theoretically, it stimulates a European political identity which is largely linked to a prior communitarian national belonging: one can be a European citizen only if one is of French, Belgian or German nationality, for example. In its present shape, the Citizenship of the European Union is thus, a sort of complementary supra-citizenship which confirms the existence of the cultural and political identities corresponding to the Member States of the European Union.

This renewal of nationalism explains the exclusion of extra-communitarian citizens legally residing in Europe from the Citizenship of the European Union. This exclusion cannot find legal justification in the case of a strict dissociation between nationality and citizenship. In many observers' views, the granting of Citizenship of the European Union is a significant advancement in a sense, that the objective criterion of residence would replace the criterion of nationality to determine who should be granted the rights commonly associated with citizenship. Now, if this perspective was effectively adopted, it would be incoherent and discriminatory to limit the access to Citizenship of the European Union to the nationals of one of its Member States.

This is the crux of the problem. Many observers have used an undifferentiated concept of citizenship¹⁰ and, therefore, they have not been able to perceive that, as far as political rights are concerned – the main novelty introduced by the Maastricht Treaty in this field – Citizenship of the European Union does not break the association between citizenship and nationality but renews it in a slightly different way. As far as socio-economic and civil citizenships are concerned, non-European Union citizens are granted rights as individuals and as workers, regardless of their nationality (North, 1992). However, the Maastricht Treaty adds nothing new to these fields, where there is effectively some degree of dissociation between nationality and citizenship. In conclusion, the fundamental criterion for the granting of Citizenship of the European Union remains the possession of the nationality. It can be the nationality corresponding to the state of residence but also one of the other nationalities corresponding to the other Member States of the European Union. In terms of principles, the criterion of residence is still largely subordinated to the criterion of nationality and it was claimed earlier on that it would be hazardous to predict a change in the short and medium term.

In this respect, the decision taken by the European Parliament in January 1993 to grant the right to petition to non-European Union citizens goes further than the Citizenship of the European Union designed in Maastricht as far as a dissociation between nationality and citizenship is concerned.¹¹

Citizenship "From Above" and Identity Construction

In his article "Outline of a Theory of Citizenship", Turner extends the classical work of T.H. Marshall notably, by introducing a distinction between passive citizenship developed "from above" by the state through the granting of rights, and active citizenship developed "from below" by the citizens through their participation in protest in various social movements (Turner, 1990). The Citizenship of the European Union has clearly been a citizenship "from above". The introduction of a Citizenship of the European Union through granting a set of "special" rights to EEC citizens is to be seen as a compromise between the European institutions and the Member States and not as the result of some kind of mobilization of the grass-roots citizens of Europe (Bryant, 1991). During the preparation of the European Council of Dublin, the Ministers of Foreign Affairs raised the question of

how to integrate and extend the notion of a communitarian citizenship to which specific rights (human rights, social and political rights, total freedom of movement and residence) are attached and which is then granted to the citizens of the Member States *by virtue of the belonging of these States to the Union*.¹²

Clearly, the role played by the will of the citizens of the European states in the process which led to the adoption of a Citizenship of the European Union in Maastricht was less than minor. Some of them did campaign in favour of the emergence of a new political movement for the development of the Citizenship of the European Union (de Schutter, 1992). However, associations like ECAS (Euro-Citizen Action Service) or VOICE (Voluntary Organizations in a Citizen's Europe), which began to become active during the campaign for the French referendum on the Maastricht Treaty and before the fateful month of January 1993, are far from forming a significant social and political movement of European citizens. In September 1993, for example, ECAS organized an important week-seminar on the European Citizen around the notions of equality and the struggle against discriminations. However, this type of initiative remained confined to a rather small circle of European citizens. Furthermore, the action of unions and political parties at the European level remain problematic. As Habermas puts it, if Citizenship of the European Union is thought of as a possibility of transnational collective action and as the consciousness of an obligation towards a common European well-being, then it does not seem to exist at the moment (Habermas, 1991). Furthermore, to

the present political context could be characterized as one of "passive democracy" (Turner, 1990).

If the Citizenship of the Union is the result of a movement "from above", of a top-down approach, and not of a movement "from below", what are the reasons which led both the European institutions and the governments of the Member States to conceive and to introduce it into the Maastricht Treaty? At this stage, an analysis of the power relations between the various European institutions and the national governments would be useful, but this goes beyond the purpose of this article. It is sufficient to say that the impact of both intra-institutional and inter-institutional conflicts on the processes of decision-making at the European level should be dealt with thoroughly to understand and explain these processes. It would be naive to consider the institutions and the governments engaged in the European integration process as homogeneous and undifferentiated bodies working exclusively in the framework of positive cooperation.

However that may be, five reasons are commonly put forward in order to explain the introduction of the Citizenship of the European Union "from above", despite the relatively meagre concern shown by the populations of the Member States.

The first reason is somewhat technical. The mobility of highly qualified workers and executives between the various European branches of international companies is certainly one condition of the efficiency of the internal market. Therefore, it seems important to make this mobility and the residence abroad as comfortable as possible for those who are directly concerned. In this respect, the Citizenship of the European Union could be seen as a means of granting an acceptable legal protection to such mobile European workers and executives. The granting of political rights at the local and European level could be considered as an extension of the free movement of workers (Heymann-Doat, 1993). This first reason is not very convincing in the current context. Effectively, as I claimed before, the Citizenship of the European Union does not grant any substantial novelty as far as socio-economic and civil rights are concerned.

The second reason comes from the "democratic deficit"¹³ which affects the process of European integration. Effectively, neither the members of the European Council of the heads of states or governments, nor the national governments which take part in the negotiations in the framework of the Council of Ministers of the European Union, nor the European Commission members are directly elected by the peoples of the various Member States. The European Parliament is the only European institution elected by universal suffrage, but its powers remain relatively limited. In this context, the introduction of the Citizenship of the European Union could be analysed as an attempt by the Commission to solve the "democratic deficit" problem and to "assure a real participation of the citizens to the Community work simultaneously and proportionately with the development of policies in the fields which affect them directly"¹⁴

If solving the democratic deficit problem were to be the aim of the Citizenship of the European Union, then the efficiency of this tool should be seriously questioned. As a matter of fact, the voting and eligibility rights granted to the citizens of the Union in the framework of the Maastricht Treaty only correspond to the local and the European elections. These rights could, therefore, be seen to confer only a second-class order of citizenship (Moxon-Browne, 1992). As far as the participation of the European citizens in local elections of their country of residence is concerned, it is difficult to understand how it could increase the democratic participation at European Union level. As far as the participation in the European elections is concerned, it should be stated that, despite the fact that the co-decision procedure has certainly increased the powers of the European Parliament – at least theoretically – it remains the least powerful of European Union institutions. Therefore, it is difficult to explain to what extent the right to elect a relatively powerless institution is likely to increase the participation of the citizens to the process of European integration and to reduce the “democratic deficit” it is suffering from.

The third reason is linked to the hypothesis that the aim is to build the European Union as a nation, and consequently, as a quasi-nation-state, resting on the building of a European culture and of an ideology of cultural resistance of a besieged Europe against the South of the world (Balibar, 1989). From this standpoint, Citizenship of the European Union can be considered as the first step in the process of transferring the national socio-political principle to the European Union level. Underlying this hypothesis is the idea of the final victory of the Federalists over the Confederalists. However, the fact that this is far from being achieved is exactly the main shortcoming of this hypothesis. In other respects, its main positive contribution is to show that the introduction of the Citizenship of the European Union happens simultaneously to the strengthening of the attempts to build Europe culturally.

Two major options can be distinguished in this relatively recent process of “culturalization” of Europe: the traditionalist option and the modernist option (Ferry, 1990). In the traditionalist and fundamentalist option, the “European culture” is seen as a given, and admitted fact, on the basis of which a European “community of destiny” should be developed. The idea of the intangible existence of a natural “European culture” based on the common Judeo-Christian and humanist experience grounding a “European spirit” has been recurrent for a long time. In his project for a perpetual peace, written at the turn of the seventeenth century, the Abbé de Saint-Pierre states that contrary to Asia or Africa, Europe is “a real society with its religion, its manners, its customs and its laws, and whose peoples cannot deviate from without causing troubles directly”,¹⁵ (Coll., 1963: 107). In 1924, Paul Valéry writes that: “every race and every land which have been successively romanized, christianized and submitted, as far as the spirit is concerned, to the

mind, the homo Europeus can thus be defined by a European spirit built through the ages by the Roman, Greek and Christian heritages. Nowadays, several apologists of Europe attempt to mobilize this heritage in order to ground the “European culture” and consequently, the European “community of destiny” of tomorrow. For Pierre-Yves Monette for example, the essential core of the European civilisation, i.e. the European specificity, is explained by all that we have in common: our cultural Judeo-Christian basis, our marked taste for liberty, justice and democracy, [...] our conception of the role of the woman which conflicts completely with other civilizations, our spirit of openness and tolerance which is not the integrism cultivated by some other peoples, [...]”¹⁷ (Monette, 1991: 285).

In the modernist and constructivist option, a major objective of politics and policies is to create a common European cultural space. In this respect, the cultural construction of Europe should follow the same pattern as the economic one. The cultural construction of Europe is seen as the result of a conscious political action in various fields such as plurilingualism, education and universities, audio-visual techniques, publishing, etc. (Domenach, 1990).

As witnessed by an opinion of the “Economic and Social Council on a Citizens’ Europe”, published in September 1992,¹⁸ these two options of the “culturalization” process of Europe are not mutually exclusive. As a matter of fact, reading Article 128 of the Treaty, it seems that they both apply, with a formidable consequence in terms of exclusion from the “Europeanness” of those citizens living in Europe which come from a non-Christian civilization, for example the immigrant populations which come from countries where Islam is the main religion. Nevertheless, it seems at the moment a bit impetuous to defend the hypothesis that the European Union has entered into a proper “nationalization” process. As a matter of fact, such a movement is impeded by the strong resistance of the European national identities formed in the past.

Let us now turn to the fourth reason which could explain the introduction of the Citizenship of the European Union. Both the achievement of the great internal market and the economic and monetary union would imply additional deprivations for the European population whose standard of living has been significantly decreasing since the first oil crisis in 1973. A certain degree of people’s consent to this additional austerity is certainly more than necessary if the economic integration is to progress in Europe. The heads of states or governments of the European Community declared at their Birmingham meeting in October 1992 that, “as a community of democracies, we can progress only with the support of our citizens”.¹⁹ According to some political actors, the stimulation of a European identity is one means to obtain the people’s support and the people’s acceptance of the additional deprivations (Bryant, 1991).

In this context, the introduction of a Citizenship of the European Union could be seen more as an attempt to create “a feeling of belonging to the European

construction"²⁰ than as the result of a will to give a real and direct means of participation in this construction to the citizens of Europe. This hypothesis is supported by the evolution of the debates and decisions which have led from the Citizens' Europe to the Citizenship of the European Union. As a matter of fact, the first European Community decisions in this area stressed the importance of creating European symbols which were not seen as mere and futile gadgets but as central elements of identification to the European Community. This explains the appearance of a European Community flag, a passport²¹ and an anthem. The same period saw the creation of a tool to control the evolution of the "European public opinion" at the same time as it was trying to give birth to it, i.e. the "Eurobarometer".²² Now, the creation and manipulation of symbols are always important in the processes of identity construction.

The fifth reason – which is also the most logical one – is perfectly summarized by the following quotation:

If one sticks to the creation of a political Union, whatever scope one wishes to give to the concept, it is at first advisable to solve the preliminary question of its domain of jurisdiction, both at the geographical level and at the level of persons. Even from a purely logical point of view, it is not possible to conceive of a political Union without an accurate previous delimitation and without defining the persons belonging to the Union²³ (Mira, 1991: 168-169).

In this respect, the aim of the Citizenship of the European Union would be precisely to bring about this delimitation. The question of the criteria adopted to eventually choose and select the members of the political Union must again be addressed here. We must therefore return to the third reason, i.e. to the construction of a European culture and the limitation of the Citizenship of the European Union to those individuals who are supposed to hold this culture.

In the end, it seems that the introduction of a Citizenship of the European Union "from above" can be explained reasonably well by a combination of the third, fourth and fifth explanations presented above. This Citizenship of the European Union tends to be granted on the basis of belonging to one of the European Union nations and on the basis of belonging to the European culture in construction. This could amount to the exclusion of numerous immigrants from the South and the East of the world already living in Europe, but also of those potential migrants who arrive in Europe as asylum seekers or of those already within the family reunification process. The idea seems to be progressing that one should be a true European Citizen – above all preliminary "culturally" European – to be allowed to profit from the relative economic European well-being. This could lead to the assertion of a sort of ethno-racial conception of European society which could account for all the exclusionary practices suffered by the non-members of that European society. Even

racial. Therefore, the various minorities living in the Member States, whose presence is a consequence of colonialism, labour migration processes and other patterns of human mobility, are a living challenge to the mythical view of an ethnically, racially and culturally homogeneous Europe. This challenge could bring about alternative conceptions of "Europeanness" through the processes of political mobilization in which the various minorities are engaged.

The Short-Term Implications of the Citizenship of the European Union

Expanding on the work of Brubaker (Brubaker, 1989), and Hammar (Hammar, 1990), I have formulated elsewhere the hypothesis of the emergence of a triangular citizenship structure in Western Europe (Martiniello, 1992). Now that the Maastricht Treaty has been ratified and entered into force, it is very likely that the introduction of the Citizenship of the European Union will legally confirm and sanction this "triangularization" of citizenship in the European Union, though modifying it slightly. Three levels of citizenship in the European Union, three types of citizens can be distinguished – depending on the civil rights, the socio-economic rights and the political rights they enjoy.

Only the citizens of a Member State living within the border of their nationality state enjoy the full civil, socio-economic and political rights, i.e. the full citizenship. In terms of the set rights they enjoy, they are the only fully included category. Even though a growing number of them is effectively excluded from the processes of redistribution of economic, social and political resources.

At a lower level, the citizens of a Member State of the European Union who are living in another Member State than their own enjoy only limited political rights (mainly the right to vote and to be elected at the local and European level). In other respects, some civil rights are lacking. For example, Article 8A of the Maastricht Treaty does not seem to provide the total freedom of settlement in another European Union country. In order to avoid movements of unemployed workers from Member States with little social protection to Member States that offer high levels of protection, two conditions must be fulfilled by the European citizens if they want to settle in another member state, i.e. financial independence and independence in terms of social security. Furthermore, their opportunity to have access to the civil service in their country of residence remains severely limited. Eventually, even though this category of European citizens is largely protected by European Union Law, the full equality between nationals and other European Union Citizens has not yet been achieved. Some difficulties and confusions can arise from the fact that the social legislations of the Member States have not yet been fully harmonized. In this respect, one should not forget that the European Social Charter has no constraining power and that the mere idea of a European Union social policy has always been faced with strong opposition from the British conservative government.

The third category of citizens living in the European Union is actually divided into two subcategories. The "denizens", that is the citizens of an extra-communitarian state legally settled in Europe, are to a certain extent part of both civil and socio-economic European society. However, they generally enjoy no significant political rights in the European Union.²⁴ The Forum of the Migrants of the European Communities has been working in this area for a few years. In theory, the Forum should be a means of expression for the extra-communitarian migrants at the European level, as well as a platform for dialogue between them and the Commission. However, the Forum has no decision-making powers and it is clearly located at the edge of the European polity which is in slow construction. The second subcategory, the "margizens", enjoy extremely limited civil, socio-economic and political rights. In many cases they have almost no rights at all because they live illegally in a Member State of the Union. Between the denizens and the margizens, one could also mention a growing category of legal temporary residents or workers, some of which might be in quite good positions, whereas others are severely marginalized. Anyway, denizens and margizens are grouped together in the same category because they suffer analogous mechanisms of exclusion from the cultural and political "Europeanness".

As far as the distinction between the first two levels of citizenship is concerned, it is justified by the renewal of the nationalist logic which is beyond the processes of European integration. For the time being, the persistence of the nationalist logic impedes the extension of the European political Citizenship at the regional and national levels of the Member States.

The hypothesis of the emergence of a triangular citizenship structure in Western Europe faces a limitation due to its normative character. As a matter of fact, the practical implementation of the rights associated to citizenship sometimes makes the distinction between nationality, denizenship and margizenship less clear-cut in daily life than in the proposed model. For example, even though the nationals – theoretically speaking – enjoy all the socio-economic rights in almost all Member States, including the right to work, a growing number of them are definitely condemned to long-term unemployment and poverty. Their living conditions tend, therefore, to be similar to that of some margizens. This is especially, but not at all exclusively, the case of black nationals²⁵ in several European countries. The possession of the nationality of a European state does not impede racial discrimination. In this respect, it should be noted that there are no strict and binding guidelines aimed at fighting racism at the European level. There is no common policy in this area and each Member State has its own approach (Commission of the European Communities, 1992; Niessen, 1992).

In any case, the growing socio-economic processes of exclusion affecting both "nationals" and "foreigners" in Europe must be taken into account to make sense of, and to qualify the trial citizenship structure; however, this does not impair its

What about the Long Term?

After having examined the short term, let us now turn to the long term. What are the prospects as far as the Citizenship of the European Union in particular and the political Union in general are concerned? Effectively, their respective development will be closely linked. The nature, the shape and the content of the future Citizenship of the European Union will depend on the type of European society that will actually be constructed and vice versa. Are we going to continue to hesitate between the present hybrid Confederalism and some kind of a vague European Federalism with the implementation of a European Citizenship which is largely based on the national model to which some elements of a federal citizenship are added? Will there be some space for a post-national political Europe and thus for a post-national Citizenship of the European Union based on the criteria of residence and constitutional patriotism?

In Glotz's view (Glotz, 1992), Maastricht is likely to be more the end than the beginning of a European Political Union. According to him, the European Community will continue to be a sort of loose confederation of nation-states which will cooperate in a free trade zone.²⁶ If we try to extend Glotz's analysis, it may well be that the Citizenship of the European Union introduced in Maastricht could be a closing point, the greatest common denominator between the respective will of the European institutions and of the Member States. Forced to abandon parts of their sovereignty in other areas, the Member States will strive to keep control of what is the core of their sovereignty, namely by their independent determination and constraints on who is allowed to be considered as one of their nationals. Chabot's analysis follows the same lines when he asserts that an involvement of the Member States in the construction of Europe is often followed by a withdrawal which makes all further progress impossible for a certain time (Chabot, 1987). Smith advances the hypothesis that a sort of pan-European nationalism could develop, grounded on the mobilization of a European cultural heritage, provided that it will not compete with the national identities and cultures. The European political community could thus constitute a new kind of collective identity embracing the present nations, without, however, abolishing them (Smith, 1991).

At present, nothing allows us to announce the beginning of a post-national era cherished by Ferry, Lafont, Oriol and many others. In Ferry's view, a post-national European society could be based on the principles of constitutional patriotism and cultural sovereignty (Ferry, 1990; 1991). Lafont does not use the same expression but he aims at the same type of society in his argument for a "crossed" and transparent Europe as well as for a "deterritorialized" human being²⁷ (Lafont, 1991). The same is true of Oriol when he states that "the Europe of the citizens can only be the Europe of all the resident citizens"²⁸ (Oriol, 1992: 217). In my view, only a successful mobilization of the denizens and margizens together with the nation-

als, that is a significant pressure "from below" for a new Citizenship of the European Union, could bring about an extended breach in the nationalist logic and open the way towards post-nationalism in Europe. However, European movements of citizens remain largely limited. As Edgard Morin puts it,²⁹ the challenge of a democratic Europe at this stage would be to develop European political parties, European trade unions and European associations committed to the construction of the Union. As far as denizens and margizens are concerned, nothing allows us to announce a positive mobilization of those social categories which suffer increasing "racialization", "ethnicization" and which are confined in a cultural alterity and treated as "target groups" (Tarzi, 1991) in the European political area. To a certain extent, these exclusion processes are precisely linked to the renewed predominance of the European nations in a complementary European political and institutional framework.

Notes

- 1 This quotation follows the foreword in the book edited by Garcia (1993).
- 2 As in the literature and in the official documents in the area, I am using two expressions in this article which in my view cover the same meaning: "Citizen's Europe" and "Citizens' Europe".
- 3 For an accurate description of the development of some elements of citizenship from the wording of the Rome Treaties and the Single European Act, see Closa's article (Closa, 1992).
- 4 Title II, Part 3, articles 138A, D, E and article 157; Title VI, article K1; Final Act of the Maastricht Conference, Declaration n° 2.
- 5 Agence Europe, n° 6150, 17 and 18 January 1994, p. 4.
- 6 Agence Europe, n° 6141, 5 January 1994, p. 11.
- 7 Agence Europe, n° 6152, 20 January 1994, pp. 4-5; Agence Europe, n° 6153, 21 January 1994, p. 11; Migration News Sheet, n° 131/94-02, pp. 8-9.
- 8 This is a free translation into English of the following quotation: "ni Empire fédérateur, ni Etat-Nation élevé en pouvoir continental: l'Union européenne est une entité économique qui, éventuellement, pourra devenir politique" (Lafont, 1991: 27).
- 9 This is a free translation of the following quotation: "prendre corps sans entamer en rien la citoyenneté nationale dont elle serait un complément et non un substitut", Opinion of the Commission on the Political Union of the 21st October 1990, Agence Europe, n° 1659, 31 October 1990, p. 5.
- 10 The work of T. H. Marshall is crucial for the sociological study of modern citizenship, especially the distinction he made between three types of rights associated with citizenship, namely civil rights, political rights and socio-economic rights (Marshall and Bottomore, 1992).
- 11 Agence Europe, n° 5905, 25 and 26 January 1993, p. 6.
- 12 This is a free translation of a quotation included in the document adopted by the Ministers of Foreign Affairs of the EEC at their meeting in Luxembourg, 11 June 1990. This document was adopted to prepare the European Council of Dublin, which took

- place on 25 and 26 June 1990 (Agence Europe Documents, n°1628, 1990) (emphasis added).
- 13 The French expression is "déficit démocratique".
- 14 This is a free translation of the following quotation: "pour assurer une véritable participation des citoyens à l'oeuvre communautaire au fur et à mesure que se développent des politiques dans des domaines qui les touchent directement", Opinion of the Commission on the Political Union of 21st October 1990, Agence Europe, n° 1659, 31 October 1990, p. 5.
- 15 This is a free translation of the following quotation: "une société réelle qui a sa religion, ses moeurs, ses coutumes et ses lois, dont aucun des peuples qui la composent ne peut s'écarter sans causer aussitôt des troubles" (Coll., 1963: 107).
- 16 This is a free translation of the following quotation: "toute race et toute terre qui a été successivement romanisée, christianisée et soumise, quant à l'esprit, à la discipline des Grecs, est absolument européenne" (Coll., 1963: 99).
- 17 This is a free translation of the following quotation: "la spécificité européenne s'explique par tout ce qui nous est commun: nos fondements culturels judéo-chrétiens, notre goût prononcé pour la liberté, la justice et la démocratie, [...] notre conception du rôle de la femme qui est en opposition complète avec celle de nombreuses autres civilisations, notre esprit d'ouverture et de tolérance qui n'est pas l'intégrisme cultivé par certains peuples, [...]" (Monette, 1991: 285).
- 18 The key to a Citizen's Europe is its unity and diversity of culture, its pluralism of thought and tradition, its Christian heritage and appreciation of other faiths as well as humanistic and secular values and principles, and its fundamental attachment to liberty, peace, social justice, tolerance, human rights and the Rule of Law. The "soul" of Europe is in fact imbued with humanistic principles (notably the right to human dignity), such principles constituting the bedrock and driving force of democracy. [...]", Economic and Social Committee, Opinion on Citizen's Europe, CES(92) 1037, 23 September 1992, p. 2.
- 19 This is a free translation of the following quotation: "En tant que communauté de démocraties, nous ne pouvons progresser qu'avec le soutien de nos citoyens", Declaration of Birmingham, Agence Europe, Special Edition, n° 5839, 18 October 1992, p. 3.
- 20 This is a free translation of the following quotation: "un sentiment d'appartenance à la construction européenne", Opinion of the Commission on the Political Union of 21st October 1990, Agence Europe, Documents, n°1659, 31 October 1990, p. 5.
- 21 The European Community passport is not a single passport but merely a document of uniform design issued and delivered only by the Member States to their citizens (Closa, 1992).
- 22 For more details on the Citizens' Europe, it is useful to refer to the Communication of the Commission to the Council "A Citizens' Europe", COM (88) 331 final, 24 June 1988.
- 23 This is a free translation of the following quotation: "Si l'on s'en tient à la création d'une Union politique, quelle que soit la portée que l'on souhaite donner à ce concept, il convient tout d'abord de résoudre la question préalable de son domaine de juridiction, tant sur le plan géographique que sur le plan des personnes. Même d'un point de vue purement logique, il n'est pas possible de

- concevoir une Union politique sans une délimitation préalable précise et sans que soient définies les personnes appartenant à l'Union" (Mira, 1991: 168-169).
- 24 In the framework of the negotiations between the EEC and some EFTA States in the perspective of an enlargement of the EEC and their accession to it, the status of the citizens of those EFTA States is likely to evolve rapidly.
 - 25 Many Member States of the European Union have a minority of dark skin citizens who are a legacy of their past colonial experiences. It is certainly the case of Britain, France, the Netherlands, Germany but also of Belgium and Italy.
 - 26 It could easily be argued that the European Community is already far more than that. However, the monetary clash of summer 1993 shows that setbacks are not to be excluded.
 - 27 It is indeed almost impossible to translate Lafont's terms. The original expressions are: "une Europe métisse et désopacifiée et un homme déterritorialisé".
 - 28 This is a free translation of the following quotation: "l'Europe des citoyens ne peut être que l'Europe des citoyens résidents" (Oriol, 1992: 217).
 - 29 *Le Monde*, Wednesday 2 February 1994, p. 2.

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CHAPTER 9

Naturalization or "Culturalization"?

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Agnes Heller

I.

A significant number of countries, although not all of them, routinely apply the term "naturalization" to the process in the course of which immigrants are accepted as citizens of a particular nation-state. Very rarely, do politicians and administrators give any consideration at all to the deeper theoretical background of the term, despite the fact that the most cursory analysis will show what profoundly different, even conflicting, shades of meaning reside in it, as well as in the opposed term, "culturalization" (which we coined for the purposes of the present discussion). We cannot call into question the underlying maxim behind *both* terms, namely the demand or the emphatic expectation that the newcomers adopt a positive attitude to what constitutes the "substance" of the recipient group (irrespective of whether this substance is regarded as "nature" or as "culture"). Questioning this maxim would turn what is meant to be a "home" into a "hotel" with transient denizens. This would be one of the new scenarios of political nihilism with which human groups with a minimum of internal cohesion cannot live. It would also generate an unbearable atmosphere of permanent exile for the newcomers. Our conviction is that the realistic choice is exclusively one of the two alternative terms.

Naturalization, if taken seriously, can mean one of two expectations. The first idea of naturalization takes the concept literally, in that it enjoins the newcomer to melt into the collective body of the receiving nation to the point of indistinction.

the nineteenth-century European nation-state. In addition to this, its nationalism was the hotbed of racism, once it abandoned its democratic thrust – the opposition of the "national sovereign" to the sovereign prince. For if we consider the receiving community to be a body, the newcomer has to develop a whole new physiology and physiognomy in order to be accepted. It was consistent, therefore, that the European nation-state denied citizenship to men and women of colour for more than a century; it also regarded even the singing of Jewish incantations as a sign of incompatibility with being affiliated with the national community.

There is a weaker formulation of this demand. Its proponents no longer use the organic language because they have learned the historical lesson. However, they continue to demand that the immigrants regard the order they wander into, its spirit and mores as the "only natural" one; and by implication that they judge all others in minimally derogatory, and perhaps in outright hostile terms. This is how Carl Schmitt's "politics of friend and foe" is written in the very tissue of the nation-state.

The two types of "naturalization" (the "strong" and the "weak" one) circumscribe the strategy of assimilation by which every nation-state has developed up until recently, including the ones which now boast of melting the heterogeneous into a homogeneous compound in a libertarian manner. Undoubtedly, it was a successful strategy, never challenged for almost two centuries for a perfectly simple reason. The alternative of being a "naturalized" citizen of a nation-state was either being a native of a colony or remaining the obedient subject of autocratic rule and neither of them could satisfy even the minimum of the libertarian aspirations of the men and women of modernity. The price to pay for becoming a citizen through complete assimilation did not seem to be exorbitant. However, for decades now, a rebellion has been mounted against naturalization. It is this newly emerging resistance that makes the analysis of the opposed term, "culturalization", mandatory.

The strategy of creating cohesion in a human group via *Kultur* has similarly been there since the inception of the nation-state, for *Kultur* (or *Bildung*) is the *bürgerliche* form of self-definition *par excellence*. A person becomes *Bildungsbürger* through self-cultivation, and not through "nature"; only the nobility, i.e. persons of "blue blood", are what they are by the grace of nature, namely by birth – the genetic contingency. Since the *Bürger* cannot define themselves by their "naturally" ennobled body, they turn against corporeality altogether, towards the light of reason, self-cultivation, refinement (which is tantamount to the progressive elimination of the elements of nature both from the person's and the community's self-constitution). *Kultur* also provides a substance, a matter for the construction of the Self in a world of void where the earlier universal substance, namely Catholic Christianity, had already collapsed and abandoned the field under the blows of, first, the

"hard core" of self-definition and self-construction. Admittedly, the cultural (as opposed to the organic) definition and constitution of group cohesion has been taking the form of an exclusive rule of a single culture for centuries under the iron hand of a strong state. (The story of the French language becoming the generally accepted medium of communication for all French men and women, from Richelieu through the revolution up until today, a truly Tocquevillean story of state centralization, is perhaps the best example here.)

However, there is no inherent necessity in this outcome of the story. "Culturalization" as a strategy of creating cohesion means simply the following: there is – because for pragmatic necessities there must be – a common discourse in every human group; this is the basis of *res publica* which cannot exist without it. At a particular place, the common discourse is conducted in a certain language; therefore, it must be mastered – preferably well – by every permanent resident in order to be able to participate in the discourse. There is also a context to the language: the context of traditions, works of art, moral customs, institutions which have been tested by time and experience. These constituents together, provide the framework in which every newcomer moves and communicates unless he or she intends to live behind the self-erected walls of a myriad of ghettos, in voluntary apartheid. However, cultural self-definition is not necessarily one of forced assimilation (although this is what it used to be) as it offers another possibility: assimilation without forcible dissimilation. We can only have but one "nature" or "body" but we can indeed have several cultures which do not necessarily exclude each other. It is at this point that the whole strategy of multiculturalism emerges.

II.

What is the deepest reason for the vehement resistance to the idea (and in some countries to the emerging practice) of multiculturalism? There is an easy, perhaps a too easy answer to this question which points to the conservative prejudices of society as a whole or of some of its strata. This accusation is undeniably true, and a good example of it was recently provided in Australia where the Conservative Party selected anti-multiculturalism for the main slogan of its ideological campaign (and, incidentally, lost the election). However, those who see a merit in the proposal, and even those who link it to the survival of Western culture, cannot be satisfied with a too easy answer. There is a legitimate nucleus in the opposition to multiculturalism which is due to a misconceived approach to the new phenomenon, now rampant on the North-American scene. In a nutshell, this approach consists in the idea of "introducing multiculturalism by laws".

Without doubt, there is a fair amount of legislative work to be done in this field; who would know it better than an Eastern European? As long as it was the state,

gally claim an ethnic identity (the target of this policy being the exclusion of Gypsies from the list), as long as the state forbids Hungarians to use their names according to the rules of Hungarian spelling, like in today's Slovakia, or Turks to use the Turkish names of their ancestors at all, like in Bulgaria of yesterday – there is a definite need for appropriate legislation. There is an equal need for anti-discrimination laws (although not for their hypertrophy) in countries with legal guarantees of participating in several cultures, instead of only in the dominant one, but where society, the collective tyrant, has prevented the cultural groups in question from putting their rights into practice. However, this is where the legislative aspect of the story ends: at the point of granting the right to multiculturalism. If the obsession with a primarily legislative foundation of multiculturalism goes further, the legitimate fear stemming from a destructive trend, even from a tyranny of laws, arises in groups which would otherwise be sensitive to opening up to other cultures. The phenomenon is not fictitious; it is simply a description of the situation in the United States where a silent majority – tacitly but stubbornly – sticks to its old prejudices, while a clamorous minority has already succeeded in imposing legal measures which make a rational, and therefore mutually critical, discourse between cultures practically impossible. He who voices the slightest dissatisfaction with any given aspect of another culture, is automatically branded as a racist. In the dominant oppressive atmosphere of the "politically correct", this situation has been aggravated by the explicit demand of "self-representation". The timid attempts to criticize from outside the so far most appalling – because "politically" correct – exhibition of the American Biennale in the Whitney Museum this year, for example; the critique of homosexual artists by heterosexuals, of black artists by white critics, etc. were immediately rebuffed by the aggressive claim that only the in-group can criticize the in-group in a legitimate fashion. Others, the out-group, cannot supposedly even understand the other's aspirations.

Multiculturalism, thus understood, would in our opinion lead to a complete fiasco, to a cul-de-sac. For what the best, the farthest-reaching, and at the same time the least extremist laws can guarantee is only a possibility of cultural self-development. It can never promise the rank of a particular group culture in a hierarchy of cultural achievements, the necessity of which is denied only by those for whom Beethoven and Michael Jackson are equivalent phenomena. This is not a reactionary bias but one of the most complex and most bothering facts of the New World where there is no political alternative to democracy anymore, where democracy and culture are often on a collision course. As Tocqueville rightly remarked, for democracy, equality is the central category; for culture, however, the inequality and hierarchy of its phenomena. This is so, precisely because culture is not a mere pastime, a decoration glued to a prosaic and boring world, a nicely packaged candy which we consume in our lazy hours. Our definitions of culture may, and indeed

substratum out of which we build our collective and individual egos. We would not be what we are without the culture which we have inhaled since our very early childhood experiences. One need not read a single article on the definition of culture for insisting, sometimes in passionate terms, on the particular kind of self-identity which one has grown up with. If, therefore, large groups feel threatened in the core of their existence, if they face the danger that the world around them may, under the impact of trendy slogans, lose the only matter from which they have built their egos, this deep existential anxiety, perhaps the second-deepest after the (individual and collective) fear of death, is cyclically translated into violent political action.

The trauma of sharing our earlier monolithic cultural environment with new pretenders, who are legitimately there and whose presence is in itself a challenge, is so deep that multiculturalism will be victorious only if the rivals of the dominant culture are going to make an extremely convincing case, i.e. if they present an alternative in which men and women of an established culture can also live. As long as those that have grown up in a Hispanic culture will *exclusively* speak pidgin Spanish, and not the language of Borges, Paz, Marquez, Fuentes and Vargas Llosa – the best Spanish written these days – "Chicanism" will either be an exotic ghetto or the threat of barbarism to those who live in the world of Shakespeare, Dickens, Carlyle, Joyce and Eliot. The emphasis is on "exclusively". For naturally, pidgin Spanish has to deal not only with Shakespeare, but also pidgin English. If both cultures have a higher level of self-expression, namely of great works of art and artistic peaks, a state of equality will prevail. However, if one of the cultures has developed all of its layers, from the lowest to the highest, while the other contrasts its bare existence, articulated at the bottom of the ladder, to this multi-layered universe, the recognition of multiculturalism can only be masochistic and hypocritical. The worst possible service rendered to the good cause of multiculturalism is that by those who want to shield it from competition by granting legal immunity from criticism.

One of the most complex, and philosophically most unclear issues of the present debate is the ranking of cultures. However, while we may not have the theoretical answer to this question, every student who studies at the best universities of the dominating culture, instead of wasting time in a "Chicano" and "Chicana" department, has independent views on this debate. A further factor can be added to this which is too often forgotten by the most passionate advocates of multiculturalism: perhaps the only examples of "migrant cultures" becoming equivalent to the mother culture from which they have seceded can be found in Spanish- and Portuguese-speaking America. (There can be very little doubt that the "Spanish" literature which captivates the soul and fantasy of the world has been created in Latin-America, and not in what has been piously regarded as the "cradle" during the last 50 years.) However, this is an exception to the rule, for solid sociological reasons. The rule

groups of emigrants rarely come to a New World accompanied by their intellectual leaders. The latter, be they the *Kaffeehaus* intelligentsia of Europe or the religious leaders of an Asian community, leave their roots and native soil only when in extreme physical danger. (The major exception to this rule was the periodical exodus of the Polish intelligentsia, from Miczkiewicz, Chopin and Marie Skłodowska-Curie to Milos and Kolakowski.) The intellectual leaders are also the first to return to the old country whenever the slightest sign of a political thaw appears on the horizon. The wandering groups normally bring along the barest essentials of their cultural existence: the language which deteriorates with the generations, and the religious habits and rites which more stubbornly withhold the challenge of time and distance. Therefore all attempts to convince the migrant groups that they represent the highest level of their own culture and that they present a challenge to the dominant culture by their mere existence do the greatest possible disservice to multiculturalism.

The chances of the challenger for becoming an authentic rival, instead of being a folkloristic relic, depends to a very large extent on the location of the multicultural unit. In this respect, two types can be distinguished: territorial and "diaspora" multiculturalism. A strong example of a territorial multicultural unit is Catalonia in the post-Franco Spanish state. There are ups and downs in the political and emotional climates of this "country within a country", which has a separate territory populated mostly by Catalans (who live in their bulk there and not in other regions of the country); which, furthermore, has its own language, its separate history and traditions. At the same time, for a number of reasons (of which we are ignorant or which simply cannot be discussed in this context) it has chosen to remain under the Spanish umbrella. This decision necessarily entails the inclusion in "the Spanish discourse", which makes the Catalan culture a case of *multiculturalism*, and not one of cultural-political secession from a dominating presence. (We can see several examples of the latter in the wake of the dissolution of the Romanov-Bolshevik Empire.) Similarly strong examples of "diaspora-multiculturalism" are provided not only by the group from whom the term stems (the Jews), but also by those Chinese, Greeks, Arabs, or Turks who are living in the niches of an alien civilization. They preserve their languages no less than the Catalans; they are the descendants of some of the most glorious cultures of the past and present. Nevertheless, there is a perceivable difference between the two types due to territorial multiculturalism. Simply by virtue of geographic and demographic separation, the "territorialists" are propelled to build up the whole network of what is usually called "high culture" (good universities, theatres, cultural centres, publishers and the like) in imitation of the dominant cultural network. Denizens of "diaspora multiculturalism" are not normally motivated by similar desires. They live in self-imposed segregation (the physical closeness of the Other is an impetus for ghetto-building, so to speak) which buries the inclination to fence off the cultural

presence of the Other, not to imitate it. (Needless to say, this is not a fatal necessity. The Jewish "diaspora culture" in New York developed an excellent theatre, and great writers, like Isaac Bashevis Singer, began their career in small-circulation Yiddish-language literary monthlies of this New York circle.) This consideration leaves open the tangled question of whether the groups struggling for the recognition of multiculturalism will not at a future point in time couple the issue of culture with that of territorial rights. However, our task here is not to predict, but rather to analyse.

The idea of multiculturalism is laden with a further tension in the Western world (the only area which, despite its resistance, at least takes the challenge seriously): this is the relativization of our standards which has been on the theoretical and political agenda since Nietzsche and the collapse of the global domination of Western-universalist rule. Absolute and universalist Cartesian Truth has been battered both by books on philosophy and on the battlefields of pragmatic politics. However, the same culture which relativized itself also discovered the price it had to pay for it: the spread of nihilism – this unmistakable sign of impending self-destruction. The following question must therefore be explicitly posed: If cultural pluralism entails the inevitable relativization of our standards (because different cultures with different standards live together in the same space and the application of one and the same standards to all of them would be inescapably felt as *Kulturimperialismus*), in which respect can we accept relativization and what are the aspects of life where we, at the peril of suicide, must remain universalist?

In a recent discussion on the issue, Peter Berger mentioned two interesting examples, both taken from recent French history, which bear out the difference between the two aspects. One of them was the well-known case of Moslem girls in French schools who, on paternal order, wore their veils in class which wrought havoc among the teachers – functionaries of a "republican and secular" system of education. The other example, similarly taken from the French context but which also appears elsewhere, is the barbarous habit of the circumcision of young girls in order to prevent them from the pleasure of "sinful lust". Although a critic of multiculturalism, rather than a supporter, Berger proposed lenience towards the first collective habit and legal and moral inflexibility in regard to the second. His – somewhat problematic – argument was that the second case (circumcision) was a legal issue while the first (the wearing of a veil) was not. We believe that legal interference and non-interference alike are legal (and moral) decisions. Montesquieu rightly remarked that the liberty of a state is enshrined not only in its constitution but also in its penal code: the Law has to know what it will not punish so that people can remain free. Deeper still, the parallel examples tell us how far multiculturalist relativism can go and where it has to come to a halt – even forcibly if necessary. The first example is taken from the kind of moral habits which may cause con-

only by keeping signs of religiousness or atheism as far from the school scene as possible) but which certainly do not prevent French girls and boys from growing up in *la civilisation Française*. Dramatically different is the second example of a moral and legal order in which the generalized and binding maxim of *habeas corpus* belongs to the first principles. Making compromises on the second issue would mean abandoning the "hard core" of our cultural existence.

All these qualifying remarks had to be appended to our argument in order to give voice to a very strong plea on behalf of a multi-culturalist turn in the West. The acceptance of a reasonable form of multi-cultural coexistence of human groups is a must for the West as it is facing a *Völkerwanderung*, which may be slowed down but which cannot be kept *extra muros* but by means which would endanger the very meaning of our culture and morality. It should be emphasized that this is mandatory not only for alleviating the suffering and increasing the chances of the newcomers' minority culture; it is also equally indispensable for the survival and further enrichment of the dominant cultural pattern. One example will elucidate what we have in mind: these days, in discussing the highly variegated origins of our European or Western culture, we use the term "Judeo-Christian tradition" in a nonchalant fashion, as if it were the most natural thing in the world. But in fact, this term was coined very recently. Prior to the Second World War, not only the Nazis, but also mainstream Christianity avoided mentioning the fact – so well-known and so amply addressed in theology by the Harnack school, by Bultmann in particular – that for two generations, basically till the acceptance of Paul's reforms, the fate of Christianity as a world religion hung in the balance. The Christian doctrine and the Christian congregations belonged more to the world of Jewish sectarianism than to the Greco-Roman universe in which Christianity was to later achieve its ultimate victory. This sudden discovery is indeed only "multiculturalism in retrospect", which does not necessarily inspire tolerance and multiversity at present. It is also true that the reasons for recognizing the multicultural roots of Christianity can be detected in the danger of progressive secularization, and not in any penchant for multiculturalism. However, an important fact has been missed with this argument: by opening up to its multicultural roots in the past, Western culture made the Jewish heritage available for itself for the first time. There is a standard defence of the Jewish presence in Christian context by tolerant conservatives in singling out "the great Jews" (from Mendelssohn to Heine) who, by "having naturalized themselves" became "great Germans". The assimilationist and anti-racist thesis is honest but flawed. It overlooks one crucial fact; as long as talented Jews had to assimilate to the German (French, English or any other) culture to become prominent cultural figures at all, the living influence of Christianity's Jewish roots had to remain paralyzed. Only with the appearance on the scene of intellectuals (like Buber, Rosenzweig, Bloch, Benjamin, Levinas and others) who did not assimilate, who embraced whole-heartedly their Jewish and German (or French)

cultural dimensions, did the Jewish legacy become a living and crucial factor in and for the Western culture. This is how we all got enriched by the "Judeo-Christian" tradition.

III.

Years ago, in writing theses in defence of the rights of migrants and in support of a multicultural coexistence, we used the metaphor of "house-rules". "House-rules" can be stipulated only if there is a house, someone's home and residence. The metaphor has provoked a certain kind of criticism even on the side of those who were in general agreement with the theses. Criticism focused on the term "house" and on the ownership of the house. Therefore, the issue has to be addressed head-on and two questions must be posed. First: Can a country be likened to a "house", i.e. someone's home and abode? In other words, are we not making concessions to the "family language" of the discourse on the nation-state, to a language which, more often than not, is affiliated with organic vocabulary? And second: If a state or a nation can indeed be likened to a house, whose house is it?

The emotional statement that one's country is one's house (or *Heimat* where the word is a derivative of *Heim*, i.e. the home) cannot be fully defended by rational arguments; but it is non-sensical only for a doctrinaire Enlightenment position, for a cosmopolitanism of the most problematic kind. There is no absolutely compelling logical argument in support of it: we do not "live" in a country, only in a particular part of a country; only children give the country's name as their address; we may dwell in this abode with a studied distance, emphasizing our non-identification, our transience at the given place; we may be quite alien to certain other parts of that same country and we may never have visited them in our whole lives. At the same time, most of us use terms and expressions, referring to the country as a house and a home throughout our lives: we are "not at home" when we are abroad (and we feel at home, the moment we cross one of the most artificial human creations, i.e. the state border); we are "homesick" when we are in an alien country (or we have to explain why we are not); some of us, among them highly rational beings, insist on being buried "in the house", because, they remark, "the soil would be too heavy on them elsewhere". Behind these everyday habits of treating a country like a house (and a home), no irrational cult of romantic-organic patriotism is hidden, at least not necessarily. We are rather realistic and pragmatic as well as morally responsible in resorting to the metaphor. This means that we know that no country can cover the surface of the earth; each one is limited like a house. (It is in precisely this sense that we speak of the *house of Europe*.) It also means that a country has a certain number of inhabitants who are supposed to close the doors behind them, not to let in any casual stranger without a preliminary agreement; however,

premises, we bear a certain kind of responsibility for its condition, regardless of any emotional attachment (or the lack thereof) to the house. We owe this responsibility, which ends where the space of the house ends, to ourselves and to our co-habitants. If borders ceased to exist and the Earth becomes one great house and home of the human race, this attachment to a country as a house (and a home) may end one day. This has been the perennial utopia of radical cosmopolitanism which would see itself obliged to impose the principle of self-limitation, and to regard the Earth as a house, only if it met the challenge of a visit by Martians. However, and irrespective of whether a unified Earth is a good or a threatening perspective, this is not the real dilemma of our existing culture. Imposing the vision of a radical cosmopolitanism upon this culture would be a no less terroristic gesture than was the imposition of the utopia of a perfectly rational economic and social order by "real socialism" on roughly a billion of the denizens of the Earth.

If the metaphor of the "house" can be accepted as a rational abbreviation of existing pragmatic attitudes to one's own country, then the question of "Whose house is it?" logically follows. However, prior to the discussion of the possible answers and of what they entail, two remarks have to be made. Firstly, discussing "ownership" regarding the "house" is only seemingly a legal debate. The roots of every present "owner" can be unearthed in those times which were described by Hegel as *vorrechtlich*, when there were laws but no consistently rationalized legal system.

Furthermore, no international legal authorities exist now which could define, with the unquestionable prestige of a court, the boundaries of such a "house". (Or if we created authorities for that purpose they would have a shaky standing and dubious credentials.) This is why Kolakowski rightly remarked in a recent debate that there are no "just borders" at all (every border had once been set by an act of violence, by victory or defeat on battlefields); and for this very reason, no modification of borders can be just either. We act more in the spirit of justice if we accept the present realities (with a few exceptions) and act on this basis by introducing laws. Legality need not be eternalized and sacralized, but it will not transpire as superfluous for the "project of modernity" either just because the roots of legal regulation cannot be traced back to the beginning of times. Secondly, in discussing the question of "Whose house is it?", we have to heed Kant's warning about the legal importance of the use of a property. Kant's complex argument need not be reconstructed here, it will suffice to say that while he was realistically sceptical concerning the origins of ownership titles, he attached great significance to the rights which should be enjoyed by the (legally accepted) user of a property. This means for us that while the debates about the "origin of the property" are not only largely superfluous but also often only serve the purpose of incensing nationalist passions, the traditional "user of the house" has to be regarded as a lawful actor.

Having said this, we can consider the three arguments which can be brought up against the ownership of the house. The first asserts that the house cannot be owned by any particular group because it belongs to everyone. Let us leave aside for the time being Bentham's seminal argument against the ways in which the French Revolution handled the issues of property and his dictum that the property which belongs to everyone, belongs to no one. More importantly, we can detect behind this view, the cosmopolitan conviction in terms of which the only house is the Earth and all borders are "artificial". The latter view is certainly correct (in the sense that borders are human, not divine creations) and eliminating this "artificiality" would only mean abandoning one of those systems of regulation, i.e. the law with which we shut out the jungle from human intercourse. The only possible logical basis on which the house could be claimed as "everyone's property" is the dogmatic assumption that there is, or there should be, a kind of global authority with political and legal relevance. Given that this is not only not the case, but that it cannot even be called a general wish of the denizens of the Earth, the intolerant and potentially terroristic character of this "sublimely enlightened" claim can be easily detected. On this basis, neither the will of every single human group to set the borders of its legitimate existence (and to defend it, if need be) can be explained, nor the well-known, and now highly topical issue of self-determination can be understood (except by declaring it "artificial"). The practical consequences of the acceptance of this view would be the denial of sovereignty and the treatment of *Solidaritäts-gemeinschaft* as a suspect network of clanishness or as a Mafia.

According to the second argument, the house belongs to its original owners (or dwellers). Behind this claim, there is a consistent philosophy of history which regards Western (or "white") domination of the world as genocide, and from this position it argues that in the enlightened spirit of the Law (which is, by the way, a Western or "white" invention) no one should enjoy the fruits of a property acquisitioned by a crime. The property belongs rightfully to those from whom it was extorted. More recently, an interesting legal event, a historic first, reinforced this view: The decision of a court in Australia which has confirmed the ownership rights of a group of Aborigines over an island where they had been continuously dwelling since time immemorial.

Three counter-arguments can be made against this position. Firstly, nothing is more dangerous, and at the same time more futile, than seeking for the point where history (and by implication: the ownership of the house) began. In part, this can never be established with any degree of certitude; behind every victim – who has once conquered himself – there is another layer of victims in the great mass grave of history. This could partially open Pandora's box (think only of a possible search for the ownership rights of present Palestine based on the historical prerogatives of the first settlers). Secondly, by recognizing the ownership of the "original" dweller

ently reside in it) more injustice than justice would occur, and certainly more cruelty would be committed than by being historically inconsistent. Finally – and although this is merely a pragmatic-political argument, it is still important – the recognition of the rights of the original owner or the first settler would protect the interests of Australian Aboriginals and European race-haters alike, the latter referring to their primogeniture when they shut the door in the face of the wave of immigrants.

The third argument is the most perplexing; it states that the house belongs to no one. There is more substance behind this bizarre opinion than meets the eye. It asserts that it is an inadequate expression to speak of the "house" (the state or nation to which we belong, the land we populate) in terms of property rights and ownership titles. This is not a historical argument; its proponents think exclusively within the orbit of the present. Therefore, they point out that today no one can "buy" a house (a nation or a state, or even parts of a country). The last transactions of this kind probably happened in the nineteenth century, when the United States literally bought Louisiana from the French, and Alaska from the Russians. Nor can the house be sold – we have a proper name for those who try to sell the house: they are traitors, and their crime is high treason. The modern age has also put an end to the practice of swapping lands by kings and absolute rulers. Nor can the famous *ius utendi et abutendi* – the definition of our ways of handling property – be applied to the house which we must not under any condition "abuse". Therefore, it would be more appropriate to characterize the status of the house as a trust fund, not as a property.

The first problem with this argument – a problem that reaches beyond terminological hairsplitting – is that every trust fund has been deposited by someone, and in the particular case of the house as a country, nation or state, the subject who had deposited it cannot be anyone else but our old acquaintance, "humanity" or the "human race" (whereby we have returned to the first argument). The second problem is that the argument is unauthentic as there are at least two types of events in the present where we have virtual certainty that the relationship of a human group to the house is one of ownership: these are the foreign conquest and the demand for self-determination. One may disagree on whether an act of invasion constitutes foreign conquest; but once we attach this particular appellation to the act, we have no doubt that people have been robbed of what they rightfully own. Similarly, we may or may not grant self-determination to a group but if we do, we know with as much certainty as can prevail in human affairs that they want to own the land which they call their house.

There is no serious reason to question the ownership of the house, a title which is due to the group which has been living there for a considerable time and regarding its culture has been developing for centuries as the prevailing spiritual power within its borders. If multiculturalism is not a disguise of barbaric invaders, as its enemies suspect, if it indeed promises to be one of the most profound and benevo-

lent transformations of modernity, it has to adopt a peaceful approach and it has to become a competition only in the field of cultural creation, not on the battlefield. This is the only way by which modernity can give birth to a universe of difference where each unit is incommensurable, but where all of them agree in a charter of common rights which could save the battered legacy of the Enlightenment.

CHAPTER 12

Changing the Boundaries of Citizenship. The Inclusion of Immigrants in Democratic Polities*

Rainer Bauböck

And the resident alien feels himself equal to the citizen and the citizen to him
(Plato on the "anarchic temper" of democracy, *Republic*, VIII, 562e)

Who is Included in Democratic Legitimation?

Every scientific discipline has its own core question. For the philosophically oriented branches of social science, their core questions seem to be unanswerable in the sense of finding a definite solution that will be accepted by all rational participants in scientific discourse. At the same time, these questions appear to be unavoidable and capable of stimulating never-ending debates that reassure social theorists that there is, after all, a *raison d'être* for their disciplines.

I think that the core question for normative political theory has been: What are the conditions for making political rule legitimate? A general answer that has strongly prevailed, at least since Thomas Hobbes, is the following one: Political rule must be of a kind that those who are subject to it could rationally consent to being ruled in this way. Theories that have tied political legitimacy to democratic rule have specified further conditions, such as the following ones: The collective of all subjects must be regarded as the ultimate sovereign in a political system. Subjects are entitled to elect their representatives.

one and one only. They can appeal to an independent judiciary against the unlawful exercise of political power and enjoy a right of resistance against illegitimate rule. It is conditions like these that mark the transformation of subjects into citizens. When elaborating such answers we will find that the core question can be split into two separate ones: *How* can political rule be made legitimate? and *Who* are those towards whom it must be legitimated? It appears that most contemporary democratic theories regard the "how" as much more important than the "who". There are two reasons for this unequal emphasis. First, contemporary liberal democracies differ strongly in their constitutional structures such as in their legal traditions, electoral systems or separation of powers; this variety stimulates the comparison of the virtues and disadvantages of different solutions to the problem of democratic legitimacy. In contrast, the ranges of inclusion appear to be rather similar in all these political systems and minimum standards are much more firmly established in this regard. The exclusion of blacks or women from the franchise, or a decision to deprive an ethnic minority of its citizenship, would be clearly regarded as unjustifiable today.¹ The second reason is that most people would probably agree that there is a straightforward answer to the who-question: All those who are affected by political decisions, and who are able to participate in the legitimating activities, should be included in the democratic polity.

Of course there are some significant exceptions where contemporary democracies seem to fail by this principle. It is by examining the reasons for these exceptions that we can best distinguish the inherent limitations of democratic inclusion from unjustified exclusion. I will group these exceptions into three; (1) external exclusion, (2) internal exclusion and (3) internal exclusion with reference to external affiliation.

(1) Citizens of state A may be strongly affected by political decisions taken by state B and legitimated only towards B's citizens. The waging of an offensive war, occupation and colonization of another country are the most blatant cases where, by definition, the victimized population is excluded from legitimation of the action (although many of these actions have been labelled by the aggressor's propaganda as liberating or civilizing missions). In other examples, a damage inflicted upon the population of A may be the by-product of some action on the part of B, which is less intended to harm A than to serve B's interests. Take, as an illustration, the depletion of natural resources at the detriment of some neighbouring country (e.g. when the water of a river is diverted or used at the expense of those living downstream at the other side of the border). Regarding environmental pollution across international borders it is not only the neighbouring areas which suffer, but generally the damage is even greater among the population of the country from which the emissions originate. Politically speaking, the former are nonetheless in the worse position because they and their representatives are formally

excluded from controlling what affects them. In these cases interstate treaties, rules of international law or pressure may help to restrain the ruthless pursuit of a national policy which does not consider the effects on populations beyond the border. However, a fundamental difference remains between such remedies and the kind of popular involvement which is regarded as essential for democratic legitimacy.

Yet another problem of external exclusion results from the operations of a global economy. In the 1980s monetarist policy of Western states pushed up interest rates with the effect of reducing the ability of highly indebted countries in both Eastern Europe and the so-called Third World to pay back credits, forcing many of them to adopt severe austerity policies. One could argue that in this example, governments of debtor nations had agreed to terms of contract which included such a risk. Yet this objection does not fairly represent the unequal balance of power by virtue of which creditor nations can unilaterally influence the capacity of debtors to comply with their obligations.

Many more examples could be given of policies that strongly affect populations which are excluded from democratic legitimation simply because they live outside the territory of the state which determines and controls this policy. The general problem is that of the disjunctures of globalization (Held, 1991; Held and McGrew, 1993). The territorial ranges of ecological systems do not coincide with the boundaries of states and modernization makes economic systems increasingly transnational or even global. The modern bureaucratic state, however, is solidly tied to a territory within which it claims a monopoly of legitimate violence. Democratic legitimation therefore also refers to a territorially bounded population. Involving the populations of other countries in the legitimation of national political decisions can normally only be achieved indirectly within a framework of peaceful international cooperation.

(2) However, democratic legitimation may in certain ways also exclude parts of the population living in the territory of a state. In pre-modern democratic constitutions, free citizens were generally a minority of the population. Slaves and women were not considered to be members of the polity. Nineteenth-century democracies still maintained gender and property requirements for active citizenship² and racist exclusion was widespread. In contemporary liberal democracies three groups remain internally excluded: minors, the severely mentally handicapped and convicts. There are two significant shifts in the patterns of justification from pre-liberal to contemporary exclusions.

Firstly, pre-liberal requirements for citizenship referred to generalized social conditions for individual autonomy which were seen as preconditions for the formation of an independent judgement about the common good and the interests of the state. Paupers, workers and women had to be excluded from full citizenship because their economic dependence made them vulnerable to the state's

them from developing that kind of judgement. This was clearly also a self-defeating ideological argument. How could the privileged class of male property owners be trusted to develop an unbiased view of the common good? Isn't it more reasonable to assume that they would rather defend their own interests against those of excluded groups? Since then it is not only the argument but also social conditions which have changed so that the argument has lost whatever force it once might have carried. On the one hand, almost everybody receives nowadays that kind of elementary education which may be said to be necessary for an active citizen and, on the other hand, a broad middle class now has to rely on wages and salaries for their income and on state bureaucracies for their social security. The capitalist welfare state has thus created a new social basis for including broader populations into citizenship by generalizing education as well as economic dependency. Any remaining citizenship disabilities are seen to result from a lack of relevant mental capacities and moral qualities of *individuals* rather than being attributed to them as permanent members of ascriptive *social groups*. Minors are automatically included on reaching their age of majority and convicts may regain the status of full citizenship when being released from prison. Mentally handicapped persons may remain permanently disenfranchised but this is justified with regard to a minimum of dialogic capacities that are essential for participating in political deliberation (see Ackerman, 1980: 78–80).

Secondly, and I think more importantly, those who remain disenfranchised are no longer excluded from citizenship. Minors, mentally handicapped persons and even criminal convicts are citizens in the latter sense even though they may be excluded from the vote. Basic mental capacities and moral qualities are not required for membership in the polity but serve as criteria for the distribution of the core rights of political participation within the polity. Citizenship is acquired at birth rather than at the age of majority and generally it cannot be taken away by the state or abandoned by citizens themselves as long as they live in the territory. From a liberal democratic point of view, the status of citizenship, by which a state recognizes an individual as its member, is not a formal legal concept lacking any particular content;³ it implies substantial rights to protection, as well as those against interference, by the state. Democratic legitimation is not confined to the activity of political participation but rests on this more comprehensive bundle of rights. For a liberal conception, in contrast with the republican tradition of Aristotle, Rousseau or Hannah Arendt, the inclusion of the inactive and even the incompetent as equal members in the polity is a basic achievement of contemporary democracy. This is a guarantee against the degeneration of democracy into the rule of a self-proclaimed enlightened elite. Modern liberal citizenship therefore emerges from a dual movement of (a) turning the narrow privileges of active political participation into general rights and (b) enriching the generalized condition of protected subjecthood with the enjoyment of basic rights.

(3) There is, however, one kind of persistent internal exclusion which can only be justified by arguments for external exclusion. This is the peculiar status of resident aliens. Their position in contemporary democracies is a paradoxical one. They are clearly affected by political decisions in much the same way as citizens. Provided that they speak, or have learned to speak, the language of their country of residence, they are not different in their general capacities that qualify them for citizenship. They do, in most cases, enjoy fundamental rights, such as equal rights in court, civil liberties, social rights to elementary education and equal employment-related benefits of social security. Their rights thus go considerably beyond universal human rights, however, they are granted to them as residents rather than as citizens. On the one hand, this convergence between the rights of residents and of citizens demonstrates that the basic democratic norm of legitimation applies to a resident population rather than only to those individuals who are formally recognized as members of a polity. On the other hand, why are there still so many significant distinctions between the status of aliens and of citizens, especially concerning the right to permanent residence and voting rights? Do not states of immigration with a large and growing disenfranchised alien population fail to meet the norm of inclusion which characterizes liberal democracy? Yet the charge that these distinctions of rights and status between citizens and foreigners lack democratic justification raises some additional questions which might be more difficult to answer. Should one draw from this the consequence of automatically naturalizing all alien residents? Or should one go even further and abandon the formal concept of citizenship altogether? What do we need a formal status of citizenship for if all residents already enjoy equal rights? The dynamics of modernization implies a long-term trend towards increasing international migration. Assuming that liberal democracies will be preferred targets and should be relatively open to new admissions, they will have to rethink their principles for the allocation of rights and membership among citizens and foreigners. This will inevitably break up national frameworks which have been used to define the boundaries of membership. But what should replace them? These are some of the questions I aim to address in this paper.

Limits for Inclusion: Individual Choice, Political Allegiance and Societal Membership

Two kinds of reasons might be given for the substantial curtailment of rights and formal exclusion of foreign residents. The first one is that this alien status is essentially a chosen one. Immigrants are supposed to have come of their own free will and to know that they will not be regarded as equal citizens.⁴ Their discriminated status as aliens is the result of a social contract by which they gained the

sen this option and thus seem to voluntarily accept their exclusion and discrimination. This line of argument does not apply to those who have come as refugees rather than as voluntary immigrants. They have not chosen their fate and have been deprived of their rights as citizens of their home countries. If there is a reasonable presumption that the situation causing their flight will not persist for long, they will need temporary protection and assistance in order to return to their homes. But if they need more permanent protection, an appropriate answer to their plight is to offer them the citizenship of the country which has granted them asylum.⁵

However, the argument referring to choice is difficult to accept, even for voluntary migrants. Most foreign citizens are not given the option of naturalization. Admission procedures in ordinary naturalizations are normally discretionary – the final decision is taken by the naturalizing state, not by the applicant.⁶ Now suppose, for the sake of argument, that naturalization became fully optional, i.e. available upon request after a relatively short time of residence and without further conditions attached.⁷ Even then, the question remains why full rights for resident immigrants should depend upon their opting for legal membership. Native citizens who enjoy these rights have not chosen to be members, but have acquired their status at birth and they are generally denied an option to renounce it while staying in the country. This indicates that, from the perspective of a liberal democratic polity, inclusion seems to be more important than choice. If a substantial number of the population is excluded from the polity because of their foreign citizenship, this creates a problem for the legitimacy of political decisions – even if this exclusion were a voluntary one. Nevertheless, migrants may have special reasons not to choose naturalization which ought to be taken into account. Intuitively, it seems obvious that forcing a migrant to adopt a citizenship she or he does not want cannot be compared to the automatic attribution of citizenship at birth. So the balance between inclusion and choice should be a different one for native citizens and migrants. However, this argument does not provide a justification for any kind of discrimination. The question which I shall take up again in the concluding section is rather: How different should the status of citizens and resident aliens be in terms of rights in order to make opting for naturalization a meaningful choice?

The second type of reasoning for maintaining a clear line between foreigners and citizens emerges from the perspective of the receiving state. The argument is that this line is constitutive for the polity itself and thus cannot be blurred by some democratic principle. Democracy would become self-destructing if the imperatives of legitimation made it impossible to maintain the boundaries of the polity.

In the framework of Carl Schmitt's politics of friend and foe, and Thomas Hobbes's view of international relations as a latent state of war, it is quite plausible to deny foreigners essential rights of citizenship as well as the optional access to naturalization. The reason for this is that their allegiance and obligations tie them

to another sovereign. It may be in the interest of a state to encourage immigration (if there is a strong demand for labour), it may even be expedient to naturalize immigrants in great numbers (if there is a lack of soldiers). However, admission to the polity must remain under the control of the receiving state in the same way as immigration⁸ and the essential qualifying criterion for naturalization is not the period of residence but a credible change of loyalty.

In this view, the boundaries of a polity do not relate to a territory or to the population living there, but define mutually exclusive sets of persons who are citizens or subjects of sovereign states. These boundaries emerge in interaction and confrontation with other polities by identifying those who cannot be included because they belong somewhere else. Such a definition of external boundaries is not arbitrary and can be well combined with a broad internal inclusion. It need not fall back on Joseph Schumpeter's dictum that a general theory of democracy must "leave it to every *populus* to define himself" (Schumpeter, 1950: 245).⁹ At the same time, it postulates that the democratic norm of inclusion ceases to apply where another sovereign state has a prior claim to regard some individual as its member. A foreigner may live permanently in the territory of state A, but, as a citizen of B, all claims of democratic legitimation which she or he might raise are addressed to that state. Such membership is not a social relation which might become weaker as time passes but a legal one that retains its binding force over time and might even be transferred to the immigrant's children. As above with the argument referring to voluntary choice, this argument about the mutually exclusive nature of sovereignty does not apply to refugees and stateless immigrants. But it is still the conventional wisdom which supposedly justifies the legal discrimination of foreigners and the discretionary procedures of naturalization.

I believe that this view is at odds with modern liberal conceptions of democracy. It is also incapable of accounting for the dynamics of the extension of legal rights for long-term resident foreigners, for the tendency to recognize that immigrants may acquire a moral entitlement to be naturalized and, finally, for a trend in Western Europe to tolerate dual citizenship. Just as I have acknowledged that a certain differentiation of status between foreigners and citizens may be justified within a framework of choice, I am also inclined to support the idea that in an international system with a multiplicity of states, polities have to be externally bounded. However, it is far from obvious that these boundaries have to be mutually exclusive in the way that territorial ones are. If it is not membership in a different polity which sets the external limits for the range of inclusion in democracy, what could then determine these limits?

I want to defend the proposition that the basic standard for inclusion in a liberal democratic polity is based on a specific notion of society – the outlines of which can be determined by applying the norm of democratic legitimacy to the social

this sense comprises all whose social position durably relates them to a certain state so that they depend on this state for their protection and rights. Seen from the perspective of a state, a society is the basic ensemble of populations permanently affected by its collectively binding decisions.

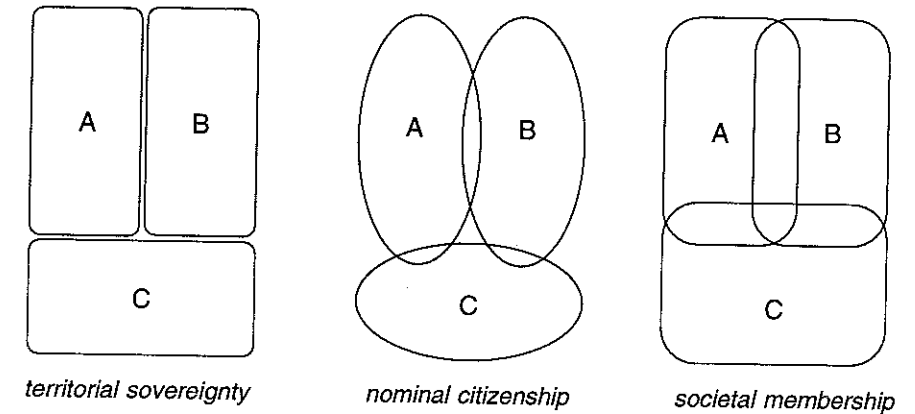
We might characterize this as the political concept of society. It contrasts with the narrower notion of the polity, on the one hand, and with the wider sociological concept of society as an open system of interaction and communication, on the other. A polity only includes citizens, i.e. those whose state membership is of a political rather than a social nature. The boundaries of polities can be controlled by the political decisions made on membership so that individuals who are not admitted, or who are excluded, will clearly not be members regardless of their social relation to the state. The boundaries of society are not subject to political decision in this way but they result from the exercise of political power. Liberal democratic legitimation requires inclusion of the whole society in the sense that the distribution of rights must correspond to the impact of political power and in the sense that the polity must be genuinely open for the admission of everybody who can claim membership in society. As we shall see later on, this does not bring with it a total equality of political status and rights of citizenship throughout society.

In contrast with the world economy of modern capitalism and global flows of information, the global political system remains segmented into a multitude of states. This is why there is also a multiplicity of societies which relate to these states. However, while the political image of societies (in contrast with a sociological or economic one) is always one of bounded populations, the shape of these boundaries remains to be determined. I will defend the idea that from the perspective of a system of liberal democratic states they are permeable and overlapping, and they include foreign residents in the territory as well as citizens, and even some foreigners living abroad. Nevertheless, political societies are not unbounded and societal membership will set the limits within which the norm of inclusion applies.

Orders of Membership – Territorial Sovereignty, Nominal Citizenship and Societal Membership

Before discussing the norms that can be applied to determine the status and rights of immigrants in receiving societies in more detail, let me first take a bird's-eye view of the kinds of orders of membership that states produce among populations. As I use the term here, an order does not refer to an internal structure (such as the hierarchical or egalitarian features of a political system) but simply to the sorting of individuals into different sets which are characterized by their relation to a state. The following diagram graphically symbolizes three different types of orders for three states A, B and C.

Diagram: Orders of Membership in Relation to States



The simplest order is that of territorial sovereignty. Each state rules a particular stretch of land and everybody who happens to be in that land is, in an elementary way, subject to that state's monopoly of violence. States generally also claim the right to make laws that are binding for anybody who is in the territory even for a short time. Exceptions do exist but they are few and well-defined. Apart from situations of military conflict, these exceptions result from legal norms or co-ordinated actions of the international community of states rather than from unco-ordinated policies of individual states. Foreign diplomats enjoy a special immunity that partially exempts them from the rules of territorial sovereignty as they apply to persons. Exceptions with regard to unique sovereignty over a territory may occur after a war when one or several victorious powers occupy the aggressor state (as was the case with Germany and Austria after the Second World War), or when an embattled territory is temporarily put under the authority of the United Nations. Another unique exception is the international status of Antarctica which, however, is due to the fact that there are no permanent resident populations in this territory. Apart from this continent, the whole land mass of the globe is now divided into mutually exclusive state territories and all human beings relate to the state of their present abode as their territorial sovereign. A substantial body of international law has attempted to resolve any remaining ambiguities such as that concerning the status of persons on board of ships in international waters.

The order that territorial sovereignty produces can thus be called complete and discrete. I define these two features in the following way: Completeness means that everybody is at any point in time subject to the territorial sovereignty of a state; discreteness implies that nobody is subject to more than one state simultaneously. Such an order can be represented, as in the above diagram, by a political map of

states without stretches of no-man's land or water between them. However, in contrast with such a geographical representation, this order can be highly volatile. We can define the stability of an order as the average probability that an individual who is classified as a member of set A in t_1 will be classified as a non-member of this set in t_2 . Individuals who cross international borders will be subject to different territorial sovereigns before and after this move.

The second kind of order is that of citizenship in the sense which is also called nationality. I will use the term "nominal citizenship" when I want to distinguish it from the substantial aspect of citizenship as a bundle of rights and obligations that individuals hold in their relation to a state. Citizenship in the former sense identifies persons in the international arena by using the name of a country in a manner similar to the use of family names in social interaction outside the family. Both indicate that an individual belongs to a state or family, but the name also belongs to the individual; it is a personal attribute which the individual has the right to carry.¹⁰ If we put individuals into sets, first, with regard to their subjection to territorial sovereignty and then once more with regard to their citizenship, we shall find that the sets broadly overlap but are usually not identical. Foreign residents will be included in the former but excluded from the latter, while the reverse is the case with emigrant citizens.

Apart from this incongruity, the above-mentioned characteristics clearly distinguish the two kinds of orders from one another. Firstly, the order of nominal citizenship is more stable than that of territorial sovereignty, secondly, it is neither discrete nor complete. Citizenship is acquired at birth and most people never change it during their lives. Citizenship is not an ascriptive feature like gender or "race" where the immutability of societal membership is emphasized by relating it to innate differences of human bodies, but it is still intended to last for life. All states' rules for naturalization emphasize this temporal stability by inhibiting frequent change. This can be achieved by residence requirements, by extended waiting periods prior to naturalization, by an oath of allegiance which is meant to express commitment for an indefinite future and by denying or delaying expatriation even after emigration. There are important political reasons for enhancing stability. The exercise of state power that turns people into subjects is spatially constrained by the range of territorial sovereignty, but it does not require all who are liable to obey the law to be bound to the state by any lasting ties of membership. However, any system of government also calls for a durable relation between the state and those who can be identified as subjects in a narrower sense of the term. Obligations that states impose on their subjects can only be enforced when the relation is relatively stable. Conscription, collecting taxes or enforcing criminal punishment require that people can be identified and that they cannot evade their obligations by simply moving somewhere else. There is also a strong democratic argument in favour of

tives who are to take collectively binding decisions need a common temporal perspective that reaches back into the past and forward into the future. They cannot form reasonable judgements on political matters unless they share some experience with past decisions and given institutions of their state. Furthermore, they must also share a perspective of knowing that they themselves, or their children and others close to them, will be affected by the decisions they support. In contrast with republican thinking, liberal democracy allows for a wide diversity of interests that can be legitimately expressed in political choices. While in such a polity common interests may be reduced to quite a small number, there must nevertheless be a common time-horizon for all interests that are put forward in the process of political deliberation.

While the nominal order of citizenship is more stable over time than that produced by territorial sovereignty, it is at the same time less perfect with regard to the criteria of discreteness and completeness. Individuals may be multiple citizens or stateless. These phenomena are widely perceived as irregular. Yet, in contrast with a breach of the principles of territorial sovereignty, such irregularities generally do not cause conflicts between states and they emerge from the very rules that guide the allocation of nominal citizenship in the international system of states. State sovereignty ends where the territory of a neighbouring state begins, but it does not necessarily end where another state claims an individual as a member. Each state reserves the right to set up its own rules for the acquisition and loss of citizenship as a core expression of its sovereignty. Statelessness and multiple citizenship can thus emerge from a conscious policy of ignoring the rules of another state or as an unintended side-effect of rules applied separately by each state involved.

Let me give a few examples. Political refugees who want to naturalize in their state of asylum are sometimes denied voluntary expatriation by their state of origin or they are unwilling to submit to the procedures for obtaining it from the authorities of the persecuting state. Western democracies normally accept that the person will become a dual citizen in this case. Dual citizenship may also result from rules of optional or automatic admission that are applied by some Western European states to foreigners born in the country when attaining their majority or to those who have been married to a citizen for a certain time. Most cases of dual citizenship emerge from birth in mixed marriages if both countries involved apply *ius sanguinis* from both parents¹¹ or result from a simultaneous application of *ius soli* by the state of birth and *ius sanguinis* by the parents' state. In contrast to dual citizenship, statelessness may be the intended effect of a policy of disenfranchising an ethnic minority or depriving it of any kind of state protection. Another origin of statelessness is the denaturalization of emigrants regardless of whether they have already acquired their host country's citizenship or not. Finally, statelessness may also result from voluntary expatriation. The right to a nationality has been estab-

lished in Article 15 of the Universal Declaration of Human Rights of 1948 and many states have signed the 1961 United Nations Convention on the Reduction of Statelessness. I think that normative arguments for avoiding statelessness are strong enough to warrant making the emigrants' right to expatriation conditional upon another state's willingness to naturalize them. However, the rules of international law still do not provide sufficient guarantees for preventing the re-emergence of these areas of no man's land in the international order of citizenship.

What I have called the political concept of society points to a third kind of order. In contrast to the two preceding ones, this order of societal membership is not formalized in the legal relations between individuals and states. Its contours emerge, on the one hand, from sociological observations about the role the state plays in regulating the conditions for the individual's life prospects and opportunities. On the other hand, the order is constructed from a normative point of view in order to answer the question posed in this paper: Who can claim a right to inclusion in a liberal democratic polity? As illustrated in the diagram above, such an order resembles that of nominal citizenship because there are overlapping areas, only that here these are much more extensive. Individuals can be members of more than one society simultaneously without this fact being reflected in multiple citizenship. At the same time, the order of societal membership shares the feature of completeness with that of territorial sovereignty. There are hardly any individuals for whom we cannot identify at least one state to which they are socially tied. Statelessness is not a condition of cosmopolitan detachment but just on the contrary; it is a status of extreme dependency upon the protection offered by specific states without the formal entitlement to claim that protection.

Within the state territory international migration makes the number of societal members larger than the population of nominal citizens, but smaller than the aggregate of everybody physically present at a certain point in time. Resident foreigners have to be regarded as members of society but individuals who are passing through on their way to another destination or who have come for a short temporary stay need not be counted.¹² Outside the state's territory the number of societal members may be either larger or smaller than that of emigrant citizens. If a state adopts a policy of indefinite transmission of citizenship by *ius sanguinis*, a third or later generation may still be registered as citizens of the state where their ancestors have come from without having any significant social ties to that country themselves. Conversely, an individual may have strong social ties to a state or depend upon its protection without living there or being one of its citizens. Two relevant examples may be mentioned as an illustration. The first is ethnic diaspora minorities who regard a foreign state as their national homeland from which they expect protection of their rights. Frequently, these rights will include that of being admitted to the territory of that state. Some states recognize these claims and treat such minorities as "ethnic citizens" abroad without nominal membership. Germany

and Israel are extreme cases who grant their co-ethnics not only a right of immigration but also immediate access to nominal citizenship thereafter.¹³ A second example is that of family members of immigrants who have stayed in the country of origin, or of migrants who had to return there after a long residence abroad. Maybe the most obvious case of societal membership of foreigners who are neither citizens nor residents is that of second-generation young people who were born in the country of immigration but were turned into aliens by *ius sanguinis* and later had to return to their parents' country of origin, either because their parents demanded it or because they had lost their residence permit.¹⁴

In its temporal aspects the order of societal membership is certainly more stable than that of territorial sovereignty but need not be as rigid as that of nominal citizenship. People can change their social affiliations that tie them to a state several times during their lives and, coming to a country where one takes up a permanent residence does not imply a promise or commitment to stay there for good. Societal membership does not strictly require a perspective which reaches back into the past and forward into the future (as democratic citizenship does). The time of residence is no more than a general indicator for the consolidation of social ties.

Along the time axis, the transition from one societal membership to another may follow different paths for different categories of migrants. For some, emigration means dissolving their households in their country of origin and dissociating themselves from that state. This will be often true for refugees who have little hope of returning but it may also be the case for some long-distance migrants who consciously choose another state as their home for the rest of their lives. For these people, migration does not generate an overlapping area of societal membership. They simply cross a societal border and a territorial one simultaneously. The number of migrants of this kind is rapidly diminishing and has probably always been overestimated for most migration flows. Even for the classical overseas labour migration from Europe to North America around the last turn of the century the idea that most immigrants had simply burned the bridges is a misconception. Immigration history is always written from the perspective of the receiving country and if that country, moreover, sees itself as a nation of immigrants, cyclical and return migration simply drop out of sight. For a second group of migrants the time of dual societal membership may be a transitional period. They leave family members behind and frequently contribute remittances to their household budget; they visit their country of origin during vacations or at least on the occasion of important family events such as births, marriages, or deaths; they often also plan themselves to return after having achieved a certain target in savings, when retiring or when the economic and political situation has improved there. For some, these plans may work out and their dual membership was a temporary extension of their societal affiliation during a certain period of their lives. If their stay abroad has been a prolonged one, they will not be able to return to their country of origin and will

to that country after returning to their country of origin. Others may finally bring all their close family into the country of immigration and cut their ties to the society of origin after a long residence abroad. In this case, the overlapping area forms a passage in a slow but unidirectional shift of membership. An ever-growing number of migrants, however, acquires a social status as dual members for the rest of their lives, regardless of whether they stay or return.

Contractarian, Libertarian, Republican and Nationalist Inclusion

I have said above that the political concept of societal membership emerges not only from sociological observation but also from a normative perspective of inclusion in a liberal democratic polity. This seems to lead into a circular argument where the norm of inclusion first refers to the reality of spatially bounded societies whose boundaries are, then, defined by specifying to whom the proposed norm should apply. I admit that some circularity of this kind appears to me unavoidable. It mirrors the fact that transnationally mobile societies do not only overlap but are also blurred at their margins. There is thus always some latitude for the contestation of societal membership which can only be decided by specifying normative criteria within the context of a particular society. By contrasting the liberal democratic perspective with alternative ones, I hope to be able to show that it is not quite so indeterminate as it might seem. No comprehensive political ideology and system of political rule can do without a political concept of society that sets a standard for inclusion. However, rival strands of political thought differ in how they construct their respective concepts of societal membership.

(1) For a Hobbesian Leviathan the basic relation between individuals and states is that of subjection to a territorial sovereign. However, as I have already pointed out above, the dense web of obligations that binds the subject to the sovereign does not necessarily include everybody in the territory nor exempt all those living abroad. The question is how those who are permanently obliged in this specific way can be distinguished from those who are only temporarily subject to territorial sovereignty. The most plausible answer to this is that anybody born within the territory has to be regarded as a subject by birth. *Ius soli* has its roots in feudal and absolutist systems where the rule over people is derived from ownership of the land. The basic idea about the status of foreigners under the latter kind of rule is concisely expressed by Hobbes:

But he that is sent on a message, or hath leave to travell, is still Subject; but it is, by Contract between Sovereigns, not be vertue of the covenant of Subjection. For whosoever entred into anothers dominion, is Subject to all the Laws thereof; unlesse he have a privilege by the amity of the Sovereigns, or by speciall license (Hobbes,

John Locke's reformulation of the social contract allows for a different and somewhat more liberal interpretation that concedes a claim to protection to foreigners and opens the door to voluntary naturalization but still emphasizes their exclusion, as foreigners, from the commonwealth:

[F]oreigners by living all their lives under another government, and enjoying the privileges and protection of it, though they are bound even in conscience to submit to its administration as far forth as any denizen, yet do not thereby come to be subjects or members of that commonwealth. Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact (Locke, 1956, VIII, §122: 62-63).

The status of foreign residents is defined as one of non-membership in both cases. At the times of Hobbes and Locke, the very idea of society as a conceptual unit for the study of human relations and interaction, independent of a country's political constitution, probably made no sense. The notions of commonwealth or civil society refer, in Locke's words, to a "political society" constituted by the original contract of which resident foreigners were clearly not seen to be party.

(2) A political theory which would tie societal membership even more strongly to territorial sovereignty is the libertarian utopia of Robert Nozick (1974). Nozick's world is one of minimal states whose functions are reduced to exercising a territorial monopoly of violence. Nozick dismisses the idea of social compact (p. 131-132) and replaces it with an "invisible-hand" explanation (p. 118-119) of how such a state might come about from the rights of individuals to ownership, self-defence and free association for purposes of protection. In contrast with an "ultraminimal state" whose monopolistic protective agency only protects clients who have purchased its services, a minimal state protects everybody living permanently in a territory. So resident foreigners cannot be excluded just because they have never formally joined and this kind of protective association neither has the right not to admit them as formal members if they wanted to join. As far as Nozick's extreme individualism allows for any conception of society at the level of states,¹⁵ the range of this society should relate to all residents of a state territory. I refrain from speculating how Nozick would define the status of transient migrants and temporary residents. Generally speaking, his kind of theory would maximize inclusion with regard to territorial sovereignty while leaving little scope for also taking the social affiliations that go beyond this into account. More importantly, the deficiency of the theory is that it achieves inclusion only at the expense of reducing the substance of rights, which citizens expect to enjoy in a democratic state, to a bare minimum.

(3) The republican tradition of political thought has emphasized active participa-

Citizenship is seen as a set of obligations more than of rights, as an office more than a status.¹⁶ Inclusion in citizenship is not so much connected to territorial residence but to mutual recognition within a community of equal members of the polity who experience themselves to be the sovereign political authority. In this approach, the order of citizenship seems to be the only reference point to which the norm of inclusion can be applied. A republican conception thus appears to come close to Schumpeter's self-defining *populus*. However, republican norms of inclusion would still not be completely redundant. Firstly, they can specify certain features of a desirable order of citizenship. Republican thought has always strongly objected to multiple membership in different polities, whereas multiple subjecthood in a Hobbesian world could be perfectly acceptable as long as it is supported by "the amity of the sovereigns". A person can be the loyal servant of two masters but nobody can simultaneously be a full member of two collectives that regard themselves as sovereign. Secondly, in contrast with the ancient conception of the *polis*, modern republicanism has to answer the question: What status should be given to those who do not qualify as active citizens? Even if active citizens are seen as an egalitarian political elite among a broader population, they must refer to a broader concept of society in their pursuit of the common good. Passive citizenship thus complements the activist conception as a second and wider frame of inclusion. In this respect, the problem with contemporary neo-republican thought is not the range of inclusion but the dichotomy of active and passive citizenship that is overemphasized within this range. Seeing active political participation and voluntary compliance with civic duties as the core expression of citizenship leads to a devaluation of the enjoyment of rights and liberties as a merely passive experience. In contrast, a liberal democratic perspective would emphasize the enabling and activating qualities of civil and social rights which are the essential precondition for making democracy representative of a broad population with widely diverse interests, rather than of a small and socially homogeneous political elite.

The active/passive dichotomy that tends to split the polity into two classes of citizens is complemented by a second one that divides a state's population into those included in, or excluded from, the polity. Republicanism conceives the bond of citizenship as the essential factor of social cohesion. From classic contractarian doctrines it inherits the idea that the mere social fact of residence in a territory cannot qualify individuals for full membership. This does not rule out a policy of encouraging naturalization. Citizenship results from an act of will and mutual consent, and each naturalization is a particular instance which highlights and celebrates this general idea that citizens freely consent to their membership. However, the republican view is incompatible with a flattening of the threshold of citizenship by granting foreigners rights that ought to remain a prerogative of active citizens only. Voting rights of any kind (even at the local level) must be strictly denied to those who have

not been recognized as citizens. In contrast with Locke's proposal that each individual should individually decide on her or his membership on attaining the age of majority (see section "Tensions between ..." below), Rousseau's formula for the social contract envisages a ritualistic mutual confirmation of membership:

Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole (Rousseau, 1973, VI: 192).

If a common will, rather than a shared experience of dependency and need for protection, unites the political community, then the act of will that marks the boundary between foreigners and citizens must be regarded as truly constitutive for the polity.

(4) Ethnic nationalism is the strongest rival for liberal democracy, not in the field of political theory where it has hardly a significant following, but in the discursive struggles for political legitimation that unfold in the public arenas of Western democratic states. The two competitors have one feature in common: both support a strong norm of inclusion that applies to a conception of society which does not coincide with the polity. However, they are fundamentally opposed to each other in the way they determine the boundaries of society. A nation shares a comprehensive and peculiar culture and historical experiences which reach back many generations into the past. Ethnic nationalism conceives of the nation also as a self-reproducing biological group of common descent. In nations like the French or U.S. American ones the ethnic interpretation that searches for its origins in some mythical ancestry (the Gauls or the Pilgrim Fathers) is counterbalanced by others which refer to a historical event of state foundation (the French and American Revolutions). This "political nationalism" comes much closer to the truth, i.e. that it was the modern nation-state which created the nation as a cultural community rather than the other way round (Gellner, 1983). However, even this version is still fundamentally opposed to a liberal conception of society. For nationalism of any kind, the character and boundaries of the community have been shaped by some irreversible historical process or event. They are thus given independently of the present shape of a state territory or the network of social interactions that connect a population to a state. The nationalist programme is to emancipate the nation in a sovereign state by uniting its dispersed communities, by conquering or liberating the territories they inhabit or where their origins lie, and by assimilating, expelling, or keeping out minorities that do not fit into the national community. Nationalism thus attempts to make the boundaries of territory and of cultural groups coincide (Gellner, 1983). Nationalism's success is rooted in the drive for cultural homogenization of populations within state territories that comes with the devel-

opment of industrial economies and of the modern state bureaucracy. Nationalism's failure lies in the proliferation of rival claims to nationhood that have led to an uneasy truce between national factions in pluri-national states, to the survival or new formation of ethnic and linguistic minorities resisting assimilation, and to chain-reactions of separation into ever smaller states that can hardly claim to be independent in their economic or foreign policies (Hobsbawm, 1990).

Nationalisms operate with an imaginary map of spheres of hegemony that nations claim over territories and populations. Seen from the point of view of each single nation, this map resembles that of territorial sovereignty. It is discrete in terms of populations – nobody can be simultaneously a member of two nations – and complete in terms of territories. It need not, however, be complete for all human groups: some have been denied the capacity of belonging to any nation or of forming one themselves. This is a characteristic of racism in both its anti-Semitic and anti-Black varieties. Moreover, the territorial map is no longer discrete when combining the perspectives of nations that raise rival claims to the same stretch of land.

Inclusion in Mobile Societies

A liberal democratic norm of inclusion with reference to a political concept of society faces a paradox. On the one hand, if people did not move across state borders the whole range of inclusion would be perfectly identical with that of territorial sovereignty and the very notion of social ties as different from political subjection would become redundant. On the other hand, once societies become transnationally mobile, there is no hard criterion for determining individual membership.

We might reassure ourselves that only borderline cases will be indeterminate. There is no natural threshold in the time of residence after which a foreigner must be regarded as a member of society. However, agreement about when a person has in fact acquired a kind of residential membership should be rather easy to find if one detaches the question in a first step from its political consequences in terms of the implied entitlements. It should neither be difficult to establish a list of indicators that obviously turn a person into a member of society in a liberal view, although they might not qualify from the nationalist or republican perspectives: being born in a country and spending one's early childhood there;¹⁷ being a member of a household where one lives for at least several months each year; going to school or being regularly employed. Other criteria are of a more dubious nature. Consider for example the frequently heard argument that immigrants ought to be given the vote because they pay taxes just as citizens do. However, tax requirements have been generally abolished for the franchise. Why should the political rights of foreigners depend upon their contributions if modern liberal citizenship has generally dissolved the former nexus between such rights and obligations of this kind? A more difficult criterion is that residence must have been legal in order

to qualify for membership. Certainly, a liberal welfare state must be interested in maintaining the rule of law and, more specifically, in preventing the spread of illegal employment. However, the facts of societal membership depend on the time of residence more than on legal status. If a state has been unable or unwilling to control illegal entries, residence and employment, it ought to consider the claims of those who have been residing in the country for a long period of time as relevant. This line of reasoning could support a general amnesty or an individual procedure for regularization of long-term irregular immigrants. The implications of liberal norms of inclusion are more obvious with regard to deportations of legally resident foreigners who have committed a crime. There can be little objection against expulsion when the crime has been committed shortly after a temporary admission into the country. But the current practice of some European states (among them my own country, Austria) of deporting even young foreigners, who have committed minor offences, from their state of birth is certainly indefensible.

The idea of inclusion with reference to membership in politically bounded societies would fail to provide a satisfactory solution for nomads. However, the post-modern metaphor of "the new nomads" for modern migrants is completely besides the point when applied to modern migrants. Nomads do not move as individuals but it is rather their societies which move. Social structures, and the individual's positions in them, are generally rigidly fixed. This creates a kind of societal membership which is dissociated from territorial location. Contemporary migrations show hardly any resemblance with those societies whose movement in space does not expose their internal structure to change. Modern states are strictly tied to a territory not only with regard to their boundaries but even in their micro-structure of local administrations. Societies, however, become mobile in the transition from the agrarian to the industrial age and this territorial mobility increasingly affects large majorities. The process is like the transition of a liquid matter into a gaseous state with the effect that the rapid movement of molecules can no longer be contained within the old vessel. International migration expands mobile societies beyond the borders of territorial states. This does not dissolve the borders; it even leads to their fortification in attempts to enforce political control over the movement of people, but it changes the composition of society as well as internal social and cultural structures. In democratic political systems this change must be reflected in the membership composition of the polity as well as in the public recognition of specific interests of migrants.

From the perspective of individual migrants, the difference between their situation with that of nomads is that their homes do not move along with them but they have to leave them in search of new ones.¹⁸ Two different types of migration result from this, none of which resembles nomads: those who have lost their membership without gaining a new one and those who have retained it until, or even after, they have found a new one. For the latter group, three policy propositions can be

derived from the liberal norm of inclusion: optional naturalization, toleration and recognition of dual citizenship and residential citizenship, i.e. equal basic rights for all residents independent of their nominal citizenship.

The former category is that of refugees. In refugee policies norms of admission must precede and supplement those of inclusion. Refugees can raise a claim to be admitted because they have been deprived of membership whereas family members of immigrants can raise similar claims that are based on their existing ties of membership. I think that both claims are strong and there is no need to give general priority to one or the other.¹⁹

The question as to which norms of admission could be defended from a liberal democratic point of view goes far beyond the scope of this paper.²⁰ Here I only want to point out that the perspective of inclusion may be widened in order to address one of the most difficult normative problems of refugee policies. The problem can be stated generally as that of unallocated state obligations (see O'Neill, 1991). One may easily agree that those who have been deprived of their state's protection and have left that state's territory can raise individual claims towards liberal democracies to receive protection there. However, which is the one state, among all possible states of asylum, that is obliged to honour this claim? Virtually all states of Western Europe have now adopted the principle that it is only the first state on the asylum seeker's route where he or she could file an application for admission. Yet this principle of first country of asylum obviously leads to an inequitable distribution of obligations and burdens and means that large numbers have no chance to be admitted into those countries where they could be most easily accommodated. Even the fact that refugees may already have close family members in some European state is deliberately ignored in order to curb the inflows. After serious consideration one can come to the conclusion that quite often the same circumstances that drive refugees to seek specific destinations should also be given some weight in deciding whether a particular state rather than an other one ought to admit them. Among such factors may be: economic prosperity which enhances immigration capacities, a common history (often that between a former colony and its colonizing state), cultural ties such as a common language or religion, economic or political involvement of the target state in the state of origin and, finally, geographical proximity. The logic of inclusion might in all these circumstances be extended beyond the boundaries of societal membership in order to determine the special obligations of receiving states. There will be many remaining catastrophes such as the present one in Rwanda where only a joint effort by the international community and a commitment to cooperate in schemes of burden-sharing will be an adequate answer to a refugee crisis. However, in a world of sovereign states, special obligations always carry more weight than those that fall upon the community of states.

These rather sweeping generalizations do not exclude the possibility that there are, or will be in the future, new nomads whose inclusion in territorial states raises

a different set of problems. It is quite possible that we may see the emergence of tightly-knit ethnic groups who develop a nomadic way of life because they adapt in this way to special niches in a global economy. However, in most cases, those who are perceived as nomads in Western societies are simply forced to move because they are not allowed to stay anywhere. Central Europe's Romanies have been often quoted as an example for the former category, i.e. as an ethnic group whose nomadic behaviour results from a mutual reinforcement of cultural traditions with a specialization in certain trades. Today, however, they clearly find themselves, once again, in the latter situation of people who are forced to cross borders in order to escape racist discrimination or miserable economic conditions. What often distinguishes them from refugees with similar motives is that they have learned not to expect protection from state authorities and consequently frequently resort to irregular routes of entry. Without societal membership acquired through continuous residence and without seeking protection by a state, how can they be included in a liberal democratic polity? The answer probably lies in the difficult task of combining a general improvement in their social conditions with respect for cultural differences and with the recognition of special minority rights, including an extended right to travel across borders.

The overall direction of policies suggested in this section can be characterized as an enrichment of liberal democratic citizenship with transnational elements. How does this compare with the supranational citizenship of the European Union that has been strengthened by a number of provisions in the 1992 Maastricht Treaty? In addition to existing protection against the discrimination of citizens of other member states with regard to civil and social rights, the treaty creates three new rights, two of which penetrate into traditional spheres of national sovereignty. These are: equal active and passive voting rights for resident citizens of other member states in local elections and in elections for the European Parliament (Article 8b), diplomatic protection of European Union citizens in third countries by the representatives of other member states if there is no representation of their own state (Article 8c) and a right to petition European Parliament (Article 8d). The most essential rights conferred by EU citizenship are, however, those of free movement across internal borders and of settlement and access to employment for EU residents in other member states. Such rights to admission go beyond imperatives of inclusion derived from societal membership. In other aspects, European Union citizenship has remained deficient with regard to this same norm. There is as yet no generalized option of naturalization for EU citizens in other states of the Union. Cases of multiple citizenship have strongly increased in number, some states have recently changed their laws and have abandoned the requirement to renounce a previous citizenship on naturalization and there are attempts at the level of the European Council to eliminate obstacles to the toleration of multiple citizenship which have been enshrined in a 1963 convention. However, so far

there is no policy of harmonizing and liberalizing citizenship laws at the level of the Union.

The most glaring discrepancy between the supranational model of European Union citizenship and the transnational approach which I try to defend concerns the exclusion of "third country aliens". Only those foreigners who are nationals of a member-state are also recognized as members of the wider community and can enjoy the new rights conferred by citizenship of the Union. Constitutional amendments have become necessary in several member states in order to extend local voting rights and access to employment in the civil service to all Union citizens. By simultaneously confirming the exclusion of *extracommunitari* from these rights, the states of the European Union have actually moved away from a liberal democratic model of inclusion.²¹ Instead of widening the range of inclusion beyond the combination of national citizenships, EU membership has been constructed by using them as the elementary building blocks. It links the separate columns of national citizenship by developing the common structure of a roof above them. The foundations of residential rights for all remain as low, and spaces between the columns as empty, as before, only that now these gaps have become much more visible as an element in the design of the building. It looks like the lofty structure of a Greek temple rather than like the much-quoted European house that would accommodate all who live on this continent in its many rooms.

A general objection might be raised against my model. Inclusion of migrants will increase the internal heterogeneity of political communities and could thereby diminish social resources for solidarity among its members. If those who have not been born and raised in the society, and who have not pledged their commitment by naturalizing, are given equal rights of membership, will this not further strain the attenuating sense of mutual obligations in modern societies? I readily concede that it is generally easier to foster such motivations within homogeneous and immobile communities. However, I do not think that this argument provides support for maintaining present forms of exclusion. Firstly, it could also have been used against the dismantling of gender, race and class barriers which had maintained a high level of homogeneity among the citizenry for a long time. Achieving the minimum levels of social welfare throughout society which are essential for participatory citizenship was relatively easy in earlier forms of democracy, when citizens were a socially rather homogeneous group. This has become a much more difficult task in modern welfare states where it requires extensive redistribution. Secondly, the exclusion of immigrants from rights of citizenship reinforces their social segregation within receiving societies. It makes these societies more unequal and their democratic systems less representative over time. Thirdly, cutting back immigration cannot be accepted as a long-term strategy to increase homogeneity for both pragmatic and normative reasons. The acceleration of territorial mobility is inherent in the process of modernization. Contemporary democracies have to

accept this as a fundamental condition of modernity which will undermine their bases of legitimacy unless they adjust to it. This does not mean denying the necessity or legitimacy of immigration control, but it does imply that such control must itself be constantly scrutinized for how well it complies with universal human rights and with specific rights that can be derived from existing ties of membership.

Tensions between Inclusion, Equality and Consent

Inclusion is not the only relevant norm for the allocation of membership status and rights in liberal democratic polities. After discussing the range of claims to societal membership let me now turn to the question as to how such wider inclusion could affect the two other norms for the allocation of membership in liberal democratic polities: the norms of equality and choice.

The liberal idea of equality is much stronger with regard to the polity than with regard to society. As citizens, individuals must be treated with equal respect and concern (Dworkin, 1977), no matter how unequal they may be in their social status. This equality of citizenship rests on a foundation of basic individual rights, such as those of equal status in court, equal entitlement to school education or voting rights. However, not all rights of citizenship are perfectly equal and individual. The wider the social range of inclusion becomes, the stronger becomes the urgency to take social inequalities and differences into account by differentiating rights according to social positions and groups. Citizenship in a multi-ethnic welfare democracy is a complex bundle of equal individual rights, as well as of highly differentiated collective ones. Nevertheless, the norm of equality provides the yardstick. A justification of collective rights must show that they contribute towards equalizing the standing of individuals in the polity. In contrast with Hannah Arendt's strict division between the polity as the sphere of equality, and society as that of discrimination (Arendt, 1958), a liberal democratic approach uses political instruments for combating social discrimination. This fight is a precondition for including discriminated groups as equal citizens in the polity. The norm of equality is thus in a relation of productive tension rather than of contradiction or identity with that of inclusion. Wider inclusion transforms simple into complex equality (Walzer, 1983: 330), while liberal equality drives formal inclusion in terms of legal status towards substantial inclusion in terms of positive rights.

Equality thus implies, first and most obviously, that the status of nominal citizenship is a homogeneous one. Distinctions between legal categories of citizens that exclude some from the enjoyment of basic rights are not permissible (with the three exceptions of minors, convicts and mentally handicapped mentioned above). This is a rather recent achievement. Until not so long ago, a number of Western democracies distinguished citizens according to their country of birth or their mode

of acquiring citizenship. In France naturalized citizens were excluded from public offices until as late as 1983. Only last year Belgium abolished the distinction between *naturalisation ordinaire* and *grande naturalisation* which reserved voting rights to those who had passed the second admission procedure. An example of largely symbolic significance is that in the USA only a native-born citizen can become President.

The more important question is: In which ways does the norm of equality extend beyond nominal citizenship and territorial residence? The bundle of rights enjoyed by emigrant citizens can never be the same as that of citizens living in the territory. Too many elements of citizenship are conditional upon residence. Emigrants will also require specific rights that only concern them, such as diplomatic protection by their country of citizenship or the right to return to this country. However, monetary entitlements of social citizenship and voting rights can also be exercised while staying abroad. Social security benefits such as retirement pensions are now mostly transferable between states and bilateral agreements often also allow contributions and employment periods accumulated in other countries to be added to the claims attained in the country of present residence. Others, like unemployment benefits generally cannot be transferred in this way because they are granted under the condition of searching for a job in a national labour market. Traditional states of emigration often not only discourage expatriation but also try to integrate emigrant citizens actively into the polity by granting them the right to participate in national elections. From the point of view of liberal democracy this may be seen as an ambiguous achievement. On the one hand, retaining one's citizenship voluntarily when living abroad can be taken as an indicator of subjective affiliation and possible intentions of returning which give some credibility to the claims of emigrants to be included in elections on equal terms. On the other hand, most among them will not be affected by the decisions taken by their representatives in parliament and they cannot participate fully in public political discourse and deliberation before elections and referenda. There is certainly some scope for reasonable difference of opinions on this. States with a long tradition and constant stream of emigration will have stronger reasons for enfranchising emigrant citizens than nations of immigrants. In this respect, the limit to acceptable diversity in this regard should be that subsequent generations born abroad might have a claim to their parents' citizenship but certainly not to representation in political decision-making if they have never lived in the country.

The norm of equality applies much more extensively to resident foreigners than to emigrant citizens.²² This means that foreigners do not just enjoy protection and rights in their host states (as is already implied by John Locke in the above citation), but that the rights of resident citizens provide the benchmark for the normative evaluation of their claims. This idea could be operationalized as a constitutional principle: There ought to be a general presumption in favour of the equal

treatment and rights of foreign residents and citizens unless expressly decided otherwise by legislation. Furthermore, no such discriminatory exception should be derived from criteria such as national, ethnic, or "racial" origins. This seems to conform to the current interpretation of the equal protection clause in the U.S. American constitution. However, most continental European constitutions still do not support such a principle but assume the contrary, i.e. that foreigners will be unequal with regard to public law unless their rights have been explicitly legislated. Only in the realm of private law is there a general presumption of equality independent of a person's citizenship.

Listing all the different areas of legal discrimination of foreign residents in European countries of immigration would take up too much time and space. I will thus concentrate on the issue which is probably the most controversial one from the point of view of a normative theory of democracy. This is the question of voting rights. Voting rights for foreigners in general and state elections have a venerable tradition which starts with the French revolution. In the USA in the 1880s, 18 states granted alien suffrage to foreigners who had simply filed a declaration of intent to naturalize. These voting rights were only finally abolished after the First World War (Ueda, 1982: 128f.). Today, New Zealand is the only country I know of that grants foreign citizens a general franchise in national elections. Others like Great Britain, give, however, such rights of political participation to a large number of non-citizens from Ireland and Commonwealth states. In Sweden, plans to introduce national suffrage for foreigners were seriously considered in the 1980s but were later abandoned. Sweden, Norway, Finland, Denmark, the Netherlands, the Irish Republic and the Swiss cantons of Neuchâtel and Jura do, however, grant active and passive local voting rights to foreigners. In France and Germany, an extensive debate during the 1980s ended with a defeat of the proponents of local franchise for foreign residents.

Local voting rights have been proposed or defended with the argument that municipalities, in contrast with provincial or national parliaments, do not exercise legislative functions. This would imply that foreigners could only be admitted for second-rate political participation. I think there is a much stronger argument for a specific priority of access to the local vote. Firstly, just as nominal citizens, foreigners do not formally choose to be members of a certain local community; membership results automatically from residence. It therefore makes sense to also derive the rights of active participation directly from that fact of residence rather than from nominal citizenship. Secondly, in contrast with nation-states, local communities are without proper borders. They are open for access to anybody who has a right to live in the national territory, citizens and foreigners alike.²³ Local democracy does not have to operate under the same constraints of bounded territorial sovereignty as democracy at the national level. This shows that, ultimately, the control over the movement of people is also no necessary condition for demo-

cratic legitimacy within territorial states. A further implication of this view is that municipalities are no longer seen as merely the local sub-units of a single sovereign political power, but on the contrary. They are political communities of a particular character whose rights to local self-determination of their own affairs under democratic control of their own citizenry can be seen as an important contribution towards making representative democracy less indirect.²⁴ Thus, the justification for equal political rights of foreigners at the local level could enhance rather than devalue this form of citizenship.

Still, this argument does not fully satisfy the criterion of democratic legitimization. There is no reason to assume that local decisions affect foreigners more than national ones. Just on the contrary, their specific discrimination as aliens is rooted in national legislation and this seems to provide a strong argument for also including them in parliamentary elections. I think that this demand is irrefutable from a liberal democratic point of view, as long as we only apply the norms of inclusion and equality.

It is at this point that we have to consider whether contractarian and republican arguments still carry some weight when deciding about the rights of resident foreigners. In my view, they fail to provide any reason for denying long-term immigrants the quintessential right which enables them to claim substantial equality with citizens: the right of permanent residence (which in a wider sense includes the right to family reunification and to return after a temporary stay abroad). Once this is granted, the scope for redefining the rights of citizenship so that they become rights of residents instead has been considerably extended. Why should this not also apply to national voting rights? The answer is that nominal citizenship would then no longer make any difference. But why should it? What is the value of a status that merely serves to discriminate against some residents?

The basic idea captured by contractarian and republican doctrines is that the status of citizenship is not only inclusive and egalitarian, but also expresses consent. As I have stated in the first section, democratic legitimacy is based on rational consent, but not necessarily on active, direct, and explicit consent of each individual with each collective decision by which she or he is affected. In some theories, political legitimacy is achieved by hypothetical consent only. Representative democracy requires more than this, although it generally gives only mediated and diluted expression to popular consent in legislation and government. Individuals must be empowered to actually express consent or dissent in a way that has an impact on collectively binding decisions. Public discourse and deliberation among citizens precede decision-making by their representatives.

A similar pattern of mediated consent can also be found in the allocation of nominal citizenship. For contractarian theorists it was essential to demonstrate that legitimate rule depends upon individual consent in membership of the polity. Locke was the most radical thinker in this respect when he stated that

a child is born a subject of no country or government. He is under his father's tuition and authority till he comes to age of discretion, and then he is a freeman, at liberty what government he will put himself under, what body politic he will unite himself to (Locke, 1956, VIII, §118: 61).

Yet this requirement is not met by any contemporary liberal democracy. Consent to membership is generally not expressed on its acquisition but only on its loss in voluntary expatriation and even then the choice of exit from citizenship is made conditional upon a previous exit from the territory and society. In naturalization, on the other hand, the requirement is heavily biased against the individual who is not at all "at liberty to decide what body politic he will unite himself to". The choice is restricted to that between the countries of origin and of present residence and it is normally the state authorities who grant admission rather than the applicant who simply chooses a new membership.

As I have explained above, I think that a strong case can be argued in favour of enhancing the element of choice by making expatriation and naturalization symmetrical. Both should be individually chosen rather than either imposed or discretionarily denied and the option to change one's membership should be only conditional upon the criteria of residence and societal membership in both cases. Liberalism increases the scope of individual rights and choice by normatively constraining the requirement of collective or majoritarian consent where it threatens to interfere with equal individual liberties and opportunities. This should hold for naturalization in the same way as it holds for expatriation.

However, why should nominal citizenship not be imposed on foreigners if the norms of inclusion and equality are of overriding importance for liberal democracy? The answer is obvious, as long as we assume that multiple citizenship is not generally tolerated. In contrast with new-born natives, foreigners have a citizenship to lose which might be of essential value for their life-projects. Their multiple societal membership gives migrants a strong claim that a naturalizing state must respect their existing affiliation and should not require its renunciation as the price for the ticket of entry. However, I do not think that choice loses all importance once dual citizenship has been granted. A receiving state should not naturalize foreigners without their consent even if their previous citizenship remains unaffected.

One potential consequence of citizenship which makes the importance of choice obvious is that of military conscription. Not every state imposes this obligation on its citizens and most states which do, impose it only on their male citizens of a certain age group. Moreover, liberal democracies permit conscientious objectors to refuse military service without forcing them out of the country or denaturalizing them. Even under these preconditions, I think that resident foreigners have a stronger reason not to be drafted than either native or naturalized citizens. U.S. law is rather unique in making foreign residents liable to be drafted (in case that general con-

scription were introduced). This seems to result from a biased view on immigration that sees the choice of a country of residence as already implying a decision for the rest of one's life and regards naturalization as the *natural* outcome of the process of settlement. If there is any obligation of citizenship which can be said to require a conscious expression of consent, it must certainly be that to kill or die in the defence of one's country. While under certain conditions of emergency, conscription of native citizens may be justified by invoking their hypothetical rational consent without giving them an actual choice, I believe that no such implication can be inferred from the fact of residence and societal membership of foreigners.

Apart from this example, the main reason for insisting on the importance of choice of membership in the polity is the following one: When applied to migration, liberalism's emphasis on individual rights and choice means that the long-term political target is to turn all migration into voluntary movement, rather than to eliminate all root causes of emigration. Enhancing the scope of choice between different migration targets is one principle that can be derived from this guideline. As I have argued above, it applies even to involuntary forms of migration such as refugee migration. It would be inconsistent with this line of argument to deny immigrants the choice as to whether they want to become nominal citizens of their country of residence. The imperatives of inclusion and equality are not strong enough to override the manifold individual reasons migrants may have to refuse applying for naturalization. This is only so because substantial and nominal citizenship need not be strictly tied to each other. Resident foreigners can be included and enjoy equal rights without and before naturalization as "residential citizens" or, in the terminology revived by Tomas Hammar, as "denizens" (Hammar, 1990).

In spite of its emphasis on choice, this is not an altogether voluntaristic conception of citizenship. Inclusion primarily relates to an objective criterion of societal membership and makes optional naturalization only available to persons who have entered this range – just as voluntary expatriation is only offered to those who have moved out of it. The same criterion also prevents that the toleration of dual citizenship could lead to an accumulation of memberships which no longer correspond to a social involvement of individuals in the affairs of the polity whose members they are. Neither is mutual consent replaced by unilateral individual choice. It is still the political community which grants naturalization and thereby expresses its consent. What changes with the move from discretionary to optional naturalization is the sequence of interaction. In the usual procedure, the last word is said by the authorities of the receiving state after the applicant has already documented her or his will and qualification. In optional naturalization, the state first lays down the rules for eligibility and the final decision is then the applicant's.

This still does not fully answer the question where the importance of the choice lies if it does not imply any consequences for the legal status and rights of those

who have to choose. I think that there are two different answers to this question and each of them seems to me defensible from a liberal democratic point of view. The first answer could be called a liberal-communitarian one. It would affirm that in spite of reasons for differentiating certain obligations such as military service between citizens and foreigners, there is indeed no reason for differentiating citizenship rights. This means that in addition to all the rights foreigners have already been granted in different countries, they ought to enjoy the full franchise as soon as they satisfy the general conditions of residence. This total equalization of rights need not deprive the status of nominal citizenship of any attraction and meaning. It would retain its symbolic value as a formal expression of membership in the polity, whereas the others would be only informal members. Immigrants could choose this status as an expression of their commitment to their society of residence. Indeed, we can assume that an equalization of rights before naturalization will strengthen such feelings of commitment and compensate for the decline in instrumental rationality of naturalization.²⁵ As long as a sufficient number of immigrants can be motivated to make a voluntary choice in favour of naturalization, there is little reason to abandon the nominal distinction between foreigners and citizens, even though it might have turned into a largely symbolic one. One might object that commitment of a purely symbolic nature is always likely to assume a nationalist tinge. However, opting for naturalization under conditions where full rights can also be enjoyed without taking this step would express a rather harmless kind of patriotic pride in the achievements of a liberal democratic polity.

There may be reasonable disagreement about such a total dissociation of legal status and rights of citizenship. If the essence of democratic legitimacy lies in the kinds of rights that it establishes for citizens, should not admission to the polity be more than a merely symbolic inclusion into the community whose process of democratic decision-making establishes and confirms the validity of these rights? After all, individuals are actively involved in democratic legitimation as members of the polity rather than of society. A collective constitutes itself as a polity distinct from society by institutionalizing democratic deliberation at the highest level of sovereignty. Should this not be reflected in making the suffrage at this level conditional upon a decision to become a member of the polity for all those who had previously been a member of a different polity? Again, I think there are some drawbacks in this argument. The most important one is that if the incentives for naturalization are not strong enough, a large percentage of the population in societies of immigration might remain permanently excluded from the most important mechanism of democratic legitimation. However, under ideal conditions of optional naturalization, there is little reason to fear such an outcome. This solution, which we could call liberal-republican, would therefore be equally permissible as the liberal-communitarian one. In any case, both solutions go far beyond present policies of inclusion in all Western democracies. There is considerable scope

for a simultaneous improvement of records along all three normative dimensions of inclusion, equality and consent before one reaches the point where tensions between them might manifest themselves as dilemmas.

Conclusions

I have argued in this paper that the norm of inclusion is central to a liberal understanding of democracy and that it refers to a concept of society that is wide enough to include foreign residents and their family members abroad as well as emigrant citizens. Nonetheless, inclusion is not the only relevant norm for liberal democracy. Equality of membership and of rights in the polity, and consent expressed in political deliberation and in agreement to membership are of the same significance.

Inclusion and equality may come into conflict when individuals enjoy a common status of membership, but unequal rights or, inversely, when they enjoy equal rights, but unequal nominal status. While the former tension develops with the accumulation of collective rights in addition to individual ones, the latter one results from the extension of citizenship rights beyond nominal membership in the polity. Both these outcomes can be well justified in a liberal approach.

Inclusion comes into tension with consent already with the automatic attribution of citizenship at birth. The conditions of consent in membership can, however, be restored by making both expatriation and naturalization optional. This may diminish formal inclusion of resident foreigners compared with a solution that would attribute a status of citizenship automatically after some time of residence. But that latter policy would ignore the specific interests and autonomous choices of immigrants. So the balance seems to be well-drawn in the way that I have suggested.

Finally, equality and consent seem to conflict with each other if equal rights can be had without any conscious decision for membership. However, as I have argued, even this radical solution would not make the choice of membership meaningless. A different position that insists on tying national voting rights to nominal citizenship seems to be equally defensible within a framework where resident foreigners can freely choose to be naturalized.

None of these solutions takes fully into account the situation of those who have not, or not yet, achieved full societal membership. Transient and temporary migrants as well as those who have just arrived but intend to stay will not be fully included, will not enjoy completely equal rights, and will not be offered all the options of membership. However, in Michael Walzer's words, the basic norm of inclusion requires that they "must be set on the road to citizenship" (Walzer, 1983: 60).

At first sight, the overall distribution of rights and legal status in liberal democracy, which emerges from our normative discussion, seems to violate all three principles of inclusiveness, equality and consent. Instead of being a homogeneous status, citizenship is acquired in a different way by natives and naturalized immi-

grants; it is different in its meaning of affiliation to a polity for single and dual citizens; it is different in its substance of rights for emigrant citizens, for temporary immigrants and for long-term residents. Nevertheless, this multi-layered structure of citizenship can be regarded as a consequence of combining the three norms and applying them to a world where societies have become mobile across state borders. However, the very same principles which can justify such distinctions also point to many obstacles which ought to be removed from the path to citizenship before the terms of admission can be regarded as fair.

Notes

- * This contribution draws on arguments developed at more length in a forthcoming book: *Transnational Citizenship. Membership and Rights in International Migration*, Edward Elgar, Avebury, UK, 1994. It was first presented at a panel organized by Joseph Carens at the 90th Annual Meeting of the American Political Science Association, 14 September in New York. Amy Gutman's critical comments at the conference stimulated some clarifications in revising the paper. Credits are also due to Ulrike Davy for challenging me to elaborate the apparent contradictions between a strategy of equalizing rights for foreign residents and citizens and one of making naturalization optional.
- 1 The last relics of gender discrimination in Western European systems of franchise have been abolished with the recent introduction of full voting rights for women in the Swiss canton Appenzell-Innerrhoden. The problem of denaturalization of ethnic minorities is still acute in some newly democratized states of Central and Eastern Europe. In June, the Latvian parliament adopted a citizenship law that would make 500,000 ethnic Russians who have immigrated after 1940 stateless until the year 2000. (The Latvian president objects to the law which has not yet come into force.) In July, the Czech republic turned 70,000 Roma into a stateless minority because they had not applied in time for citizenship of the new state.
- 2 John Stuart Mill, for example, denounced the exclusion of women but defended a franchise limited to taxpayers and a system of plural votes for citizens with a higher education (Mill, 1972, *On Representative Government*, chapter 8).
- 3 As regarded by legal positivists (see de Groot, 1989: 10-17).
- 4 Joseph Carens has objected that "[a]fter a while, the terms of admission become irrelevant" (Carens, 1989: 44).
- 5 Article 34 of the Geneva Refugee Convention obliges states of asylum to facilitate the integration and naturalization of refugees and to reduce the costs of the procedure as far as possible. A number of signatory states take this into account by reducing the required period of residence prior to the naturalization of refugees.
- 6 In some Western democracies an option exists for those foreigners who are not immigrants but have been born in the country, or for immigrants who have married a citizen.
- 7 Canada and Australia are probably the two countries of immigration that today come closest to this model of optional naturalization. The Canadian Citizenship Act includes

- 5 of the Act specifies that the Minister *shall* grant citizenship to any person who meets the requirements whereas the Minister *may, in his discretion*, waive on compassionate grounds some of these requirements in favour of the applicant.
- 8 David Hendrickson points out that in a realist perspective "[t]he acquisition of nationality is a more momentous step, and it would not be inconsistent with this formulation to hold that the state's discretion is much wider in deciding upon membership and nationality than in rejecting admission to visitors" (p. 219).
 - 9 A view which has been strongly criticized by Robert Dahl, who insists that "[t]he demos must include all adult members of the association except transients and persons proved to be mentally defective" (Dahl, 1989: 129).
 - 10 See de Groot, 1989: 12-13.
 - 11 This has been an unintended effect of eliminating gender discrimination in citizenship laws. Until well after the Second World War, citizenship was transmitted only by the father in most Western democracies. The mother's membership became then only relevant if the child was born out of wedlock.
 - 12 Apart from being subjected to territorial sovereignty these "transients" (Robert Dahl) may certainly have rights towards their temporary host country but such rights are not based on their societal membership. They result rather from a commitment to respect human rights when no significant ties of membership are involved. This same kind of commitment opens the boundaries of liberal politics to claims of refugees that their admission is a matter of right rather than merely of generosity, clemency or expediency.
 - 13 Claims to external ethnic membership can be based on a purely nationalist line of argument that replaces the political concept of society with that of a national community of descent and culture. In a liberal democratic view membership requires ongoing social ties of interaction and communication and/or dependence from a state for protection. Where neither is the case the claims to national solidarity beyond borders become spurious.
 - 14 The German Aliens Act of 1990 has, for the first time, recognized that young foreigners who had to return to their parents' country of origin enjoy a right to re-immigration into Germany, i.e. a prerogative that has traditionally been reserved for citizens only. However, beneficiaries are defined very narrowly as those who have spent at least eight years in Germany and have visited school there for six years, who have sufficient means of subsistence and who apply for return between their 15th and 21st birthdays and within five years after leaving Germany (*Gesetz zur Neuregelung des Ausländerrechts*, §16).
 - 15 Nozick's theory defends an atomistic individualism only at the level of states but envisages the flourishing of a multiplicity of associational communities within that framework (Nozick, 1974: chapter 10).
 - 16 See, for example, Oldfield (1990) or van Gunsteren (1992).
 - 17 The extreme interpretation of *ius soli* in the USA, which merely focuses on territorial birth and attributes citizenship automatically even if a child is born on board an aircraft flying over the territory, need not necessarily be seen as a model for other countries of immigration. (For an interesting controversy about the attribution of citizenship to native-born children of illegal immigrants see Schuck and Smith, 1985 and Carens, 1987.) For European states that consider reforming their *ius sanguinis* laws, it would probably make more sense to apply *ius soli* to native-born children under the condition that one parent has been resident in the country for at least a short period of time. The

- solution that seems most attractive to me would be to give alien parents a choice, whether they want their children to acquire citizenship at birth and to give the children themselves a second option at an age well before they attain the age of majority. However, a third generation, i.e. children born in the country of parents themselves born in the country, ought to be attributed automatic citizenship. This is the rule of *double ius soli* which is, among others, established in French and Belgian law.
- 18 This criterion distinguishes migrants not only from nomads but also from tourists who visit other countries without searching for a new home. International tourism is a major consequence of the modern revolution in transportation technology. It strongly affects the economy, ecology and culture of states but it raises no challenge for their definitions of membership. In nomadic migration, societies move while individuals stay put within their structure; in tourism, societies stay put while individuals move. In modern migration the movement of individuals causes an expansion of the social basis of membership.
 - 19 As Mark Gibney does when he defends a liberal admission policy for refugees by attacking the U.S. immigration priority for relatives of citizens and immigrants (Gibney, 1986).
 - 20 I have tried to address this question in two other papers (Bauböck, 1994a, 1994b).
 - 21 See Marco Martiniello's contribution in this volume.
 - 22 The third category of persons to whom the norm of inclusion may apply are those who are neither citizens nor residents. For them there is little substantial equality. They may claim admission to the territory but not many other rights which they could exercise beforehand.
 - 23 See Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights.
 - 24 The classical statement on this point is Tocqueville's analysis of New England township democracy (Tocqueville, 1954: chapter 5).
 - 25 Relatively high rates of naturalization in countries such as Sweden, Australia, Canada, which grant both easy naturalization and substantial rights for foreign residents, seem to provide empirical illustration for this point.

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