DORA KOSTAKOPOULOU

The Future Governance of Citizenship

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In much of the citizenship literature it is often considered, if not simply assumed, that citizenship is integral to the character of a self-determining community and that this process, by definition, involves the exclusion of resident 'foreigners'. Dora Kostakopoulou calls this assumption into question, arguing that 'aliens' are by definition outside the bounds of the community by virtue of a circular reasoning which takes for granted the existence of bounded national communities, and that this process of collective self-definition is deeply political and historically dated. Although national citizenship has enjoyed a privileged position in both theory and practice, its remarkable elasticity has reached its limit, thereby making it more important to find an alternative model. Kostakopoulou develops a new institutional framework for anational citizenship, which can be grafted onto the existing state system, defends it against objections and proposes institutional reform based on an innovative approach to citizenship.

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Introduction

The irony of life is that it is lived forward but understood backward.
Søren Kierkegaard

Why citizenship?

Citizenship, which may be defined as equal membership of a political community from which enforceable rights and obligations, benefits and resources, participatory practices and a sense of identity flow, affects everyone. More than any other institution, it impacts upon our public and private life by shaping the way we behave, informing how we can live together and determining what we should expect from the state and other institutions. But citizenship is not confined to the realm of the real. It also encompasses a future-oriented, rather aspirational, dimension; namely, cognitive and normative ideas about what is possible and, perhaps, desirable for socio-political relations. Poised between the real and the ideational, citizenship can thus be both an instrument for maintaining the status quo and an invitation to social and political change.

This, perhaps, explains citizenship's appeal. There exist many volumes on it and scholars frequently engage in lively debates about its meaning and content.[1] Politicians, too, often make it the focus of public debate about a wide range of issues, such as realising active citizenship, enhancing the accountability of public officials, providing education for citizenship, defending the European social model and so on. Following 9/11, arguments over the public space and recognition afforded to faiths, and in particular to Islam in western multicultural societies, complaints about competing loyalties and multiple identities, litigation over the wearing of the niqab and other symbols of faith, have raised the political stakes and highlighted the centrality of citizenship to contemporary politics. And even though the broader debate as to whether citizenship is valuable per se[2] or has an instrumental value is far from being

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[1] For an excellent review of these debates, see Kymlicka and Norman (1994, 2000).

[2] Civic republican and communitarian scholars have emphasised the importance of civic engagement and participation in public affairs. For a good exposition of their arguments, see Mulhall and Swift (1992).

settled, very few individuals would actually call into question the value and importance of citizenship.[3]

Given the prominence of citizenship in public discourse and academic literature, it is tempting to think that we know almost everything about it. However, when we turn our attention to contemporary challenges, such as pressures for regional autonomy, global economic processes and global inequalities, climate change, increased human mobility and the claims made by resident non-nationals for political inclusion, cultural pluralism, continuing discrimination and international terrorism, we gradually discover not only that we know less than we thought, but we are also confronted with citizenship's limitations. Frustrating this may be, it is, nevertheless, understandable. It is not easy to reconcile twenty-first-century challenges and problems with twentieth-century resources and nineteenth-century models. The nation-state may be under pressure from above, below and within – that is, the pace of social and economic change, migratory movements, demands for regional autonomy, claims for full citizenship from marginalised citizens and non-citizen residents, the internalisation of the economy and accelerated capital mobility, the development of supranational law and institutions and, lately, the intransigence of dogmatism – but the nationality model of citizenship continues to be the dominant paradigm.

Having a historical pedigree of approximately 200 years, national citizenship reflects the relationship between right-bearing individuals and the territorial state, which has been conceived of as the political embodiment of a nation, that is, as an association of compatriots endowed with sovereignty. According to this paradigm, free and equal citizens qua nationals are united by a shared set of values and patriotic allegiance in a quest for democratic governance. Four main assumptions have traditionally underpinned national citizenship: I will call them the priority, exclusivity, supremacy and cohesion theses. According to the priority thesis, citizens must show a preference for the well-being of their fellow co-nationals over that of non-nationals residing both within and outside the territorial borders. The idea of having special obligations to the members of one's community (Miller 1995) stems from the 'we feeling of the nation' and the concomitant sense of shared identity. Although citizens live among strangers who they will never know (Anderson 1983), they have been accustomed to think of them as compatriots. Accordingly, their interests matter more than the interests of non-compatriots, irrespective of the latter's residential proximity. The exclusivity and supremacy theses refer to the assumptions that national identification should be single – it should not reflect multiple belongings,[4] and should subdue, absorb and assimilate all other individual or collective

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[3] Turner (1993) has argued that citizenship is a key aspect of our political thinking.
[4] The ideal of monopatride citizen has been the hallmark of national citizenship. Accordingly, multiple nationality has been seen to be both undesirable and a problem, since it results in divided loyalties. For an excellent account of the implications of this, see Leuprecht (2001).

identifications, respectively.[5] Citizens have thus been expected to display absolute and unconditional allegiance to their nation. Finally, the internal cohesion thesis refers to the assumption that heterogeneity and pluralism are not conducive to political stability and democratic governance. As Mill (Mill 1972 [1861] 382) noted: 'free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist.' The paradox, here, is that while difference has been perceived to be a problem and a barrier, national citizenship itself has been founded on, and sustained through, difference, that is, the insider/outsider distinction. By excluding the outsider, it has managed to elicit the loyalty of the citizenry. Because all these assumptions, which will receive more detailed attention below, reflect the world of yesterday, rather than contemporary realities, their grip upon thinking, policy and politics has been noticeably weakened over the last two decades.

Indeed, the political landscape has shifted in such a way that the nationality model of citizenship has been seen to be an anachronistic institution by both globalists and sociologists keen to explore the dynamics associated with the language of human rights (Soysal 1994; Jacobson 1996) or the recovery of the 'subject' (Touraine 2000). Others disagree. They prefer to bracket the limitations of citizenship qua national membership, and proceed to address substantive issues, such as enhancing participation and equality. This trend thus centres on what may be called a 'limitation neglect'; that is, community membership and boundaries are taken as given and unproblematic. Finally, a third trend in the literature on citizenship starts from a different premise; namely, scholars acknowledge the limitations of national citizenship, but they seek to remedy them and to increase the inclusionary side of citizenship by reforming national citizenship and by pluralising national cultures and identities. Although scholars have chronicled the crisis of the nationality model of citizenship well in the light of the prevailing notions of democratic legitimacy, the forces of globalisation and the unfolding dynamics of European integration, the search for a truly non-national alternative has not progressed.

This book seeks to furnish the tools required in order to transcend the present limitations of citizenship and make it more meaningful in the twenty-first century. It does so by suggesting an alternative citizenship design based on domicile and defending it against a number of objections. Although the history of the nation-state weighs heavily on citizenship, we should not forget that the latter has been characterised by remarkable plasticity. As society develops over time and its central themes and guiding values are undergoing revision and refinement, citizenship is re-written in a way that transcends the narrow confines of the past, while retaining its capacity to be meaningful and socially relevant.

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[5] According to Smith (1979) the idea that loyalty to the nation-state overrides other loyalties is one of the seven propositions that make up the core nationalist doctrine.

This is often done by enhancing rights protection, increasing civic involvement and by promoting democratic inclusion and equality in the political system. And although one should always be sensitive to constraints and political obstacles, we also should keep in mind that citizenship is, perhaps, the only institution that has the capacity to turn strangers into fellows and residents into associates in an ongoing quest for just and democratic institutions and for improved symbiosis. But now that the scope of this book has been sketched out and the importance of citizenship highlighted, readers might wonder why we should address citizenship now.

Why citizenship now? Turning points and transition theories

In the 1990s, political reform in Eastern Europe brought about an unprecedented optimism about the future and a widespread belief that politics can change things for the better provided that the liberty of the citizens is respected.[6] And citizens can only be free if they view themselves to be not only the addressees of laws promulgated by governments, but also the joint authors of such laws. At the same time, the processes of globalisation and European integration provided another, equally gripping, motivation for engagement with fundamental thinking about community membership and the role of the citizen. The establishment of European Union citizenship, by the Treaty on European Union in 1992, brought forth the possibility of disentangling citizenship and nationality and, despite its present limitations, this institution was legitimately considered to be a prototype for political experimentation beyond the confines of the national state.[7]

Such experimentation was seen to be necessary because the abovementioned four theses underpinning the paradigm of national citizenship were revealed to be both problematic and inappropriate for contemporary political communities. This is because they were premised on assumptions about unitary identities, unified nation-states, homogenous political cultures and clear boundaries between members and strangers which did not reflect reality (Kymlika and Norman 2000). Democracy and nationalism may have been bedfellows for a very long time, but, in the last two decades of the twentieth century, their uneasy relationship could no longer be concealed. Activists and scholars argued convincingly that the fixity, assumed homogeneity and simplicity of the old paradigm perpetuated exclusion and separation, left many inequalities unscathed, subjugated competing religious beliefs and cultural frames of meaning, encouraged isolationist minority positions, hindered social capital formation and democratic partnerships.

The parallel trends of internal differentiation and cultural globalisation, coupled with European integration and processes of decentralisation, gradually

[6] Compare J. Dunn (2005).   [7] This will receive a detailed exposition in Chapter 1.

induced transformations of national identities in Europe and elsewhere. In the UK, for example, Parekh (2000) articulated possible options for the redefinition of national identity, and his report on the future of multi-ethnic Britain outlined a set of institutional reforms which could make Britain a more vibrant multi-ethnic society. As the national was squeezed among assertive pluralism, on the one hand, and transnational and supranational forces, on the other, scholars wondered whether the modern nationality model of citizenship had outlived its usefulness. For although these developments did not precipitate the eclipse of the nation-state, they nevertheless demonstrated that the generative matrix from which citizenship had sprung was based on the manufactured couplings and equivalences between the state, the nation, sovereignty, territoriality, democracy and citizenship that were not as tight as it was previously thought. The loosening of the connections and the possibility for new combinations was heralded to be a unique opportunity to remedy the exclusiveness, restriction and discrimination that prevailed in the past, to straddle the opposition between citizenship theory and political reality that had widened by the conservatism of the 1980s, and to promote social justice.

In the early twenty-first century, however, people found that political life was neither caring nor compassionate. Human life was not worth much: bombers did not care about where they bombed, soldiers did not care about who they killed and politicians pursued their own narrow agenda without much regard for international legal guarantees and human rights. In the aftermath of the catastrophic events of 11 September 2001 security concerns prevailed and authoritarianism dominated the political agenda on both sides of the Atlantic. Politicians argued that changes in citizenship, naturalisation and migration policies were appropriate, and indeed inevitable, in light of new and unprecedented security threats posed by Al-Qaeda and other terrorist groups. Accordingly, they pursued policies designed to strengthen national cohesion by increasing naturalisation requirements, stripping dual nationals of their nationality, and to restrict civil liberties, such as detention without trial, control orders, restrictions on free speech, increased powers of arrest and so on. One thus notices a clear shift away from multiculturalism and diversity towards either 'integration' or 'assimilation' and a gradual 'thickening' of notions of political belonging in western Europe and elsewhere. The loyalty of Muslim citizens and residents has been called into question by the mainstream parties, while the Populist Right pursues its Islamophobic and anti-migrant discourse with a renewed dynamism, capitalising upon the threat of terrorism.

Although the political struggle to make citizenship more meaningful continues in the form of policy battles over border regulation and migration policy, loyalty and patriotism, naturalisation rules and dual citizenship, anti-discrimination legislation and social welfare reform, in the current state of affairs nationalism appears to be a right without a left. It is as if political options have run out. Opinion polls reveal that millions of people have lost

hope in politics, are distrustful of politicians and cynical about the future.[8] Clearly, this is a turning point as regards citizenship. And turning points do not merely provide good illustrations about unfolding social processes and the role of time in politics (Pierson 2004), they also prompt a critical reflection on what works and what needs to be fixed, a consideration of a different vision and the transition from one set of beliefs to another. Turning points are thus closely linked with transition theories.

True, no transition theory can predict with certainty the future of the nationality model of citizenship. Nor is it easy to ascertain whether the trend of making the ethnic boundaries of citizenship more visible will take hold and, more generally speaking, where we are headed in terms of reconfigurations of citizenship. But given the risks posed by the thickening of national identities and state authoritarianism, it is not only reasonable to ask what modifications and adjustments citizenship needs, but it is also vital that we defend the normative ideals of inclusive and democratic citizenship in the twenty-first century. We thus need to reignite a vision that points towards the future while taking stock of the past. We also need to debate openly alternative institutional designs that might improve democratic life by providing better connections among the whole and the parts, democracy and diversity, and supranational patterns of governance and democratic partnerships both within and beyond the state. In other words, we need to ponder upon embedded utopianism.

Embedded utopianism

In many respects, the nation-state centred notion of citizenship has not only prevented us from developing a sophisticated understanding of associational relations and from articulating an appropriate response to present challenges, but it has also stifled normative thinking by insisting that polities are like clubs. As such, they have the power to exclude eligible applicants from admission to the public realm of the community. Longstanding residents are, according to Cole (2000), 'outsiders', since they are permitted to enter the private realm of the state, but are excluded from the public realm. In the subsequent discussion, I argue that the analogy between a polity and a club is incorrect and that another configuration of citizenship is possible which reflects more accurately present historical exigencies and, more importantly, democratic sensibilities.

For as Bauman (2001, pp. 54–5) has convincingly argued:

democracy is not an institution, but essentially an anti-institutional force, a 'rupture' in the otherwise relentless trend of powers-that-be to arrest change, to silence and to eliminate from the political process all those who have not been 'born' into power … Democracy expresses itself in a continuous and relentless critique of institutions; democracy is an anarchic, disruptive element inside the

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[8] See, for example, the poll conducted by *The Sunday Times* on 31 December 2006.

political element; essentially, a force for dissent and change. One can best recognise a democratic society by its constant complaints that it is not democratic enough.

Sharing this critical sensibility and believing that democracy cannot be imagined without internal inclusion, in this book I seek to think the impossible with respect to citizenship while being attentive to what exists and the forces that have shaped its historical evolution. By looking into the horizon of 'what could be' or 'what might be', I avail myself of a language of critique and social transformation[9] – a language of embedded utopianism.

Underlying this term is an awareness of the need to keep the normative agenda on a realist footing. Alas, it is not sufficient to come up with alternative institutional designs and to assume that they will be adopted by policy-makers who are convinced about their strengths. We also need to analyse the obstacles that stand in their way, consider possible objections to them and reflect on the political forces that may work against their implementation. Although throughout the subsequent discussion I seek to anticipate objections to my argument and to address a number of criticisms that may be raised from differing political perspectives and theoretical traditions, it may be worth pre-empting, and responding to, a few general criticisms at this point.

Three general, albeit interrelated, criticisms may be anticipated. The first is raised in almost all cases involving institutional transformation and bears a close resemblance to A.O. Hirschman's (1991) futility thesis; namely, that attempts at social transformation will simply fail to make a 'dent'. Politics is, after all, the art of the possible. In assessing the chances of implementing institutional reforms in 'the real world', however, one must bear in mind that the line separating 'possibility' and 'impossibility' is quite indistinct. Things widely held to be impossible in the past have been, in fact, entirely possible. In addition, our conception (and prediction) of what is possible and impossible is self-limiting (Barrow 1999): the possible and its limits are essentially defined by our perspectives and institutionalised political choices. And even though we long for certitude and predictability, on a deeper level we know that the world, be it cosmic or political, is complex, unruly and unpredictable. In this respect, questions of feasibility must be situated within the matrix of fluid, dynamic, constantly changing political and institutional environments. In such environments, not only is there no privileged vantage point from which one may pass judgement on what can and cannot be achieved, but, like balloons, whose shape and volume cannot be detected before inflating them, even small mutations can have big and often unexpected effects.

Secondly, it may be argued that the transformation costs associated with an alternative model of citizenship are simply too high. I take 'transformation costs' to include not only the resources devoted to the process of considering a

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[9] From this standpoint, the scholars' task is not merely to promote understanding and identify gaps in knowledge. They also have a responsibility to intervene, criticise injustice, ask uncomfortable questions and suggest alternatives. On this, see Brown (2001).

rule change (Buchanan and Tullock 1962) but also the expected, ex post impact of the proposed rule change on other institutions and the political setting in general. After all, an anational citizenship design will not only radically transform citizenship, but will also shake the foundations of modern politics by decentring the national frame of reference. For some, this would be an unacceptable cost. But equally, for others, the continued conditioning of citizenship by nationality in the present globalised era entails a number of unacceptable costs and constraints. Some might even go further and argue that it ultimately discredits itself by its indifference to principle. Upholding the principle of democratic inclusion and placing political membership on a more egalitarian plateau in the new millennium may thus require a critical appraisal of ideologically driven justifications and a willingness to explore new ways of articulating the alliance between citizenship and democracy. After all, as Hirshman's discussion of the jeopardy thesis has shown, it is often the case that fears about these pressures and transformation costs are greatly over-blown. Furthermore, unsettling particular meanings and thinking beyond the given are central to democratic transformation.

Thirdly, it may be argued that my framework does not take into account the wishes, perceptions and preferences of the average voter. Indeed, in the current climate of suspicion and negativity that has accompanied the 'war on terror', the enactment of an inclusionary framework of anational citizenship is bound to generate hostile reactions from the public. I see two problems with this argument. First, it is bedevilled by a 'chicken-and-egg' question. For instance, if people are suspicious of 'foreigners' and tend to trust co-nationals more, it is not clear whether nationality produces these sentiments and reactions or whether these are the by-product of nationalist discourses and appeals to ethnic exclusiveness espoused by politicians, of anti-migrant rhetoric and of hostile representations of migrants by the media. After all, a cursory look at the state of political affairs since 9/11 shows that it is not so much the average voter, but politicians and the media, who are controlling the debate and the prevalent discourse on migration, citizenship and nationality. In many respects, 'the nation' is not discovered and expressed by the government of the day; instead, it is made and remade by it.

Secondly, although one cannot afford to disregard what people may want, over time political life would become impoverished if peoples' preferences (and often prejudices) were made the basis for citizenship design. After all, political judgements about what the national interest requires and the best way to deliver public goods do not always coincide with public preferences. Nor has such an argument concerning 'telling people what they want to hear' or 'delivering what people want' been relevant with respect to a great deal of public policies and government-driven radical reforms, such as the denation-alisation of public utilities, private finance initiatives, taxation and so on.

Alas, the above arguments may not convince critics. Readers may disagree with my responses and, by the end of the journey, may even conclude that

I may not have offered an acceptable solution to the problems pertaining to national citizenship. Such a response would not be regrettable. The book would, indeed, have been devoid of purpose if all readers agreed with me. It seems to me that a valuable purpose will be served if the discussion provokes debate, encourages a more reflective approach towards our paradigms and the dominant nationality model of citizenship and stimulates thinking about alternative institutional designs. Thinking differently about citizenship can unlock many fruitful possibilities, even if readers decide to depart from my conclusion that the impossibility of anational citizenship is only in the mind. In essence, what I am offering here is an invitation to start thinking about a genuinely postnational framework of democratic citizenship and its institutional implementation in the twenty-first century. In this respect, even if I am judged to have failed in furnishing the correct – and in the opinion of certain readers, an *acceptable* – imagining of citizenship for the future, I do hope that I will at least succeed in the remaining objectives.

Plan of the book

The structure of the subsequent discussion reflects the themes of ideological and structural change, theoretical innovation and institutional implementation. However, the book is not divided into parts. Nor has the discussion been based on a separation between theory and praxis. Rather, theoretical and policy perspectives are blended in an attempt to trace the rise and evolution of citizenship, to account for the development of the nationality model of citizenship, to explore its main ideological and practical limits, to furnish a solution and to examine the empirical conditions for its implementation.

The discussion will proceed as follows. Chapter 1 traces the emergence and development of citizenship. Following the exposition of different conceptualisations of citizenship, it discusses the dominant paradigm of national citizenship and explores some of its main normative and empirical limitations. Chapter 2 considers these limitations in more detail and critically assesses liberal national justifications of the normative relevance of national identity and culture. I argue that the latter are premised on a 'container' concept of culture that may not be as sound as it first appears. I proceed to examine whether an alternative conception of culture, that is, a conception of culture as practice, process and project, represents a more promising way of thinking about culture and the formation of political communities in this increasingly interdependent and interconnected world.

Chapter 3 continues the discussion on the theme of 'making a virtue out of the necessity' of nations and examines proposals to overcome the limitations of the nationality model of citizenship by incorporating new ideas and reforming naturalisation law and policy. More specifically, I critically examine two trends in the literature; namely, the 'new' discourse of patriotism and new models of citizenship. In examining contemporary discourses on patriotism, I argue that

it is inconsistent and unpersuasive. Neither Viroli's rooted patriotism (love of patria understood as a community of shared political territory, historically situated institutions and values grown out of historical processes) nor Habermas' constitutional patriotism (identification with the political culture embodying universalist political principles) nor Mason's republican patriotism (love of central institutions and practices) succeed in transforming the nationality model of citizenship in order to make it more compatible with contemporary developments and with cultural pluralism. In all three accounts, citizenship is embedded within the nation, and cannot function without the thick, thin or thinner mutual sentiments of commonality and civic national belonging. Patriotism in its various forms continues to have the nation-state as a referent and presumes that citizenship is national in character. Similarly, the three models of citizenship suggested by the literature – that is, postnational, transnational and multicultural citizenship – remain rooted within the civic nationalist trajectory. I demonstrate this by taking issue with the institution of naturalisation. Owing to the weight of its past and the symbolic significance it carries, even 'thin' naturalisation will continue to be rooted in and be configured by ethnicity, thereby making any claim to inclusivity either spurious or temporary. Instead of arguing for the liberalisation of naturalisation requirements and the ensuing pluralisation of citizenship, I consider how the nationality model of citizenship might be transcended by developing a model of civic registration.

Chapter 4 develops further the controversial option of superseding the framework of nationality and dislodging citizenship from the confines of the national. It sets forth arguments for redesigning citizenship by decentring the national frame of reference from its privileged position in citizenship theory and practice and by accentuating the network good character of citizenship. It furnishes the guiding principles for an anational framework of citizenship, shows how it can be implemented in reality and addresses a number of related policy dilemmas and objections to it.

Chapter 5 develops this analysis by exploring the implications of the anational model of citizenship in the international public realm and, more specifically, in the fields of diplomatic protection, the nationality of claims, plural citizenship and double punishment. I argue that a model of citizenship based on domicile would substitute nationality in the international domain, since it is premised on the existence of a genuine and effective connection between the individual and a political community. Such connection would be brought to an end in the event of voluntary renunciation of domicile of birth, domicile of choice, domicile of association and the revocation of civic registration owing to fraud or misrepresentation. Prolonged domicile abroad would also result in the severance of the links between the citizen and the country in which (s)he has domicile of choice.

Having designed the personal scope of denationalised citizenship, Chapter 6 focuses on examining its material scope. A central question in such an enquiry

is how much weight should be given to the notion of differentiated citizenship. The idea of differentiated citizenship has emerged as a response to the critique of liberal citizenship in the 1990s. Accordingly, differentiated rights and asymmetrical solutions are seen as an effective means of tackling inequality and empowering discriminated against groups. I critically examine the relevant literature and argue that, although accounts of differentiated citizenship are both insightful and important, differentiated citizenship is not a novel idea. Citizenship has always been differentiated and liberal citizenship constitutes no exception. I examine three faces of differentiation built into citizenship to illustrate my point and argue that the citizenship debate must go beyond the equal citizenship status and differentiated citizenship dualism by focusing on the development of an institutional framework of flexibility that promotes equality, inclusive democratic politics and fairer terms of group incorporation. Put another way, any credible model of citizenship has to exhibit what may be termed 'a variable geometry'. I then proceed to furnish the specifics of the variable geometry design.

In Chapter 7 I graft flesh onto the variable geometry model by linking the normative template with issues of public policy and service delivery. Guided by the theoretical framework of anational citizenship, I focus on institutional frameworks for minority incorporation and proposals for policy reform. In this respect, I examine various modes for the incorporation of minority groups in various countries, and argue that 'living together' in a radically plural and increasingly interdependent world might require the replacement of the vocabulary of integration with that of participation in practices of socio-political co-operation. I furnish the necessary ingredients of such a pluralistic mode of inclusion and explore what needs to be done in order to remove barriers to socio-political inclusion, equal participation and respectful recognition, by identifying a number of what I call 'vertical' and 'horizontal' pathways for minority inclusion.

Finally, Chapter 8 summarises my arguments and urges that we overcome political obstacles that will prevent institutional reforms from being enacted and ideas from taking root. After all, one must have faith that change is possible and that good ideas can capture the political imagination. But change is unlikely to occur unless the what, when and why of national citizenship and its alternatives are openly discussed and questions so far avoided are raised. I sincerely hope that this book will serve as a channel for such questioning and re-imagining.

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The cartography of citizenship

Citizenship has had a millennial-long history and its influence upon politics and practice has been deep and wide. Policy-makers and scholars have commented on citizenship's role and a number of volumes have been written expounding its origins and content. Yet citizenship, as we know it, has been called into question by globalisation, the process of European integration and the increasing internal differentiation of political communities. These have challenged the institutional setting of the nation-state within which modern citizenship emerged, making the conventional idea of citizenship as membership in an undifferentiated statal community unsuited to contemporary developments. In addition, if we believe that within a territorial state the governed have a rightful claim to participate, either directly or indirectly, in the process of political decision-making, and that democracy entails higher standards of legitimacy than nationalism, then the nationality model of citizenship generates exclusions which are difficult to justify from a normative point of view. Indeed, this internal contradiction creates several problems which, as we shall see in Chapters 3 and 4, may be for practical purposes insoluble. But does this mean that the concept of citizenship is in danger of obsolescence? And if it is concluded that citizenship cannot survive in its current form, are there alternative ways of thinking about it?

In answering these questions and reflecting on the limits and possibilities of citizenship, there are two things we cannot afford to ignore: namely, history and theory. One needs to look more closely at citizenship's past and present, before examining its future prospects. By considering the chronography of citizenship and surveying its topography, that is, its variability in space, we can appreciate better existing contradictions and conjectural openings, and decide what must remain the same and needs to be designed afresh, if we are to retain it as a concept and an institution.

But how can we approach such a journey into the past? It seems to me that two options are available. First, one may be tempted to see citizenship as a compound of complexity, which like an onion, can be peeled off to reveal layer after layer underneath. In peeling off these layers, we might expect to find what may be termed the 'constants' of citizenship, that is, a small number of components that characterise citizenship, notwithstanding its historical

variability. These could be either some core ideas, such as the notion of equal membership in a political community, however narrowly or broadly the latter may be defined, or an array of complex interrelationships among free and equal citizens on a horizontal level and between citizens and the polity on a vertical level. Indeed, citizenship has emerged from such 'connections'. More importantly, as we shall see below in connection with the project of European integration, these are still at the mercy of complicated processes and historical events that produce often unexpected, dramatic changes and reconfigurations of meaning.[1]

Dissecting citizenship – that is, breaking it down into a few key components – should by no means imply that citizenship can no longer be the site for ideological and political battles, akin to those in the 1980s and 1990s. In the 1980s, the New Right responded to the Left's emphasis on the primacy of social and economic rights by successfully shifting the citizenship debate away from entitlements to individual responsibility and by furnishing arguments for states' disengagement from welfare provision. The aim was to push individuals into devising strategies of self-improvement and self-sufficiency. In the 1990s, citizenship became a site of a major battle over a unified and uniform status and national unity, on the one hand, and the recognition of group differences and distinct cultural and collective rights which can be asserted against the state, on the other. Finally, in the post-9/11 era, the rights versus security dilemma has been predominant in policy and politics and we are witnessing a renewed emphasis on (an idealised) national belonging, patriotic identification and the integration of migrant and other minority groups in western Europe and elsewhere.

Uncovering the constants of citizenship, however, may not be the only route to understanding. For although such an exercise would enable us to appreciate the importance and resilience of citizenship, it cannot capture fully the complex history of citizenship and its divergent manifestations throughout the world. Indeed, there exists such a multiplicity of meanings of citizenship in history as well as between societies, that to aspire to a simple, unitary theory of citizenship would be counterproductive. In this respect, it may be argued that citizenship is what it is and does what it does, not because it contains certain core elements, but because of the way in which its constituent parts are organised, interwoven in various discourses and sedimented in institutions. And if we fail to pay attention to the variability and indeterminacy of citizenship, the forces that shape its evolution as a concept and an institution might evade our consideration.

A danger here might be to see evolution of citizenship as a linear process; that is, a progressive realisation of the core meanings that are definitionally built into citizenship. This is something I shall try to avoid in considering the

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[1] As Mills (1959) has noted, standard categories of thought if applied to contemporary situations become unwieldy, irrelevant not convincing.

past and the present of citizenship for three reasons. First, such a view would sidestep the multiple and highly differentiated forms of citizenship that have existed in history (diachronically) and still exist across societies (synchronically). Secondly, it would have to focus on the dominant ensemble, thereby excluding societal divisions and other 'invisible' citizenships, that is, the complex, formal and informal citizenship practices that may take place below and above the state. Finally, linearity, of any shape or form, leaves very little room for silences and discontinuities between the 'new' and the 'old'.

Having made these observations, I wish to draw attention in what follows to the variability of citizenship and to present a critical genealogy of the complex institutional and discursive means by which it has been configured. By so doing, the discussion will lay the foundations for the more ambitious project of redrawing citizenship along more inclusive and flexible lines to which the bulk of this book is devoted. For citizenship has been (and is) an unfinished institution. It has always combined a number of historically produced presuppositions and processes of change, formations and transformations. As such, it has been the subject of political contestation and periodic redefinition. And, as we shall see below, whenever citizenship seemed to become increasingly problematic owing to material changes, a multitude of processes and new developments, it was not because it had reached a breaking point or because a rival had emerged threatening a take over. Instead, it was due to a generalised belief that some kind of reshuffling of meaning was needed or that one of its organising principles had outlived its purpose and cried out for replacement.

The origins of citizenship

Citizenship's roots can be traced back to the ancient Greek city states. Within the small, tightly knit communities of the ancient world, citizenship was associated with participation in self-government. Aristotle defined the citizens as 'all those who share in the civic life of ruling and being ruled in turn' (1948, p. 1283). And Pericles' infamous *Epitaph*, the funeral oration for those who fell in the Peloponnesian War, emphasised further this definition: 'we do not say that a man who takes no interest in politics is a man who minds his own business; we say that he has no business at all' (Thucydides 1954, pp. 118–9). It is true that, for Athenians, political participation was neither a mere supplement to private life (the life as *idiotis*) nor a distracting state of affairs. Rather, it was a normative presupposition for the development of a good personality (*kalos kai agathos*). Aristotle believed that the attainment of the highest good required the adequate development of personhood, the possession of certain attributes, such as wealth and health and, above all, civic participation. Citizenship and participation in the *koina*, that is, in the public life of the city-state, was so important, that if a man did not belong to the city, he was less than what he could be. He lacked the full subjectivity of citizenship. As Aristotle (1948) stated in *Politics*, 'anyone who cannot form a community

with others, or who does not need to because he is self-sufficient, is no part of a city-state – he is either a beast or a god'. Human beings could thus achieve moral perfection only within the polis.

In the public arena of the polis, citizens came together to discuss the meaning of the good life and to debate how politics and the private life ought to be conducted. The political was the *koinon* (the common) that applied to, and concerned, everybody. In fact, according to Maier (1988, p. 13), the word *koinon* was so closely connected with the political association of free and equal citizens that it often meant the opposite of 'despotic' and oligarchic forms of government. Thus, the process of broadening the oligarchy was equated with making it more political.

But the idyllic picture of the polis should not lead us to overlook that political participation was confined to Athenian adult males, almost all of Athenian descent. Slaves, metics and women did not have a share in the offices and honours of the state. Nor should the preceding discussion lead us to assume that there existed a uniform understanding of citizenship in ancient Greece. Aristotle (1948, p. 1274) himself disclosed this by stating, 'the nature of citizenship . . . is a question which is often disputed; there is no general agreement on a single definition'. In Sparta, for example, citizenship did not imply democracy, as it did in the Athenian city-state. The citizens of Sparta did not enjoy the freedom to participate in self-government. Instead, they were required to conform to the requirements of a highly disciplined society and to display militaristic loyalty. Indeed, Athenians always took such pride of their *politeuma* which had institutionalised rule by the people, that is, full participation by the citizenry in the popular assembly that regarded oligarchies, monarchies and aristocracies as inferior forms of government. True, no one can argue that the assembly's decisions were always correct. Demagogues and powerful interests often exerted powerful influence. But what was important was that the system was open and flexible enough to give to all citizens an equal right to be consulted before major decisions were taken, to hold public officials to account, to dismiss dishonest officials and fight corruption, and to allow the distribution of annual administrative posts by lottery.

The city state was thus the main locus of political identification and the site for a genuinely participatory citizenship, until the swamping of the city-states by the military power of Alexander the Great. The weakening of the limited loyalties of the city-state and the emergence of an impersonal world of large scale government under the Hellenistic kingship gave rise to a more individualised and universal philosophy. In the Hellenistic world, Stoicism put emphasis on the universality of human nature and the brotherhood of all men. For Stoics, all men and women were equal and equally capable of achieving the perfect moral life within one grand universal community governed by *Nomos*, that is, the divine logos for human society. Against the background of large-scale rule and under the influence of the theoretical idealism of the Hellenised Stoics, the boundaries of the political communities

that sustained the citizen/non-citizen distinction melted down and emphasis shifted away from citizenship and local political loyalty to natural reason which is common to all men. The old ideal of citizenship was no longer apposite to new political realities: it represented an exclusive, particularistic status which was confined to a minority, and failed to take into account the emergence of a community beyond the polis. Zeno's institutional cosmopolitanism was based on the premise that 'we should regard all men as our fellow-citizens and local residents, and there should be one way of life and order, like that of a herd grazing together and nurtured by a common law' (Plutarch, 'On the Fortune of Alexander', 329A–B, in Long and Sedley, 1987). And Diogenes of Sinope gave expression to this belief by coining the word kosmopolites, that is, citizen of the cosmos.

The Greek understanding of citizenship was also called into question by the Roman order. The Romans transformed citizenship by making it a status that could be extended and granted to conquered peoples (Heater 1999) and by disentangling citizenship from political participation. As regards the former, the creation of *civitas sine suffragio*, that is, of the new category of citizenship without political rights, not only rendered citizenship more passive, but also gave it a practical and militaristic dimension. As regards the latter, citizens should be keen to serve the army, have a strong sense of duty and respect the law. This was indeed necessary, since Rome's imperial power could only be sustained by harsh discipline and the maintenance of order.[2]

Cicero (106–43 BC) drew on Greek philosophy and reinterpreted Stoic and Platonic ideas in order to emphasise the importance of cultivating civic virtues and sacrificing private life for public duty, as Cato had done. In his *Republic* (I, 25), Cicero noted eloquently that since a people is not merely 'a mob of men come together anyhow', but an association '*iuris consensus et utilitatis communione sociatus*' (united by acceptance of law and by common enjoyment of its practical advantages), the legal rights at least of citizens of the same commonwealth should be equal. For 'what is the state but a fellowship in law?', Cicero observed (I, 32). This pragmatic view of the political community, coupled with the new conception of citizenship as a legal status, not only played a key role in the success of Roman imperialism, but, as we shall see below, laid the foundations of the modern idea of citizenship.

Citizenship and the medieval city

Citizenship lost its political meaning in the Middle Ages. In the feudal setting, which had the personal relationship (fealty) between lord and vassal as its implicit basis and was dominated by ecclesiastical power, there was no room for political participation and the classical idea of self-government. The feudal

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[2] This was, indeed, the meaning of the Roman ideal of 'virtue' – a term originating from virtus that echoed the celebration of manliness.

political order was centred upon other notions, such as faith, trust, law-abidingness and allegiance.

Allegiance (ligeance) had a double meaning; it denoted a geographical tract and allegiance, that is, the bond of fealty between the tenant and his/her 'liege' lord.[3] From the point of view of the vassal, fealty implied devotion, sacred duty, readiness to risk one's life for the lord and the right to be tried by one's own peers. From the standpoint of the lord or the king, who was viewed to be *primus inter pares* (first among equals) initially and then the lord of all other landlords, fealty implied an obligation to protect and honour the interest of the vassal, the grant of estates in return for service (fiefs), including military service, and the obligation to consult the vassals (Sayles 1948).

By the late thirteenth century allegiance was conceptually linked with the territorial scope of the lord's/king's power. 'Out of ligeance' thus meant outside England (Kim 2000, p. 138). All persons born within the king's dominion automatically became his subjects, irrespective of parentage and alienage. Hence, the king addressed charters to 'all his barons, French and English of a particular shire' (Dummett and Nicol 1990, p. 24). This rule had been crystallised in common law even before its codification by statute in 1367. Whereas in the thirteenth and fourteenth centuries alien status was marked by birthplace alone (within or outside the king's ligeance) and the king's 'fideles' comprised people of various ethnic origins, in the fifteenth and sixteenth centuries, the centre of gravity shifted away from the spatial notion of birthplace to the notions of faith and allegiance to the king. This shift of emphasis exerted strong homogenising impulses for the population of the kingdom; the latter was conceived of as 'a quasi spiritual union of people bound together by the bond of faith and allegiance' (Kim 2000, 142; Boureau 2001). Foreign birth was no longer a simple geographical fact endowed with little legal consequence. Rather, it became a marker of a new legal status; namely, that of an outsider. Those who lacked faith and allegiance to the king could by no means be considered to be members of the community. They were aliens and alienage resulted in the absence of legal benefits and privileges.

Before the abovementioned ideological shift towards allegiance and faith, however, one finds a revived notion of citizenship within semi-autonomous towns and cities. In late medieval Europe, citizenship meant membership of a city. Cities had emerged as central political units within the decentralised mode of feudal governance since the twelfth century. From 1100 many cities started to gain charters from a bishop, lord or the king, granting them urban liberty and authorising the formation of city councils, which would enable them to function as independent, self-governing commonwealths. By the thirteenth century, burgesses, with their sophisticated mercantile organisations, were a

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[3] According to Salmond (1902, p. 51), the term 'ligeance' is derived from the adjective *ligius*, which meant absolute and unqualified. Allegiance signified originally liege fealty, that is to say, absolute and unqualified fealty.

power to be reckoned with, and burgers – that is, the inhabitants of a burgus or an urban area – were assigned privileges and obligations. Foreigners were thus defined as people from outside the town or borough. True, citizenship was an exclusive status: less than half of the city's population were citizens, mostly skilled tradesmen and merchants, who enjoyed the freedom to engage in commercial activities. In addition, the clergy, sometimes the nobility and those who performed 'dishonourable' practices, such as the hangmen, grave-diggers and prostitutes, were excluded from citizenship (Blockmans and Tilly 1994). Jewish people, too, did not have citizenship status. Despite their significant contributions, particularly in the financial sector, they often had to face restrictions and religious hatred.[4]

By the later Middle Ages, guild membership was a prerequisite of citizenship. In addition to the freedom to exercise a profession regulated by a guild and free movement in order to trade, the privileges of urban citizenship included the right to hold public office, freedom from tolls on bridges in the lord's land, freedom from sales taxes and certain civil rights, such as the right to be tried in town courts and to be released on bail. Urban citizenship also included a number of obligations, such as payment of taxes, service on fire brigades and street patrols, the defence of the city in time of war and service in the city militia. Citizens swore an oath of loyalty to the city in public ceremonies in plazas, often in front of the city hall, once a year. Town government displayed strong elements of popular sovereignty in practice: a mayor, city councils, both large and small,[5] and a plethora of standing committees performed the basic functions of government and administration. Elections were by lot and were conducted openly, quite often names were drawn from a hat. The candidates' term of office was quite short, often shorter than a year. Such conventions ensured that no one held power for long and that every elector had an equal chance of holding an office.

Owing to the growing volume of European trade and the rising of a new mercantile class, the thirteenth century also saw the development of representative institutions which enabled the rising nobility, merchants, lawyers and civil servants to exert influence on government. In England, the Parliamentum – the consultation of the king (Edward I) in council with representatives of the various communities – formed the basis for the development of a parliamentary framework in the seventeenth and eighteenth centuries. In France, the Estates General of the realm and the provinces, including clergy, nobility and bourgois, were growing in stature and in Spain the towns and villas were represented by the *Cavalleros e hombres beunas* of Castile, Leon and Estremadura. Similar representative bodies existed also in Germany, Switzerland, the Netherlands, Belgium and

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[4] In England, Jews enjoyed a special status guaranteeing them the king's protection (Dummett and Nicol 1990, p. 31). But they were expelled from England unlawfully in 1290.

[5] The small council was the main governing body; 'the sovereign of the city' according to Hofert (2003, p. 69).

Italy. In England, the medieval tradition of self-government exerted a formidable challenge to absolutism, thereby altering the mode of governance on a large scale. Influential political theorists, such as Bracton and Fortescue, were sensitive to interests of property owners and stressed the need for effective rule. Writing in the thirteenth century, Bracton attempted to rehabilitate the medieval theory of the state by reconciling the precepts of Natural Law with the rights of property and to assert the supremacy of common law expressing the will of the whole community. And Fortescue's *The Governance of England* extolled the efficiency of the limited monarchy, based on the sensible co-operation among the various classes in the fifteenth century. The king's duty was to 'protect his subjects in their lives, properties and lands; for this very purpose he has delegation of power from the people' (ch. Xiii). Marsilius of Padua, Nicholas Cusanus and William of Ockham went even further, stressing the importance of popular consent as an independent source of governmental authority. Their work, premised on a vision of community in which there is a balance between order and consent, laid the foundations for the principle of popular sovereignty in the modern era.

Renaissance and republican citizenship

Although the fourteenth century and the first half of the fifteenth century have been viewed in negative terms – that is, as marking a period of decline, serious disruption and violence, disease and war, and the disintegration of the universitas of Christendom – extraordinary social and cultural revival took place in Italy. The Italian Renaissance marked the re-emergence of a humanistic and rationalistic outlook. There was a renewed interest in ancient Greek philosophy, the Stoics, the Roman republic, and a revival of the idea of citizenship. The Roman vision of the republic and the ideal of virtuous citizens served as both a sensible aspiration and a necessary escape from the turmoil of Italian politics. In republics, citizens could enjoy freedom, realise the perfect life and take part in the exercise of power in order to prevent autocratic and arbitrary rule. Political activity was thus seen as an essential means of good government. The first widely influential political expression of this vision emerged in Machiavelli's *Discourses on the First Ten Books of Titus Livius*, completed in 1520. Like Dante, Machiavelli admired the Romans and the citizenly qualities of res publicae.[6] But he made a bold effort to distance himself from both the Aristotelian moral framework characterising the city-state and Aquinas' notion of the community of Christendom. For Machiavelli, the community was not a locus of ideals; rather, it was a well-organised and agreeable commonwealth. And in contrast to the political realism and the pessimistic view of human nature underpinning *The Prince*, *Discourses* was permeated by republican idealism. Machiavelli argued that good laws preserve liberty by

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[6] For an excellent account of Machiavelli's influence on the Atlantic Republican Traditions, see Pocock (1975).

prompting citizens to discharge their civic duties (Skinner 1992; Pocock 1975). He commented, poignantly, that his contemporaries did not display the same love of liberty as people had done in old republics and argued that love of freedom, often manifested in citizens' willingness to resist foreign aggression, was a key characteristic of virtuous citizens. However, the political situation in Italy made republican government impracticable. A strong leader was needed in order to unite Italy and to bring about stability and order. Machiavelli concluded the *Prince* with an appeal to Lorenzo and the Medici family to take the initiative 'to liberate Italy from the Barbarians' and restore order.

Just as Machiavelli sought to revive a secularised view of politics, Thomas More responded to the economic and social situation of the time by sketching an ideal commonwealth in *Utopia*. Although both Machiavelli's ideal preference for mixed government and More's Utopian community, which was governed by an aristocracy of talent, were not explicitly premised on popular consent, the medieval ideal of the trusteeship of power was kept alive in the Renaissance. Accordingly, European thought continued to contemplate ways of recovering political authority for the people. The design of bottom-up approaches to political authority which would ground sovereignty in the people, who would, then, delegate it in limited amounts to rulers chosen by them, was thus given impetus by the Renaissance, the Reformation and, more importantly, the Conciliar movement, which advocated popular sovereignty.

Republican thinking has remained alive throughout the centuries and has been reinvigorated from time to time. In the eighteenth century, for example, the American and French revolutionaries were inspired by the civic republican message (Pocock 1995), while in the nineteenth century, Hegel and Toqueville emphasised the benefits of a strong civil society and the civic qualities of citizenship. In the second half of the twentieth century, the so-called neo-republican scholars challenged the liberal view of citizens as rights bearers and sought to transform passive citizens into active participants in government and shareholders in self-governing communities.[7] In so doing, they argued that in 'the good polity', individuals cast aside their private interests in order to engage with fellow citizens in the political arena and participate in governance. As Barber (1989, p. 54) has put it, 'liberalism has created a safe haven for individuals and their property, but a poor environment for collective self-government'. By cultivating civic virtues and instilling in individuals a sense of responsibility for the community, neo-republicans hope that citizens will take an active interest in public affairs, and, above all, refrain from making judgements or taking decisions on the basis of their private interests. However, even the proponents of civic republicanism concede that participatory citizenship is quite demanding and that the line separating the vocabulary of civic virtues and the appeal to patriotism needed to support republicanism is deceptively

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[7] See Arendt (1958); Walzer (1983); Sandel (1982); MacIntyre (1981); Selznick (1992); Barber (1984); Cohen and Arato (1992); Pettit (1997; 2005); Bellamy (2000).

thin.[8] Before elaborating on this, however, let us examine the liberal conception of citizenship.

Liberal citizenship

The intellectual roots of liberal citizenship, which flourished following its entanglement with the constitutionalist tradition in European thought, lie in the theories of resistance in Reformation and counter-reformation writers and the debates associated with the rise of the modern state. By the sixteenth century, the medieval political order, which was characterised by flexible feudalism and local citizenship, had been superseded by the modern state.

The modern state was not situated within the framework of the divinely ordained harmony of the universe (the *cosmos*) (Gierke 1934). Nor was it wedded to the medieval notions of popular sovereignty and delegation of power. Instead, it was premised on a novel conception of sovereignty, associated with omnicompetence and absolutism, and built on a framework of centralised administration and military might (see Anderson 1974; Poggi 1990; Rokkan 1975). The new theory required for the modern state was furnished by J. Bodin (1530–96) and T. Hobbes (1588–1679). Writing against the background of the Huguenot wars, Bodin advocated a strong, centralised power which would restore and maintain order,[9] while Hobbes (1991) worked out the full theoretical implications of Bodin's thought in the *Leviathan*. The *Leviathan*, which was published in 1651, exemplified the advantages of an enlightened absolutist order founded on a social contract. According to Hobbes, the advantages of peace, order and stability led the multitude to exit the state of nature and empower a sovereign by means of a contract, thus becoming a people at the time of their subjection to the power of the sovereign. Since the sovereign was not a party to the contract, he could not be accused of breaking it. But this did not imply that the sovereign's power was unlimited. For Hobbes considered sovereignty to be limited in at least one respect; namely, by the raison d'Etat, that is, the preservation of the lives and property of the governed. True, neither Bodin's nor Hobbes's schemas left room for citizenship. Passive obedience and law-abidingness were the hallmarks of the modern statist political order. But both theorists had successfully articulated a secular account of power.

English puritan radicalism and the radical strand of reformation kept alive the medieval notions of the trusteeship of government and peoples' duty of resistance to a bad ruler. The seventeenth century saw an unprecedented mobilisation of the people and the diffusion of a wide range of socialist and

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[8] This is attested by the liberal communitarian strand of republicanism (Taylor, 1994; Sandel, 1982; Walzer, 1983) and more conservative communitarianism, such as Etzioni's (1995) appeal to a reinvigorated community with a strong sense of identity. But compare Pettit (1997; 2005).

[9] Bodin (1576, Bk I, ch. i) defined sovereignty as the highest, absolute and perpetual power over the citizens and subjects in a commonwealth.

democratic ideas. In England, proletarian discontent and social struggles found political expression in the Leveller movement and the debates of the Cromwellian army. Printing had contributed decisively to this bottom-up challenge of the status quo by enabling the dissemination of political ideas and the publication of religious and political thought. It comes as no surprise that Milton rigorously defended freedom of speech and emphasised the importance of decentralisation of power and of education. While the Levellers sought to renegotiate the founding principles of the state and demanded a social contract, the Radicals demanded the abolition of property ownership as qualification for suffrage. Cromwell was confronted with 'the Agreement of the People', in which the soldiers appealed to 'their ancient fundamental rights', while the Diggers and Wistanley, in particular, called for 'a people united by common community into oneness'. The dissemination of the idea that the people is the only source of sovereign power paved the way for the re-emergence of citizenship. Indeed, both the 1649 Revolution – which brought about the condemnation of Charles I for subverting the 'Ancient and Fundamental Laws and Liberties of the Nation' and his execution for treason – and the Glorious Revolution of 1688 highlighted the belief that the government derives its authority (indirectly) from the governed. As King Charles himself stated during his imprisonment at Hurst Castle: 'There is nothing [that] can more obstruct the long hoped for peace of this Nation, than the illegal proceedings of them that presume from servants to become masters and labour to bring in democracy.'[10]

Although the 1688 Declaration of Rights asserted the 'rights and liberties of the subject', and not the rights of citizens, the very idea that a legitimate collective order has to respect the individual freedoms gave rise to a conception of citizenship, which dominated politics in Europe and in America in the eighteenth and nineteenth centuries. It is for this reason, coupled with the fact that the Declaration entailed a number of civil rights and equal access to justice, that it can be argued that the origins of the liberal paradigm of citizenship lie in the late seventeenth century. For liberal citizenship is essentially a status bestowed on those who are presumed to be full and equal members of the community.

Whig political theory, too, made an important contribution to the development of the liberal paradigm of citizenship. Arguing that the purpose of government is to safeguard man's natural rights and anxious to prove that the right of property is among them, thereby voicing the interests of the rising bourgeoisie, Locke (1962) broadened the meaning of liberty. Liberty was no longer simply centred upon the Whig doctrine of the sovereignty of 'the people' through Parliament – notwithstanding the fact that the people included only the propertied classes; it was extended to mean the protection of the rights of the governed by the government itself and especially the

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[10] See His Majesty's Declaration Concerning the Treaty cited in Wedgwood (1964, p. 71), cited in Dunn (1993).

legislature (ch. XIII). If the government violated these rights, thereby forfeiting the trust its citizens had put in it, it could be legitimately overthrown. It was this new conception of 'negative' liberty and the idea of 'natural' and 'inalienable' rights that inspired the French thinkers of Enlightenment and the American revolutionists in the eighteenth century.

The Lockean commonwealth, however, took for granted and, in turn, remained silent about the political process of constructing the collectivity. This is far from surprising, given that the English Commonwealth, which formed the backdrop for Locke's thought experiment, was founded on the distinction between nationals and aliens. In 1698 the Parliament had formally prohibited aliens from voting in parliamentary elections. And in 1707 the Act of Settlement stipulated that: 'no person born out of the Kingdom of England, Scotland or Ireland except such as are born of English parents shall be capable to be of the Pivy Council, or a member of either House of Parliament, or enjoy any office, or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown' (Dummett and Nicol 1990, p. 73). As modern states developed into entities rooted in space and territory turned into an object of political devotion in the late seventeenth and eighteenth centuries, citizenship became entangled with nationality. By *c*. 1800, citizenship and nationality were synonymous (Heater 1999, p. 99), and citizenship signalled both state membership and national membership. The latter was conceived as a unified body embodying the will of the community. As Brubaker (1992, p. XI) has observed, in this respect, 'national citizenship is a modern institution through which every state constitutes and perpetually reconstitutes itself as an association of citizens, publicly identifies a set of persons as its members, and residually classifies everyone else in the world's population as a non-citizen, an alien'. Contractarian theory did not call into question the link between citizenship and nationality, for national communities were viewed to be natural communities. Since contractual communities in theory were modelled upon empirical national communities, characterised by closure and selective membership, theorists focused on the foundations of legitimate rule.

The Enlightenment literature on the social contract and political reform, ranging from Montesquieu to Voltaire and Rousseau, thus centred on two issues regarding citizenship. First, it claimed a popular origin for the legitimacy of the state, thereby undermining the absolutist nature of the ancient regime. Secondly, inspired by a new confidence in the perfectibility of people, it rooted political ideas into specific communities and revived republican thought. Montesquieu extolled the virtues of the Roman republic and of an active citizenship, while Rousseau saw the Republic as a moral and collective body, whose members, the citizens, share in the exercise of sovereign power. Accordingly, he conditioned human fulfilment on citizenship in a free republic and praised genuinely participatory citizenship and self-government in small, tight-knit political communities, akin to Greek city-states or the Swiss

communities. According to Rousseau, citizens have to see themselves as parts of a body and to subjugate their selfish interest to 'the general will', that is, the expression of the public interest as formulated by the people as a whole. True, enforcing the general will gives rise to many problems, some of which can only be solved by compromising liberty and ultimately undermining the legitimacy of government which Rousseau himself set out to establish. But neither Rousseau nor the French revolutionaries, who were deeply influenced by his thought, were particularly concerned about this risk.

Montesquieu and Rousseau's ideas 'caught on' and galvanised the democratic revolutionary thought of the late eighteenth century and became embodied in the Constitution of the United States (1787) and the French Declaration of the Rights of Man (1789).[11] The French Revolution astounded the aristocracy and the bourgeoisie and made many ideas on popular sovereignty, consent and natural rights common political currency. It also gave the idea of citizenship a boost by liberating the individual from subservience to monarchy and privilege, bringing about a comprehensive list of civil and political rights and widening franchise. The Constitution of 1791 granted the right to vote to a reasonable proportion of the male population,[12] thereby marking a shift from a small-scale participatory citizenship limited by socio-economic differentials towards a more universal citizenship – notwithstanding the fact the demos was confined to people loyal to the revolution, and excluded women, Jewish people, Protestants and black people (Dummett and Nicol 1990, p. 81). True, it would be incorrect to assume that there existed a uniform concept of citizenship during the French Revolutionary period (1789–99). Jaume (2003) has distinguished three different notions of citizenship reflecting the different visions of the state held by the different groups that successively took power during the ten-year period; namely, the precedence of man over the citizen, the rational citizen and the virtuous citizen during the third Jacobin phase. Jacobin radicalism represented a full scale revolt against the early-modern version of passive citizenship (Walzer 1989, p. 216). Foreigners fighting for the revolution were naturalised and made citizens, while national opponents were deprived of their status or were eliminated. Notwithstanding the divergence in the meaning of citizenship, however, it remains the case that during the French Revolution, the term 'subject', which existed alongside the term 'citizen' (*citoyen*) for most of the eighteenth century, was supplanted by the term 'citizen', which was placed at the apex of the newly established revolutionary nation.

The American Revolution, on the other hand, made the people the constituent power of a political community founded upon the natural rights of liberty and equality, the rule of law and separation of powers. Subjecthood was

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[11] Palmer has argued that John Adams, who drafted the preamble to the Massachusetts Constitution of 1780, had read the *Social Contract*; see Palmer (1969, vol. I, pp. 228–9).

[12] This has been estimated to be 4.3 million individuals out of 6 million male adult citizens: Jaume (2003, p. 134).

replaced by citizenship and democratic constitutionalism ensured that citizens were endowed with constitutionally guaranteed rights. As the fourteenth and fifteenth Amendments (s. 1) stated: 'the right of the citizens of the United States to vote shall not be denied or abridged by the United States . . . on account of race, colour, or previous condition of servitude'.

In the absence of a popular revolution, subjecthood and the doctrine of allegiance continued to characterise British nationality law. It reflected the exigencies of the British empire and helped to maintain diverse peoples' allegiance to the crown. However, throughout the nineteenth and the twentieth centuries, demands for an enlarged franchise, greater equality and more participation in government proliferated. The rising tide of democratisation could not be contained by highly sophisticated rationalisations postulating the necessity or the effectiveness of the exclusion of sections of the population and reflecting elites' lack of confidence in the judgement of the mass of individual citizens.[13] Restrictions of franchise owing to wealth, sex, age and race differentials were progressively removed incrementally via four Reform Acts between 1832 to 1918.[14]

But the democratic broadening of citizenship was accompanied by its progressive nationalisation. The sovereign people of the eighteenth century had already been transformed into a body rooted into the soil and endowed with a unique identity. The German Romantics and Herder sedimented this conceptual transformation by viewing the nation as a living organism that could thrive in a world marked by cultural particularity and the unique Teutonic folkways. Membership of the political community thus became conditioned on membership of a sovereign nation. Citizens were deemed to possess certain national characteristics, be they a common origin, a common culture, religion, language and so on, which distinguished them from 'foreigners'. Accordingly, the boundaries of the state became congruent with the boundaries of the nation and the principle of spatial exclusion replaced the pre-modern principle of subjection to a sovereign ruler (Walker 1990) as the premise of citizenship law.

It is true that in the late seventeenth and early eighteenth centuries nationalism was closer to republican patriotism. Commitment and devotion to the patria was intimately bound up with citizenship in a free republic sustained by the idea of popular sovereignty and a sense of generalised respect for institutions and laws – rather than a sense of belonging to a homogeneous ethnic community that endows the individual with a distinctive identity. As Mann (1990) has observed, the term nation was closely linked to the notion of participatory citizenship in this phase of joyous nationalism.[15] Indeed, according to Abbe

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[13] See Mill ([1861] 1972).

[14] The Acts were the Reform Act 1832, the Interpretation Act 1850, the Sex Disqualification (Removal) Act 1919 and the 1928 Act.

[15] Compare also Hans Kohn's work (1965). Kohn has noted that during the French Revolution the meaning of the term nation shifting away from the notion of inhabitants of the territory or an aristocracy linked to their monarch by blood to a political community of free, participating

Sieyes's (1963), being 'French' did not imply belonging to a unified and homo-geneous community characterised by a common past, history, language and culture. Instead, it referred to membership of a body of associates governed under common laws and represented by the same legislative assembly.

But during the second half of the nineteenth century, the predominantly political meaning of nationalism subsided. Territories were transformed into national homelands and became the object of identification and exclusive loyalty. The inclusive internal dimensions of early nationalism, which had contributed to the removal of particularist privileges, sectional interests and monarchical rule, had thus brought about new exclusions. Border crossers and new settlers were seen as non-belongers. Citizenship could not but reflect this ideological transformation in both conceptual and institutional terms. In institutional terms, nationality acts enacted in continental Europe in the second half of the nineteenth century institutionalised citizenship by descent and reflected homogenising impulses.[16] In late eighteenth-century Germany, for instance, the notion of Untertan (subject), which essentially denoted the hierarchical relationship between the state and the individual without any reference to ethnicity, was replaced by the concept of Staatsburger, which referred to equal participation in politics. By the 1830s, Staatsburger denoted the formal equality of citizens who were the bearers of rights and the duty to obey the law. But in the course of the nineteenth century, the concept of Staatsangehörigkeit emerged, reflecting Germany's transition into a homogenising nation-state.[17]

As the state became a projection of the nation, and the claims of the state became identified with the (alleged) needs of the national community, states' power to control entry to the polity became a hallmark of state sovereignty. Citizenship not only became bound up with the politics of migration, but it also aided the process of aligning territorial lines with cultural and ethnic/racial lines. *Ius sanguinis*, that is the principle of conferment of citizenship by descent, aided the project of ensuring ethnocultural homogeneity.[18] Conversely, the principle of *ius soli*, that is, the conferment of citizenship on all those born within the states' territory, regardless of parentage, has been seen to furnish a more inclusive conception of citizenship.[19] As the literature has noted, a civic national

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individuals. As the French Constitution of 1791 stated, sovereignty 'belongs to the nation; no section of the people nor any individual can attribute its exercise to themselves'.

[16] See, for example, the 1893 Nationality Act in the Netherlands and Law on Nationalities adopted by the newly autonomous Kingdom of Hungary in 1868.

[17] Brubaker (1992) has shown how the concept of Staatsangehörigkeit developed into an institution of ethnocultural descent.

[18] Rokkan (1975) has convincingly shown that historical processes of state formation and nation building in Europe have shaped the collective identities of European peoples and have contributed decisively to the emergence of differing legal models of citizenship. See also Rokkan and Urwin (1982).

[19] It is interesting, however, that only a minority of the EU member states have adopted the ius soli principle. Sweden, Denmark, Finland, Luxembourg, Austria, Italy and Greece do not permit *ius soli* at birth. The Netherlands, Spain, Britain, Portugal, Belgium, Germany, Ireland, the UK and France grant citizenship at birth if one parent meets varying legal residence requirements in the country, which range between three and ten years. For more information on this, see Baubock

community is more open to new members who demonstrate their unreserved acceptance of its public culture, at least in theory. In contrast, in a political community premised on the existence of ethnic or cultural commonalities, citizenship is confined to those who share the same ethnicity or culture regardless of the levels of interaction. Residents face various barriers to admission and strong evidence of cultural integration and loyalty is a prerequisite for admission to citizenship. While meaningful in theory, however, the distinction between ethnic and civic nationalism may not be as meaningful in practice. Appeals to shared political principles could be as effective as appeals to cultural origins and inherited identities in creating 'us' versus 'them' distinctions, and in all states ideology, exlcusionary beliefs and prejudice have played a central role in the construction of modern citizenries and the formation of national identities.[20]

The complicity between liberal citizenship and nationalism was such that it was simply taken for granted that the nation-state was the natural locus of democracy and human welfare, and that national unity could not be fractured by the existence of, often defiant, minorities. For more than three-quarters of the twentieth century, nation states were thus viewed to be stable, undifferentiated communities, with fixed and predetermined boundaries (Anthias and Yuval-Davis 1992, p. 30). National belonging and cohesion was nurtured by the national system of education and by the provision of increased security and material enjoyment. Social integration had spread from the sphere of patriotism and sentiment to that of formal equality and entitlement to state-provided welfare, thereby accentuating the social dimension of citizenship (Marshall 1975, pp. 71–134). It is to the latter dimension that I will now turn my attention.

Social citizenship

The relationship between citizenship and socio-economic status has been both longstanding and complex. As noted earlier, possession of a certain level of wealth was an essential prerequisite for citizenship activities until the nineteenth century. But the widely held assumption that 'passive citizens' –

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et al. (2005). Australia, Canada, New Zealand and the US grant citizenship to non-national children born on their territory.

[20] In this respect, Kohn's (1944) distinction between ethnic and civic nationalism and the corresponding juxtaposition of the German Volkgeist and French Fraternite should not be taken for granted. Xenos (1996) has argued that the civic national requirement of commitment to a certain set of values or political principles, as defined by the majority community, may not be markedly less exclusive than ethnocentric politics. In addition, liberal republics can always enact restrictive nationality laws, as France did in 1998 by conditioning the automatic acquisition of citizenship at the age of 18 by non-nationals born in the country on residence requirements (Arts. 21, 17 and 21(11) of the Civil Code as amended by the Law of 16 March 1998) while ethncocultural republics may liberalise their nationality laws, as Germany did in 1999 by granting a right to German citizenship to the children born in Germany of parents legally resident in the country for eight years (BR Drcks 188/99). These reforms appear to contradict Brubaker's (1992) thesis about the distinctive understandings of nationhood embedded within citizenship legislation.

i.e., the poor – lacked both the interest and the capacity to make the political judgements required for electoral participation was progressively called into question. Accordingly, denying citizenship status to those lacking the qualifying wealth was seen to contradict the very ideal of equality that strikes at the heart of citizenship. While citizenship had thrived under capitalism – notwithstanding the existence of deeper socio-economic inequalities and class domination, with time capitalism was viewed to undermine citizenship by setting significant material and educational barriers to its exercise.

The confluence of liberalism with social democratic ideas in the late nineteenth century brought forth the social dimension of citizenship. The latter was premised on the idea that the bond between the individual and the state is not a one-way process: the state owes certain services to the citizen in return for his/her loyalty and services. As a consequence, the locus of citizenship gradually shifted from the capitalist market-based society to a state-based model (Delanty 2000, p. 14) and citizens became structurally related to the state (Offe 1984). In addition to being the ultimate source of state authority and legitimacy, citizens became clients of the state, that is, recipients of state services, which were necessary for their welfare and well-being.

Marshall's work crystallised these ideas. Marshall believed that the principle of equal citizenship had been an evolving institution: 'the modern drive towards social equality is, I believe, the latest phase of an evolution of citizenship which has been in continuous progress for some 250 years' (Marshall 1950, p. 7). The evolutionary path of citizenship was marked by three great transformations taking place in the eighteenth, nineteenth and twentieth centuries, respectively. Accordingly, he distinguished three types of citizenship rights; namely, civil rights, whose origins lie in eighteenth century and are associated primarily with the recognition of the equality of all citizens in the eyes of the law; political rights, which sprung in the nineteenth century and are associated with parliamentary democracy and the progressive extension of franchise; and, finally, social rights, which emerged in the twentieth century and are at the heart of the welfare state. Notwithstanding the attractions of such an evolutionary conception of citizenship, scholars found the subtle determinism underpinning Marshall's schema quite problematic. They did not only call into question the descriptive plausibility of Marshall's incremental typology of citizenship rights, but they have also criticised Marshall for portraying citizenship rights as beneficent gifts of the liberal state (Giddens 1982; 1985; Mann 1987; Barbalet 1988). Others have commented critically on the disassociation between social citizenship (social rights) and democracy (political rights), which owes much to Marshall's belief that social rights are potentially in conflict with democratic values (political rights) and capitalism (civil rights) (Roche 1992, pp. 34–7), and his assumption that citizenship rights are irreversible. Finally, scholars observed that Marshall had overlooked the salience of active engagement and participation. Notwithstanding such criticisms, however, Marshall's endorsement of a politics of containment of

capitalist inequalities and his belief that social citizenship rights are, in fact, a precondition for full membership in a community, were reflected in the Beveridge Report of 1942 and have been quite influential ever since.

More specifically, Marshall (1950, p. 30) believed that equal citizenship would gradually undermine the inequality of class differentials, thereby enabling all individuals to participate in the life of the community. In his view, citizenship rights, such as the right to health care, education, state assistance during unemployment and to an old age pension would thus remove the 'citizenship gap', and would result in 'a general enrichment of the concrete substance of civilised life, the general reduction of risk and insecurity, an equalisation between the more and less fortunate at all levels' (Marshall 1950, pp. 102–3). Marshall recognised that citizenship would not guarantee the equalisation of economic welfare. But he believed that equality of status was more important than equality of income. On his reasoning, social class inequalities are not necessarily incompatible with citizenship, assuming they are neither deeply ingrained nor hereditary. For citizenship has the capacity to ensure security and dignity for all citizens by endowing them with a set of material and educational resources independent of market forces. Indeed, modern welfare capitalist societies are 'hyphenated societies', in so far as they have achieved some form of democratic egalitarianism amidst widespread inequality.

Marshall's theory of citizenship proved very influential during the Reagan-Thatcher era of neo-liberal reforms. New Rights politicians, who, following Friedman and Hayek, praised unregulated market economies, attacked the paradigm of social citizenship and blamed the welfare state for encouraging a culture of dependency and for promoting welfare clientism. However, the co-ordinated attempt to roll back the frontiers of the state and to reduce big government in the US and in Britain increased inequalities and social exclusion. Social citizenship re-emerged on the political agenda, as critics of the New Right began to ask uncomfortable questions, such as who suffers and for how long in such an economy. Social liberals insisted on the importance of retaining the ideal of egalitarianism and pinpointed that citizens are not merely individual consumers and privatists.

While Marshall's notion of social citizenship proved to be a good device for challenging neo-liberalism in the 1980s and the 1990s, feminism and anti-subordination literature highlighted that women, minorities and ethnic groups were absent from Marshall's schema. By focusing on class inequalities, Marshall had paid little attention to other sources of inequality and disadvantage, such as, race, gender, ethnicity and so on. Nor had he closely examined the relationship between citizenship and nationality and the exclusions generated by it.

Turner's responded to Marshall's critics. He argued that Marshall's theory was not myopic and that its limitations lie precisely in its moderate focus (Turner 1990, p. 212). He then proceeded to transcend these limitations by revising it. More specifically, Turner situated the development of citizenship within the context of the consolidation of the modern nation-state and of the

international division of labour. Accordingly, he argued that the expansion of English social rights went alongside the decline of the political autonomy of indigenous populations in the British colonial system (Turner 1986, p. 47). At the same time, Turner sought to transcend Marshall's Anglophile perspective by developing a historical sociology of citizenship which takes into account the various conceptions of citizenship developed within different cultures and traditions. On the basis of the axes active/passive and private/public, Turner drew a typology of citizenship which enabled him to account for particular outcomes and contemporary practices of citizenship in various countries. Although Turner's typology is insightful, it is not always clear whether the private/public and the active/passive axes are an explanatory variable or the outcome of the institutionalisation of certain forms of citizenship. Notwithstanding this observation, however, it is true to say that Turner's outline of a theory of citizenship enriched the sociology of citizenship by being more responsive to issues, such as national identity, diversity and the politics of difference that became prominent at the turn of the century.

Citizenship and difference before and after 9/11

In the 1980s, feminism, poststructuralism and postcolonial criticism called into question the idea of a unified subject and the unitary conception of citizenship underpinning liberalism. The presumption of fully unified, complete, secure and coherent identities was pronounced to be unconvincing. In its place, poststructuralists positioned the multiple self and the complex process of identity formation. Scholars and activists alike did not hesitate to draw attention to the multifarious injustices pertaining to the public and private spheres, and highlighted the inconsistency between the illusory notion of a unified nation and the actual multi-ethnic composition of contemporary states. Accordingly, respect for diversity, recognition of the distinctiveness of cultures and subcultures (which had been glossed over and ignored under the nation-state centred model), political claims for equality and empowerment and the critique of culturally embedded representations of women, racial and religious minorities, gay and disabled people received prominence in the 1980s and 1990s. The discourse on, and politics of, difference challenged liberal democracy, by problematising the notions of a unified subject, homogeneous and bounded publics, and popular sovereignty embodied in a 'unitary' nation.

In contrast to the liberal ideal of universal citizenship, for instance, Young (1990) put forward the notion of differentiated citizenship as the best means of realising inclusion and full civic participation. According to her vision of the unoppressive city, heterogeneous publics capture the ideals of moral equality and equal dignity by ensuring that the recognition of difference coexists with commitments to combat oppression and inequality and to engage in processes of communication stretching across the differences involved. Increasing voices 'from below' does not only make political decisions attentive to and reflective

of the needs of the various communities, it also revitalises democratic processes by disallowing the imposition of a particular, albeit dominant, viewpoint as the norm.[21] However, as Waldron (2000, p. 173) has remarked, citizens cannot discharge their civic responsibility to come into deliberative relation with one another if they 'think from the beginning that their deeply held opinions are polluted by juxtaposition with others or affronted by being introduced into a deliberative process at all'.

Arguments about group rights,[22] often giving rise to battle lines around language rights, anti-discrimination, political representation, education curriculum, land claims, migration and naturalisation policy, generated a lively debate about the merits and weaknesses of universal categories, such as citizenship.[23] But they also highlighted individuals' plural identities and multiple attachments. Processes of homogenisation within the state, which were the norm until the 1970s, and essentialist conceptions of national identity could no longer be justified on the basis of creating 'unique' nations and authentic identities. Instead, they were criticised for their oppressive consequences and the exclusions from the national community they had generated. The conception of collective identities as bounded, complete and homogenous entities was thus replaced by a more dynamic and flexible approach; namely, one that views identities as open, fluid, shifting, interacting and, above all, subject to redefinition, adaptation and change.[24] Scholars and political activists did not hesitate to expose the historical (mis)use of citizenship talk to justify the assimilation or oppression of minorities' (Kymlicka and Norman 2000, p. 11). In addition, hybridity, the development of diasporic cultures of transplantations, transnational voyages and linkages not only called seriously into question the binary codes on which group identities were perceived to have been formed, but also asserted themselves as indispensable and irreversible facets of the human condition at the end of the twentieth century. Furthermore, the language of human rights became part of the emancipatory discourse of progressive movements world-wide (de Sousa Santos 1999).[25]

Multiculturalism and the discourse of diversity and rights thus projected a vision of community in which differences could be peacefully negotiated and profitably accommodated in a democratic polity. The parallel trends of internal differentiation and cultural globalisation, coupled with European

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[21] On the importance of 'voice', see Chambers (1996) and Williams (1998).

[22] Compare also Lehning (1998); Havemann (1999); and Musgrave (1997).

[23] For a typology of forms of ethnocultural diversity, see Kymlicka and Norman (2000, p. 19). The scope of the discussion, here, does not extend to the distinctive claims made by national minorities, stateless nations and indigenous peoples. For a discussion on the latter, see Kymlicka (1995).

[24] Compare, here, Maffesoli's conception of playful, dionysiac sociality and Bauman's 'liquid' modernity; Maffesoli (1982); 1993; 1988; and Bauman (2002). See also Tambini (2001, pp. 195–217).

[25] The fall of the Berlin Wall, developments within the former eastern Europe and the pro-democracy movement in China highlighted the importance of citizen rights to democratic institutional design.

integration and processes of decentralisation, gradually induced transformations of national identities in Europe and elsewhere (Outhwaite 2006). In the UK, for example, Parekh (2000) articulated possible options for the redefinition of national identity, and his report on the future of multi-ethnic Britain outlined a set of institutional reforms which could make Britain a more vibrant multi-ethnic society. The process of redefining what belonging to the political community means and the recasting of nationality opened up the possibility of creating more open, inclusive and reflexive communities. But it also gave rise to new dangers, such as the valorisation of difference, group closures and deeply conservative reactions.

The New Right in Europe, for example, embraced difference as a means of 'purifying' national community by excluding the 'racial' other. According to the New Right, non-national residents have the right to be different, but in their own home state, since hybridity and multiculturalism undermine the alleged ethnic and cultural homogeneity of the host national communities. Accordingly, racism mutated to what Taguieff (1994, p. 124; Balibar and Wallerstein 1991) has termed cultural differentialist or mixophobic racism; that is, to an essentialist discourse that bears much resemblance to ethnocultural understandings of nationhood. Conservatives on both sides of the Atlantic have also attacked the idea of group-differentiated citizenship on the grounds that it leads to separatism and generates mutual mistrust and conflict. The perceived withdrawal of communities into ethnic and racial 'islands' has been viewed to be a threat to the political and cultural integrity of the state, particularly in the US and France (Vertovec 1995). Conservative group elites, on the other hand, have conveniently used cultural difference as a shield designed to preserve and sustain internal structures of domination and illiberal practices based on gender, sex and so on (Levy 1999). On occasions, multicultural discourses have thus enhanced the hegemony of 'community leaders'.[26]

But critical assessments of multiculturalism have emerged from the centre and left, too. It has been argued, for instance, that multiculturalism underscores the differentiation and hierarchical relations existing within minority groups (Okin 1989) as well as their members' hyphenated identities. Others have observed that an anti-racist discourse might be a more helpful approach, since it shifts the focus of attention away from ideology and culture to structures of exploitation and from identity to solidarity. But as Parekh (1998) has pointed out, endorsing multiculturalism should not lead us to accept that cultural groups have a licence to do as they please, thereby violating the rights of their members. Multiculturalism is not tantamount to cultural relativism, nor does it in any way legitimise rape, marriage by capture, coerced marriages, clitoridectomy

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[26] This may also be an unintended consequence of minority rights claims. A desire to increase the chances of success in claims making, or even reactive positioning may lead to an acceptance of group essentialism. It may be worth noting here that Kymlicka (1995) has made an important distinction between internal restrictions, which a liberal theory of minority rights would not accommodate, and external protections which would enable the flourishing of minority groups.

and so on (Parekh 1998). Instead, multiculturalism calls for the equal recognition and equal respect for all minority groups irrespective of race, ethnicity or religion, and their transformation into legitimate partners in society and politics. This is often ignored by conservative critics, who see monoculturalism as the key to preserving homogeneity and national cohesion.

Others are prepared to accept cultural diversity in so far as it does not clash with the overarching majority culture and the need to promote a strong national identity, societal cohesion and integration. The chief weakness of this approach, however, is that the legitimate concerns of minority groups, including their frustration about continuing discrimination and racism, are more often than not seen as expressions coming from disloyal and troublesome minorities who must 'learn to respect the laws, codes and conventions as much as the majority' (Crick Report 1998, pp. 17–18). But, as Kymlicka and Norman have pointed out, it is unhelpful to portray citizenship and diversity as a zero-sum game, whereby 'every gain in the direction of accommodating diversity comes at the expense of promoting citizenship' (Kymlicka and Norman 2000, p. 39). This is not to deny the fact that the politics of difference has raised some hard questions about how to go about nurturing and strengthening the ties that bind multi-ethnic democratic polities, how to promote interpersonal trust and to encourage full political participation by all citizens, irrespective of their ethnic background. But certain often-cited examples of multicultural challenges, such as religious education and state funding of denominational schools,[27] the Rushdie affair, the French *foulard* (headscarf) and the Danish cartoons cases have also demonstrated how easy it is for different interpretative communities to fuel divisive politics by stereotyping Islam, promoting a frozen, essentialist identity and by conveniently ignoring that treating religions equally is the best means of affirming a common sense of community and equal citizenship.

In light of the foregoing, it is, indeed, difficult to say with certainty whether opposition to multiculturalism is symptomatic of either the success of multiculturalism and the politics of difference or their failure to become fully embedded within domestic arenas and to procure a fundamental transformation. What is certain is that the trend towards de-ethnicisation and the thinning out of national identities that scholars identified at the turn of the century has been reversed. There has been a shift away from multiculturalism and the politics of difference towards integration and assimilation and a gradual 'thickening' of political belonging in western Europe and elsewhere following 9/11. Capitalising upon the threat of terrorism, the Populist Right has pursued its Islamophobic and anti-migrant discourse with a renewed dynamism. Centre-Right and Centre-Left governments in Europe also frequently comment on the

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[27] On the importance of reconciling legitimate concerns about promoting capacity for citizenship and civic engagement with the need to avoid the institutional privileging of one religion over others, see Modood (1998).

alleged weaknesses of the mutlicultural model and have called into question the degree of loyalty of European Muslims. As a consequence, thicker, communitarian notions of community have resurfaced as replacements of the idea of plural communities, as attested by recent reforms in naturalisation law and policy in many European countries. All this has already had an adverse impact on community relations and empirical studies report an increased polarisation and growing hostility towards Muslims and non-white groups. Although it is difficult to determine whether the trend of making the ethnic boundaries of citizenship more visible will take hold and where we are headed in terms of reconfigurations of citizenship, it is important to reflect on the normative challenges posed by the thickening of national identities and to keep alternative perspectives firmly on the political agenda.

This may be urgently required in light of the 'war on terror' and the ensuing convergence of nationalist ideas and agendas with civilizational imperatives in the US, Europe and elsewhere. Drawing on Huntington's civilisational thinking (1993, 1997), official policy circles, for instance, have blamed multicultural education for the alleged demise of America. The report by the American Council of Trustees and Alumni (ACTA 2001), entitled 'Defending civilisation: How our universities are failing America and what can be done about it', criticised universities for failing to support national efforts and for failing to adopt strong, nationalist curricula. In Australia, too, there have been calls for 'a national policy on assimilation', while the possible introduction of sharia family courts has given rise to controversy in Canada. In Western Europe, a recent wave of criticism against multiculturalism has focused on Islam and migration from Muslim countries. Uncritical readings of Islam as being antithetical to western culture and democracy have led to the re-introduction of policies for 'social cohesion', 'integration' and 'assimilation', including the official promotion of national identity, official lists of national values, such as the 'Muslim-test', in Germany, which has been designed to elicit 'unacceptable values', language prohibitions in public transport, schools universities and hospitals, compulsory language courses and tests for migrants, naturalisation ceremonies and oaths of loyalty. In the Netherlands, the multicultural model has been replaced by an official mono-culturalism. On the basis that the Dutch polity has exceeded its 'absorptive capacity' and following Pim Fortuyn's assassination in 2002, the cabinet of Jan-Peter Balkenende rejected multiculturalism in favour of a tough assimilation policy, accompanied by migration restrictions. Similarly, in the UK, multiculturalism has been sidelined, as attested by the revision of naturalisation law in 2002 (see Chapter 3). Initially proposed in the aftermath of 9/11 and against the background of the riots in Bradford, Oldham and Burnley in the summer of 2001, which official policy circles saw as signifiers of the absence of communal cohesion and trust among the various communities (Home Office, Cantle Report 2001), the White Paper, entitled 'Secure Borders, Safe Haven' (Home Office, 2002a), put forward the idea of 'integration with diversity'. Developing 'a sense of shared civic identity

or common values' which could unite the diverse communities in Britain (Home Office 2002a, p. 10) and 'preparing people for citizenship' were thus pronounced to be antidotes to the 'problem of integration' in multi-ethnic areas. Accordingly, the Nationality, Immigration and Asylum Act 2002 'thickened' naturalisation policy by including a number of new 'integration' requirements (see Chapter 3).

The recent reversal of the policy consensus on multiculturalism in Europe is thus associated with the reinvigoration of national identity and the promotion of integration. Governments believe that security will be strengthened and community relations will improve by introducing a thicker notion of national belonging. Because 'too much diversity' is perceived to result in either segregation or fragmentation, allowing the flourishing of diversity within an overarching national culture is pronounced to be the preferred mode of migrant incorporation. But, as I argue below, the vision of 'integration with diversity' is premised on a contestable image of multiculturalism and might lead to deeper divisions and exclusion. Moreover, it leaves the encompassing national statist framework unchallenged by accentuating the primacy of social cohesion and the importance of voluntary identification with national values as a prerequisite for political belonging, on the one hand, and by remaining silent on the structural inequalities and injustices that undermine the sense of belonging, on the other hand. Accordingly, this policy option fails to notice that political belonging is best nurtured by institutional inclusion and full participation in society and politics and that citizenship plays a key role in promoting both these objectives.

The challenge of European Union citizenship

The conceptions of citizenship we have examined thus far refer to the relationship between the individual and the territorial state. The process of European integration has changed this. The state is no longer the only container of citizenship. Even sceptics would have to concede that the reality of 'multiple membership in various overlapping and interlocking communities formed on various levels of governance'[28] cannot but have important implications for citizenship theory and practice. However, multilevel governance and the fact of multiple membership cannot, by themselves, fully account for the novelty, and in many respects the challenge, of European citizenship. Although the emergence of 'nested' citizenships (supranational, national, sub-national citizenships) and institutional pluralism in Europe is significant and Meehan has correctly pointed out, the importance of European citizenship lies not so much in what it is, but in what it should or might be,[29] more significant, in my opinion, is the interaction between 'old' (national) and 'new' (European) citizenships and the ensuing process of incremental, transformative change.

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[28] Meehan (1993); Eder and Giesen (2001); Shaw (1996, 1998).   [29] Meehan (1997).

European legal and political dynamics have subverted the fundamental premises of the nationality model of citizenship and changed the organisational logic and practices of national citizenship.

In the remainder of the discussion I will focus on European citizenship and discuss its impact upon national citizenships, which is far more extensive than portrayed by the literature. It is true that, whereas national citizenship still denotes full membership in national community, European citizenship at the outset was associated with internal mobility of labour and the creation of an internal market. Progressively, it reflected concerns about how new economic institutions and experiments could become more anchored in concrete communities and the transformation of the single market into 'a People's Europe'. The Treaty on European Union (TEU) tied the Community law rights of free movement and residence to the political status of the citizen of the Union, thereby contributing to a 'conceptual metamorphosis' of the former.[30] Accordingly, Union citizenship carries within it the expectation of equal treatment throughout the EU, irrespective of nationality.[31]

True, this process is riddled with fundamental ambiguities, contradictions and tensions. The opposing dynamics between intergovernmentalism and supranationalism have not only shaped the development of Community's discourse and policy on citizenship, but are also present within the crystallised institution of Union Citizenship. The restrictive personal scope of EU citizenship, for instance, is a reflection of intergovernmentalism.[32] Secondly, whereas

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[30] See the Commission's Report on Citizenship of the Union, COM (93) 702 Final.

[31] Advocate General Leger's Opinion in Case C-1214/94 *Boukalfa v. Federal Republic of Germany* [1996] ECR I-2253.

[32] Although the establishment of a supranational citizenship in 1992 showed that citizenship can no longer be confined within the national-statist setting, the nationality model of citizenship prefigured European citizenship. Union citizenship has been conditioned on the tenure or acquisition of national citizenship (Art. 17(1) EC). As a consequence, the member states remain the gatekeepers who control entry to the privileged European demos. Making European citizenship derivative of national citizenship does not only give prominence to the nationality principle, but, perhaps more worryingly, subjects membership to the European public to the definitions, terms and conditions of membership prevailing in national publics. As the Declaration on Nationality of a Member State, annexed to the Final Act of the Treaty on European Union, expressly stated: 'the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned'. Similar declarations were adopted by the European Council at Edinburgh and Birmingham. The Birmingham declaration confirmed that, in the eyes of national executives, EU citizenship constitutes an additional tier of rights and protection which is not intended to replace national citizenship – a position that found concrete expression in the amended Art. 17(1) at Amsterdam. The ECJ has, by and large, upheld the international law maxim that determination of nationality falls within the exclusive jurisdiction of the member states, despite the anomalies that this creates in the field of application of EU law and its exclusionary implications with respect to the rights of long term resident third country nationals. In *Micheletti*, the ECJ confirmed that determination of nationality falls within the exclusive competence of the member states, but it went on to add that this competence must be exercised with due regard to the requirements of Community law, and in Kaur it stated that 'it is for each member state, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. This, essentially, means that persons who are legally

national citizenship premises citizens' claims and entitlements on the basis of a historically developed, rich notion of membership in a national community, European citizenship appeared to comprise a core of economic entitlements primarily designed to facilitate market integration.[33] This led critics to argue that EU citizenship was simply a loose and fragmented form of mercantile citizenship designed to facilitate European integration.[34] Notably, such a minimalist conception of EU citizenship accorded priority to the economic interests of private individuals at the expense of other important dimensions of citizenship, such as active involvement and political participation in the polity, the cultivation of a sense of political belonging, special duties owed to fellow citizens and redistributive concerns. In addition, it appeared to be relevant to a favoured group of EU nationals, that is, to a minority of EU citizens who possess the necessary material resources required for intra-EU mobility.[35]

Thirdly, European citizenship was seen to have a weak affective dimension. Unlike national citizenships, which reflect strong national identities and the horizontal ties of belonging to a nation, conceived of as either a homogeneous ethnocultural community (ethnic nation) or a community of shared values (civic nation), European citizenship was going to help construct a European demos and to elicit subjective identification with the European Union. The main difficulty here is that collective identities remain firmly embedded within the national-statist environments. Indeed, a simple exercise of projecting processes of national identity formation onto the EU can easily reveal that the latter lacks those 'pre-political elements', that is, the spiritual, social and cultural ties that bind the people together.[36] As the literature in the mid-1990s stated, the EU does not have a fully fledged European demos; at least not yet.[37] True, there exist serious doubts concerning the appropriateness of such an exercise – given the fact that the European Union is neither an extension nor the mirror image of national-statist jurisdictions – as well as its accuracy, since it appears to underestimate the historical and political processes of collective identity formation. Fourthly, the weakening of traditional state prerogatives

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recognised to be nationals of a member state should be able to exercise their rights to free movement without impediments imposed by additional regulations adopted by other member states. In *Chen*, the ECJ criticised the restrictive impact of such additional conditions for the recognition of nationality of a member state. It ruled that the UK had an obligation to recognise a minor's (Catherine Zhu) EU citizenship status even though her member state nationality had been acquired in order to secure a right of residence for her mother, Chen, a third country national, in the UK. Since Catherine had legally acquired Irish nationality under the *ius soli* principle enshrined in the Irish Nationality and Citizenship Act 1956 and had both sickness insurance and sufficient resources, provided by her mother, the limitations and conditions referred to in Art. 18 EC and laid down by Directive 90/364 had been met thereby conferring on her an entitlement to reside for an indefinite period in the UK.

[33] Everson (1995).   [34] Vink (2003).

[35] In January 2003, the number of mobile EU nationals was estimated to be 6.95 million; Commission figure available at the europa website, cited by Chalmers *et al.* (2006, p. 572).

[36] Grimm (1995); Smith (1992).

[37] Weiler (1995; 1997). But compare Rubio-Marin's contribution to La Torre (1998).

with regard to the entry and residence of economically active or economically self-sufficient Community nationals has been accompanied by the reinforcement of the dichotomy of citizens and 'aliens', be they resident third country nationals, migrants, asylum seekers or refugees.[38] Processes of equalisation thus coexist with processes of exclusion. Although it is only right and proper that we should be reminded of this, it is difficult not to be impressed by the extent to which Community rights jurisprudence has transformed immigration law and practice in the member states.

More specifically, the notion of 'immigrant' or 'temporary guest' has been replaced by that of Union citizen.[39] Accordingly, the presence in the territory of a host member state of Community workers, work-seekers, establishers, service-providers and tourists, as potential recipients of services, is no longer a matter of state toleration and consent. It is, instead, an issue of exercising fundamental rights. In the pre-Maastricht era, formal rights of free movement and residence were also conferred on the economically independent, retired persons, students and their families, provided that they have sufficient resources to avoid becoming a burden on the social assistance system of the host state and are covered by health insurance.[40] In the post-Maastricht era, the institution of Union citizenship raised citizens' expectations[41] and created a normative template for calling into question the link between citizen status and economic activity or self-sufficiency. Indeed, in its Communication to the European Parliament (EP) and the Council on the follow-up to the recommendations of the High–Level Panel on the Free Movement of Persons, the Commission stated that 'free movement rights are becoming an integral part of the legal heritage of every citizen of the European Union and should be formalised in a common corpus of legislation to harmonise the legal status of all Community citizens in the Member State, irrespective of whether they pursue a gainful activity or not'.[42] And in the *Sala* case, the self-sufficiency and sickness insurance conditions which have been attached to the free movement rights were seen to apply only to the actual exercise of this right, thereby leaving its existence unaffected.[43] In this case, the European Court of Justice (ECJ) ruled that nationality cannot justify differential conditions in the enjoyment of a child raising allowance by a Union citizen who was legally authorised to remain in Germany, but received assistance under Federal Social Welfare Law. As the constitutional importance of European citizenship increased, a number of developments, including the Commission's proposal for a citizenship directive which referred to 'a new legal and political environment established by

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[38] Baldwin-Edwards (1997).   [39] Bohning (1992, pp. 18–19). See also Wilkinson (1995).

[40] Council Directives 90/364 [OJ 1990 L 180/26], 90/365 [OJ 1990 L180/30], 90/366 replaced by Directive 93/96 EEC [OJ 1993 L 317/59].

[41] European Commission, Second report on Citizenship of the Union, COM (97) 0230.

[42] COM (98) 0403 final.

[43] See Advocate General's Opinion in Case C-85/96 *Sala v. Freistaat Bayern* [1998] ECR I-2691, para.18.

Union citizenship', and the *Grzelczyk* judgment,[44] prepared the ground for the disentanglement of residence from economic status by deriving a directly effective right from Article 18 EC in *Baumbast*.[45] As the Court ruled:

> . . . the Treaty on European Union does not require that citizens of the Union pursue a professional or trade activity, whether as an employed or self-employed person, in order to enjoy the rights provided in Part Two of the Treaty, on citizenship of the Union. Furthermore, there is nothing in the text of that Treaty to permit the conclusion that citizens of the Union who have established themselves in another Member State in order to carry on an activity as an employed person there are deprived, where that activity comes to an end, of the rights which are conferred on them by the Treaty by virtue of that citizenship. As regards, in particular, the right to reside within the territory of the Member States under Article 18(1) EC, that right is conferred directly on every citizen of the Union by a clear and precise provision of the EC Treaty. Purely as a national of a Member State, and consequently as a citizen of the Union, Mr Baumbast therefore has the right to rely on Article 18(1) EC.

Any limitations and conditions imposed on that right must be applied in compliance with the limits imposed by Community law and in accordance with the general principles of that law, in particular the principle of proportionality. As such, they 'do not prevent the provisions of Article 18(1) EC from conferring on individuals rights which are enforceable by them and which the national courts must protect'. Such an interpretation further weakened the link between economic status and the right to free movement and reflected broader normative aspirations for a constructive understanding of European citizenship that eventually found their way into juridicopolitical reform ten years after the establishment of this institution. Building on the rights-based approach characterising the jurisprudence on the free movement of workers, the Citizenship Directive (Dir. 2004/38) established an unconditional right of permanent residence for Union citizens and their families, after a period of five years of continuous legal residence in the territory of the host member state, which creates an entitlement to equal treatment in the areas covered by the Treaty.

Notwithstanding the language of universality and the transformative impact of Union citizenship, however, we should not lose sight of the institutional and structural conditions that underpin the distribution and exercise of citizenship rights. Union citizenship may have been presented as a 'de-gendered', 'de-raced' and 'classless' concept, but, in reality, its scope reflects gender, race and class differentials; it excludes long-term resident third country nationals and limits the rights of residence of non-active economic actors who are not self-sufficient and wish to reside in another member state for more than three

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[44] Case C-184/99 *Grzelczyk* [2001] ECR I-6193.
[45] Case C-413/99 *Baumbast v. Secretary of State for the Home Department* [2002] ECR I-7091.

months,[46] be they women engaging in domestic work and care for dependent relatives, unemployed people, or persons who have not acquired the necessary skills due to institutionalised racial discrimination in education and labour markets. In addition, differential levels of protection against racial discrimination in national legislations often function as a disincentive for the cross-border movement of ethnic migrant citizens.

Nevertheless, European citizenship should not be regarded as a finished institution. Its content is flexible and dynamic. For instance, the ECJ did not hesitate to establish a right of residence for mothers who are the primary carers of children entitled to reside in a member state because they are either EU citizens or enrolled at educational establishments.[47] And in *MRAX*, the Court had an opportunity to take issue with strict interpretations of the visa requirement for third country national spouses and the ensuing restrictive practices adopted by the Belgian state, and to highlight that the residence rights of such persons do not derive from states' authorisation of their entry.[48] Instead, they are based on their family ties with EU citizens. In this respect, the extensive rights which Community workers and their families enjoy by virtue of Community law have not only ruptured conventional understandings of citizenship, but they have also set an important precedent for third country nationals and other excluded groups. Directive 2004/38 has strengthened citizens' rights. True, even though the 'fundamental and personal right of residence is conferred directly on Union citizens by the Treaty', for periods of residence exceeding three months, member states may require EU citizens to register with the competent authorities for the issuing of a registration certificate or a residence card. But a failure to comply with such formalities can never constitute a ground for deportation. As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host member state, they should not be expelled. If they have to rely on such assistance, the member state concerned has to take into account a number of considerations, such as the temporary nature of their difficulties, the duration of their residence, the personal circumstances and the amount of aid granted before deciding to adopt an expulsion measure. It is explicitly stated that an expulsion measure should not be adopted against workers, self-employed persons or job-seekers, who can provide evidence that they actively seek employment and that they have a genuine chance of being engaged, save on grounds of public policy or public security.

Member states may restrict the freedoms of movement and residence of EU citizens and their family members on the basis of the abovementioned grounds, but as the ECJ has consistently stated, the latter must be strictly

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[46] See the typology of residence rights entailed by Directive 2004/38.
[47] See *Chen* and *Baumbast* respectively.
[48] Case C-459/99, Judgment of the Court of 25 July 2002.

interpreted and comply with the principle of proportionality.[49] Nor can these grounds be invoked by a member state in order to serve economic ends. Measures taken on these grounds – that is, decisions denying leave to enter or ordering expulsion – shall be based exclusively on the personal conduct of the individual concerned, which must constitute 'a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society'.[50] The same assessment must take place with respect to third country nationals who are spouses of Community nationals, for whom alerts have been entered in the Schengen Information System for the purpose of refusing them entry. In commenting on the relationship between the Schengen Implementing Convention and the Community law provisions on freedom of movement for persons, the ECJ has stated that both the member state issuing an alert and the member state that consults the Schengen Information System state must first establish that the presence of a person constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.[51] Clearly, a member state cannot order the expulsion of an EU citizen as a deterrent or a general preventive action. Previous criminal convictions cannot in themselves constitute grounds for deportation, but past conduct may constitute evidence of a present threat to public policy, particularly if the individual concerned is likely to reoffend. By insisting on a strict interpretation of the public policy derogations, the ECJ has circumscribed significantly the member states' discretionary power over nationals from other member states. By so doing, it has reduced the risk of possible 'scapegoating' of 'foreigners' in order to satisfy public opinion. Yet national administrative practices forcibly deporting EU citizens by reason of an enforceable criminal conviction continue to take place, even though they clearly breach Community law. According to Advocate General Stix-Hackl: 'the German practice of automatic deportation, without regard for personal circumstances, justified on the ground of its deterrent effect on other foreigners and in breach of the fundamental right to family life breaches Community law'.[52] The new citizenship Directive goes a step further in the direction of enhancing security of residence for EU citizens by requiring member states to take into account a number of considerations, such as the length of residence, age, state of health, family and economic situation, social and cultural integration and the extent of one's links with the country or origin before taking an expulsion decision and by stipulating that the residence of Union citizens or their family members can only be terminated on serious grounds of public

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[49] Case C-100/01 *Ministre de l'Interieur v. Aitor Oteiza Olazabal*, Judgement of the Court of 26 November 2002; Joined Cases C-482/01 and C-493/01 *Orfanopoulos v. Land Baden-Wurttemberg* [2004] ECR I-5257.

[50] Case 30/77 *R v. Bouchereau* [1977] ECR 1999.

[51] Case C-503/03 *Commission v. Kingdom of Spain*, Judgement of the Court of 31 January 2006.

[52] See the Advocate General's Opinion in Case C-441/02 *Commission v. Federal Republic of Germany*, 2 June 2005.

policy or public security.[53] In addition, long-term resident EU citizens and minors may not be ordered to leave the territory of a member state, except on imperative grounds of public security.[54]

Another major area illustrating the authoritative transformation of domestic citizenship and migration laws concerns the wide range of substantive rights that EU citizens and their family members enjoy in the host member state. Community law prohibits discrimination based on nationality as regards access to employment, remuneration and other conditions of work, and the enjoyment of social and tax advantages, housing, equal access to vocational schools and retraining centres and participation in trade unions and staff associations. Interestingly, the enjoyment of these rights does not depend on a transfer of loyalty to the host member state. Nor is the length of residence or of employment a prerequisite for qualifying for a social advantage in the host state, as this depends on an individual's worker or resident status. Family members of Community workers,[55] have the right to install themselves with the primary beneficiary, enjoy security of residence and to take up employment or self-employment in the host member state. In addition, the children of EU-national workers are entitled to be admitted to the host state's educational courses under the same conditions as nationals of that state, including to the primary and secondary schooling system, and to receive educational grants and assistance.[56] According to Art. 24 of Directive 2004/38, EU citizens who have a right of permanent residence in a member state and their family members shall enjoy equal treatment with the nationals of that member state within the scope of the Treaty. But prior to the acquisition of the right of permanent residence, the member states are entitled to decide whether they will grant social assistance during the first three months of residence, or for a longer period, and whether they will 'grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families'.[57] This means that work-seekers during the abovementioned period might be able to claim social assistance provided that they do not become an unreasonable burden on the public finances of the host MS. They could, for example, receive financial support designed to facilitate access to employment, such as a job-seeker's allowance, if the claimant has been habitually resident there, thereby having acquired a 'genuine

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[53] Article 28(1) of Directive 2004/38.   [54] Article 28(3) of Directive 2004/38.

[55] They include the spouse, the registered partner, if the legislation of the host member state treats registered partnership as equivalent to marriage, descendants who are either under the age of 21 or dependent, and those of the spouse or partner and depending relatives in the ascending line; see Art. 2 of Directive 2004/38.

[56] See, for example, Joined Cases 389 and 390/87 *Echternach and Moritz v. Netherlands Minister for Education and Science* [1989] ECR 723.

[57] Article 24(2) of Directive 2004/38.

link' with the employment market in question,[58] subsistence allowances and tide-over allowances in Belgium even in cases where the applicants have completed their secondary education in non-Belgian establishments.[59] And students who are studying in another member state will be able to rely on the non-discrimination clause in claiming social assistance if they face temporary economic difficulties (*Grzelczyk*), and will be entitled to receive financial support (either a subsidised loan or a grant) for their maintenance costs if they have established a genuine link with the society of the host state, thereby demonstrating a 'certain degree of integration into the society of that state'.[60] The grant of such benefits to EU citizens clearly 'enlarges the social content of citizenship'[61] without undermining national welfare systems and attests the incremental expansion of the right to equal treatment enjoyed by EU citizens.[62]

Another area which demonstrates the changing boundaries of national citizenship is employment in the public service. Despite national executives' claims that 'freedom of movement was not meant to alter the legal situation existing before the Communities were established as regards the organization of the state and in particular access for foreigners to the public service',[63] the Court has curbed the traditional state prerogative of identifying the boundaries of its public sector and excluding non-nationals from access to it. Employment in the public sector can thus no longer be confined to nationals who are deemed to have 'a relationship of special allegiance to the state and can identify with its interests'. There is an exception for posts involving direct or indirect participation in the exercise of powers conferred by public law and for duties designed to safeguard the interests of the state. This exception therefore does not apply to posts that come under the state or other public organisations but are too remote from the specific activities of the public service or involve the exercise of power conferred by public law sporadically, thereby opening up a wide range of public service posts to Community nationals. This includes posts in public health care, state education, non-military research and public bodies involved in the provision of services.

European citizenship provisions have thus changed the boundaries of national citizenship. They have achieved this by invalidating ethnicity as a boundary

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[58] Case C-138/02 *Brian Francis Collins v. Secretary of State for Work and Pensions* [2004] ECR I-2703.

[59] Case C-224/98 *Marie-Nathalie D'Hoop v. Office national de l'emploi*, Judgement of the Court of 11 July 2002; Case C-258/04 *Ioannis Ioannides*, Judgement of the Court of 15 September 2005. Compare Case C-224/02 *Pusa* [2004] ECR I-5763.

[60] Case C-209/03 *The Queen (on the application of Dany Bidar) v. London Borough of Ealing and Secretary of State for Education and Skills*, Judgment of the Court of 15 March 2005.

[61] Guild (2004).

[62] In *Pusa*, Advocate General Jacobs stated that, far from being limited to a prohibition of direct or indirect discrimination, Art. 18 EC applies to non-discriminatory restrictions, including unjustified burdens – an approach that was take up by the Court in *Schempp*; Case C-224/02 *Pusa* [2004] ECR I-5763; Case C-403/03 *Egon Schemmp* [2005] ECR I-6421. See also Case C-406/04 *De Cuyper* [2006] ECR I-6947; Case C-192/05 *Tas-Hagen, R. A. Tas v. Raadskamer WUBO van de Pensioen – en Uitkeringsraad*, Judgement of the Court of 26 October 2006.

[63] Case 149/79 *European Commission v. Belgium* [1980] ECR 3881, 2895.

marker and diluting the traditional link between the enjoyment of citizenship rights and the possession or acquisition of state nationality. As an institutional challenge, European citizenship has enabled EU citizens to escape the closure of territorial democracy and to enjoy a wide range of associative relations across national boundaries. But the transformative potential of European citizenship does not stop at this point. European citizenship is also a conceptual challenge in that it shows that citizenship is not definitionally tied up with the modern state and its organising principles, and that the broken parts of the triptychon 'nation, culture and belonging' can be reassembled on more critical terms[64] (see Chapters 4 and 5).

Conclusion

Cartographies generally orientate, thereby facilitating journeys. Our brief journey into the past and present of citizenship has set the scene for the imaginative journey that is to follow. It has done so by showing that the generalised belief that citizenship entails a relatively stable core meaning surrounded by a periphery of historically contingent meanings (Kloek and Tilmans 2002) is incorrect. Citizenship, as a concept and an institution, has evolved in non-deterministic way. This, of course, should not be taken to imply that citizenship's variability is limitlessly plural. For citizenship's evolving meanings and content have been, and will continue to be, shaped by differential historical exigencies, institutional contexts and structural developments. But it would also be incorrect to believe that citizenship, including the existing nationality model of citizenship, is inhospitable to alternative readings and thus non-malleable.

The foregoing discussion has also steered clear of distinguishing between the stabilising and emancipatory dimensions of citizenship, with a view to make the latter components of a progressive conceptual armoury. That, too, would be a futile exercise, since both dimensions inhere in citizenship. It is, perhaps, this complex, two-sided quality that makes citizenship negotiable and indeterminate. For, as noted above, citizenship does not simply provide markers of privilege. It also generates the resources and the means by which a political space riddled with privileges and divisions can be transformed. In all its historical variants, citizenship has thus been an instrument of both social closure and intervention. Interestingly, it is when the dissonance between 'what exists' and 'what could be' can no longer be contained, when the horizons become unrestricted by the obvious realities and an alternative vision of society emerges, that we can fully appreciate citizenship's distinctiveness, relevance and remarkable elasticity.

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[64] I borrow this from Somers (1994).

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The nationality model of citizenship and its Critics

By delving beneath the layer of permanence and objectivity that characterises citizenship, Chapter 1 illustrated the historicity and the variegated nature of modern citizenship. We saw that modern citizenship represents an achievement.[1] In a relatively short time-span of about 200 years, it has transformed the state, extended democracy and shaped social welfare provision. It successfully displaced the authority of the church and the personal, clientalistic ties between the subjects and the sovereign ruler(s) that characterised the old feudal order, by positing an abstract and uniform system of legal membership based on civic equality and political participation. Political belonging thus was no longer conditioned on either membership of a community of believers or subjecthood and obligations of fealty. Instead, it became a matter of mandatory membership of a statist community which defined – often following intense processes of social bargaining – the rights and duties enjoyed by its progressively expanding body of citizens. And even though the evolution of citizenship has not followed a predetermined and linear path, the gradual disentanglement of suffrage from property, literacy and gender differentials has brought about its democratisation.

But, as earlier argued, democratisation never extended beyond the ballot box. As Zolo (1992, p. 148) has noted, 'in modern (extended, differentiated, complex) societies, democracy entails no form of political equality which goes beyond the holding of political rights. Equality of status did not eradicate de facto inequalities; instead, it was rendered compatible with them.' But as capitalist economies developed and were coupled with post-war systems of social provision (Marshall 1950) and the class/income pyramid became less elongated and a bit more thickened towards the middle and the base,[2] citizens demanded that citizenship should live up to the normative ideals of equality, democracy and inclusion.

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[1] Compare Offe's remark, 'the European nation-state is the largest container of democracy and solidarity that has historically become possible . . . and that one needs to be sceptical about the likelihood that human history could go beyond that achievement'; 'Democratie und Wohlfahrstaat' in Streeck (1998, p. 133).

[2] The term is borrowed from Lipset (1960).

By the mid-1970s, the shock waves of a decade of protest by 'margizens' – that is, citizens who could enjoy only partial or second-class citizenship owing to discrimination and exclusion – had shaken the ideal of abstract, equal citizenship. With energy and sometimes with anger, marginalised citizens stirred the politics of universal citizenship by drawing attention to race, gender, ethnicity, class, locale, sexual orientation and disability differentials. By so doing, they eventually called into question the liberal consensus on citizenship and the general frameworks for understanding community, identity and membership (Eder 1993; Abramson and Inglehart 1995, Tarrow 1994; Melluci 1989). The single most important strength of modern citizenship – that is, the idea of civic equality, became its 'Achilles' heel' – citizenship was critiqued as an imperfect achievement that was entangled in contradictions.

But the critique of the 'citizens as equals' idea that dominated the 1960s and 1970s did not call into question the foundations of modern citizenship, that is, its link with nationality. The 'citizens as co-nationals' assumption was questioned in the late 1980s and the 1990s. The requirement of states that citizens identify with an overriding social and cultural entity, the nation, which furnished 'the ties that bind' by endowing the relations among individuals with trust and mutual affection, was no longer seen as something natural and unproblematic. Developments above and below the nation-state associated with the emergence of common risks that cut across the borders of the state (Beck 1992), processes of globalisation, European integration, subnational demands and assertive pluralism within the states revealed that the generative matrix which gave rise to and sustained modern citizenship was based on manufactured connections and equivalences between the state, the nation, sovereignty, democracy and citizenship which were not as tight as it was previously thought. The loosening of those connections and the contestation of truths entailed by narratives used in the processes of people-building and state consolidation undermined the nationality model of citizenship.

More specifically, the 'citizens as co-nationals' idea was criticised as being an oversimplified picture of a much more complex reality of composite peoples having multiple identities, multiple commitments both within and beyond state borders, multiple rights and obligations and, more importantly, a reflexive and tactical subjectivity. Indeed, modern citizenship had been based on a strange simplicity that brackets a wide range of citizen and resident experiences: namely, the experiences of citizens with an outward view owing to transnational, professional, interest-group, commercial and financial links, the experiences of naturalised ethnic citizens and of denizens who retain their connections with their homeland and celebrate their ethnic identity, the emergence of forms of civic participation within and beyond the state that are not reducible to nationality, and the broadening of the obligations of citizenship to include concern for and co-responsibility for the environment and future generations. In addition, the portrayal of citizenship as a singular relationship between the individual and the nation-state sounded unconvincing in the

light of EU citizenship and subnational citizenship (see Chapter 1). Moreover, the idea of an all-embracing collective, the people, that is held together by a common national culture, concealed the fact that cohesiveness has always been contrived and rests on an intolerance of both in-group and out-group differences.

The discussion in this chapter will focus on the transformation of the nationality model of citizenship in view of the structural and ideational changes that have occurred over the last two decades. In particular, I wish to consider whether national citizenship can adequately respond to the post-modern and postnational challenges by adjusting its organising principles to shifting demands and structural changes or whether it has reached its limits and thus a more paradigmatic shift is needed. But any inquiry into the limits and possibilities of the nationality model of citizenship has to address the normative relevance of national identity and culture, and it is to this issue that I now turn.[3]

The relevance of nationality

Perplexing as it may sound, liberalism is full of paradoxes. One important paradox is that although it purports to transcend time and space and to be relevant to individuals irrespective of their particular histories, cultures and specific experiences, it has always been rooted in the concrete institutional reality of liberal democracy. The latter, in turn, cannot be thought of separately from the idea and reality of the nation-state. But until quite recently, the notion of the nation hardly featured in liberal theory. The existence of self-contained national communities has been taken for granted in modern polit-ical philosophy (Canovan 1996a; Kostakopoulou 1996). As Vincent (1997, p. 288) has noted, 'there was, always, a residual suppressed statism and nationalism implicit in all liberal thought'. Indeed, in liberal political theory one observes two distinctive, albeit not mutually exclusive, general trends. The first is a silence about the impact and relevance of nationality. To an extent, this is understandable, since the carving out of humanity into separate entities endowed with unique, national characteristics was viewed to be 'a natural order of things'. Revolutions, wars and the political order of the modern state relied on and, in turn, required people's identification with a comprehensive collective, the nation, that assumes priority over other collectivities. The original violence which made nationality possible and the violence that resulted from its realisation were concealed by successive layers of hegemonic narratives that made national democracy and the nationality model of citizenship appear

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[3] It must be noted at the outset that the subsequent discussion does not aim at furnishing an all-embracing account of the range and scope of liberal nationalism and ethnic theory. Rather, I will draw selectively on liberal nationalist accounts in an attempt to extract from them what needs to be preserved and adapted in articulating a framework for citizenship in a global age.

natural, relevant and solid. At the same time, the giveness of a present which was markedly better than the troubled past both hampered and, to an extent, relieved theorists and political actors alike of the moral responsibility for critical reflection and political action.[4]

The second trend has been to take the nation-statist setting as a starting point, but then to bracket it or to make it a background condition in the process of developing accounts about political life, human nature, community and the grounds of political obligation. But this strategy is ineffective. For 'nations have a way of creeping in and concealing themselves among our tacit presuppositions; many theorists who believe themselves to be thinking in terms only of individuals and smaller groups are actually taking for granted the existence of national political communities' (Canovan 1996b, p. 72).

It is true that over the last twenty years, the 'well-settled' field of political theory has become unsettled. Issues, such as national membership, borders and the exclusionary implications of certain understandings of national identity have become the subject of systematic inquiry. In addition, there is a renewed interest in nationalism and national identity following 9/11 and the so-called 'war on terror'.[5] Scholars wonder whether the ideological upsurge of nationalism should be seen as either a reflection of the endurance of the nation-state paradigm or a reaction against the forces and dynamics of denationalisation and pluralism. Irrespective of any plausible explanations for the upsurge of nationalism, however, it is true to say that very few political philosophers today would dismiss the idea of the nation and its impact on contemporary politics. There has been a belated recognition that nation-states and nationalism are salient features of the contemporary world (Archard 1995). In addition, scholars have found a way of making sense of the nation such that it becomes acceptable to the sensibilities of modern political philosophy. This involves demonstrating that the nation can be a genuinely ethical community and that 'one's nationality can be a rationally defensible component of one's cultural identity' (Cole 2000, p. 87). This has been done from the standpoint of 'benign' or 'tamed' liberal nationalism, which is then juxtaposed to undesirable forms of nationalism, such as militarist, genocidal and thick ethnocentric nationalisms.

Liberal nationalists have noted that national identity and citizenship foster a more universal sense of belonging to a nation that transcends the particularistic nature of ethnic identities. Accordingly, citizenship becomes disassociated from ethnic membership, which is linked to exclusionary tendencies and an ascriptive sense of belonging. According to liberal nationalist perspectives, various ethnic groups can peacefully coexist within a political community that puts emphasis on citizenship and shared values. A common citizenship and a shared civic national identity furnish the ties that bind the 'compatriots',

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[4] But compare Laitin (1998).

[5] It could be argued that this is not something new. After all, modernisation has always been accompanied and often sustained by the ideological upsurge of traditionalism; Gusfield (1967).

sustain relations of reciprocity and are strong enough to override particularistic demands and overcome the divisive politics of ethnic group allegiance. Aided by the work of scholars, such as Smith (1991); Kedurie (1993); Hobsbawm (1990); Greenfeld (1992), who have traced the historical, ethno-cultural roots of contemporary national identities and highlighted the *longue duree* of nationalism, liberal nationalists have developed an ethical particularist perspective that justifies the principle of co-national partiality within communities demarcated by boundaries. This, in turn, enables them to make nationality a precondition of distributive justice and to defend the nation-state and social democracy against processes of economic globalisation (Miller 1999). As Miller (1989b, p. 245) has observed: 'nations are the only possible form in which overall community can be realised in modern societies ... Without a common national identity, there is nothing to hold citizens together.' Others prefer to pay more attention to expressions of 'banal nationalism' (Billing 1997) that are discrete and embodied in the ordinary practices and habits of social life. Finally, others favour the replacement of nationality with patriotism and loyalty to institutions embodying principles that transcend the particularity of communities.[6] On this account, nationalism is recuperated in terms of a thin, civic nationalism and national obligations become intelligible in terms of political obligations.

Although such approaches may fail to convince those who worry about the exclusionary effects of settled understandings of political membership and the injuries inflicted on human beings, they have, nevertheless, succeeded in demonstrating that nationalism should not be viewed as a nuisance. National identities do matter. Accordingly, the crucial questions that need addressing are how they should matter, what weight and, more importantly, what kind of institutional recognition should be given to them in the new millennium, given that identifications are no longer absorbed by an overriding national identification, and that citizens' obligations and identifications fail to coincide. The sections that follow will address these questions.

In defence of nationality?

Notwithstanding the reservations mentioned above it is true that the prevailing tendency among scholars is to 'make a virtue out of the necessity of nations' (Tamir 1993; Miller 1995). As Tamir argued in 1993, 'except for some

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[6] According to Yack, 'distinguishing civic from ethnic understanding of nationalism is part of a larger effort by contemporary liberals to channel national sentiments in one direction – civic nationalism – that seems consistent with the commitments to individual rights and diversity that they associate with a decent political order' (Yack 1996). Lepsius has distinguished among four conceptions of the nation; namely, an ethnic conception based on a common descent or shared history, a cultural conception based on a shared cultural heritage, a political conception associated with membership in a liberal democratic polity and a class conception denoting working class solidarity: Lepsius (1985).

cosmopolitans and radical anarchists, nowadays most liberals are liberal nationalists' (Tamir 1993, p. 139). The strategy of 'making a virtue out of a necessity' is premised on the assumption that nations are necessary because they exist, have been successful and are resilient.[7] The necessity of nations is thus an empirical fact; most human beings regard themselves as members of a nation and are willing to make the sacrifices commanded by their national identification. In this respect, it is immaterial whether national identities have real or shallow foundations; for they may have been built on myths and symbolisms or even false beliefs about the origins and history of a people and its culture. What is important, however, is that those beliefs are powerful enough to resonate among the population and to foster a sense of mutual attachment.[8]

Although the argument concerning the success and durability of nations appears to be convincing, one should not forget that nations are not timeless constructions. They are about 200 years old (Hobsbawm 1990) and their success is less a measure of the intrinsic value they might have, or of objective imperatives (Gellner 1996) – be they modernising impulses, functional imperatives or economic growth – than the expression of political projects and sociopolitical contingency. Besides the variable of 'time', however, one should not disregard the variable of 'space', too. For although the nation-state paradigm has spread across the world, there are places in which it has not taken root and is still competing with local alternatives. Moreover, given the facts that the 'success of the nation' owes much to programmes and practices of coerced homogenisation – ranging from populations transfers and exchanges to intolerance and the persecution of members of ethnic, religious and linguistic minorities – and to national education, the growth of assertive pluralism of contemporary societies, coupled with global developments, has undermined the capacity of states to inculcate homogenisation, thereby raising doubts about the endurance of the nation (Sassen 2000). If I am correct on this, the argument concerning the tenacity of the nation should not be seen as an empirical one, as it entails prescriptive ideas and a defence of pre-existing institutional commitments.

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[7] Smith (1986, 1971) has also praised the 'long duree' of ethnohistories, that is, the enduring character of the premodern ethnic core underpinning modern nations thereby challenging the argument that nations are essentially fabrications of modernity. In this respect, Smith is a 'perennialist' and not a primordialist. Perennialism is the less radical version of primordialism; it recognises the historical nature of nations, but attributes to ethnie, the foundation of nations, an enduring character. On this, see Ozkirimli (2000). Tan (2004) has also argued that national attachments have a non-instrumental value because they are constitutive of peoples' well-being or conception of a good human life. I will neither examine nor criticise these views here. This has been done successfully by others (Zubaida 1989). What I wish to do here, instead, is to take issue with the instrumental defence of nationality.

[8] According to Tamir, although beliefs may be false it is not irrational to believe in them, if they have an important functionality.

But, perhaps, the most important weakness of the strategy of making a virtue out of the necessity of nations entails a circular reasoning whereby the fact and the reasons for it somehow converge.

F 1: Nations exist since most people in the world regard themselves as members of a nation and feel that membership is an essential part of their identity (nationals are a real and enduring feature of the world and of our identities) (Miller 1995, p. 10; Tamir 1993, p. 73).

F 2: National identities provide the affective resources, the fellow-feeling that inspires people's loyalty and prompts them to make the sacrifices that distributive justice requires.

The necessity of the nations is virtuous since:

V 1: Co-nationals are bound together in a community of transcendence and permanence that carries the dead, the living and those yet to be born forward into a limitless future, thereby turning chance into destiny.

V 2: Nations provide the intense experiences of solidarity and nurture the relations of mutual trust required for the realisation of social justice and democratic politics.

Evidently, foundation (F1 and F2) and justification (V1 and V2) converge, since V1 and V2 that purport to justify F1 and F2 are themselves part of F1 and F2. In principle, what appears to justify nationality is the outcome of, and is sustained by, nationality in practice. National culture is both the starting and the reference point and the privileged status of nationhood is not in itself called into question.

Having concluded that the general strategy of the instrumental defence of nationality is underpinned by a circular reasoning, it may be worth examining whether various approaches justifying nationality have overcome this limitation. It is true that justifications of nationality diverge. This owes as much to the existence of different conceptions of nationhood in practice as to differing theoretical approaches and scholarly disagreements. Notwithstanding their differences, however, all existing justifications display converging assumptions and shared frames that envelop them. One such converging assumption is that individuals are embedded in national cultures and their well-being, however this might be conceived, is linked with the flourishing of these cultures. Cultural membership is thus viewed to be important either for enhancing individual freedom or autonomy (Margalit and Raz, Kymlicka), or fostering relations of trust and social solidarity (Miller), or satisfying the human quest for secure belonging and mutual attachment (Tamir) or for identity recognition (Taylor).

Let us examine these justifications in more detail. Arguing from the perspective of liberal communitarianism, Kymlicka views national culture as the precondition for the realisation of liberal autonomy. As he put it, a societal culture provides a meaningful context of choice; that is, it enhances individuals' capacity to lead meaningful lives by providing options for good life and

assigning relative values to them. Because a societal culture 'affects the capacity to understand ourselves and to make responsible decisions about what is valuable in life' (1995, pp. 85–6), its stability needs to be maintained. By the latter, Kymlicka does not mean that societal cultures are immune from criticism. Nor should they be seen as static, monolithic traditions, for they are subject to change. But Kymlicka insists that such changes must come 'from within' the community, that is, must be the result of the choices of their members and should not threaten the existence of the culture as an intelligible context of choice (1995, pp. 84–106).

While Kymlicka's argument is insightful, it does not appear to evade the problem of circularity. It may be observed that only societal structures that ascribe value to autonomy are suited to the realisation of their members' autonomy.[9] Kymlicka's argument thus works coherently only if we assume that the cultural structure that needs protection is one which privileges autonomy as a moral value. But, perhaps, the most important weakness of Kymlicka's argument is that it is highly derivative from the nation-state paradigm. Kymlicka's starting point is the premise of an encompassing national societal culture which is then grafted onto national minorities. Accordingly, national minorities are treated as petite states, having a relatively homogeneous and distinctive culture, which exists independently of the practices that reproduce it. This, perhaps, helps explain why Kymlicka believes that the narratives and resources needed for meaningful choices must come from a single, unified and fully constituted and secure cultural matrix (Waldron 1992) and, by equating the content of the societal culture with a particular cultural community, he tends to view unwanted changes in the content of the culture as threats to the existence of the community itself. But it has been observed that the dichotomy between 'changes from within' and external changes 'is confounded by practice and is curiously ahistorical' (Kingsbury 2001, p. 84). Furthermore, Kymlicka's distinction between territorially concentrated national minorities and ethnic groups and the precedence he gives to the claims of national minorities over those of migrant ethnic groups has given rise to criticisms. By believing that one's homeland is the best place to lead one's life, not only does he subscribe to the sedentary ideas underpinning the modern territorial states, but he also mistakenly believes that when individuals migrate, they leave their culture behind – as opposed to their country (Parekh 1995; Templeman 1999; Levey 1997). As Parekh (1995, p. 432) has argued, 'it is, of course, true that their country is the home of their culture, but the two are not identical'.[10]

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[9] Patten (1999) has argued that the cultural nationalist reliance on the importance of individual autonomy and on culture, as the framework providing a meaningful range of options, can only do the job of justifying that a liberal state ought to promote a national culture, if it is assumed that 'national cultures are important to the autonomy of citizens'.

[10] Kymlicka has also been criticised for failing to account for 'in-betweens' and other distinctive groups such as the Roma in Europe, who have recently chosen to adopt a non-territorial Roma national platform, and African Americas in the USA. On the former, see Petrova (2001).

Another influential justification regards nationality as a source of identity (Taylor 1994). In opposition to the abstract and atomistic self posited by liberal theory (atomistic individualism), communitarians have argued that individuals are neither naked nor disembodied. Nor do they exist prior to society. Rather, their selves are socially constructed and their identities are forged by virtue of their group memberships (embedded or contextual individualism). Families, local communities, religious communities, nations, ethnic groups, professional associations, clubs etc., all have formative effects on individuals. Therefore, if the individual is to be respected in his/her individuality, so too must be the group which endows him/her with identity. For in the absence of those moral and social frameworks, we would not be able to make sense of our lives (Taylor 1994, p. 27), we would be 'at sea' – that is, overwhelmed with feelings of alienation and disorientation. Respect for individuals therefore entails respect for those formative cultures that provide the sources of their identity. This, in turn, entails the political recognition of cultural communities, since they provide the most relevant context for the identity of individuals.

Although Taylor's argument appears to be convincing, on closer inspection one observes that one cannot easily infer from the notion of 'embedded individualism' a thesis of normative communitarianism, that is, that cultures ought to be respected and recognised.[11] True, individuals are born and socialised within environments permeated by variegated webs of meaning and these have formative effects on them. But it is equally true that individuals critically reflect on these environments and position themselves accordingly. At times, they may value their membership, while, on other occasions, they may criticise it or see it as irrelevant. Individuals do negotiate the parameters of their lives differently and the weight they place on cultural membership is variable. In time (t) and prompted by context (c), for instance, I may choose to give salience to a particular aspect of my identity, while in t+1 and c+1, I may feel that another aspect of my identity is more salient. In addition, individuals often experience dilemmas, anguish and difficult predicaments stemming from conflictual or contradictory frames of meaning furnished by religion, national culture, family and so on. In such situations, national culture is just one source of identity among others and we cannot assume that it will be given priority. Indeed, a problem with the 'source of identity' thesis is that we must either accept that all sources of the self, that is, all forms of group membership, deserve respect and protection – a rather controversial statement, since this could involve objectionable and socially undesirable group practices, such as chauvinistic convictions or cultural prejudices (Vincent 1997, p. 290), or conclude that what needs to be respected is not culture itself, but the fluid process of intersubjective communication, expression and creation of which culture is a product. Taylor could, perhaps, observe here that national cultural

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[11] I draw on Hardin's terminology (Hardin 1995, pp. 185–6).

resources and, in particular, language are the most relevant sources of the self and that these should be seen as worthy of protection. However, this argument may not be as convincing as it appears at first sight. For as Vincent has observed (1997, p. 286), although nations are not ephemeral, 'they certainly have little everyday significance for most individuals – at least for most of the time . . .'. In this respect, even if one conceded culture's important role in self-formation, thereby choosing to underscore the deterministic logic of this thesis, two crucial questions remain unanswered: (1) why one should respect a culture *tout court* as opposed to those aspects of a culture – that is, the tendencies, trends, values and resources, which have played a formative role and are intrinsically valuable – and (2) why a national culture should be privileged over other sources of identity in all contexts and all the time.

Question 1 would prompt adherents of Taylor's thesis to examine the merits of, and determine what weight should be given to, various aspects of a culture, thereby leading them to concede that culture is plural, diverse, internally contested, contradictory, antinomic and diffused. But such a concession implies a second one. Taylor and others would not only have to call into question the 'given', unified and relatively homogeneous conception of culture underpinning his basic argument, but they would also have to specify what counts as an authentic culture and, more importantly, who has the prerogative of defining its authentic core.[12]

The answer to question 2 might be that a national culture should be privileged because it provides the most relevant (and most important) context for the identity of the individuals involved. But such an answer mirrors the nationalist assumption about the existence of overarching and encompassing national cultures. As such, it assumes that the boundaries of particular communities contain all 'social and moral frameworks' and that national attachments have automatic priority over other commitments and identifications. More importantly, it rules out the possibility that a person's quest for an authentic and meaningful way of life may lead him/her to treat national culture as weightless, to blend it with other cultures or to abandon it altogether. But for Taylor, 'stepping outside a national culture' would be tantamount to stepping outside what we would recognise as integral, that is, 'undamaged human personhood' (Taylor 1994, p. 27) – an argument that clearly contradicts the ideal of authenticity underpinning his schema. In the light of the above considerations, it may be concluded that the 'embedded individualism thesis' does not appear to furnish a sound justification for the political recognition of a national culture.

A similar conclusion can be drawn by examining Taylor's argument concerning 'the survivance of [Quebec] culture'. Taylor does not only equate the concept of the culture with that of territorially based group (quasi-nation), but he also views culture in static terms. It is depicted as an achievement that needs

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[12] 'The culture of our ancestors' in the case of Quebec (Taylor 1994, p. 58).

to be defended from besiegers inside and outside the community. But by treating culture and the cultural community – be it the Quebecois or aboriginal peoples in Canada – as co-extensive, he is led to the conclusion that the group and its identity may not survive if the content of the culture changes dramatically. However, to treat cultural change as a threat, and not as a change, is to legitimise the particular boundaries drawn around culture and to concede that the continued existence of a cultural community requires cultural homogeneity and the assimilation of minority group members. As Taylor (1994, p. 58) put it, 'cultural survivance' requires the maintenance of a communal context by actively creating new members of the community who will want to avail themselves of these resources in the future. In this respect, Taylor's multiculturalism does not embrace the full pluralisation of territorial constituencies. It conveniently overlooks internal divisions, hybrid identities and the multiple, and often competing, readings of the culture that exist within any collectivity. This gives rise to a number of questions. Why does respect for 'territorially encased' (Connolly 1996, p. 62) cultures necessitate their political recognition by the state and the provision of state assistance in the survival of a culture? Why and under what circumstances does the survival of a culture become an issue? And, finally, is 'cultural survivance' the central issue or the politics of survivance, that is, the discursive construction of risks and existential threats, strategic positionings and 'us' versus 'them' distinctions? Although Taylor's account contains references to 'our' and 'their' culture, he deflects attention from the objectionable 'politics of survivance' that give rise to such divisions.

MacCormick shares the premise of contextual individualism, but differs in both the conceptualisation of cultural identity and the institutional recommendations he makes. According to MacCormick (1982, p. 247), individuals can 'acquire a sense of their own individuality – as a result of their experiences within human communities'. Like many other groups, such as churches, trade unions, schools, political parties and universities, nations provide their members with the means to comprehend their existence as 'belonging within a continuity in time and a community in space' (MacCormick 1982, p. 251). Respect for individuals thus entails respect for their identities. The latter obliges us to respect that which is constitutive of their identity. Since national culture is constitutive of individual identity and forms an important means of self-realisation, it follows from this that it deserves respect. This argument, however, evades a consideration of the intrinsic worth of the national culture and, more importantly, underscores the multiple, diverse and often contradictory nature of identities.

A more pragmatic justification of nationality is furnished by Tamir. Tamir (1993; 1996) sees nationality as fulfilling a basic human need; namely, the need for belonging to a group that transcends individuality, links the present with a (shared) past and creates a vision for the future. National attachments thus perform an important function: they 'endow individual life with meaning and foster an illusion of fraternity so desperately needed in an age characterised by

rapid social change, extensive geographical mobility and alienation' (Tamir 1996, p. 98). In other words, they give to 'cold, impersonal structures an aura of warm, intimate togetherness' (Canovan 1996, cited in Tamir 1996, p. 91). Liberalism, therefore, needs to accommodate the 'worthy elements' to be found within nationalism[13] (Tamir 1993, p. 5) and to appreciate the fact that people value their national identity intuitively, since it furnishes feelings of belonging that are constitutive of their well-being. As Tamir has put it, 'deep and important obligations flow from identity and relatedness' (Tamir, 1993, p. 99). In other variants of the same argument, the resources provided by nationality are viewed as enhancing personal well-being (self-fulfilment argument) or facilitating self-realisation.

Although Tamir's theoretical schema is based on a perceptive understanding of the human situation, it does not unequivocally demonstrate why national attachments should have a monopoly in satisfying the human quest for belonging and community. Religion, for instance, plays a similar role, quite successfully in the opinion of some. Local attachments and civic participation could also foster relations of trust and feelings of belonging to a larger group. Of course, liberal nationalists would argue, here, that cultural membership provides superior resources, such as feelings of belonging, relations of mutual recognition and trust, and meaningful bonds, and that the value of national identity is commensurable to the value of cultural membership. However, such a response begs the question why cultural membership must necessarily take the form of national membership. Indeed, one could plausibly argue that what is important for human flourishing is not culture per se, but group membership; that is, social relations and attachments, which are, in turn, facilitated and nurtured by culture. In other words, while Tamir furnishes convincing reasons for appreciating and promoting the value of cultural membership, these neither support the switch from cultural to national membership nor justify the making of the state the property of an ethnic group. Her argument is premised on the implicit assumption that the nation provides the most valuable cultural context.

It may be counter-argued, here, that the national framework provides the most effective platform for cultural membership to do what it does, namely, to foster feelings of belonging and to provide individuals with the resources they need in order to make sense of themselves and the world around them. But the pursuit of such an argument could lead to uncomfortable concessions and inconsistencies. For one would either have to concede that all ethnic and cultural groupings should be granted statehood and hence condemn the subordination and suppression of other national/ethnic communities within states, or have to accept the fact that the weight and priority claim of nations

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[13] Tamir (1996, p. 86) defines the nation as a community whose members share feelings of fraternity, substantial distinctiveness and exclusivity as well as a belief that they have common ancestors and that their community exhibits a continuous genealogy.

owes much to their association with the state – and not to the valuable feelings of belonging they generate. Both statements, however, would pose problems, since they call for a shift of the focus of attention away from the romanticism of the nation to the politics of national identity and community-building.

Miller has defended nationality in a sophisticated way on the basis of what may be called the 'social trust or solidarity' thesis. Whereas Tamir's point of departure is to make liberalism compatible with nationalism, Miller has built his argument on communitarian foundations. His primary concern has been to 'capture nationalism for market socialism' (Vincent 1997, p. 280) and to defend the nation-state against the onslaught of globalisation (Miller 1999).[14] Accordingly, he defends the liberal (reasonable) face of nationalism by circumscribing it within the framework of social democratic liberalism. For Miller, a national culture nurtures relations of social trust. As he has put it, 'trust is more likely to exist among people who have a common national identity, speak a common language and have overlapping values' (Miller 1998, p. 48; 1995, p. 98; 1989, pp. 236–7). Prepolitical attachments[15] thus provide the motivational resources for participation in institutions and politics that citizens regard as 'their own', guarantee political stability and nurture the strong ties of solidarity required for social justice and distributive policies. According to Miller (1995, p. 10), 'our nationality is an essential part of our identity. Sharing a national identity provides the trust and solidarity required for social co-operation' and welfare programmes. Nationalism thus answers one of the most pressing needs of the modern world, namely how to 'maintain solidarity among the population of states that are large and anonymous, such that their citizens cannot possibly enjoy the kind of community that relies on kinship or face-to-face interaction' (2000, pp. 31–2).

Although it is true that feelings of shared belonging foster group solidarity and nurture a democratic politics, it does not necessarily follow that only national-qua-cultural belonging can achieve this objective. There exist different notions of belonging as well as political communities, such as the European Community, plurinational communities and 'immigrant states', that are characterised by a future-oriented sense of belonging centred upon shared participation in a common quest. As regards the former, Mason (1999), for instance, has distinguished between a thicker 'sense of belonging together', based on attachments, such as common past, history and culture, and a thinner 'sense of belonging to a polity', which stems from the fact that citizens 'identify with their major institutions and practices, and feel at home with them, without believing that there was any deep reason why they should associate together . . .' (1999, p. 272). According to Mason, the various benefits which

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[14] The problem with this argument is that nation-state is portrayed as a victim of globalisation, thereby overlooking the complex interaction between the two. As Sassen (2000) has noted, states also shape the dynamics of interaction not only by resisting it but also by participating in it.

[15] Miller (1989, pp. 238–44) accepts the historicity of nations, but he also believes that there must be some shared substantive beliefs or attitudes, rituals and so on for nationalism to exist.

are thought to flow from a shared national identity, such as stability and a politics of the common good, might be secured by such a sense of 'belonging to a polity'. After all, it may be argued that the sense of belonging and the ties of solidarity and mutual trust that Miller identifies as prerequisites for democratic citizenship and redistributive policies could well be the product of liberal national communitarianism. For, as Walter Berns (2001, p. 65) and others (Hobsbawm 1990, p. 89) have argued, '. . . none is born loving his country; such love is not natural, but has to be somehow taught or acquired'. If a liberal nationalist is willing to concede the constructed nature of co-national empathy and patriotic attachment, then (s)he cannot disregard the fact that the subjective component that characterises collective identities, that is, the consciousness of 'we-ness', may stem from various sources. Oppositional consciousness and a shared religion, for instance, can transform strangers into brothers and prompt people to sacrifice themselves for strangers.

Miller (1988) could, perhaps, observe that elements such as the above would not be strong enough to support the networks of trust and solidarity required for redistributive programmes. In contrast, a shared national identity nurtures trust and social solidarity for co-nationals: members of a community realise that they must help 'those who lose in economic competition' through welfare and anti-poverty programmes (Miller 1997). By making the willingness to make financial contributions the outcome of and a marker for the 'thickness' of social relations, however, Miller overlooks a number of important facts. People make financial (and other) contributions owing to a wide range of reasons, such as humanitarian concerns, a sense of fair play, self-interest and ideology. In addition, the argument does not reflect the position of non-national resident tax payers, who are normally excluded from political membership, at least in the first few years of their residence, and have nothing in common with nationals, apart from the fact that they are enmeshed within a system of social co-operation which makes their own welfare intimately connected with the welfare of others. Furthermore, one often finds a large number of co-nationals who are willing to block redistributive programmes for ideological or purely selfish reasons. These examples serve to illustrate that trust and solidarity may have more to do with practices of co-operation from which a sense of interdependence springs than with cultural affinity. True, a liberal nationalist would observe, here, that any belief in some sort of affinity, cultural or otherwise, can enhance trust. But this argument would lead to the demotion of a shared culture from the key explanatory variable to a supplementary condition. All this leads me to conclude that the links among nationality, trust and social redistribution are not as tight as Miller would like us to believe.

Similar concerns can be raised about other variants of the 'trust thesis', such as the integration and the intergenerational community arguments. The former treats nationality as a necessary condition for communal integration, thereby reflecting Mill's (1861) assumption that political institutions are unlikely to be either stable or enduring unless citizens share a national identity. The second

argument conceives of the nation as a community encompassing the dead, the living and those yet to be born. The members of such an intergenerational community, that reaches back into the past and stretches into the future, know that their present has been conditioned by the labour and achievements of past generations. They also know that membership entails obligations: the undertaking of burdens in the polity, sacrifices in the name of future generations and the obligation to pass the nation on to them. Whereas the former argument highlights the importance of the existence of a shared national identity for stability and social cohesion, the latter views nations as historic communities of co-responsibility. Both arguments are underpinned by the belief that a shared national identity is crucial for the realisation of various values to which liberals are committed, such as respect for individual rights, democracy and social justice,[16] but they nevertheless fail to justify sufficiently the priority and centrality attributed to it. More importantly, they tend to forget that national political communities have been the product of historical and political processes which transformed composite social fabrics into unified peoples.

Having surveyed a number of justifications of nationality, it seems to me that they, too, exhibit the circular reasoning identified earlier with respect to the general instrumental defence of nationality. The point of departure for liberal nationalist scholars is that nationhood has symbolic and political weight – which is probably the by-product of the ideological strength of the national-statist paradigm, and this premise runs throughout their argumentation. In other words, they presuppose what they seek to explain; namely, the priority, primacy and significance of nationhood. As noted above, the value of national culture lies in the instrumental value of cultural membership for either making various options available and meaningful to us, thereby instantiating norms of freedom or autonomy (Kymlicka), or generating feelings of belonging and fostering mutual attachments (Tamir), or promoting relations of social solidarity and mutual trust which is the presuppositional framework for redistribution (Miller). All this makes perfect sense if one takes the nation-state paradigm as the starting point, and believes that 'liberal democracy works best within national political units' and that 'nations provide the most valuable cultural context'. But if one searches for a convincing explanation for all the above, then a number of things are not clear:

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[16] This belief is shared by egalitarian liberals, such as Barry (1989; 1991). Barry (1991, p. 177) has noted that a national identity facilitates reciprocal compromise in the face of conflicting interests, since people are likely to trust their co-nationals' willingness to reciprocate benefits when the need arises. Perfectionist liberals, such as Macedo (1991) and Galston (1991), on the other hand, argue that liberal states should foster the civic virtues required for the preservation of liberal values, should promote some forms of liberal nationalism to protect the liberal community and should provide individuals with the social and political means for their flourishing as liberal citizens. For them, liberal democracy cannot be secured in the absence of a shared national identity.

(a) Why national qua cultural membership should have a monopoly in realising these values and goals. Liberal nationalists could object here that they do not believe that only national qua cultural belonging can promote the above mentioned liberal values and goals (a1). Rather, they believe that national culture provides the best or the most effective context for securing all the above (a2). By arguing either a1 or both a1 and a2, however, liberal nationalists would have to concede that a shared national culture is not the key explanatory variable.

(b) Why the realisation of these liberal values and goals requires institutionalised cultural membership as opposed to social membership and participation in reflexive practices of social co-operation among co-venturers which include, but are not limited to, co-nationals.

(c) Even if we accept for a moment the liberal nationalist connection between cultural membership and the achievement of liberal goals, it seems to me that scholars need to explain why cultural membership must necessarily take the form of national membership. Scholars thus simply assume that the nation provides the most valuable cultural context and by so doing often rely on 'a culture-concept that best suits their political theory' (Scott 2003, 97). This is the container view of culture, which receives full exposition below.

On containers and envelopes

Notwithstanding the strengths and weaknesses of the abovementioned justifications of nationality, the foregoing discussion suggested that they are premised on a concept of culture that may not be as sound as it first appears. Given the importance of this issue for liberal nationalist perspectives, as well as for my inquiry into the future prospects of the nationality model of citizenship, in this section I will look into the 'container view of culture', with a view to examining its usefulness in an increasingly interdependent and interconnected world.

It is true to say that liberal nationalist perspectives are not distinguished by their innovative understanding of culture. Instead, they are premised, either explicitly or implicitly, on an historical, and contingent, understanding of culture; namely, the Herderian conception of a cultural archipelago. Cultures are seen to be bounded, discrete and internally homogeneous entities, like scattering islands, entailing distinctive sets of values, traditions and practices that 'belong' to particular peoples and reflect their unique spirit through time. This is understandable. In a world partitioned into states and nurtured by the belief that the state had to be congruent with the nation, assumptions about bounded, unified and homogeneous cultures containing unique nations sustained the order-creating master narratives of sociopolitical life.

Anthropology had also reinforced the essentialist understanding of culture as a set of distinctive shared customs and core fixed understandings of a

particular group. But Barth's (1969) seminal work on boundary drawing called this paradigm into question and prompted anthropologists to adopt an intensely critical stance towards the culturalist, essentialist and reified conception of culture in the 1980s (Clifford 1988). Notwithstanding this debate in anthropology, however, one often finds in the politics of difference what may be called 'a strategic essentialism', that is, the deployment of essentialist conceptions of culture as means of challenging majority nationalism. So although essentialist nationalist narratives were critiqued for espousing a questionable logic of purity and authenticity and for denying ambiguity and fluidity, certain minority constituencies, be they minority nations, quasi-nations or non-nations, found it expedient to portray themselves as self evident 'communities of culture',[17] that is, as collectivities entailing cultural features that are relatively fixed, relatively uncontested, intrinsically valuable and thus worthy of recognition. Aided by international law's preference for a unitary and reified conception of culture, that is, a notion of culture as a unified ensemble of meaning and practices which already formed collectivities are entitled to enjoy or to have (Cowan *et al.* 2001, p. 8), the project of claiming minority cultural rights condemned the essentialism of the whole while invoking an essentialism of the part. Accordingly, the right to culture was transformed into a prominent 'right of peoples', and has been utilised in a variety of legal claims relating to land, environmental protection, education, language, education and self-government. It has also collided with the doctrine of equal rights and fuelled debates about the appropriate philosophical and political responses to intra-minority constituency differences.

Kymlicka's (1995, pp. 18, 76, 80) notion of societal culture, for example, is the mirror image of national culture. It tends to be monocultural, institutionally embodied, territorially concentrated, monolingual (Benhabib, 2002; Carens 2000, p. 56) and, more importantly, congruent with the political community that produces it.[18] As noted previously, societal cultures deserve institutional support and recognition because they form the context that makes choices meaningful to us. But, as already noted in the foregoing section, Kymlicka furnishes no explanation as to why the national context should offer individuals the most meaningful life options, given that individuals are situated within various overlapping and cross-cutting cultural formations which exercise a profound influence on them.[19] Like Kymlicka, Taylor (1992, 2001)

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[17] I borrow the term from Baumann (1996).

[18] As Carens (2000, p. 56) has noted, it homogenises culture, obscuring the multiplicity of our cultural inheritances and the complex ways in which they shape our contexts of choice.

[19] Interestingly, Leuprecht (2001) has used the image of the daisy in order to describe identities; like the daisy, our identity is made up of many petals. Since our identity is composite and reflects the diversity of our belongings, then 'it is a serious error to reduce it to one of these many aspects' (Leuprecht 2001, p. 124). And as McLennan (2001, p. 391) has pinpointed: 'if national, ethnic, and religious belonging are major types of cultural affiliation, there are plenty of other relatively coherent cultural formations too: those coagulating, for example, around work roles, class experience, sexual identities, residential location, leisure habits, political and social

and Miller (1995) view culture as a distinct, bounded entity which is congruent with a particular cultural community. By so doing, they not only overlook the relational, mutating, contested, messy and fuzzy nature of culture,[20] but also tend to conceive of possible cultural changes as 'threats', endangering the 'survival of the culture' and thus the identity of the community. It is as if culture has a life of its own: it has to be nurtured, deserves recognition and needs protection. Change, therefore, must be slow and can only be accommodated within the tightly controlled parameters set by shared beliefs and the rooted heritage. This leaves little room for 'national' and 'non-national' agents' active participation in the creation, negotiation and transformation of cultural meanings and practices.

In the last two decades, however, our understanding of culture has become more sophisticated. Societies are no longer conceived of as being isolated 'billiard balls' (Wolf 1992) and cultures are no longed seen as unique fields giving sustenance to particular groups or as quasi-biological entities capable of organic growth and decay. Tully's (1995) dialogical conception of culture, that is, as overlapping, interactive and internally negotiated, is a case in point. Anthropologists, too, have replaced the old, essentialist understanding of culture with constructivist perspectives that depict cultures as historically produced repertoires that are contested, negotiated and re-negotiated and, more importantly, leaky, that is, having a tendency to overflow clearly set boundaries of all sorts.[21]

Constructivist perspectives have also shown that even 'a shared history' is not an undisputed cultural marker and that historical narratives can be read and interpreted differently both across cultures and within the same culture,[22] thereby highlighting the decisive role of agency in the process of culture making and re-making.[23] With imagination and creativity, human beings create, blend, use, contest, negotiate, re-appropriate and redefine meanings and practices in order to understand themselves and their societies and to respond to changing conditions and new exigencies. Social interactive processes thus leave behind a multi-faceted and contradictory ensemble of deposits, be they practices, habits, symbols, ideas, shared customs, myths, shared systems of beliefs, language, ideological schemas, artistic works, local political

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movements and so on. Not only are these cultural mores often productive of distinctive communities, configuring a rich mosaic of cultures. Social theorists today are at pains to point to the ceaseless intersection of all these spheres, and to the myriad hybrid subjectivities that are constantly – increasingly – constructed through their intermixture.'

[20] See Baumann (1997) and Vermeulen and Covers (1994).

[21] Tilley's empirical study of culture in the global village (Tilley 1997) has shown that the small Nambas' show and associated tourist developments on Wala Island are ways of negotiating an external relationship with outsiders and constructing a past by combining different elements, drawn from outside the ethnic group, thereby providing community empowerment.

[22] For a critique of the constructivist perspective and an illustration of the merits of a critical realist one, see Bader (2001).

[23] As Terry Eagleton has observed, 'the term culture contains a tension between making and being made' (Eagleton 2002).

structures, institutions, discourses or broader categories, such as ways of life and heritage.[24] Some of them may become embedded in institutions. Other elements may be woven in webs of local knowledge that are passed on through socialisation, while others may be free-floating or even in a state of marginality. As Comaroff and Comaroff (1992, p. 27) have noted, cultures are open, incoherent ensembles of signifiers in action, some of which may be tightly integrated into explicit world views, others may be heavily contested forming the subject of counter ideologies and subcultures and others may be relatively free floating. On such a constructivist reasoning, culture emerges as the flow of signs and meanings;[25] a field of contestation and negotiation; the locus of co-operation and competition; and a reservoir of resources and possibilities which at times may be progressive and at other times may be constraining.

Culture as antiform

I have argued thus far that the appropriation of the container view of culture by national hegemonic narratives, and by counter-hegemonic projects, has brought about the hypertrophy of culture in contemporary political life and academic discourse. Accordingly, the impact of (national) culture on personal and collective identities tends to be over-exaggerated, while, at the same time, the wider sociopolitical context tends to be bracketed. This creates the false impression that cultures are bounded, deeply rooted, coherent and stable amalgams of beliefs and practices, and that it is cultural difference per se that creates instability and conflict. Against this background, a more contextual and anti-essentialist approach that draws on anthropological insights and constructivism may be a more promising line of inquiry.

A contextual approach would have to focus on culture's socio-political context; that is, it would have to situate within ongoing processes of social interaction, meaning-making, and value-assigning. Readers may recall that the theorists examined above follow a different approach; namely, they begin with doctrinal assumptions about culture (and about liberalism), which are then applied to particular contexts.[26] This approach, however, often results in partial understandings, owing to the superimposition of abstract categories on what is, in reality, a fluid, messy and complex field.

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[24] At the risk of objectifying culture, Swidler (1986) has captured this characteristic by conceiving culture as a kind of human software. Culture is thus a 'tool-kit' of symbols, stories, rituals and world views which people may use in varying configurations to solve different kinds of problems. Another apt simile would be that of an open-ended index (Orloff 1993): the 'cultural' index entails categories, narratives and meanings that people need to employ in social relations, in articulating their viewpoints and expressing their judgements.

[25] Geertz (1983, p. 14) views cultures as webs of significance. This view allows anthropologists to study the symbolic context within which people and their actions can be described and understood, without attributing an ontological status to culture.

[26] As a consequence, these narratives are predisposed towards simplicity, fixity and stability; see Goldberg (1994).

It is true that both Parekh (2000) and Carens (2000, p. 15) favour such a contextual approach. They conceive of culture as a socially constructed and heterogeneous entity that is made up of diverse and conflicting strands which can be the subject of differing interpretations and reinterpretations. And although cultures do not have timeless and essential qualities, they are seen to provide all those characteristics that identify and differentiate the members of communities. According to Carens and Parekh, cultures provide value and meaning to the lives of the people who participate in them and thus deserve respect and recognition. As Parekh (1998) has noted, because human beings are culturally embedded and derive their sense of identity and meanings from their cultures, respect for them implies respect for their cultures. Along similar lines, Carens' belief that the political life of a community reflects a shared culture and 'a political community may be the locus of descriptive cultural understandings that instantiate justice and deserve respect' helps him furnish normative justifications for the Quebec nationalistic project and the requirement of linguistic assimilation (2000, ch. 5) as well as inalienable land rights for Fijians (2000, ch. 9).

Carens and Parekh successfully avoid the pitfalls of unity, fixity and reductionism that characterise the container view of culture, but, in my opinion, they do not succeed in evading the tendency to objectify or reify culture and thus cultural essentialism *tout court*. Although cultures are viewed to be heterogeneous, contested, dynamic sets of traditions, commitments, self-understandings or habitual practices, they are, nevertheless, still conceptualised as 'things' that people 'possess' or 'enjoy'. In this respect, it maybe argued that pluralising culture and emphasising its complexity and porosity might be a necessary condition for remedying the pitfalls identified above, but it is by no means a sufficient one. For culture is neither a 'thing' to be possessed nor a heritage. Far from being states of 'being', cultures are expressions of 'doing': flexible, changeable, often incoherent, and contested processes of 'culturation', that is, of figuration of signs and their ensuing meanings. Through such interactive and polymorphous processes we make sense of ourselves and of the world around us. Culture is, thus, a lived experience which can only be pursued in collaboration and competition with others.[27]

Perhaps, culture might be better understood as a practice, process and a project (3P-Plex). The term 'practice' connotes the participatory and collaborative character of this pursuit and highlights the important role that agency plays in interpreting and reinterpreting, combining and rejecting, changing and reappraising signs and meanings. On this conception, inherited cultural products and practices have neither an inherent pre-eminence nor immunity from critique and challenge. The term 'process', on the other hand, captures the on-going, flowing, flexible and situational production and exchange of

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[27] The etymological root of culture lies in the Latin verb *colere*, which means both inhabit and cultivate.

meanings. In contrast with the reified view of culture espoused by liberal nationalist perspectives, cultures would be seen as collective 'travelogues'. Finally, the term 'project' signals the open-ended, future-oriented and incomplete character of the quest for meaning and understanding. For cultures entail visions of the future. Such visions may be the product of the interweaving of 'present pasts', that is, interpretations of the past through the eyes of the present, and of 'present futures', that is, the production of meaning in order to invent a future.

The concealment of the processual, polyvalent, incoherent and contestable character of culture results in the incorrect impression that what needs recognition and respect is culture per se, rather than individuals' involvement in processes of culturation, that is, in those crucial processes and practices of meaning creation, contestation and renegotiation. In so doing, it overlooks the 'travelling' character of culture, that is, the flow, circulation and exchange of signs and meanings. Accordingly, a shift of emphasis away from protecting culture to protecting people's capacity for culture-making would lead to the deflation of culture in politics and academic discourse and would call into question the assumption that individuals have moral or political obligations of loyalty towards the culture in which they have grown up.[28] The proposed shift of emphasis would also highlight the 'performativity' of culture, namely the use of culture as an order-creating narrative and an instrument for domination, colonialism and assimilation as well as a counter-hegemonic mechanism and a means of strategic essentialism.[29] By so doing, it would bring to the forefront an array of questions, such as who benefits from a particular depiction of culture, how coherent and representative this might be and the extent to which it may be veiling special interests.[30] In sum, the contextual and anti-essentialist understanding of culture furnished above, renders culture weightless, but not irrelevant, for political association, thereby opening up space for a critical reflection on beliefs, practices and symbols that are presumptive of trust and legitimacy, and for a transformative politics.

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[28] Parekh (2000, pp. 160–2), for example, has remarked that culturally rooted individuals have obligations of loyalty towards the culture in which they have grown up and towards the community that is associated with this culture, such as duties of gratitude for the contributions that culture has made to their lives, duties to defend the cultural community when it is attacked unjustly from outside, duties to preserve and pass on to future generations what is of universal value in this culture and, finally, a duty to criticise its internal injustices and repression.

[29] Compare here Benhabib's (2002) argument in the chapter, entitled 'On the use and abuse of culture'.

[30] I refer here to the process of assigning value to certain elements of a given culture and using them as identity markers, that is, as symbols that encapsulate the distinctiveness and authenticity of a group in a given historico-political conjuncture. By so doing, elites are 'fixing' the value of certain elements of the ensemble (Barth 1969). This process of value-assigning may or may not be congruent with culture-making and there may exist a divergence between how these elements are valued by the people and a government's or elite's declared value.

3

Shades of togetherness, patriotism and naturalisation

In the preceding chapters I argued that a conception of culture as practice, process and project can open up space for a contemplative mode of thinking and a reflexive understanding of who we are and how we relate to others. There seems to be a marginal consensus in the literature that the 'container view of culture', along with the nationalist narrative about the rootedness of human beings in the homeland, forecloses possibilities for a re-organisation of political life in ways that facilitate the inclusion of and the venturing forth towards the other. The consensus is only marginal, because although several scholars criticise 'thick' understandings of the nation and wish to disassociate themselves from chauvinistic, exclusivist and xenophobic nationalism, they are, nevertheless, unwilling to depart from the nationalist trajectory. Even those who dispute the normative relevance of national culture and national identity for political belonging (see below) are reluctant to make the case for a genuinely postnational understanding of political community and citizenship. Instead, scholars seek to develop thicker, thick, thin, thinner versions of civic nationalism by attributing variable importance and differing weight to matters of ethnicity, culture, political loyalty and to liberal democratic values. By so doing, they tend to assume that ethnic and civic understandings of national identity are situated on a continuum, where it is possible to oscillate between the 'ethnic' and 'civic' poles and to stop at intermediate positions.

Despite its appeal, however, the 'swinging pendulum' metaphor does have limitations. First, it conceals the fusion between ethnic, cultural and civic elements in the crafting of national identities in modern states. Secondly, it overlooks the fact that civic formations can easily be quasi ethnic under certain circumstances. Thirdly, and more importantly, it discourages scholars from going beyond the (civic) national frame of reference and from contemplating alternative institutional designs.

This is by no means surprising. It is difficult to break away from traditional assumptions about political membership and community and to forgo the cosy feelings of belonging together in a political community which is 'ours'. Indeed, any attempt to break away from nationalist narrative is often criticised on the grounds that it would guarantee no stability, undermine the sense of a

common identity and be accompanied by low levels of trust.[1] For this reason, scholars who view patriotism and loyalty to institutions embodying principles that transcend cultural particularity as the perfect substitute for nationalism find it difficult to convince critics. On this account, nationalism is recuperated in terms of a thin civic nationalism and national obligations become intelligible in terms of political obligations. But is this as far as we can go?

In what follows, I examine the 'new' discourse on patriotism in its various shades, and argue that it is inconsistent and unpersuasive. Neither the rehabilitation of civic nationalism under 'republican patriotism' (Mason 1999), nor 'constitutional patriotism' (Habermas 1989; 1996; 1998), nor 'rooted patriotism' (Viroli 1995) succeed in rendering the nationality model of citizenship more compatible with contemporary developments and with cultural pluralism.[2] I then examine the fruitfulness of the strategy of transforming national citizenship by redefining the nation and 'thinning out' national citizenship. In this respect, I discuss three alternatives to the traditional notion of national citizenship suggested by the literature: Soysal's notion of postnational membership, Baubock's transnational citizenship and Parekh's multicultural citizenship. The difference between these three models of citizenship and the shades of patriotism I mentioned earlier is that, whereas the latter push aside particularist ethnocultural understandings of citizenship, thereby giving prominence to a political sense of belonging, the former seek to redefine and transform national citizenship. In other words, the new discourse on patriotism de-emphasises or downgrades culture in the compound of national citizenship, while the three forms of citizenship seek to reconstruct the nation and to reconfigure national citizenship. Notwithstanding their important insights, however, the latter models overlook the possibility that the reconfiguration of national citizenship may have built-in limits. I use the institution of naturalisation in order to make my point. The choice of naturalisation owes much to the facts that this institution appears to be self-evident in both theory and practice and none of the three abovementioned schemas of citizenship has called it into question. Instead of arguing for the liberalisation of naturalisation

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[1] As the then Home Secretary, D. Blunkett, stated in the Foreword to the White Paper 'Secure Borders, Safe Haven': 'having a clear, workable and robust nationality and asylum system is the prerequisite to building the security and trust that is needed'. To this end the government added 'sufficient knowledge of English' and 'sufficient knowledge about life in the UK' to the existing requirements of naturalisation through marriage. To the existing requirements for general naturalisation, the 2002 Act has added the condition of 'sufficient knowledge about life in the UK' and regulations designed to determine whether applicants do meet the linguistic requirement, such as the production of language certificates and attendance of language classes. In addition, the 2002 Act provided for the taking of a modernised citizenship oath and a new citizenship pledge at citizenship ceremonies.

[2] Viroli's rooted patriotism, that is, love of patria which is understood as a community of shared political territory, historically situated institutions and values grown out of historical processes, is different from Habermas's constitutional patriotism, that is, an identification with the political culture embodying universalist political principles and Mason's republican patriotism which emphasises central institutions and practices.

requirements and the ensuing pluralisation of citizenship, I offer some tentative suggestions as to how it might be possible to go beyond the nationality model of citizenship by developing an alternative to naturalisation. Possible objections to my argument are considered in the final section of this chapter.

Shades of togetherness: thick, thin and thinner patriotisms

Patriotism has a highly variegated nature. Two variants of it are prominent in the literature; namely, the 'old' discourse of 'patriotism as nationalism' and the 'new' discourse of 'patriotism as anti-nationalism'. Whereas old patriotism shows the affinity of patriotism with nationalism, new patriotism seeks to disentangle patriotism from nationalism and to articulate a credible alternative to it. This is done by stressing the importance of political loyalty to a democratic polity and citizens' commitment to the common principles underpinning liberal democratic cultures. In brief, whereas old patriotism 'politicises the ethnic', new patriotism seeks to 'de-ethnicise the political'. I will not examine the merits and demerits of old patriotism here. Others have done this successfully. Instead, I will focus on the second variant of patriotism.

This variant too comes in three shades; namely, what I call rooted patriotism, constitutional patriotism and republican patriotism. The former finds expression in Viroli's 'love of patria'. Republican patriotism entails allegiance to a community of shared political territory, historically situated institutions and values grown out of historical processes. Constitutional patriotism is associated with Habermas's influential account, which praises individuals' identifications with a political culture embodying universal political principles. Finally, Mason's republican patriotism has been defined as love of central political institutions and practices.[3] My main argument in this section is that all three shades of new patriotism put weight on historical institutions and particularistic cultures and thus represent shades of civic nationalism.

Despite the connotations of transcendence entailed by the prefix 'post' in notions such as postconventional identity and postnational citizenship, Habermas's constitutional patriotism does not represent an attack on the nation-state. Nor does it imply the transcendence of the national frame of reference. In its original formulation, constitutional patriotism grounded Germany's collective identity in universal normative principles and procedures that realise the 'unlimited communication community',[4] thereby eschewing ethnocentric commonalities.[5] In his later work, Habermas (1989; 1993; 1996)

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[3] Mason (1999) differentiates his position from Viroli and Habermas's accounts.

[4] I will not discuss Habermas's emphasis on rational argumentation. On this, and on the criticism that Habermas denies the validity of other forms of communication, see Young (1997; 2000); Oquendo (2002). It is true that Habermas presumes that participants in the dialogue are autonomous and self-transparent individuals with fixed identities. For a critique, see McAfee (2000).

[5] See Markell (2000); Maier (1988); Torpey (1988).

'thickened' somewhat this conception, since constitutional patriotism was defined as attachment to 'the political order and the principles of the Basic Law', that is, to universal principles as they have been mediated by the institutions and the culture of a particular, ethical community. This shift of meaning is significant for two main reasons. First, it signals that Habermas's emphasis on a 'postconventional' or 'postnational' identity[6] implies a political identity centred upon and grown out of a historically specific political culture. Secondly, it reveals that Habermas's intention is not to supersede, but to 'tame' or 'civilise' the national frame of reference.

Habermas's point of departure is a normative and empirical analysis of the achievements and the limitations of the nation-state and nationalism. According to Habermas (1998), an important achievement of the nation-state has been its capacity to tackle quite successfully the problems of legitimation and integration that arose from the demise of the old feudal order. Nationhood created bonds of mutual solidarity among former strangers and motivated the extension of democratic citizenship. But the coupling of the state and the nation has given rise to many contradictions and dangerous ambivalences:

> the tension between the universalism of an egalitarian legal community and the particularism of a community united by historical destiny is built into the very concept of the national state. This tension remains harmless as long as a cosmopolitan understanding of the nation of citizens is accorded priority over an ethnocentric interpretation of the nation.
>
> (Habermas 1998, p. 115)

Hence, 'republicanism must learn to stand on its own feet' (Habermas 1998, p. 117). This can be achieved by proclaiming loyalty to the liberal democratic principles of the constitution and to a shared political culture, which must be uncoupled from prepolitical identities.

Constitutional patriotism can tame the growth of nationalist passions, by subjugating and 'civilising' inherited particularistic loyalties. As such, it represents a perfect candidate to take up the place originally occupied by nationalism (Habermas 1995). By giving primacy to political belonging, Habermas leaves nationality in the background. After all, according to Habermas, overcoming the nation-state does not imply its abolition, but its transformation in light of new developments. Such a transformation was necessary in the Federal Republic of Germany, given its troubled past and the resurgence of ethnic chauvinism in the wake of German reunification.

Notwithstanding its fruitful insights, Habermas's endeavour to disentangle political belonging from the pre-political community of history, language and culture is, at best, unconvincing and, at worst, self-defeating.[7] Habermas

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[6] On the post-conventional identity, see Habermas (1987). On the post-national identity, see Habermas (1992; 1995).

[7] Bader (1997) has remarked that political institutions and practices cannot be entirely separated from their wider cultural background.

concedes that political principles have to be interpreted on the basis of the ethical-political self-understanding of the citizens and the political culture of the country (Habermas 1987, p. 228). By situating these principles within the horizon of the history of the nation, that is, of a prepolitical community with its own cultural horizon of shared memories and historical experiences,[8] Habermas (1998, p. 144) recuperates nationalism under a civic mode.[9] The centre of gravity is shifted from the particularism of culture, history and tradition to liberal political values, but this shift does not cast doubt on either statal democracy or its national dimensions.[10]

Whereas critics on the left pinpoint Habermas's failure to articulate a genuinely postnational concept of citizenship and a conception of the public sphere that is not 'contaminated' by ethnicity,[11] more conservative critics criticise Habermas for being insufficiently attuned to the importance of culture in politics (Miller 1995; Canovan 1996; Laborde 2002). Arguably, although the existence of political ties uniting individuals and groups in a common venture may be a necessary condition for the existence of a political community, it is by no means sufficient. Indeed, it has been observed that without either an emotional bond and the affective identity provided by nationality or, alternatively, a thin national identity which 'motivates citizens to feel that particular institutions are somehow "theirs", in a meaningful sense' (Laborde 2002, p. 601) and makes them feel that they belong to a 'self-determining political community',[12] communities are vulnerable to fragmentation (Miller 2000; Baubock 1997; Canovan 2000).

Habermas would not hesitate to respond here that a liberal democratic culture based upon constitutional principles, which are decoupled from the 'majority culture', can furnish 'the ties that bind', if and only if it guarantees the enjoyment of social and cultural rights. It is very important that citizens are 'able to experience the fair value of their rights in the form of social security and the reciprocal recognition of different cultural forms of life' (Habermas 1998, p. 409; 2001). Irrespective of the weight given to this claim, however, this line of reasoning essentially calls for the development of a more 'rooted' patriotism.

Viroli's 'love of patria', that is, love of country, is a good example. Patriotic loyalty to the republic entails the sacrifice of self-interest for the liberty of the

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[8] See Yack (1996).

[9] Markell (2000) has made a similar point, even though he does not reach the same conclusion: 'the universal principles toward which constitutional patriotism is supposed to direct our affect are not self-sufficient, but both depend on and are threatened by a supplement of particularity that enables them to become objects of passionate identification'.

[10] See Kostakopoulou (2001). According to Markell (2000), this is essentially a strategy of 'redirection of political attachment and affect toward safe and proper objects'.

[11] I chose this term because Habermas (1989b) himself views constitutional patriotism as the 'critical filter' that screens out the irrational, and undesirable aspects of nationalism whilst allowing its benign elements, such as national pride and collective self-esteem to pass.

[12] The term is borrowed from Habermas (1996b, p. 496).

country and a willingness to commit oneself to unknown others (Viroli 1995, p. 40). Patriotic loyalty is thus rich in motivational resources for a deep commitment to the polity and for citizenship practice. More importantly, it appears to be compatible with universalist commitments and cultural diversity. Viroli traces the legacy of 'true' or 'right sort of' patriotism in the Italian city-republics in the fourteenth century, and sketches the decline, revival and flourishing of republican patriotism in the late sixteenth, seventeenth and eighteenth centuries respectively. Although in the late eighteenth and nineteenth centuries patriotism became 'nationalised' and the ideal of cultural unity and ethnic identity displaced civic and political liberty, the experience of Italian anti-Fascist resistance revived true patriotic discourse. Drawing on this discourse, and by eschewing the distinction between an open-minded universalism and narrow-minded ethnocentrism,[13] Viroli argues that 'the patriotism of liberty' (civic patriotism) can address the challenges of cultural pluralism and globalisation. Viroli thus reclaims the language of patriotism for the democratic left.

Notwithstanding Viroli's noble aspiration to find the perfect 'antidote' to nationalism; namely, a form of 'patriotism without nationalism',[14] that can command popular loyalty and induce war-time self-sacrifice without replicating the exclusive character of particularistic commitments, his patriotism of liberty fails to convince for several reasons. First, Viroli conceals the militaristic character of classical patriotism and the exclusionary character of patriotic loyalty and pride.[15] Secondly, Viroli overlooks that political values can be as effective markers of group identity and as exclusionary as ethnic allegiances. In such cases, patriotic pride can easily undercut multicultural respect (Cohen 1996, p. 14). Thirdly, whereas liberating patriotism from the grip of nationalism and rendering it compatible with respect for individual rights and for cultural diversity is a welcome initiative, the latter could be viewed as a rhetorical and political strategy designed to rehabilitate nationalism.[16] This is because it is very difficult to disentangle civic from ethnic understandings of nationhood, since cultural, ethnic and political elements have been blended together in various ways. One may recall here that Renan's daily plebiscite relies on 'the rich legacy of memories', which presuppose the existence of a prepolitical cultural community (Tamir 1993; Maccormick 1996). In practice, too, all states have made formal belonging to the polity dependent of some

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[13] Viroli (1995, pp. 19–20) sought to 'confront nationalism on its own terms'.

[14] Compare here Kristeva (1993). Kristeva draws on Montesquieu and defines the nation as a heterogeneous and dynamic public within which l'etranger will feel at home. For a critical reflection on Kristeva's work, see McAfee (2000, pp. 102ff).

[15] Owing to the particularistic demands of patriotism, MacIntyre (1984, p. 17) has observed that 'good soldiers may not be good liberals'.

[16] Compare here Gomberg's (1990) reply to Nathanson's (1989) attempt to formulate a third alternative between chauvinistic patriotism and unpatriotic universalism.

form of political cum cultural conformity, and have blended the ius soli and ius sanguinis principles in citizenship and naturalisation laws (Weil 2001).

It is noteworthy that Viroli's account does not depart from the ideal of the 'rootedness' of individuals in their homeland, which underpins nationalistic narratives of all shades and forms. Viroli's patriots are autochthones (natives): they belong to the community they have 'inherited'. In this respect, attachment to the polity is not a mere function of their interest, for their roots run deeper than self-interest. Linking love of country with personal identification with the country's institutions that reflect political principles and conjure particular histories and memories entails the risk that all those who cannot or do not identify with the historical processes that gave birth to political institutions may be excluded. This makes 'love of patria' indistinguishable from civic nationhood. This leads me to conclude that Viroli's 'patriotism as civic nationalism'[17] does not only subvert the primacy of the political that Viroli himself sets out to establish, but it also represents a thicker shade of togetherness than Habermas's constitutional patriotism.[18]

In opposition to rooted and constitutional patriotisms, Mason (2000; 1999; 1997) advocates a conception of 'republican' patriotism. 'Republican' patriotism is centred upon a sense of 'belonging to the polity'.[19] A person has a sense of 'belonging to the polity if and only if she identifies with most of its major institutions and feels at home in them'. 'Identification with most of its major institutions' entails the citizens' perception of them as valuable, conducive to their flourishing and reflective of their concerns (Mason 2000, p. 272). 'Feeling at home in them' refers to the ability of the citizens to find their way around institutions and to experience participation in them as natural.

Although the latter two subjective requirements appear to be vague and abstract, Mason is convinced that they represent an alternative to ethnonationalist or cultural-nationalist notions of national identity, that is, to a conception of national identity founded on the alleged commonalities of shared myths, common history, shared cultural heritage and ethnic pedigree. According to Mason, 'belonging to the polity' is different from a 'sense of belonging together', that is, 'the citizens' belief that there must be some special reason why they should associate together, which might be provided by the belief that they share a history, religion, ethnicity, mother tongue, culture or conception of the good' (Mason 2000, p. 263). As Mason (2000, p. 273) has put it, 'a liberal polity can be

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[17] On other variants of patriotism, such as natural or land patriotism, created patriotism and convenated patriotism, see Schaar (1981).

[18] As Bader (1999) has noted, 'if one chooses the "thin" political version of patriotism, one may ask Viroli himself whether this can still be called "love of country". There may be patriotism without nationalism, but there is no patriotism without patria, which most of the time includes a lot of ethnonational values.'

[19] Mason (1997) states that 'the interpretation of citizenship required in order to underpin the special obligations to fellow citizens with which I have been concerned is, broadly speaking, a republican one'.

viable even if citizens lack a sense of belonging together, so long as they have a sense of belonging to it'.

In Mason's dualistic schema of belonging together/belonging to the polity, one easily discerns the replication of the distinction between ethnocultural and civic understandings of national identity. Indeed, Mason looks for the empirical substantiation of 'the sense of belonging to a polity' in the politics of national identification in US, Belgium and Switzerland. All three countries have been shaped by a 'future-oriented' approach to nation-building, which puts emphasis on a 'shared destiny', common institutions and shared political values. It is true to say that Mason does not deny the existence of a sense of belonging together in these countries. But he views this as being parasitic on a sense of belonging to a polity.[20] By distinguishing 'belonging to the polity' from ethnocentric understandings of national identity, Mason overlooks the fact that US nation-building is a prime exemplar of a civic nationalist narrative which, in the absence of an ethnocultural pedigree, did not hesitate to invent one. In the process of the founding of the American nation, the assumed homogeneity of the American people became entangled with exclusionary racialist concerns when the first naturalisation laws were debated in the 1790s (Schuck and Smith 1985, p. 51).

Arguably, there is no need to embark upon a historical analysis in order to show that civic nationalist narratives are easily susceptible to ethno-cultural interpretations. In all civic nations (including US, Belgium and Switzerland), 'belonging to a polity' has been developed and sustained by constructing a 'sense of belonging together'. In addition, both types of identity can lead to exclusion, as they draw on a generalised belief that 'others are not of the same community'. Given that 'distrust and fear of persons from different cultural backgrounds often finds expression in language emphasising a conflict of values' (Karst 1989, p. 29), both 'belonging to the polity' and 'belonging together' can legitimise exclusion by culture-baiting ethnic minorities as others threatening to corrode the character of the polity. Moreover, the distinction is quite artificial, since most polities are in reality characterised by both elements, irrespective of whether they are the product of a future-oriented and political approach to nation-building or of a past-oriented, ethnocultural approach centred on 'organic' senses of belonging. Furthermore, both senses of 'belonging to the polity' and 'belonging together' evolve and are subject to periodic 'thickening' or 'thinning'.[21]

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[20] Mason (1997) denies that there exists a shared American national identity: 'But in the American case, it is hard to see what shared principles, commitments, or norms could provide the content of a distinctive American national identity. American institutions, public practices, and ceremonies are distinctive, but does that really reflect distinctive principles or norms which govern how citizens are to conduct their lives together? The alternative is to say that Americans share an identity in the sense that they identify with these institutions, practices, and ceremonies, but this does not mean that they share a distinctive public culture in Miller's sense, nor indeed that they believe that they share one'.

[21] Compare Glazer (1997).

But why does Mason insist on a sharp differentiation between the two? This might be due to the classificatory scheme that Mason adopts; namely the differentiation among ethnic nationalism (based on descent), civic nationalism (based on a shared national culture), civic republicanism (based on a shared political territory, institutions and history) and the neo-Kantian appeal to shared political institutions (constitutional patriotism). By branding Miller's theoretical perspective (which is Mason's main target) as 'civic nationalism', Mason (1999; 2000) overlooks the possibility that both civic republicanism and neo-Kantian perspectives might represent variants of civic nationalism.

Another possible explanation might be that Mason's aim to articulate a normative approach to political belonging which does justice to contemporary pluralism is wedded with and modelled upon already existing (national) communities and their pre-arranged boundaries. This hypothesis is supported by the following three considerations. First, in examining how the legal and political culture of the state can cultivate a sense of belonging to the polity, Mason does not go beyond articulated axioms of consociational democracy, that is, effective representation of the groups within the polity's major decision-making institutions and the grant of autonomy or 'self-determination' 'as they want and can be feasibly given'(1999, pp. 282–4; 2000). Secondly, Mason overlooks the fact that his notion of 'belonging to the polity', defined as 'identification with the most of the polity's major institutions' and 'a feeling of being at home in them', is tension ridden. Since institutions embody culturally specific interpretations of values, principles and norms (Mason 1999, p. 291), it is likely that people entertaining interpretations which are different from those crystallised in major institutions will not 'feel at home in them'. Thirdly, Mason's implicit reliance on presuppositions tied up with national statism can be seen in his distinction between citizenship[22] and residency. As Mason has noted:

> the moral notion of citizenship I have outlined would explain why citizenship, as opposed to merely residing together in the same territory, has intrinsic value. Mere long-term residents do not possess the same political rights as citizens and do not have the same status. Although resident non-citizens may influence public affairs, they are not part of the collective which makes law and policy and do not have the same opportunities as citizens in relation to these matters. The state may have special obligations to its residents, and long-term residents may have special obligations toward each other, but if so, I suggest that these obligations will be justified by other means, for example, by the idea of the fulfilment of them is necessary for equal well being or for protecting the vulnerable. Special obligations of this sort are unlikely to be justified by the

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[22] Citizenship obligates citizens to participate fully in public life and to give priority to the needs of fellow citizens: Mason (1997, pp. 442–3).

value of residing together in the same territory, for at best, this has instrumental value.

(Mason 1997, p. 443)

This distinction sits uncomfortably with the ideal of political participation underpinning the republican notion of citizenship that Mason espouses. For if democracy is defined as equal participation in ruling and being ruled, then the exclusion of long-term residents from the decision-making process creates problems for democratic theory. Such exclusion can only be justified on the basis of prepolitical considerations and ultimately on 'senses of belonging together', which Mason himself renounces.

In light of the foregoing discussion, it may be concluded that the three variants of new patriotism examined above constitute neither alternative approaches to nationalism nor effective devices in taming nationalism. They seek to assert the primacy of the political over the cultural by pushing ethno-culturalism in the background, but they fail to dislodge citizenship from the confines of the national. As a consequence, cultural commonality resurfaces either by providing the medium for relating abstract universalist principles to a specific populus and the lens through which the former are interpreted (constitutional patriotism), or in the form of the history of the patria (rooted patriotism), or in the form of already formed and bounded *demoi* of collective self-determination (republican patriotism).

In all three accounts, citizenship is wedded to the nation, and cannot function without the thick, thin, or thinner, mutual sentiments of commonality and civic national belonging. Patriotism, in its various forms, continues to have the nation-state as a referent and presumes that citizenship will be national in character. As a consequence, the fruitful insights yielded by the notion of culture as process, practice and project are left unexplored (see Chapter 3). But if patriotism without nationalism cannot do the trick of reconfiguring national citizenship because it turns out to be as much an oxymoron (Xenos 1996) as the idea of 'nations without nationalism', is there an alternative? It seems to me that there exist two possibilities here. First, the option of transforming the nationality model of citizenship and reinventing the meaning of national identity. This could be achieved by pluralising the nation and imbuing it with openness and flexibility. Secondly, the more controversial option of superseding the framework of nationality and dislodging citizenship from the confines of the national. I explore both options in the remainder of this chapter and in Chapter 4, respectively.

New forms of citizenship?

Since patriotism in its various shades is premised on thicker, thick and thinner notions of civic nationalism, the strategy of redefining the nation and national citizenship may be a more promising alternative. The intellectual search for

new forms of citizenship, which would replace the old model of singular membership in the national community (Held 1995; Kostakopoulou 1996; Soysal 1994), has yielded three conceptions of citizenship; namely, postnational membership, transnational citizenship and multicultural citizenship.

Before examining these conceptions, it is important to note that doubts have been expressed about both the desirability of such a search and the feasibility of the suggested alternatives. Those who cling to the national-statist tradition of citizenship, for example, argue that citizenship's 'outer edges' are likely to remain coterminous with those of the national state (Kymlicka 1995, p. 12). As a consequence, alternative possibilities are seen as either weak or unstable, or utopian or dystopian. Such a perspective, however, overlooks the mutations of citizenship over time and its shifting boundaries (see Chapter 1). In this respect, neither citizenship's embeddedness in specific contexts nor its entanglement with territorial nation-states provide convincing reasons for freezing citizenship's mutation and evolution. Citizenship can be used in order to rethink the past, to transform the present and to open up new sociopolitical practices that can best realise the promise of equal participation in the polity. After all, citizenship is not merely about rights (what you get), participation and duties (what you owe) and a sense of belonging (what you feel), but is also about the way in which people express their opposition to crystallised conceptions about all the above.

Advocates of postnational forms of citizenship argue that the nationality model of citizenship has been superseded by a new type of membership based on deterritorialised notions of persons' rights. The codification and elaboration of human rights principles have led to the dilution of the 'natural dichotomy' between citizens and aliens, thereby leading to the decline of national citizenship (Soysal 1994; Jacobson 1996). This is evidenced by the fact that migrants residing in a state which is not 'their own' are now being incorporated into a wide range of rights and privileges which were originally reserved only for nationals, particularly those relating to socio-economic membership. Soysal (1997) elucidates the disruption of the affinity between national community and rights enjoyment, and the extension of civic participation beyond the bounds of national spaces. Hence, the parameters of citizenship and claims making have been altered, as attested by forms of 'post-national membership',[23] such as the membership of long-term resident migrants in Europe, the increasing acceptance of dual citizenship, the institutionalisation of European Union citizenship,[24] and regional/local citizenship, which is characterised by collective rights in the culturally autonomous regions of Europe (Soysal 1997, p. 512).

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[23] In her earlier work Soysal (1997) makes a distinction between postnational membership and national citizenship. In her essay on 'Changing Parameters of Citizenship', the instances of postnational membership are designated as forms of postnational citizenship.

[24] On the postnational promise of European Union citizenship see also, Kostakopoulou (1996; 1999); Tambini (2001).

Transnational citizenship highlights the fact that international migration and the ensuing interactions between receiving and sending countries result in the creation of mobile societies beyond the borders of territorial states without dissolving these borders (Baubock 1992; 1994; 1997). Whereas national citizenship has been underpinned by a sedentary ideal, transnational citizenship captures the reality of human mobility and settlement, multiple belonging and of the uprootedness created by processes of transnationalisation. The formation of deterritorialised communities beyond state borders not only creates overlapping loyalties and negotiated attachments to different polities, but also affects the host society and its institutions. Citizenship is particularly exposed to these developments and to pressures for reform, given its reliance on national closure, both in the sense of limited access from outside and internal cultural homogenisation. But closure and the 'exclusion of immigrants from basic citizen rights jeopardise basic democratic achievements' (Baubock 1992, p. 59). Conversely, if the structure of citizenship became dynamically adjusted and migrants were included in the polity, then external boundaries would become more relaxed.

Multicultural citizenship, on the other hand, entails the aspiration that socio-political institutions and structures become more attentive to, and reflective of, the claims made by minority constituencies for inclusion and cultural recognition. Parekh (1996, p. 256; 2000) correctly notes that:

> no society is static, and its very survival requires that it should constantly redefine its identity and modify its values – including those that are central to it. Arguably, a plural (liberal) national identity could nurture a sense of common belonging, premised on a shared political culture, which even though it cannot be culturally neutral it should have the power to evoke deep historical memories while including minorities within it.
>
> (Parekh, 1996, p. 255)

Far from being a homogenous menu of settled options and choices and monolithic wholes, cultures are complex, contradictory and subject to ongoing negotiation and revision (see also Chapter 2). Indeed, the very existence of various cultures and various ways of life signal not only the diversity of humanity, but also the value of diversity. Diversity facilitates critical reflections on one's own culture and provides an opportunity to gain a deeper appreciation of its merits and its limitations. For this reason, Parekh (1996, p. 255) urges liberals to go beyond the ideal of toleration and to find ways of conversing with other cultures. Intercultural communication or dialogic multiculturalism institutionalises an open-minded dialogue that involves minorities in decisions that affect them and a politics of compromise among cultural communities that provide equally defensible forms of life. By so doing, it turns cultural collisions into opportunities for an open dialogue between majority and minority communities, by imposing on both parties (i.e., majority and minority communities) the obligation to justify the disapproval of minority

practices or to defend the latter on the basis of both the operative public values and the minority's cherished values and ways of life.[25] Intercultural dialogue may thus lead either to the justification of those practices that may be seen as objectionable from the majority's point of view or to the condemnation of those cultural practices that contravene the public operative values of a polity.[26]

Although all three conceptions of citizenship are insightful and important, they are, nevertheless, underpinned by a model of citizenship that is wedded to the nation-state. Postnational citizenship correctly notes that the legal discourse on human rights has permeated national legal orders, thereby leading to an intensification of legal pluralism and to the emergence of deterritorialised rights. However, the state remains the body that is rightfully and legitimately charged with upholding human rights. More importantly, since human rights are the outgrowth of commitments made by states, the latter are keen to hold on to their prerogative of defining the scope and the content of the rights granted to resident aliens. It should also be pointed out that while international law has helped the plight of migrants, it has never called into question the nationality principle as a criterion for distributing community membership nor indeed the state's sovereign power in this area.[27] In sum, it is debatable whether postnational forms of citizenship have either fundamentally called into question national citizenship or made it less national.

Similarly, transnational citizenship neither repudiates national conceptions of citizenship nor has it denied the relevance of borders and nation-states. Baubock pays attention to non-state networks and communities formed beyond the state and recognises the existence of multiple belonging and overlapping loyalties. But this does not necessarily imply that citizenship ceases to be a national enterprise. Baubock takes the nationality model of citizenship as a premise and articulates a more liberal and reformed version of it. Transnational citizenship is thus seen to enrich the liberal democratic model of national citizenship by being more inclusive, by accommodating dual citizenship and genuine denizenship, by respecting the right to family unity and by affirming humanitarian obligations to refugees. However, it does not go beyond national citizenship.

On the other hand, multicultural citizenship is sensitive to the differentiated character of plural 'megalopoleis' that are characterised by the incessant traffic

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[25] Parekh applies this to several 'controversial' practices, such as female circumcision, polygamy, Muslim and Jewish methods for slaughtering animals, arranged marriages, marriages within prohibited degrees of relationship and so on.

[26] The latter represent the values that the 'society considers to be essential to its survival and self-conception that it imposes them on all its members by embodying them in its constitutional structure and its system of law' and are embodied in the civic relations between its members: Parekh (1995; 1996).

[27] Bosniak (2000) has observed that 'the fact that aliens enjoy civic and cultural rights does not mean that their formal or nominal legal status vis-a-vis the political community in which they reside has changed'.

of people back and forth. It aims at pluralising the nation and making ethnic migrant communities an integral part of a changing nation (Parekh 2000, p. 14). But it does not interrupt liberal nationalism. Parekh's dialogical multiculturalism is modelled upon and presupposes an already existing liberal culture, its institutional infrastructure and its national underpinnings.[28] This is exemplified by Parekh's discussion of operative public values and of the obligations that migrants have towards the host society. Parekh argues that operative public values can trump rival ideas and values. Indeed, if intercultural dialogue leads to an impasse, or if an urgent decision is needed, then the values of the wider society should prevail because: (i) they are woven into its institutions and practices, form part of the lived social reality, and cannot be changed without causing considerable moral and social disorientation; (ii) while a society has an obligation to accommodate the immigrants' way of life, it has no obligation to do so at the cost of its own, especially when it is both able to make out a reasonably good case for its values and remains unconvinced by the minority's defence of the disputed practice; (iii) 'immigrants are new to the wider society's way of life, they need to appreciate that its nature and inner workings are likely to elude them and that in doubtful matters they should therefore defer to its judgement'(1995, p. 442). Because migrants need the wider society's goodwill and support to overcome the resentment and hostility their presence tends to provoke, they are more likely to secure these, if, after making their point, they gracefully accept its decision.[29] According to Parekh, migrants have obligations to the host society, such as the duty to respect the way of life to which they have been admitted, to familiarise themselves with its language, values, culture and mode of public discourse, to be modest in their demands, and to appreciate that, as newcomers, they are likely to be resented or found threatening and should therefore do all they can to win over the trust and goodwill of the wider community.[30]

In all three accounts, therefore, citizenship remains a national affair. Cultural diversity and the incorporation of newcomers and settlers of various origins is achieved by modernising national citizenship, that is to say, by introducing changes at the fringes, thereby leaving the core of national citizenship intact. Two important implications flow from this. First, because

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[28] Dossa (2002) has criticised Parekh for 'casually glossing the blatant political/cultural/economic inequalities in the majority-minority relations in liberal-capitalist nations in favour of the established elites'. See also Modood's (2001) reservations about Parekh's conception of national identity.

[29] Ibid.

[30] Ibid, p. 434. Compare here the then Home Secretary's statement 'it is possible to square the circle. It is a "two-way street" requiring commitment and action from the host community, asylum seekers and long-term migrants alike. We have fundamental moral obligations, which we will always honour. We must uphold basic human rights, tackling racism and prejudice which people still face too often. At the same time, those coming into our country have duties that they need to understand and which facilitate their acceptance and integration': Home Office (2002a).

citizenship remains national in scope, it is exposed to cyclical and periodic variables that could easily prejudice the long-term viability of reforms. History shows that periods of incremental expansion of migrants' rights tend to be followed by a more cautious system of management and regulation, which may equally involve a reversal of policy, a contraction of rights, and a revival of nationalist and restrictionist rhetoric. It is thus likely that any project of pluralisation and reinvention of national identity, along the lines suggested by the three models, will be short-lived. Secondly, all three accounts foreclose real institutional change and the transition from the nationality model of citizenship to new institutional designs. If theory does not make a convincing case for a genuine and sustainable reform of the model of national citizenship, could possible institutional innovations in citizenship itself, for instance as regards naturalisation, lead to more optimistic conclusions about the possibility of the transition to an anational model of citizenship that is better suited to the exigencies of a complex and globalised era?

Why naturalisation? Orthodoxy and heterodoxy

Naturalisation may be defined as a process whereby a person is transformed from an alien guest into a citizen invested with the rights and privileges pertaining to indigenous subjects. Naturalisation, therefore, constitutes a 'rite of passage' (Hammar 1990): through naturalisation 'disloyal' and 'untrustworthy' strangers, who may be subject to foreign allegiances, become formal members of the community within which they intend to stay on a permanent basis. Indeed, if a function of citizenship is to determine 'those whom we regard as our own – those to whom we owe a special obligation because they are fully-fledged members of our society' (Legomsky 1994, p. 291), naturalisation filters out those settlers who can become full-fledged members.

It is true that the formation of the national state has not only necessitated the development of naturalisation policy, but has also placed a value on naturalisation itself. This owes much to naturalisation's transformative capacities. Indeed, since the sixteenth century, the verb 'naturalise' had acquired the meaning of making someone or something natural and familiar, changing someone or something in form, condition or qualities. Naturalisation thus encapsulates a sense of becoming. It is akin to secondary socialisation. When religion was the main organising principle of political life, naturalisation signalled admission into a religious body by conversion from another religion.[31]

If one views nationalism as a civic religion (Anderson 1991; Greenfeld 1996), then the affinity between admission to a community of faith and admission to the national community is clear. Admission to communities of faith is reserved for the initiated and the converted, that is, for those who have familiarised

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[31] In Donne, we find the statement: 'persons . . . not naturalised by conversion from another religion to us'.

themselves with the holy books and the sacred traditions. Ceremonies and rituals symbolically confirm a neophyte's inclusion. Similarly, border-crossers and settlers must pass a membership test.[32] They must share the identity of the community and commit themselves to taking part in the fulfilment of its earthly providential purpose, whatever this might be. In the past, residents were expected to assimilate to the dominant culture and to adopt the host society's norms of behaviour; they had to think and act like a national. Naturalisation was thus regarded as a reward for assimilation. Even though the expectation of assimilation to national identity and culture has not faded away, most states now require, at least officially, that applicants are committed to the nation's public values, observe national laws and are willing to join the social system as a whole by working diligently to learn about the history and political institutions.[33] Such expectations often carry personal costs for naturalisation applicants, who may have to renounce ties with the home country in order to gain citizenship in the host state.[34]

Naturalisation is thus a nationalising practice. Through the naturalisation 'filter', the national community allegedly ensures its cultural survival, that is, the preservation of its character, its rules of belonging and the strong communal ties. At the same time, naturalisation recreates, re-enacts and sustains the national character of the community. Naturalisation laws are seen to sustain a strong sense of national identity and to revitalise the values of loyalty and of individual sacrifice for the common good. By so doing, they enhance the symbolic significance of citizenship. This explains why possible relaxation of naturalisation requirements is criticised for leading to the devaluation of citizenship.[35] As Legomsky (1994, p. 292) has observed:

> both the nature and the value of the citizenship bond might depend also on the way in which citizenship is acquired. One who acquires citizenship through naturalisation might value the resulting status as a hard-earned reward for the time and effort invested in studying the English language, American history and civics.

Naturalisation thus has more to do with 'identification' and the old logic of 'assimilation', than with citizenisation;[36] that is, the transformation of settlers into full participants in democratic governance. It is true to say that some states

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[32] Many have commented on the functional equivalence of religion and nationalism; see, for example, Anderson (1991) and Greenfeld (1996).

[33] This is what Justice Rehnquist stated dissenting in *Sugarman v. Dougall*, 413 U.S. 634 at 661 and 658.

[34] This does not imply that their original ethnic identification will fade away. In reality, ethnic identities become stronger in reaction to the context of reception and treatment. On the process of reactive formation of ethnic identities, see Glazer (1954).

[35] Schuck (1989) argues that American citizenship has been devalued because it is relatively easy to acquire, the rights and disabilities associated with it differ little from those attached to the status of permanent residency, it is hard to lose once acquired and those eligible for naturalisation seem unenthusiastic about applying for it.

[36] The term is borrowed from Tully (2002). The discussion here draws on Kostakopoulou (2003b).

have been more jealous than others in setting out strict criteria for admission. Much depends on their political culture and on the style in which national communities are imagined (Anderson 1991). However, it is equally true that in all states political belonging has been conditioned on conformity (Turner 2001, pp. 199–200), and we must not forget that almost everywhere ideology, exclusionary beliefs and racism have played a central role in the construction of modern citizenries and the formation of national identities. Although many believe that the nexus between civic nations and majority culture can be effectively disrupted by appeals to the political principles underpinning liberal democratic states, the foregoing discussion has shown the difficulty in disentangling naturalisation from nationalising impulses even in territorial nations (see Chapters 1 and 2). This owes much to the fact that civic nationalism is underpinned by, and propagates, a conception of culture as an atomised thing with mutually limiting boundaries (see Chapter 2).[37] Cultures are therefore seen as endangered species that must be defended – and not as changeable, renegotiated and reconstructed creations shaped by external influences, internal reflections, struggles and collisions. Since cultural survival, and not the making of culture, is taken to be both a norm and an expectation, lawfully admitted newcomers of any nationality can only become 'true naturals', if and when they give their allegiance to the values animating communal life.

Because naturalisation is a symbol of nationhood and a medium for the integration of the political community, any attempt to squeeze the ethnic element out of it, by confining, for example, naturalisation requirements to a simple residency qualification is bound to generate reactions.[38] Ethnonationalists would oppose such a reform on the grounds that it undermines the cultural identity of the community and the shared conception of national purpose underpinning it.[39] On the other hand, civic nationalists would argue that a de-ethnicised system of naturalisation would be insufficient in ensuring the integration of the community, since it is bound to render its identity diffused. In other words, a 'de-ethnicised' naturalisation law is very likely to be perceived to be an oxymoron.

This does not mean that we should not aspire to 'naturalisation without nationalism' as far as possible (Kymlicka 1995; 2001). Baubock (1994), for instance, has put forward an argument for making optional naturalisation an entitlement, thereby reducing the discretionary power of the authorities of the

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[37] Compare here the relational, adaptable and dynamic conception of culture postulated by post-structuralists and cosmopolitans alike. See also Cowan *et al.* (2001); Bader (2001); Baumann (2001).

[38] Habermas's constitutional patriotism would tolerate dual citizenship, and demand a residence requirement and allegiance to the constitution. The latter would be manifested in the absence of criminal convictions, basic knowledge of the constitution and society, and the ceremonial oath of allegiance.

[39] Compare Mill ([1843] 1974).

host state. In contrast to Baubock's optional naturalisation,[40] Rubio Marin (2000) has defended the policy of granting automatic and unconditional grant of national citizenship to resident migrants. Both accounts suggest that it is possible to 'thin out' naturalisation law and policy, thereby making it more open and inclusive.

Notwithstanding their refreshing insights, both accounts tend to assume the 'thinning out' of naturalisation; they do not demonstrate it. Given the weight of its past and the importance of naturalisation for national citizenship, it is plausible to argue that even a 'thinner' naturalisation will continue to be rooted in and be configured by ethnicity, thereby making any claim to inclusivity either spurious or temporary. Since naturalisation logically entails the idea of transforming the 'alien' into a natural subject, it is bound to bring into play a cultural core, however shadowy this might be, against which newcomers will be measured, perceived and assigned a status and a place within the national territory. It is doubtful whether naturalisation could be disentangled from the idea of a national 'we' in collective possession of the land and the polity (Canovan 2000) and the hierarchical relations and exclusions that this entails. Although Baubock and Rubio Marin's attempts to keep nationality relevant, but at the same time to make it as inclusive as possible, are praiseworthy, one wonders whether their proposed strategies may be only ephemerally corrective and imperfect solutions to the challenges of political inclusion and difference. After all, they do not challenge the foundations on which national citizenship is based and overlook the fact that the distinction between 'exclusive' nationality and 'more inclusive' nationality is often not a qualitative one, but one of degree.[41]

'Thin' naturalisation can easily thicken over time. Politicians interested in re-election might be tempted to introduce additional and stricter requirements, thereby capitalising on popular fears about 'cultural survival' and 'unassimilable aliens'. By so doing, they could generate a renewed interest in the constitution of ethnic identity and in the community's rich repertoire of historical memories. Such a re-ethnicisation of naturalisation has occurred in most states, owing to a variety of political imperatives. Smith (1997) has observed, for example, that each period of significant reform and liberalisation of citizenship law in the US has been followed by a period of reaction and inegalitarianism. The shift away from multiculturalism and the politics of difference towards integration and assimilation and a gradual 'thickening' of political belonging in Western Europe and elsewhere post-9/11 is another example. Thicker, communitarian notions of community have resurfaced

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[40] According to Baubock (1997): 'we may speak of optional naturalisation as an individual right of resident aliens if a reasonably short period of legal residence is a sufficient condition for applying, if the new citizenship can be acquired by individual declaration or if the authorities have little discretion in rejecting application.'

[41] I disagree with Barber (1996), who contends that 'the question is not what to do with patriotism and nationalism, but how to render them safe'.

as replacements of the idea of plural communities, as revealed by the revision of naturalisation law and policy in the UK, the Netherlands and elsewhere (see below).

Against this background, it seems to me that one has to consider seriously the less obvious possibility of pronouncing naturalisation an outdated institution, a troubled institutional reality and an anomaly in plural states. This is essentially an invitation to change completely the map of political belonging by decentering the national frame of reference from its privileged position in citizenship theory and practice.[42] To what extent can this be done? In the remainder of this chapter, I shall consider and defend the option of transcending the nationality model of citizenship by suggesting an alternative to naturalisation. I argue that the contradiction between the inherited institution of the naturalisation, on the one hand, and the needs of contemporary plural and globalised environments, on the other, could be resolved by replacing naturalisation with a system of automatic civic registration.

It is perhaps appropriate for such a model that is striving to avoid the monolithic logic of the nation-state and places the centre of gravity on democracy and the notion of engagement in a common venture – as opposed to nationality and a sense of shared life or a shared identity, or shared values, to make domicile and absence of serious criminal convictions the only requirements for admission to full membership. Resident migrants wishing to 'opt out' from automatic citizenship could repudiate it via a declaration.[43] No doubt this alternative approach would require the reflexive transformation of existing national conceptions of group membership and a post-conventional understanding of citizenship in contemporary plural and globalised states. But it would also make democratic theory 'go postnational'. In what follows, I flesh out the civic registration approach and defend it by examining existing requirements for naturalisation and their justificatory bases.

Justifying naturalisation requirements: the civic registration model

Let us suppose that naturalisation were pronounced an outmoded institution and an institutional anomaly in contemporary plural states. Suppose further that it were possible to move beyond the nationality model of citizenship by replacing naturalisation with a system of civic registration. Civic registration would place the centre of gravity on enhancing democracy by promoting civic

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[42] Compare here Miller's (1995) argument that: 'There is no realistic alternative to the long-standing project of nation-building, but it must now be carried out in circumstances where the national identities have to compete within a wider range of other potential objects of loyalty.'

[43] In the 1980s in France in the wake of restrictionist immigration measures, the argument that automatic citizenship would deprive second generation migrants of their consent was used in order to reform the law and to make the acquisition of citizenship by second generation migrants conditional upon a formal declaration of their wish to become French: Shor (1996, p. 280). The nationality reform materialised in 1993.

engagement and participation among co-venturers, irrespective of their nationality – as opposed to among co-nationals. By so doing, it would make the national frame of reference weigh less heavily on central political institutions, including citizenship. The crucial questions, however, are what kind of requirements would automatic civic registration entail in practice and how could these be normatively justified?

Naturalisation ordinarily includes a number of requirements, such as residency and so-called 'integration' requirements. The latter may entail allegiance to the Crown, participation in citizenship ceremonies, a good character test, self-sufficiency, the absence of a criminal record, demonstration of adequate knowledge about the host society, linguistic skills, attendance of language and citizenship classes, 'sufficient integration' and renunciation of the nationality of origin. All these naturalisation requirements can be understood and justified on the basis of three models; namely, the libertarian, republican and communitarian models. Although these models do not actually exist in a pure form in contemporary states, they nevertheless serve to illustrate where the centre of gravity of the various naturalisation laws lies and how this relates to existing nationality traditions and distinctive political cultures.[44] In addition, the typology is useful for the purposes of our discussion since it allows me to compare and contrast these models with the civic registration model.

The libertarian model is premised on the calculation of the relevant costs and benefits associated with the admission of applicants into full membership. Naturalisation constitutes a 'sieve', filtering the population and retaining the more qualified and skilled applicants. Accordingly, it posits relatively easy naturalisation conditions, such as residency and proof that the applicant possesses the necessary skills, knowledge and experience required for meeting the needs of the host society (see Table 3.1). The republican model, on the other hand, views polities as communities of values sustained by a notion of civic duties and by active engagement in the political life of the community. Applicants for citizenship need to embrace the civic republican ideal of commitment to the pursuit of public good, without necessarily abandoning their particular ethnic identifications and cultural commitments. In other words, aspiring citizens must be patriots, rather than 'ethnics'. Naturalisation applicants thus need to swear an oath of allegiance to the constitution, to fulfil residency requirements, to have certain ideological beliefs, to display a good command of the constitutional history and the language of the host state and most probably, albeit not necessarily, to renounce all foreign allegiances (see Table 3.1). Finally, the communitarian model emphasises the maintenance of

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[44] Scrutinising the normative justifiability, the philosophical coherence and the empirical accuracy of the assumptions underpinning naturalisation requirements is not an easy task. This is due to the fact that naturalisation laws are hybrid constructs, that is, they entwine legal rules concerning eligibility for naturalisation with social expectations often associated with countries' nationality traditions and official representations about the behaviour, traits and attitudes of migrants. But compare Carens (1998).

Table 3.1 A typology of naturalisation requirements

	Libertarian	Republican	Communitarian	Civic registration approach
Residency requirements	Low to Medium (3–7 years)	Low to Medium	Strict (8–14 years)	Low (2–3 years)
Allegiance to the Crown	Possibly	Yes	Yes	No
Citizenship ceremonies	No	Yes	Yes	No
Good character / good civic conduct / sufficient income	Possibly	Yes	Yes	No
Absence of criminal record	Yes	Yes	Yes	Yes (serious offences indicating propensity to reoffend)
Ideology	No	Yes	Yes	No
Knowledge of society	No	Yes	Yes	No
Language	Yes	Yes	Yes	No
Acceptance of dual citizenship	Possibly	Possibly	No	Yes
Language classes	Possibly	Yes	Yes	No
Citizenship classes	No	Yes	Yes	No

the community's distinctive identity, as it has been traditionally defined by the majority community. Accordingly, applicants may have to meet rather strict conditions and may have to 'assimilate' into the majority culture. Assimilation may be justified on several grounds. First, it may be argued that communities are essentially communities of trust and people are motivated to assist those whom they feel belong or can belong to the community. In addition to this motivational argument, one might prefer to draw on cultural arguments about the constitutive role of culture in generating loyalties and sustaining social relationships. Others might prefer to put forward an institutional argument in order to justify naturalisation. Finally, 'thick' naturalisation may also be justified on intuitive grounds: people intuitively think that the national community resembles a club with predefined membership, which, in turn, implies special obligations, including the obligation of sharing and cherishing the common culture. Irrespective of the various justifications on offer, however, the crux of the point is that the communitarian model entails strict residence requirements, an unconditional display of loyalty to the state which should override other loyalties, language skills, knowledge of the society and its history, good character provisions and citizenship ceremonies.

One observes that the only two requirements on which all models converge are residency and the absence of criminal record, even though considerable divergence may exist over both the length of residence required for formal political membership and the operationalisation of the 'absence of criminal

record' condition. Concerning the former requirement, the civic registration model would posit low residence requirements. This owes much to the fact that residence generates entitlements, owing to the participation of people in a web of social interactions and the sense of 'rootedness' associated with home ownership, business ownership, employment, participation in civil associations, family ties and schooling. *De facto* social membership and partial *de jure* membership in the social and civil spheres make resident non-nationals stakeholders in the running and the future of the community, thereby strengthening their claims for political inclusion. Such claims cannot be successfully resisted by appeals to democracy. Democracy requires inclusion (Dahl 1989) and equal participation of all those affected by governmental policies in processes of policy formulation and implementation. This translates into low residence requirements, ranging from two to three years.[45]

It may be objected here that one should not become a citizen by simply inhabiting a place (Miller 1998; Schnapper 1997). After all, communities are bound together by a shared set of norms, values and cultural practices that give meaning to individual life projects. Residents must share these commitments, if they wish to become citizens. From a communitarian perspective, too, only prolonged residence can provide sufficient guarantees that an individual shares the national identity of the polity. Such arguments reveal the extent to which democracy has been configured by nationality in so far as they are underpinned by the assumption that democracy needs 'nationals' more than it needs democrats, that is, participants in democratic self-government. According to Van Gustern (1988), the only condition for democratic function is that there is a willingness to live according to democratic rules and regulations. Nino (1996) has also stated that 'the polity should include as full citizens all those whose interests are at stake in conflict and may be affected by the solution adopted through the democratic process'. Accordingly, democracy suffers if there is a divergence between formal citizenship and informal membership which results in long periods of residence and citizenship without suffrage. Similarly, it is a deficit of democracy if majoritarianism becomes a vehicle for the domination of minority groups by a cultural majority and for hardening existing lines of privilege.

As regards the second requirement of absence of criminal record, one may observe that this exists in most, if not all, naturalisation laws. In many countries, absence of criminal record serves to show that the aspiring citizen

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[45] It is noteworthy here that the Act of 26 March 1790 provided for two years' residence in the US for the naturalisation of a free white person. Subsequent acts raised the length of residence to five and 14 years respectively; Acts of 29 January 1795 and 18 June 1798. In addition, Art. 39, para. 3, of the Bolivian Constitution of 23 November 1945 (as amended on 20 September 1947 and 26 November 1947) required two years' residence for the acquisition of Bolivian nationality: 'The required period of residence is reduced to one year with regard to a person who has a Bolivian spouse or children or immovable property, or operates a railway or transport undertaking, or is a school teacher, or is an immigrant under government contract.'

has a good moral character. In Australia and France, however, absence of criminal record and good character represent distinctive requirements. Arguably, the requirement of 'good character' is an abstract and vague concept, and, as such, it can be interpreted in many ways. Historically, the test of 'good character' succeeded religious tests in naturalisation laws. The British naturalisation laws of 1740 and 1761 contained religious tests and the 1740 law, in particular, prohibited the naturalisation of Catholics. The first US naturalisation law of 1790 replaced the religious test with a test of good character as a prerequisite for US citizenship.[46] In Portugal, naturalisation applicants must be 'morally and civilly fit', whereas in Sweden they must lead a respectable life manifested in the payment of taxes and maintenance.

Although the requirement of 'absence of criminal record' is less indeterminate than the 'good character' test, much depends on how strictly it is interpreted.[47] In Austria, for instance, naturalisation is declined if an applicant has had a prison sentence of three months. Whereas relatively minor offences and past convictions can by used to exclude people from citizenship under the republican and communitarian models, under the civic registration approach an applicant would be refused citizenship if (s)he represented a genuine and sufficiently serious threat to the requirements of public policy. Previous criminal convictions would constitute grounds for refusal only in so far as they indicated clearly a propensity to re-offend or represented punishment for abhorrent offences, including war crimes and participation in organisations carrying out violations of human rights. In other words, the crucial consideration would be whether an aspiring citizen constitutes an actual and serious threat to the interests of the community.

Settlers meeting the requirements of residency and of absence of serious criminal convictions would thus be entitled to citizenship under the civic registration model. Naturalisation could be either optional or mixed, that is, optional after two years of residence and automatic after five years of residence. Those wishing to opt out from automatic citizenship could always repudiate it via a declaration.[48] It is certainly the case that the civic registration approach would require the reflexive transformation of existing national conceptions of group membership and a postconventional understanding of citizenship in contemporary plural and globalised states. But it would also make democratic theory 'go postnational'. The subsequent discussion will substantiate this by considering possible objections to my argument.

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[46] Ueda (1980).

[47] See, for example, the Anti-Terrorism and Effective Death Penalty Act of 1996, 18 U.S.C. para. 1 *et seq.* and the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104–208, 110 Stat. 3009–546 (1984) adopted by the American Congress in 1996.

[48] In the 1980s in France in the wake of restictionist immigration measures, the argument that automatic citizenship would deprive second generation migrants of their consent was used in order to reform the law and to make the acquisition of citizenship by second generation migrants conditional upon a formal declaration of their wish to become French: Shor (1996). The nationality reform materialised in 1993.

Objections

As the foregoing discussion challenges the very ideational foundations of national citizenship, it is bound to generate strong objections. These may relate to either the civic registration approach or my general line of argumentation. Four criticisms may be raised, as follows.

> Objection 1: *The civic registration model takes the concerns of host communities too lightly. States cannot admit 'resident aliens' into full membership if the latter do not declare their allegiance to the constitution or the state and do not give formal and public expression to their willingness to obey the laws, to share the civic values of the polity and to further the common good. Naturalisation oaths and citizenship ceremonies reflect these concerns.*

It is worth noting here that the roots of naturalisation oaths lie in medieval Europe, in the bond of 'fealty' owed by the vassals to the feudal lord and by the lords to the king (see Chapter 1).[49] The obligation of fidelity and service owed to the lord was manifested in a public act, known as homage, and in the taking of an oath. In the ceremony of homage, the inferior pledged to follow and obey his superior lord, while the lord promised to cede property and jurisdictional liberty to the vassal. In the hierarchical feudal pyramid, everyone born in the king's 'ligeance' owed permanent and personal allegiance to the king (Salmond 1902). Alien subjects from friendly countries owed 'local' allegiance to the King so long as they remained within its 'ligeance'. According to sixteenth-century jurists, allegiance was grounded in the law of nature. As the court stated in *Calvin* (1608), 'as the literatures or strings do knit together the joints of all parts of the body, so doth ligeance join together the sovereign and all his subjects . . . ligeance and obedience of the subject to the sovereign is due by the law of nature; ergo it cannot be altered'.[50]

Although the formation of the modern state changed the hierarchical network of interconnections between greater and lesser lords and the personal, almost clientalistic, relationship of trust and loyalty between superiors and inferiors, it did not alter the obligations of dutiful respect, obedience and service pertaining to this bond. The people continued to be perceived as liege men/women (*homo ligeus*), vassals sworn to the service of their superior lord and loyal subjects who would not hesitate to accept governmental dictates on the basis of national identification and trust. Equally, foreigners wishing to be subjects of a state's jurisdiction had to declare their allegiance in the form of special appeals to the king and of allegiance to the Crown.

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[49] Smith (1997, p. 13) has noted the links between naturalisation law draws on feudal conceptions of subjecthood, which do not cohere with the liberal understanding of citizenship. Naturalisation is premised on the assumption that 'it is natural to be subject to the ruler under whom one is born and that it is so natural that one is subject to that ruler for life'.

[50] *Calvin's Case* (1608) 7 Co Rep la Jnk 306; 77 ER 377, 282. See also Kim (2000, p. 142).

Notwithstanding the medieval roots of naturalisation oaths and ceremonies, one has to reflect seriously on their functionality in contemporary plural and globalised environments. It is undoubtedly true that both permanent and transient residents unreservedly and voluntarily undertake the obligation to abide by the laws of the host country. To make an obligation that is freely undertaken by almost everyone a condition for admission to citizenship seems superfluous, unless, of course, public expression of one's respect for the law of the land serves other non-functional purposes and is thus invested with symbolic significance.

The recently introduced citizenship pledge and new citizenship oath that those who wish to become British citizens have to swear at citizenship ceremonies is a good example of this. Under the old s. 42 of the British Nationality Act 1981, an oath of allegiance had to be sworn by all those who sought British citizenship, unless they came from a country that already had an allegiance to the Queen.[51] Under Sch. 1, para. 2, the new citizenship oath will retain the wording of the existing oath of allegiance and a new citizenship pledge has been introduced: 'I will give my loyalty to the UK and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen.' Although the government has stated that the abovementioned reforms reflect commitment to citizenship, cohesion and community, it is doubtful whether a public declaration of personal attachment to the polity enhances greatly the commitment made by naturalised citizens. As the Refugee Council has observed:

> We believe that what makes people feel and act like citizens is the respect they are accorded by society. As stated earlier, how people are treated is far more important than anything they may be taught through citizenship classes. This obviously goes much further than swearing an oath of allegiance or attending a ceremony.[52]

True, such oaths made sense in the past, when applicants had to renounce all foreign allegiances. National loyalty implied indivisible allegiance: in Hobbesian terms, who could obey two masters, particularly since each master would require absolute subjection? In a world dominated by the ideal of monopatride citizens and the norm of unitary, overarching and unconditional authority of the state, dual citizenship was clearly an anomaly and a threat to state sovereignty. This norm was encapsulated by the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws and its preambular reference that 'it is in the interests of the international community to secure that all members should recognise that every person should have a

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[51] The wording of the oath is: 'I, [name], swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to the Law': British Nationality Act 1981, Sch. 5.

[52] Refugee Council's response to the White Paper, paras. 2.19–2.21; www.refugeecouncil.org.uk/ infocentre/asylumprops/cons_ response/contents.htm.

nationality and should have one nationality only' (cited in Koslowski 1998, p. 742). Similarly, the Council of Europe's 1963 Convention on the Reduction of Cases of Multiple Nationality enshrined the principle that acquisition of one nationality comes at the cost of losing the previous nationality. However, since the 1980s there has been increasing acceptance of the multiple identities that individuals may have and the multiple connections with more than one jurisdiction. This is attested by reforms of nationality laws incorporating provisions on dual citizenship in several European states and the 1997 European Convention on Nationality adopted by the Council of Europe. The latter legitimises dual citizenship without abrogating the 1963 Treaty. Conflicts of laws concerning public and private international law matters, such as taxation, family law issues, voting, inheritance and military service, can be tackled via multilateral agreements concluded by the states. As the international norm against dual nationality is called into question and state co-operation increases via processes of intergovernmental co-ordination and/or supranational harmonisation of legal regimes and policies, oaths of allegiance appear to be rather outmoded.

After all, there is no evidence to suggest that permanent residents are necessarily less committed and less public-spirited than 'new' citizens. Nor can it be argued that they lack the required long-term view.[53] In the UK, citizens who obtained citizenship via simple certificate of naturalisation issued by the Home Office cannot possibly be regarded less committed that those who have taken part in the new citizenship ceremonies that have been introduced by the Nationality, Immigration and Asylum Act 2002. In addition, people's identities remain divided, irrespective of their legal status,[54] and this is not necessarily regrettable. What follows from all this is that naturalisation oaths and citizenship ceremonies are an incident of nationality, and are thus invested with symbolic significance. They serve to accentuate the 'nationalness' of citizenship. Through them the 'nation' reaffirms its existence as a community of ideas, culture, meaningful ties, memories and hopes (Withol de Wenden 1998, pp. 85–6) and momentarily attains its (illusionary) unity and a glimpse of its transcendental nature. The performative act of the oath in a public ceremony, the 'declaration of true faith and allegiance' to the country, thus instantiates the national spirit of a community unified in a celebration of civic virtue and national pride. But if political belonging is to be uncoupled from nationalism, then we must rethink the appropriateness of oaths and ceremonies in our era.

[53] Bar-Yaacov (1961) informs us that during the debate relating to the 1952 Nationality Law in the Knesseth, Israel, it was suggested that applicants for naturalisation should formally express their intention to settle in Israel via a declaration. But the President of the Committee on the Nationality Law rejected this proposal, arguing that such an intention could be proved by certain facts, such as the establishment of a business, employment, arrangements made for lodging and so on: Divrei Haknessth, cited in Bar-Yaacov (1961, p. 250).

[54] Compare Carens (1998, pp. 141–8).

> Objection 2: *The civic registration model does not address the needs of aspiring citizens by omitting requirements, such as acquisition of knowledge about the host society, familiarity with its forms of life, and knowledge of its institutions and collective history. Education in history, civic culture and the organising principles of the host society are designed to facilitate the integration of applicants into the fabric of society and the employment market, and to promote citizenship capacity.*

What is the level of knowledge about the host society that is required for one's pursuit of an economic activity as an employed or self-employed person, for the payment of taxes at local and national levels, and for social interaction? In addition, do existing naturalisation tests accurately detect the possession of such a level of knowledge? These questions prompt us to disentangle the functional from the ideological dimensions of the requirements of 'knowledge of the host society' and 'education in its collective history'. As regards ideology, there is hardly any doubt that such requirements can be convincingly justified on liberal nationalist grounds. Miller (1995, p. 130) has argued that:

> the prospective citizen must be capable and willing to be a member of this particular historical community, its past and future, its forms of life and institutions within which its members think and act. In a community that values autonomy and judgement, this is obviously not a requirement of pure conformity. But it is a requirement of knowledge of the language and culture and of acknowledgement of those institutions that foster the reproduction of citizens who are capable of autonomous and responsible judgement.

Tamir (1993, p. 129) has also observed that 'a state that views itself as a community is justified in offering citizenship only to those committed to respect its common values, collective history and shared aspirations for a prosperous future'. However, such arguments reflect more the perceptions of national statist communities and nationalising impulses than the needs of aspiring citizens. If anything, they are premised on the belief that 'resident aliens' must learn and appreciate the traditions and values of the majority community, and must earn their membership by showing commitment and working hard in order to familiarise themselves with the constitutional history and the nation's traditions.

In reality, however, naturalisation 'demands nothing more than a rudimentary level of knowledge' (Carens 1998). In this respect, it cannot be argued that non-naturalised residents are less knowledgeable about the host society and thus less 'integrated' than naturalised citizens. But could it be argued that naturalised citizens are more likely to participate in politics and to make sound political judgements precisely because they have attended citizenship classes?

The British government believes that citizenship classes play a crucial role in 'integrating migrants to Britain' and enabling them to participate in society and politics. By inserting para. 1(1)(ca) to the British Nationality Act 1981, cl. 1(1) has added the requirement for an applicant for naturalisation to demonstrate 'sufficient knowledge about life in the UK'. Clause 1(2) enables the

Secretary of State to make regulations to determine whether a person has sufficient knowledge of life in the UK, and whether a person has sufficient knowledge of the English language. But does active citizenship and fostering a sense of belonging to the community depend on what applicants are taught?

Carens has expressed serious reservations about such a line of reasoning, on the grounds that:

> the knowledge required for wise political judgement is complex, multifaceted and often intuitive. It is not something that can be captured by a simple test. In addition, we know that formal tests of this kind always have built-in biases that inappropriately favour some class or cultural backgrounds over others, even if that is not intended.
>
> (Carens 1998, p. 142).

In addition, the argument that knowledge of the host society and its collective history fosters citizen participation and enhances sound political judgement rests on the subjective and flawed assumption that foreign nationals are, invariably, ignorant and incapable of exercising wise political judgement, even though their exposure to a different history, political system and civic culture at home equips them to make comparative political judgements and more mature reflections on the institutions and traditions of the host society. It also sidesteps the fact that, owing to globalisation, most newcomers already know something about the host country. Having said that, it is nevertheless true to say that naturalisation itself is generally considered to be an enlightening opportunity.[55] But this perception overlooks the fact that the market is a site of political education and that labour force participation imparts skills and experiences that are politically relevant for citizen activity. In addition, reading newspapers of the host and home countries and books, watching television, participating in discussions with co-ethnics and nationals, and, generally speaking, participating in reflexive social co-operation in daily life are more effective media for the acquisition of knowledge about the country and its political culture than naturalisation itself.

> Objection 3: *The absence of a provision concerning linguistic competence in the civic registration model is deeply problematic. From a republican point of view, it undermines political participation, since a common language is necessary for democratic deliberation, and hampers the integration of migrants into common public institutions. From a communitarian perspective, not requiring migrants to learn the official language before becoming citizens begs vital questions about the state and its national identity, and may lead to the fragmentation of the political community.*

It is true that competence in the language of the host society enhances participation in society and public life: people are more willing to engage in public discourse about political matters, to criticise the performance of those

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[55] Knapp (1996).

in office and to defend their interests by providing generalisable reasons.[56] Both the republican and communitarian models discussed above regard linguistic competence as necessary for enhancing civic participation and for the maintenance of national identity and culture, respectively. A purely functional justification of language requirements, on the other hand, would draw attention to the fact that ability to communicate in the language of the host country increases employment opportunities and thus augments the contributions that residents would make.

Notwithstanding the merits of the above arguments, however, it would be incorrect to conclude from them that lack of linguistic competence either significantly undermines political participation or renders it impossible. Empirical evidence drawn from historical migrations and settlements reveals that newcomers with no (or very basic) knowledge of the host language have contributed effectively in public life, in the workplace and society.[57] And, by speaking and writing in their home language, many have been active and concerned members of the community. It is interesting to note that until recently there existed no general requirement that people who wish to settle in the UK must be able to speak English.[58] Similarly, in Austria the Foreigners Act did not establish a legal obligation to learn German for those who wish to settle in Austria.

Although the civic republican ideal of face-to-face communication in the public space is appealing, it is important to recognise that modern polities contain multiple, cross-cutting and overlapping public spheres (Frazer 1997, pp. 126–9), and that migrant participation in any of these spheres (i.e., local politics, neighbourhood organisations, voluntary sector, workplace politics) would suffice (Abizadeh 2002, pp. 502–4). In addition, opportunities for democratic participation in society and economy should not be underestimated.[59] Nor can it be argued that discourse about matters of public policy conducted in another language ceases to be public. Linguistic competence may increase 'voice', that is, claims making, but it would be incorrect to argue that lack of fluency in the official language automatically creates an informational disadvantage, thereby deadening political participation. In this respect, republican concerns about the abstention of non-English speaking migrants from the democratic process owing to informational disadvantage appear to be unjustified if one considers the English speakers abstention rates. For, as argued above, the sources of political information are multiple, variable and, quite often, multilingual.

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[56] On the virtue of public reasonableness, see Macedo (1990).

[57] In the 1950s and 1960s guestworkers in Germany were not encouraged to learn German ; they were housed in barracks and hostels, were put to work on assembly lines and, generally speaking, were not considered as a part of German society.

[58] However, there was a language requirement for a person who wished to become a British citizen (Sch. 1, para. 1(1)(c) of the British Nationality Act 1981). Under the Nationality, Immigration and Asylum Act 2002, the language requirement also applies to those who apply for naturalisation as spouses of a British citizen or a British Overseas Territories citizen.

[59] Warren (2002).

This leads me to argue that if the hallmark of the good citizen is his/her public spiritedness coupled with the capacity for critical reflection on society and its problems, then these qualities surely cannot be reserved for those who have the ability to engage in fluent communications. Instead, they must apply to all those who care about the community, interact with one another, thereby creating a common life, and share a sense of responsibility for the present state and the future prospects of the community, because they recognise that their own future is inextricably linked with the welfare of the community, irrespective of the language that they speak.

I do not wish to deny the fact that fluency in the host language increases access to most sectors of the labour and business markets and facilitates social incorporation. Migrants themselves are acutely aware of this, and do not hesitate to take part in language courses offered by governmental and non-governmental agencies. This also explains, perhaps, why certain countries make tuition in the host language available to all residents, regardless of their legal status or their intentions with regard to citizenship. In Australia, for instance, free tuition in English was provided as part of the range of settlement services and migration programmes prior to the 1970s. Having said this, one must also bear in mind the importance of retaining a close link between language acquisition and the nature of an employment post in assessing existing justifications about the importance of the imposition of language tests. In an attempt to prevent discrimination based on nationality, EU law has stipulated that mobility of labour in the European internal market cannot be restricted via the imposition of language tests, unless such tests are required by the nature of the post.[60] This is because linguistic tests often serve as a means of direct discrimination and exclusion by denying Community nationals equal access to employment. Similarly, it would be incorrect to argue that linguistic competence has a decisive impact on the contribution one makes to society. For contributions are multifarious. For example, acquisition of the host language bears no relation to the creative output of a painter or a novelist writing in Urdu, even though it will probably affect the dissemination of his/her artistic work.

It is true that the communitarian model regards linguistic competence as both an obligation of citizenship and a sign of allegiance to the nation's (monolingual) identity. Prior to the 1980s, linguistic and cultural assimilation was perceived to be a legitimate state objective, since the ideal of national homogeneity required linguistic homogeneity (Kymlicka 2001, p. 1). In countries where monolingualism has been the hallmark of national identity, such as the US, 'the acquisition of non-accented English and the dropping of foreign

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[60] Article 3(1) of European Council Regulation 1612/68 on Free Movement of Workers (OJ Special Edn, 475 [1968] L 257/2). See also Case 379/87 *Groener v. Minister for Education* [1989] ECR 3967, [1990] 1 CMLR 401.

languages represent the litmus test of Americanisation'.[61] As Portes and Rumbaut have noted, 'immigrants were not only compelled to speak English, but to speak English only as the prerequisite of social acceptance and integration'.[62] Speaking the home language was thus seen as unpatriotic and, on occasions, a sign of intellectual inferiority. One should not forget that in the early twentieth century, scientists sought to demonstrate the 'alleged' link between lower intelligence and lack of fluency in English. Fortunately, beliefs have changed. Despite the official acceptance of multiculturalism in the US, Europe and elsewhere, however, multilingualism is still seen to threaten nationhood. Notably, in 1997 the US Commission on Immigration Reform stated that 'the nation is strengthened when those who live in it communicate effectively with each other in English, even as many persons retain or acquire the ability to communicate in other languages'.[63] Liberal nationalists, such as Miller and Tamir, agree with this argument. In their opinion, without a common language there cannot be a single unified public. But the ideal of a single unified public has been called into question, and the imposition of strict linguistic requirements for admission to citizenship can undermine social unity. People develop a sense of belonging to the same community if they are respected for who they are and for the contributions they make, and are recognised as partners having a stake in the polity. If they feel that they are being marginalised and shut out of society, then the imposition of linguistic tests as part of naturalisation will do very little in connecting people and enhancing social solidarity. What such requirements are likely to promote is reactive ethnicity.[64] In this respect, it seems to me that the historical context of language politics and the transformation of language into an important marker of national identity in liberal nationalist narratives should not be overlooked in the process of reflecting on the justifiability of language tests as a requirement of naturalisation.[65]

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[61] Portes and Rumbaut (1996, pp. 194, 196). Compare here President Roosevelt's condemnation of German-American biculturalism: 'we have room for but one language here and that is the English language; for we intend to see that the crucible turns our people out as Americans, and not as dwellers in a polyglot boarding-house; and we have room for but one loyalty, and that is loyalty to the American people', quoted in Brumberg (1986, p. 7).

[62] Ibid., p. 196.   [63] US Commission on Immigration Reform (1997, p. 7).

[64] People respond to the discrimination and hostility of the host society by drawing a protective boundary around the group and perceiving themselves as belonging elsewhere. On reactive ethnicity, see Portes (1999).

[65] Critics may observe, here, that migrant communities support the imposition of language tests as a requirement of naturalisation. In the UK, both the Joint Council for the Welfare of Immigrants and the Refugee Council expressed concerns about the then Home Secretary David Blunkett's relevant proposals which culminated in the 2002 Act. Notwithstanding this fact, even if surveys concluded that there is overwhelming support for language tests among the members of migrants communities in the UK, this would not cast doubt on my arguments about the ideological significance and functionality of language tests, which are normative and reflective in character.

In concluding this section, it may be observed that the arguments examined above reveal the host communities' deep anxieties about cultural difference and the fragility of 'integration'. Owing to the grip of nationalist narratives, most societies have harboured a fear of migrants and widespread beliefs that societies will somehow disintegrate if newcomers and settlers do not speak the host language at home and in the public life and do not know the history and the nation's traditions. Such fears are appeased when aspiring members are seen to 'make the choice' to conform to the majority community's (partial) notion of national identity. But this conceals that what makes people feel and act like citizens is the respect they are accorded by the host community – and not their fluency in the language of the community.[66]

> Objection 4: *Any grand redesign of naturalisation laws, along the lines suggested above, is both pointless and counterproductive, given that in liberal democratic states we notice 'a trend toward de-ethnicisation'.*
>
> (Joppke 2001, p. 437)

It seems to me that the argument concerning a trend toward de-ethnicisation in liberal states[67] underestimates the fundamental role that naturalisation plays for nationhood and collective identity politics. As noted above, naturalisation policy cannot be easily disentangled from nationalising practices, and its possible liberalisation cannot prevent its susceptibility to 'thickening' in particular historical and political conjunctures. Indeed, given the strong link between naturalisation and nationalisation, it is plausible that liberalisation of naturalisation policy in time t may be subject to reversal in time t + 1. The reconfiguration of British national discourse about citizenship and nationality prompted by the Labour government's White Paper, 'Secure Border, Safe Haven' (8 February 2002) and the Nationality, Immigration and Asylum Bill

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[66] It may be observed, here, that my argument overlooks the fact that language tests nurture social trust and solidarity. Given the decline in interpersonal trust that has been documented by empirical social science, strengthening, rather than weakening, the national model of citizenship by introducing stricter language tests and more citizenship classes might be advisable. In response, it may be said that, while some analysts argue that low levels of trust are a direct result of ethnic diversity, survey evidence suggests that the decline in community spirit is due to a number of factors, including longer working hours and the time spent watching TV or visiting internet sites. It has also been suggested that it is not diversity itself, but the issue of 'new migration' that often preoccupies people and that their degree of anxiety is closely linked to economic deprivation. Ambiguous or hostile media messages also fuel anxieties about migration and its impact on identity, employment and welfare services (Runnymede Trust, 2005). In this respect, peoples' perceptions about the impact of ethnic diversity on interpersonal trust vary in accordance with how well or poorly managed new migration is and media coverage. In addition, research by Grimsley *et al.* (2003) has shown that trust depends on how well people are informed, how much control they experience over their lives and the extent to which they feel able to exert influence over community affairs. This is echoed by the Council of Europe's (2002) report on Diversity and Cohesion which notes that 'it is not the denial but, rather, the recognition of differences which keeps communities together'. See also Zetter *et al.* (2006).

[67] Joppke (2001) grounds this on the liberalisation in requirements for naturalisation and the provision of the right to citizenship to second and third generation migrants. See also Hansen and Weil (2001).

(12 April 2002), which culminated in the Nationality, Immigration and Asylum Act 2002 is a good case in point. Initially proposed in the aftermath of 9/11 and against the background of the riots in Bradford, Oldham and Burnley in the summer of 2001, which official policy circles saw as signifiers of the absence of communal cohesion and trust among the various communities (Home Office, Cantle Report 2001), the White Paper, entitled 'Secure Borders, Safe Haven' (Home Office 2002a), put forward the idea of 'integration with diversity'. 'Re-building a sense of common citizenship' was seen to be a remedy to the 'depth of polarisation' among the various communities (Home Office 2001). Developing 'a sense of shared civic identity or common values' which could unite the diverse communities in Britain (Home Office 2002a, p. 10) and 'preparing people for citizenship' were thus pronounced to be antidotes to the 'problem of integration' in multi-ethnic areas. Accordingly, the Nationality, Immigration and Asylum Act 2002 'thickened' naturalisation policy by including 'integration' requirements, such as the requirement for an applicant for citizenship to demonstrate sufficient knowledge about life in the UK, and by extending the existing language requirement to the spouse of a British citizen or a British overseas citizen. It also modernised the current oath of allegiance and introduced a citizenship pledge, which is modelled on the Canadian oath, and citizenship ceremonies. Such reforms were, allegedly, needed in order to end the current 'mail order' approach to the acquisition of British nationality, to give symbolic significance to the acquisition of citizenship and to enhance the integration of migrants.

As the White Paper (Home Office 2002a, p. 28) stated, 'strong, cohesive and confident communities are the building blocks of a healthy society'. The requirements of knowledge of language and society:

> would strengthen the ability of new citizens to participate in society and to engage actively in our democracy. This will help people to understand both their rights and their obligations as citizens of the UK, and strengthen the bonds of mutual understanding between people of diverse cultural backgrounds.
>
> (Home Office 2002a, p. 11)

According to the Home Secretary:

> it is possible to square the circle. It is a 'two-way street' requiring commitment and action from the host community, asylum seekers and long-term migrants alike. We have fundamental moral obligations, which we will always honour. We must uphold basic human rights, tackling the racism and prejudice which people still face too often. At the same time, those coming into our country have duties that they need to understand and which facilitate their acceptance and integration.
>
> (Home Office 2002a, Foreword)

One discerns, here, that 'integration' issues are seen from the perspective of the majority community: creating 'bonds of mutual understanding' depends on the conformity of newcomers to the terms of integration articulated by the

majority community. In this vision of Britain as a diverse, yet cohesive, nation, what matters is the nation's capacity to absorb or incorporate migrants by regulating their conduct and instilling patriotic values, thereby enhancing the security and identity of the nation. Accordingly, emphasis is put on a 'top-down', authoritative construction of belonging. Little attention has thus been paid to the everyday processes in which people negotiate and construct their sense of belonging and the extent to which everyday experiences of non-belonging and discrimination shape one's attitudes to citizenship (Ong 1996).[68] Experiences of racism, discrimination and xenophobia often generate feelings of 'partial belonging' or of 'non-belonging', since people are likely to develop a sense of attachment to the community only if they feel that it includes them.

As argued in Chapter 1, the reversal of the policy consensus on multicultur-alism and the return of national communitarianism is not confined to the UK. The language of assimilation; the re-introduction of policies designed to enhance 'social cohesion'; the reinvigoration of national identity; the drawing up of official lists of national values; language prohibitions in public transport, schools universities and hospitals; compulsory language courses and tests for migrants; naturalisation ceremonies and oaths of loyalty feature prominently in the US, Germany, France and the Netherlands. Because 'too much diversity' is perceived to result in either segregation or fragmentation, allowing the flourishing of diversity within an overarching national culture is pronounced to be the pre-ferred mode of migrant incorporation. But the vision of 'integration with diversity' is not only based on a contestable image of multiculturalism, but also overlooks the fact that belonging to a community is best nurtured by institutional inclusion and full participation in society and politics, rather than by declarations, language proficiency tests or citizenship quizzes.

The post-9/11 trend towards 'thicker' notions of civic membership and belonging, coupled with the foregoing discussion on new patriotism and models of citizenship, show that the reconfiguration of national citizenship has built-in limits. Hence, any attempt to modernise citizenship by excising the monolithic contours of the traditional national-statist logic might have to consider the unthinkable, that is, the transcendence of the national frame of reference. The civic registration approach discussed in this chapter represents a step towards this direction. But this implementation of such a model neces-sitates a more fundamental rethinking, and reconfiguration, of citizenship. This is the subject matter of the discussion in Chapters 4 and 5 below.

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[68] True, the Crick Report (2003), which dealt with the implementation of the policies set out by the Nationality, Immigration and Asylum Act 2002, attempted to dilute the nationalist character of the 2002 Act by putting more emphasis on 'valuing diversity'. But despite its more conciliatory tone, the report did not depart from the integrationist mode of minority incorporation. According to the drafters of the report, integration occupies the middle ground between assimilation and multiculturalism, conceived of as depicting a society of separate enclaves, whether voluntary or involuntary (section 2.10).

4

The institutional design of anational citizenship

The discussion on the civic registration model for admission to citizenship in Chapter 3 demonstrated the need to go beyond the nationality model of citizenship. In this chapter I suggest ways to improve citizenship by putting forward an anational institutional design. Evidently, designing an institutional framework for anational citizenship requires a great deal of groundwork. It not only requires a reflexive assessment of nationalism and a critical examination of the limitations of the model of national citizenship (see Chapters 1 and 2), but also an examination of how persuasively and coherently these limitations have been addressed by scholarly efforts to reconfigure patriotism and to redefine national belonging (see Chapter 3). In view of these requirements, the preceding discussion has investigated the coherence of liberal nationalist justifications of nationality and reflected on the strategies of de-accentuating the ethnic/cultural component of national citizenship (see Chapter 2) and redefining national belonging (see Chapter 3). I have argued that, although these strategies are praiseworthy efforts to solve the problems inherent in national citizenship, they nevertheless leave many issues unresolved and, moreover, alternative institutional designs need to be explored. Otherwise put, citizenship continues to be a national affair and the institutional framework of postnational citizenship remains unexplored.[1]

Such a framework is necessary because citizenship as national membership has exclusionary effects which undermine the normative ideals of democratic participation and equality (Dahl 1989; Young 1990; Baubock 1994; Kostakopoulou 1996, 1998, 2001; Shaw 2007; Rubio-Marin 2000; Honing 2001; Benhabib 2004). True, liberal nationalism and contractarian moral theory do not regard this as problematic, because they have been premised on the assumption that national societies are self-sufficient and self-enclosed schemes of social co-operation the membership of which is by and large confined to co-nationals. Accordingly, the exclusion of non-national

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[1] This deficit has been pinpointed by Karst (2000, pp. 599–600) who has argued that: 'if the proponents of postnational citizenship are to persuade US citizens to go along with their project, they will have to offer an institutional framework that serves the substantive values of citizenship ... In short, what the proponents of postnational citizenship need to offer is law.'

residents from the rights and benefits of citizenship is seen as a necessary consequence of a community's process of self-definition. But this assumption is flawed. For it is based on an odd circularity, whereby aliens are by definition outside the community by virtue of a prior self-definition of the community which separates 'us' and 'them' and privileges 'us' over 'them'. In addition, it screens out the various lines of connections and ties of interdependence between 'us' and 'them'. If I am correct on this, then political exclusion and the transformation of democracy into an ethnarchy might not be necessary, albeit unfortunate, consequences of a community's right to democratic self-determination, but, instead, they may be contingent consequences of a contestable model of democracy which is rooted in the modern national-statist world and is, therefore, in need of correction in this millennium.

The discussion in this chapter is structured as follows. First, I argue that citizenship has been an oligarchic good and that this has given rise to a number of important externalities. Citizenship might be best conceived of as a network good with low excludability. Although we tend to believe that being together and doing things together[2] presuppose either a prior cultural cum political homogeneity or the favourable reception of the national culture, domicile and equal participation in the social, economic and political spheres of the community may provide a better foundation for citizenship than the priority thesis underpinning liberal nationalism and contractarian moral theory.[3] Finally, I consider some objections to my argument.

I should mention here that the underlying premise of the subsequent discussion is not that everything we know about citizenship is wrong and that national citizenship is useless in its present context. Rather, my starting point is that if we are seriously concerned about the deficits of the nationality model of citizenship and wish to develop an inclusionary agenda that lives up to democratic and egalitarians ideals, and to create a democratic community that is reflective of and responsive to ethnic and cultural diversity, then we must consider seriously the possibility of going beyond the framework of nationality.[4]

Citizenship as an oligarchic good

In the previous chapters, we saw that citizenship has been an oligarchic good: membership of the territorial state has traditionally been confined to certain classes of people, namely to nationals and naturalised persons. While in theory electoral participation is governed by the universal principle of political

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[2] The term is borrowed from Becker (1986, pp. 11–24).

[3] The paper focuses on internal inclusion and exclusion. Issues concerning the external manifestation of the bond between individuals and the state are considered in the subsequent chapter.

[4] My position differs from Benhabib's (2002; 2004, pp. 171–221) approach to incorporate citizenship claims into a universal human rights regime and from her argument about cosmopolitan federalism.

equality, the historical trajectory of citizenship shows that, in reality, only particularist constituencies have been taken to constitute 'the demos'. True, bars to citizenship owing to class, race and gender differentials have been progressively removed, at least formally, as a result of the struggles of discriminated against groups. But while the progressive expansion of the personal scope of citizenship has undoubtedly made citizenship less oligarchic,[5] it has not democratised citizenship fully (Neuman 1996; Kostakopoulou 2001; Aleinikoff 2002; Benhabib 2002, 2004). Citizenship remains conditioned on nationality and the term 'citizen' is normally equated with 'national' and 'naturalised' persons. More importantly, as gatekeepers, states retain the sovereign prerogative to decide who may be naturalised in accordance with distinctive nationality traditions and official discourses about the behaviour, traits and attitudes of migrants (see Chapter 3).[6]

Citizenship thus remains a positional good that is reserved for a national oligarchy. For those who view nation-states as self-contained political units, encompassing distinctive and homogenous cultures, this is both natural and desirable. As we saw in Chapter 1, diversity was seen to undermine democratic governance (Mill 1861). But for others, the conditioning of citizenship by nationality reveals the 'tragedy of citizenship',[7] since the promise of equal democratic participation that citizenship entails is not matched by rules that give all the inhabitants, who are subject to laws, directives and political decisions, a stake in the process of making them (Kostakopoulou 1996; 1998; 1999; 2000; 2001; Rubio-Marin 2000; Honing 2001; Bosniak 2000; Benhabib 2004). It is the disjunction between citizenship as formal national membership and the normative ideals of democratic participation and inclusion that has led Dahl (1989, p. 70) to argue that democracy requires inclusion: 'the demos must include all adult members of the association except transients and persons proved to be mentally defective'. Although democracy requires political inclusion and residence tends to give rise to entitlements in contemporary states, exclusion on the ground of national origin remains a defining characteristic of modern citizenship.

Liberal democratic theory has not addressed the issue of exclusion because it has been based on national communitarianism (Requejo 1998). Liberalism has traditionally taken for granted the existence of bounded national societies that are relatively unified and homogeneous. Homogeneity can take the form of either prepolitical commonalities, such as ethnonational traditions and beliefs (culturalism) or a civic community constituted by shared beliefs and mutual commitments (civic nationalism). It is thus assumed that democracy can only flourish within the national context and that democratic politics is politics in the vernacular (Kymlicka 1999). Indeed, the paradigmatic literature on

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[5] Karst (1989, p. 3) has commented on 'citizenship's expanding circle of belonging'.
[6] Carens (1998) has put forward a convincing argument for the separation of the above elements.
[7] The term is inspired by Hardin (1968).

democracy is ground in the belief that: 'self-government, whether direct or through representatives, begins by defining the scope of the community of the governed and thus of the governors as well; aliens are by definition outside the community'.[8] The existence of a given demos united by the commonalities of history, language and culture has been considered to be a sine qua non of democracy. Without the existence of a demos, defined as either a community of fate or a liberal contractual community of shared values, there can be no democracy.

Heterogeneity in interests, opinions and preferences within a polity does not only rest upon an assumed prior cultural cum political homogeneity, but the latter is also elevated into a condition of possibility for a flourishing democracy (Kostakopoulou 2003). This is the paradox of the inherited understanding of democracy: the political system must be sufficiently complex, differentiated and disharmonious to require the pursuit and political management of conflicting interests, opinions, disputes and so on (Crick 1998), yet sufficiently homogeneous and harmonious for democracy to take root and survive. Homogeneity can take various forms and consensus can be of varying degrees, ranging from a common understanding of the public good to shared political values or to a mere agreement on some procedural organising principles of society which form the common platform on which the conflicts of beliefs are fought out. In the latter sense, what is required is an overlapping consensus on 'constitutional essentials', that is, on the fundamentals of the institutional culture (Rawls 1993). Where such agreement is lacking, the prospects of the governability of the system apparently diminish. In the consociational model of democracy, too, the internal cohesion and homogeneity of segments and general acceptance of the principle of government by elite cartels are vital to the functional stability of societies that are divided by deep and reinforcing cleavages across ideological, ethnic and religious divides (Lijphart 1977).

Although the above ideas echo the basic prerequisites of democracy (Lipset 1994), in reality they are historical articulations attached to our inherited understanding of democracy. Accordingly, they reflect the institutional arrangements and historically situated practices that have sustained national democracy.[9] By examining the close link between ideals and historical context and institutional practices,[10] we discern that the assumption that the national

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8   *Cabell v. Chavez-Salido*, 454 U.S. 432, 439–440 (1982).
9   The same applies to the belief that welfare states are predicated on some form of closure, since the system can only distribute benefits to its members if it insulates itself from external pressures (Walzer 1983). Because welfare systems have developed within nation-states and the principle of nationality was naturally grafted onto them we tend to believe that there is a natural link between membership and nationality. This belief, however, misdirects attention from the fact that it is possible to have a welfare system which distributes resources and welfare benefits to its members irrespective of their nationality. Welfare benefits and nationality status are not perfectly correlated, and the fact that resident migrant workers have been drawn into the net of national welfare systems proves this.
10   Butler (1997) has highlighted the need to pay attention to historical articulations of universality.

context is the necessary setting for democracy to work (the necessity theorem) has filtered out the possibility that the national context may actually be a hindrance to democratic ideals (the disability theorem) by precluding groups residing within, and subject to the jurisdiction of, a country, from expressing their views and pursuing their interests in the political arena.

Polities are not clubs, that is, voluntary associations which people choose to join in order to enjoy the benefits of membership.[11] Rather, people find themselves enmeshed in citizenship bonds and institutional structures, and remain life-long citizens. For the vast majority of them, exit is a mere theoretical possibility. But even those who decide to opt for exit almost never cast off and acquire citizenships in the same way they might do with gym or golf membership. After all, one has a fairly good idea about what (s)he is entitled to as a member of a golf club, but can never know in advance what to expect or whether (s)he will be better off in a host state, even if (s)he manages to gain admission. Nor is the presence of an exclusion mechanism, whereby the members' utility rates can be monitored and non-members can be barred, the main incentive for members to join a polity and to pay their dues and other fees.[12] Residents pay taxes and share the collective burden, irrespective of their citizenship status, and make contributions to the commonwealth even though they know their payoffs are invariably less than those citizens derive and can be limited for a variety of reasons at any time. A polity that prides itself on its democratic underpinnings, therefore, cannot exclude segments of its population from influencing or taking part in decision-making that affects them,[13] thereby treating them as a subject class (Walzer 1983; Carens 1987; 1989; Kostakopoulou 1996; 2001; Rubio-Marin 2000). Disenfranchisement and exclusion from the political process seriously disadvantages an identifiable segment of the commonwealth by 'withholding the political power that would enable persons and groups to protect themselves in the legislative forum' (Rosberg 1971, p. 1107).

Unfortunately, the question 'who makes up the people?' has not been subject to a normative test.[14] It is simply assumed that non-citizen residents 'lack an interest in, and the power to effectually work for the welfare of the state'.[15] But this assumption legitimises pre-existing exclusions on the grounds of national, ethnic or racial origin; it does justify such exclusions. Non-national residents are de facto members of the polity by virtue of their work, multifarious contributions and their participation in a web of social interactions. Their commitment to the host country has been proven by their voluntary

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[11] On this, see Buchanan (1965) and Cornes and Sandler (1986).

[12] These are the distinguishing features of a club according to Cornes and Sandler (1986, p. 160).

[13] The 'all affected principle' has escaped the 'domain of the governed' and has been applied to the global order. Held (2004) has argued for an equal opportunity of all those affected to influence a decision and Goodin (2007) for the enfranchisement of all possibly affected interests.

[14] Compare Schumpeter (1942). For a critique, see Baubock (1994).

[15] Compare *Terrace v. Thompson*, 263 U.S. 197 (1923).

settlement and engagement in practices of socio-economic co-operation and, unavoidably, the future of the polity is inextricably linked with their own future and the future of their families. Accordingly, their interests as taxpayers, consumers, employees, parents, homeowners and so on are no different from the interests of national citizens. To assume otherwise is to create the presumption that non-national residents are 'outsiders'. But this presumption stems from the intuitive belief that the national community resembles a club having a predefined membership, which, in turn, implies special obligations for members, including the obligation of sharing and cherishing the common culture, and that resident migrants possess qualities or characteristics which make them unsuitable for membership. Viewed from this perspective, proposals to accentuate the national character of citizenship or 'to make citizenship more valuable', by denying birthright citizenship to the children of undocumented migrant parents who are born in the country[16] or by introducing more restrictive provisions concerning naturalisation (see Chapters 1 and 3), seek to maintain the oligarchic character of citizenship and leave its specific ethnic centre (Back *et al.* 2002) intact.

Citizenship theory and practice can no longer overlook the externalities that accompany the 'affinity' between demos and nation or ethnos.[17] Three types of externalities deserve special mention, here; normative, felt and expressed externalities. As regards the former, the failure to consult all the inhabitants in a polity irrespective of their nationality damages democracy (Walzer 1983; Dahl 1989) and undermines the liberal principle of equal concern and respect. Fair minded co-nationals view their own critical interests as 'inevitably thwarted when their community fails in its responsibilities of justice' (Dworkin 1989, p. 504). If a society places value on equity considerations and on the liberal principle of fairness, which normally entails equal opportunities for all, then limiting the domain of equality emits powerful signals not only about how much society cares for different groups, but also about how much it values equality itself.

Political exclusion also results in 'felt externalities'. The treatment of resident non-nationals as second class subjects downgrades their multifarious contributions, results in powerlessness and identity misrecognition and causes unnecessary suffering. By so doing, it impedes personal development and social advancement and perpetuates stereotypical views and subordination. When this happens, human and social capital formation is hindered and, inevitably, society itself loses out. In addition, since institutionalised discrimination and experiences of non-belonging shape people's attitudes to

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[16] Schuck and Smith (1985) stated that the 14th Amendment permitted Congress to legislate on this matter.

[17] According to economic theory (Pigou 1920), externalities denote the effects of an economic agent's actions on another agent's welfare. According to Stigler (1975, p. 104), 'an external effect of an economic decision is an effect, whether beneficial or harmful, upon a person who was not a party to the decision'.

citizenship, it is unlikely that excluded groups will develop a sense of deep attachment to the polity, if they feel that it is indifferent and unresponsive, notwithstanding their efforts and contributions. Moreover, political exclusion can give rise to expressed externalities; people are bound to demand a stake in society and may eventually turn into action in order to gain visibility and empowerment. The ensuing instability[18] can undermine both the credibility of the democratic process and the legitimacy of a specific policy output.

Critics may object, here, that the abovementioned externalities do not pose any serious problem for liberal democratic states in so far as they are temporary. If access to citizenship via naturalisation remains open and flexible, then political exclusion could be tolerated during the 'probationary period' of citizenship. Conversely, if alienage were to become a permanent or semi-permanent status, then liberal democratic principles would be violated. As stated in Chapter 3 above, Baubock (1994, pp. 73–114) has advocated the 'egalitarian' strategy of making the transition to the higher status of citizenship an entitlement, thereby reducing the discretionary power of the authorities of the host state. According to Baubock, such a right to naturalisation would be available upon request. In contrast to Baubock's optional naturalisation strategy, Rubio-Marin (2000) has defended the policy of granting automatic and unconditional national citizenship to resident migrants after a period of ten years. Whereas both arguments are insightful, the proposed strategy of reconciling nationalism with democratic norms by making nationality more inclusive raises a number of questions about desirability and feasibility. First, it fails to explain why it would be permissible to suspend the application of normative principles for a three-, five- or ten-year period, during which non-national residents are required to share fully the burdens of membership (i.e., taxation and national insurance contributions). Secondly, it overlooks the fact that naturalisation is not a neutral process: it involves various conditions and requirements, some of which can be both quite restrictive and costly. The recent reform of citizenship laws and the adoption of 'integration' requirements and tests in Europe and elsewhere following 9/11 attest to this. More importantly, 'thin' naturalisation is premised on a superficial de-ethnicisation. This is not only due to the fact that complex migration rules ensure the entry of 'favoured' nationals, having the right qualifications, age and socio-economic background, but also because the goal of becoming a natural citizen manifestly involves the sharing of specific cultural attributes, such as language and knowledge of the society, its history and constitution. Thirdly, even if naturalisation laws were reformed and the discretionary power of state authorities was reduced, which seems highly unlikely in the present era, owing to the weight of its past and its symbolic significance, 'thin' naturalisation will continue to be rooted in and be configured by ethnicity, thereby making any claim to inclusivity either spurious or temporary. As the discussion in Chapter 3 has shown,

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[18] See Layton-Henry (1991).

it is impossible to divorce naturalisation from nationalisation and the gate to full membership can be shut at a moment's notice. In this respect, a political risk associated with 'thin' naturalisation is that it may thicken over time. Politicians interested in re-election might be tempted to introduce stricter requirements thereby capitalising on popular fears about 'inassimilable aliens'. By so doing, they could generate interest in the re-ethnicisation of naturalisation and the 'survival' of national identity. As Smith (1997) has observed, each period of significant reform and liberalisation of citizenship law in the US has been followed by a period of reaction and inegalitarianism.

Secondly, it may be objected that the abovementioned externalities do not necessarily call for the transcendence of the nationality model of citizenship. After all, the costs of 'institutional change' may exceed the benefits of any progressive citizenship reform. But given the failure of national citizenship to honour the promises of equal membership and participation in the democratic process and the fact that, in practice, these externalities cannot somehow be ironed out by the participants themselves, the troubling question remains: what if nationalism and citizenship are uneasy bedfellows and their uneasy co-existence is neither an aberration nor a temporary inconvenience which will improve with time, but is, instead, a built-in feature of national citizenship? In chapter 3 I argued that if we wish to correct the contradiction between formal membership and informal membership which results in long periods of residence and social participation without any effective voice in the governmental affairs,[19] we might need to shift the centre of gravity from nationalism to democratic principles and to make nationality weightless for citizenship eligibility and practice.

Citizenship as a network good

Acknowledging the need to address the externalities of citizenship qua national membership should not lead us to conclude that citizenship is a public (or a quasi-public) good. For whereas citizenship meets the requirement of non-rivalry in consumption – that is, the inclusion of additional citizens will not reduce any other citizen's benefits –[20] thereby making the marginal cost of its extension almost zero ($NCCitiz\ ext = 0$),[21] it does not meet the non-excludability condition. Unlike national defence, good ideas and the classic example of the lighthouse's lighting (Musgrave and Musgrave 1980; Fisher 1996) individuals have been, and can be, selectively excluded from citizenship. True, 'pure' public goods

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[19] See Buchanan and Tullock (1965).

[20] Critics may argue that the inclusion of additional citizens might reduce the existing citizens' chances to prevail in political contests. This argument overlooks the fact that equal membership, and not the maintenance of privileges, lies at the heart of citizenship. It is also problematic because it exaggerates the unity and homogeneity of the existing demos, thereby overlooking the fact that the voting preferences of new citizens are as diverse as those of the existing population.

[21] It is true that in the real world consumption is seldom, if ever, completely non rival.

are rare, and most goods lie within a continuum of degrees of publicness and privateness (Snidal 1979, p. 536). However, bearing in mind that jointness in supply is a necessary, but not a sufficient, condition for a public good and that the crucial test is non-excludable consumption (Snidal 1979, pp. 539–40), in the sense that if the good is available to one person, then it is available to all others, citizenship clearly does not fit this definition.

Citizenship might be better understood as a network good. Existing definitions of citizenship (e.g. citizenship as status, citizenship as rights, citizenship as practice and citizenship as identity) embrace the idea that citizenship implies and flows from active connections – be they vertical, that is, between the individual and the state, or horizontal, that is, between the individual and the community (the nation) which endows him/her with identity, or both. Vertical and horizontal connections are mediated by intermediary bonds of citizenship in civic associations, civic forms of public service, social class and so on. The English Pluralist School, and to an extent Otto von Gierke's association theory, have painted a sophisticated picture of individuals as being situated within numerous social entities and associations.[22] And although one may not necessarily agree with the demotion of the state into just one association among others underpinning pluralism, it is nevertheless the case that individuals have multiple connections with a political community, as they are part of webs of interactions and reciprocal relations among other units, persons, and groups exhibiting mutual concern about the future of social co-operation. In addition, their identities are produced within such webs of social relationships. Citizens are thus members of, and participants in, associative networks which distribute the benefits and burdens of co-operation, rights and obligations. Moreover, individuals are no longer locked within a single, unified and finite network commanding unqualified allegiance. They have connections with other networks (i.e., the country or origin or the country of employment) and, owing to international law developments and to regional forms of co-operation, such as the European Union, new connecting lines have been developed between individuals and normative orders beyond the nation-state (Kostakopoulou 2001; 2002). Citizens can thus shift subject positions and activate their link with a normative system (i.e., the human rights regime or the EU) when their link with another normative system is either blocked or fails to yield a positive outcome.

As a network good, citizenship exhibits complementary consumption: one person's consumption of the good does not prevent someone else from using it. The inclusion of women into the body of citizens, for instance, has not limited the consumption of citizenship by male citizens. Citizenship is capacious and the entry of additional participants, and of more connecting lines, often increases the benefits other users draw from the network good. This is due to several factors. First, whereas the exercise of civil and political rights

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[22] On this, see Laski (1917).

does not prevent any other person from exercising these rights, the utility of social rights is raised for all participants owing to the increased resource base and the risk spreading function of extended participation. The possibility of a significant narrowing of 'the community of risk-sharers', owing to the ageing populations of western European countries, has prompted a reconsideration of existing policy responses to migration. Admittedly, this view does not cohere with public perceptions; many native-born citizens tend to view citizenship as a rival good and prone to congestion. As a consequence, they demand some form of managing congestion by limiting access to it. But such claims are predicated on the incorrect assumptions that new participants draw from public funds much more than they contribute to it through the payments of taxes of all sorts and of national insurance contributions, and that too many people would try to use or access the same service at the same time. Secondly, the utility of a network good, such as citizenship, itself increases as more participants join the network. The inclusion of more groups, and thus of voices, preferences and interests is bound to yield better and fairer decisions and more credible policies. Polyphony lessens 'bounded rationality' problems and enables parties to gain a better understanding of competing claims, to share information about issues they know and to find solutions to common problems. It also enhances the legitimacy of a given political order, since decisions taken on the basis of the highest possible input are bound to elicit the identification of the highest possible majority of individuals. The political inclusion of women or African Americans in the US in 1965 are cases in point. And although many male and white citizens worried at the time that the extension of suffrage would reduce the value of citizenship, making it more difficult and less enjoyable to engage in public deliberation or to reach political consensus, such views would be strongly condemned as being antithetical to good democratic governance today. True, some of the empirical literature in the US appears to suggest that ethnic divisions make the provision of public goods more difficult; if, for example, 'a white person perceives that a public good is enjoyed mostly by black citizens, he would oppose it precisely for that reason' (Alesina *et al.* 1999, p. 11; see also Alesina and La Ferrara 2002). However, besides the fact that it is highly debatable whether such a finding would apply to other countries which have not been polarised on race, basing policies on such perceptions (and prejudices) is at best problematic and at worst profoundly detrimental to constitutional principles. Finally, while it is often stated that the heterogeneity of migrants' preferences regarding public decision-making might result in fundamental changes in public policies or increase the political power of certain groups, the first and second phases of migration to Europe since World War II (i.e., 1945–73, 1973–89) suggest that migrants' preferences are neither unified nor different from those of the settled population. Inclusionary processes can thus reveal, and gradually change, mis-guided assumptions about settled boundaries, the meaning of belonging and the character of political culture. And empirical evidence from Europe suggests

that the political incorporation of resident non-nationals nurtures social co-operation and thwarts permanent divisions and conflicts, thereby performing a vital integrative function.[23]

While citizenship as a network good exhibits complementary consumption, its excludability varies. In the past, excludability was high as citizenship was the privilege of few wealthy white males. Restrictions based on ascriptive assumptions relating to race, gender and class which allegedly make certain groups unfit for the requirements of public life have been progressively removed, thereby making citizenship a good of decreasing excludability. However, important issues remain not only about how to make substantive citizenship more meaningful, but also about how to make formal citizenship more inclusive. It is true, for instance, that denizens enjoy many of the civil and socio-economic rights of citizenship; they enjoy the rights of free expression and association, and can thus join political parties and trade unions and occupy positions within their internal hierarchy. They may also participate in alien assemblies and consultative councils. In Sweden (since 1975), Denmark (since 1980), the Netherlands (since 1985), Finland (since 1991), Belgium (since 2004), Ireland (since 1974), Luxembourg (since 2003), Estonia (since 1996), Hungary (since 1990), Lithuania (since 2004), Slovakia (since 2002), Slovenia (since 2002) and Norway (since 1983) local electoral rights have also been granted to resident non-nationals. Spain, Portugal and the UK also allow voting rights to citizens of certain countries. However, denizens are excluded from political rights, such as national suffrage, the right to hold public office, the right to serve on juries and public service employment. Equally, it is true that in countries embracing a corporatist policy-making style, migrants have more opportunities to influence policy-making through union organisations and migrant organisations (Soininen 1999). But even in these countries corporatist channels do not guarantee inclusion and equal membership. Nor are non-national residents protected from retrogressive policy changes and shifts in membership entitlements. In the 1980s, for example, the Swedish government distanced itself from the 1970s Immigrant and Minority policy, which encouraged multiculturalism and a group oriented approach and adopted a more individualistic approach which undermined cultural rights. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act, which restricted access to federally funded public benefits for legally resident migrants in the US, is yet another example.[24]

The foregoing discussion shows that citizenship's network morphology is very much embedded within power relations, and it would be a serious mistake to assume otherwise. Although individuals participate in a web of social relations and are affected by processes of collective decision-making, they

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[23] See, for example, Fennema and Tillie's (1999; 2001) work on political participation and political trust in Amsterdam.
[24] Pub. L. No. 104–193, 110 Stat. 2105 (1996).

can easily be excluded from formal political networks in various socio-political conjunctures. By turning off the switches connecting the networks, gates within the circuit can become shut, thereby leaving parts of the networks as the preserve of political elites. As Castells (1996, p. 471) has noted, in another context, 'switches connecting the networks . . . are the privileged instruments of power'. They are essentially nodes of concentration of economic and political power and can be used in order to exclude the input of certain groups and individuals.[25] In the light of the progressive shift of citizenship from high to lower excludability, an argument can thus be made for lowering even further the threshold of excludability established by alienage and for extending full network access to all participants. This can be achieved by decentring the national frame of reference from its privileged position in citizenship theory and practice and by accentuating the public-good like nature of citizenship (see below).

The public quality of citizenship is not solely a measure of the existence of a government that ensures, through direct and indirect tax collection, that all citizens and residents share the collective burden and enforces payment for the benefits of membership. Rather, the publicness of citizenship is a function of the ideals of equal membership and civic participation it entails. As noted earlier, a political community that is ostensibly committed to those ideals must ensure that all the inhabitants, who are subject to its laws, directives and decisions, take part in decision-making and are recognised as full and equal members. And although a democratic community has a legitimate interest in limiting political participation to persons who are concerned about it and committed to its welfare, residence, participation in the web of socio-economic interactions for an indefinite period of time and contribution, be it monetary or otherwise, are good evidence of this sort of commitment. In this respect, artificial distinctions based on the political formalities of membership which result in widespread exclusion from political participation tend to corrode the democratic credentials of political cultures.[26]

If we are to do better than we have done, we must find ways of correcting the abovementioned externalities. We need to ensure that all domiciled individuals have equal access to citizenship, an equal opportunity to take part in 'the common weal' and to enjoy a modicum of state-provided welfare and stakeholder status. But in order to inject democratic norms into the network good of citizenship and to affirm its open and inclusive character, we need to devise principles and policies that prevent oligarchic citizenship.

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[25] Citizenship thus resembles a highly differentiated and polymorphic network. It contains multiple, overlapping and intersecting social networks of power, but it has the capacity to expand, incorporate new nodes and to integrate a multitude of potential connecting routes and intersections.

[26] By the end of the nineteenth century nearly half of the states and territories in the US had some experience of voting by aliens (Rosberg 1977).

Citizenship based on domicile

Domicile could well be an alternative premise for citizenship. Whereas national citizenship denotes formal membership of a national state to which a person owes allegiance,[27] domicile indicates the various legal connections and bonds of association that a person has with a political community and its legal system. Domicile could reflect either the special connection that one has with the country in which (s)he has his/her permanent home or the connection one has with a country by virtue of his/her birth within its jurisdiction or of his/her association with a person on whom (s)he is dependent. As already noted, national citizenship has traditionally overlooked the connections that non-national residents have with a juridicopolitical system, even though they are subject to its laws and as much a part of the public as birthright citizens. By putting emphasis on the national cum political nature of citizenship, it cannot capture the complexity of membership, which results in individuals taking on an identity within a community by virtue of the social facts of living, working and interacting there, and the endemic variegation of human interaction. The reductionist character of such an approach is attested by the fact that non-national residents are often seen to lack 'an interest in the country or its institutions'.[28] Nationals and their descendants, on the other hand, remain citizens for life even when they may lose all connections with their state of origin, owing to long-term residence abroad.

Domicile attributes both relevance and weight to the connections that individuals have with a particular jurisdiction. Citizenship is thus converted into a 'shareware' (i.e., a network good), which is distributed to all the participants in a given network. Instead of being either liberal or communitarian, citizenship becomes connexive. Connexive citizenship also recognises that maintaining plural attachments is an expression of multiple identities and a reflection of the legitimate and enriching connections that individuals may have with two polities, thereby facilitating the acceptance of dual citizenship.[29] But what connections are deemed to be relevant and how may these be weighed? Before elaborating on this by articulating a typology of domiciles (see below), it is worth noting here that domicile is weaved together with three other, equally important, principles in an attempt to render nationality

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[27] Nationality is defined as the status of belonging to a state for certain purposes of international law; see Weis (1979).

[28] See Justice Field's statement in *Chae Chan Ping v. United States* (The Chinese Exclusion Case), 130 US 581, 595–596 (1989).

[29] It is true that the ideal of monopatride citizens has been the hallmark of the nationality model of citizenship. But international norms are changing, as attested by the 1997 European Convention on Nationality (Council of Europe, ETS 166, in force on 1 March 2000) and it is widely recognised in Europe and elsewhere that the ideal of a single nationality is no longer suited to contemporary globalised environments.

weightless for the purpose of citizenship acquisition,[30] namely: (1) the principle of *ius soli*; (2) the non-effect of marriage upon the acquisition or loss of citizenship; and (3) the principle of free will, as follows.

Founding principles

Domicile

In private international law, domicile is distinguished from habitual and ordinary residences.[31] Ordinary residence reflects physical presence in a country: living 'in a place with some degree of continuity and apart from accidental or temporary absences'.[32] This means that an individual can be resident in two countries at once, even though (s)he might have a principal residence.[33] Habitual residence, on the other hand, denotes one's voluntary settlement in a particular country 'as part of the regular order of one's life for the time being'.[34] Regular physical presence in a country in order to complete a university degree or perform an employment contract thus suffices for the establishment of habitual residence. And since the latter does not require an intention to reside permanently in the country,[35] regular absence from the territory does not deprive a residence of its habitual or usual character. This means that individuals can be habitually resident in more than one country at the same time.[36]

In contrast, at the heart of domicile lies the idea of a permanent home.[37] A domiciled individual person must intend to make a country the hub of his/her interests, irrespective of his/her motives that preceded settlement. Indeed, it is the intention to become an 'inhabitant' that has led judges and scholars to argue that the test of residence for the purpose of acquiring a domicile is a qualitative rather than a quantitative one.[38] This means that, in addition to the mere fact of residence, an intention of permanent settlement is required. The combination of the factum of residence and the animus to reside permanently or indefinitely rules out short-term residents, travellers and persons whose residence is associated with a completion of a special purpose or a project. A university professor, for example, who was born in France, migrated

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[30] Domicile is the dominant connecting factor in common law jurisdictions, whereas nationality is the personal connecting factor in civil jurisdictions. The notion of habitual residence emerged over the last 30 years as a compromise between the common law concept of domicile and the civil law notion of nationality in conflict of laws.

[31] I will draw on these definitions, but will also give creative meanings to domicile.

[32] See Colier (1994, p. 59).

[33] *Plummer v. IRC* [1988] I WLR 292. But in *IRC v. Lysaght* it was held that a person who lived in Ireland but spent about a week in each month in England living in hotels when on business there, had his ordinary residence in both places: [1928] AC 234, HL.

[34] *R v. Barnet London Borough Council, ex p. Shah* [1983] 2 AC 309 at 344.

[35] *Cruse v. Chittum* [1974] 2 All ER 940.

[36] *Ikimi v. Ikimi* [2001] EWCA Civ 873, [2001] 2 FCR 385.

[37] *Whicker v. Hume* (1858) 7 HLC 124.

[38] *Ramsay v. Liverpool Royal Infirmary* [1930] AC 588 at 595, 598.

to the US, obtained domicile and citizenship by living and working there, and who spends three months every summer at the European University Institute in Florence would not be considered to be domiciled in Italy and thus eligible for citizenship there. He would remain a dual (French–US) citizen. Similarly, students from overseas, persons travelling abroad in order to receive medical treatment, posted workers and refugees do not acquire domicile, unless they decide to settle in the host country for an indefinite period.[39] A refugee, for instance, who decides to remain in the host country even though he can return home, could establish domicile. Posted workers may also decide to establish their permanent home abroad, even though their initial residence was 'involuntary'. Given that individual circumstances frequently change, institutions, such as citizenship, must be flexible enough to accommodate such changes. For this reason, under anational citizenship, domicile would be perfectly compatible with residence or habitual residence in another country, thereby accommodating the needs of mobile individuals, who either live in one country and work in another or spend certain months in the home country and the remaining months of the year in another country.[40]

I should make it clear, here, that the notion of a permanent home underpinning domicile does not imply that an individual must live in a country until his/her death. *Animus manendi* (the intention to reside in a country indefinitely) cannot be made a life-long affair, for people are not inherently sedentary and their circumstances frequently change. Many dream of overseas paradises and/or retirement in sunny places or in their states of origin. Notwithstanding such dreams, domicile is acquired by being an inhabitant of a country, that is, by taking up residence with the intention to remain there for an unlimited period of time. And it is this element that furnishes sufficiently strong connections with a community, concern for and an engagement with its affairs. To an extent, the subjective dimension of domicile resembles the intentions of parties in a marriage. Marriage is 'a union for life', but this does not mean it cannot be dissolved. What is important is that the partners genuinely believe their marriage is potentially indefinite in duration and, therefore, its dissolution does not feature as a relevant consideration. Similarly, an intention to reside indefinitely in its future contemplation will suffice for acquiring domicile and, therefore, citizenship.

It may be observed here that, unlike the fact of residence, the subjective intention to reside indefinitely in a country (*animus manendi*) is difficult to

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[39] *Brown v. Brown* [1982] 3 FLR 212, CA.

[40] Consider, for example, Mr X, a dual citizen, who was born in Italy and obtained domicile by virtue of his birth, according to my schema. Mr X immigrated to the UK when he was 27 years old, lived and worked in the UK for decades and during his retirement spends five months of the year in Greece, three months in London and four months in Italy. Mr X's habitual residence in Greece would be neither undermine nor affect the special connections he has with the Italian and British polities owing to his birth and socialisation in the former and the permanent home he established in the latter.

ascertain. This is not necessarily true. There exist a number of 'indicators' of such intention, such as: longstanding and uninterrupted residence in a polity; family ties and the existence of a matrimonial home; social ties; acquisition of property; a professional career; schooling; participation in local politics; the purchase of a burial ground; and membership in associations, churches and clubs. Uninterrupted residence, and the numerous connections associated with it, thus creates a presumption of an intention to remain in a polity for an indefinite period which is difficult to rebut.[41] It is true that unforeseen circumstances change the lives of people, but misfortunes affect both new-comers and autochthones citizens. The death of a parent, for example, may prompt someone to abandon his/her country of domicile and return to the country of origin in order to take care of the family estate. Similarly, the death of a companion may lead a national to abandon his/her domicile of origin and to acquire a new domicile in another country where (s)he can enjoy the warmth and security that close relatives or friends can provide.

Finally, critics might object that one does not become a citizen by simply inhabiting a place (Miller 1995; 1998; Schnapper 1997). But, as the preceding discussion has shown, the relevant and important factor for citizenship acquisition is not place per se, but the connections and bonds of association that one establishes by living and participating in the life and work of the community. Citizenship law and theory have traditionally disregarded these connections. By presuming that non-national residents are by definition outside the bounds of the community, lack allegiance to the state and have no interest in its welfare, little credence has been given to the idea that political communities very rarely arise through people having feelings for one another or holding the same, or similar, beliefs and values. Rather, a community emerges through individuals being in mutual relations with one another and through their engagement in reflexive forms of community co-operation (Honneth 1998).

The territorial principle (*ius soli*)

This principle prescribes that all children born within the dominion of a state become citizens at the time of their birth. Patrilinear or matrilinear connections are not relevant for the automatic acquisition of citizenship at birth. Citizenship is based on subjection to the territorial jurisdiction of a state at the time of birth. It may be recalled, here, that Francisco de Vitoria championed the adoption of *ius soli* as an international standard and, in discussing the legality of the Spanish conquests of Peru and Mexico, he proposed the conferral of citizenship on Indian children on the basis of 'the rule of the law of nations, that he is to be called and is a citizen who is born within the state'.[42]

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[41] Law Commission Working Paper No 88 (1985), para 5.15.

[42] It is cited in Donner (1983). See also the US Supreme Court's decision in *United States v. Wong Kim Ark* which stated that the children born to Chinese migrants were US citizens; 169 US 649 (1898). However, the court stated that this principle did not apply to American Indians who were 'standing in a peculiar relation to the National Government, unknown to the common

Despite its medieval origins and ascriptive nature,[43] territorial birthright citizenship has had, and continues to have, considerable appeal. Generally speaking, *ius soli* is a more flexible, inclusive and easily administered form of citizenship acquisition than *ius sanguinis*. *Ius sanguinis* – that is, the acquisition of citizenship by descent – has been associated with 'thick' notions of the nation highlighting common blood descent or strong cultural and linguistic commonalities. Accordingly, citizenship laws based on *ius sanguinis* are internally exclusive and externally over-inclusive, since, by conferring citizenship automatically to the children of emigrants born abroad, they result in creating nominal citizens who are totally disengaged with a polity in which they may never take up residence. And while a polity's adherence to the principles of *ius soli* or *ius sanguinis* is often seen to reflect distinctive conceptions of nationhood, I have raised reservations about the usefulness of this distinction in Chapter 1. After all, the distinction not only underscores the common ground shared by these two conceptions (Xenos 1996),[44] but it also overlooks the fact that in most states the principle of descent is complemented by the territorial principle.

According to the model of anational citizenship, birth in the territory of a country would culminate in the grant of a domicile of birth and thus of citizenship. Domicile of birth is a construction, an inference that the law would make, and its rationale lies in the fact that, irrespective of their parents' nationality or membership status, children are born within a pre-existing 'web of ties' that profoundly shapes their identities and lives. Domicile of birth thus reflects their formal connection with a juridicopolitical system and its rules as well as their pragmatic connection with a society within which they grow up. For the vast majority of them, the place of their birth will remain their permanent home until their death, regardless of the membership status of

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law'. Citizenship was finally conferred on all Native Americans born in the US in 1924 by the Indian Citizenship Act.

[43] Both Carens (1987) and Shachar (2003) have commented on the global inequalities that citizenship laws may sustain.

[44] Brubaker's (1992, pp. 14–15) typology between a state-centred and inclusive nationhood in France and an exclusive and restrictive conception of nationhood in Germany, for example, did not highlight sufficiently the descent-based notion of citizenship institutionalised by the post-revolutionary French Civil Code of 1804. In addition, citizenship reform in both countries in the 1990s has called into question Brubaker's thesis. In 1993 France reformed Art. 44 of the nationality code thereby ending the automatic acquisition of citizenship at the age of 18 by non-nationals born in France. To acquire citizenship second generation migrants had to declare their willingness to be French between the ages of 16 and 21. If they failed to do so, they could no longer naturalise under Art. 44. This was partially reversed by the 1998 nationality law reform, which restored the automatic acquisition of citizenship at the age of majority, provided that second generation migrants lived in France since the age of 11 for at least five years. The 1993 reform also modified the double *ius soli* principle, whereby to acquire citizenship automatically at birth, third generation migrants had to be born of parents living in France for five years. Germany, on the other hand, embraced *ius soli*, thereby establishing the second generation's right to citizenship at birth if one of the parents has lawfully resided for eight years in Germany and holds either an unrestricted residence permit of three years or an establishment permit.

their parents. Territorial birthright citizenship reflects this. It ensures inter-generational continuity (Brubaker 1992) as well as equality and inclusiveness, by preventing the formation of different citizenship classes and anomalies in relation to the status of second generation migrants. It also guards against statelessness – a function that is explicitly entailed by the 1997 European Convention on Nationality, which states that member states should include in their laws a provision for the acquisition of nationality by children born on their territory who do not acquire another nationality by birth.

For certain people, the place of their birth may not be the place where they have spent much time at all beyond infancy. The children of posted workers would fall within this category. But this does not impact upon the principle of automatic access to citizenship at birth. Nor does it imply that domicile of birth may not be consistent with the premise of domicile which is underpinned by the notion of permanent home. For, as mentioned earlier, domicile of birth is a legal construct which affirms that every newborn child is a citizen and has a stake in the country of his/her birth. One can hardly find another, more egalitarian approach for attributing citizenship and a better operational legal standard for the vast majority of the population of a country. And although critics may raise concerns about the imposition of citizenship at birth and its compatibility with liberal autonomy, it is nevertheless the case that any form of acquisition of citizenship at birth by operation of law would be an imposition. What really matters, in my opinion, is that the child has the choice of retaining or casting off his/her domicile of birth by voluntarily choosing another domicile at the age of majority.

Another objection to *ius soli* is that it is an ascriptive rule, a remnant of feudalism which cannot easily be reconciled with the consensual underpinnings of liberalism. As Schuck and Smith (1985, pp. 2–3) have put it:

> in a polity whose chief organising principle was and is the liberal, individualistic idea of consent, mere birth within a nation's border seems to be an anomalous, inadequate measure of expression of an individual's consent to its rule and a decidedly crude indicator of the nation's consent to the individual's admission to political membership.

While it is undoubtedly the case that *ius soli* is historically linked with the feudal doctrine of perpetual allegiance to a sovereign lord and the disintegration of feudalism brought upon its demise and the re-emergence of *ius sanguinis*, one needs to weigh the implications of *ius soli* and of its rivals. After all, consent is not the only principle that is indispensable to liberalism (Martin 1985), and if 'consensual liberalism' is not balanced by other normative principles and human rights norms, it is bound to yield exclusionary results. The proposal to exclude the children of undocumented migrants from US citizenship, thereby penalising them for circumstances that are beyond their control, serves as a reminder of the risks entailed by unprincipled consensual liberalism.

Independent domicile for married partners

While this principle epitomises the principles of equality and liberal autonomy in our era, until the first quarter of the twentieth century, citizenship was a status of dependency for women. Upon marriage, they were divested of their citizenship, and, in the eyes of the law, 'though loyal at heart, they became alien enemies by their marriage'.[45] Section 3 of the US Act of 1907 stated that 'any American woman who marries a foreigner shall take the nationality of her husband'. In *Mackenzie v. Hare* the constitutionality of s. 3 was upheld on the basis that 'it is of public concern to merge the identity of husband and wife and give dominance to the husband'.[46] It was not until 1922 that marriage was pronounced as having no effect on the nationality of the spouse, unless she made a formal renunciation of her citizenship.[47] In Britain, the common law doctrine that marriage had no effect on the nationality of the spouses was reversed by the Aliens Act 1844, which proclaimed the unity of the nationality of spouses. Accordingly, s. 10 of the Naturalisation Act 1870 stated that 'married women shall be deemed to be a subject of the State of which her husband is for the time being a subject'. This provision survived until the formal recognition of sex equality by the British Nationality Act 1948.

International law embraced the principle of sex equality in matters of nationality in 1932, while the principle of the unity of the family from the point of view of nationality was losing its privileged status.[48] The Convention on the Nationality of Married Women 1957 (in force on 11 August 1958) recognised the principle of independent citizenship for spouses. The principle has also been enshrined in the Declaration on the Elimination of Discrimination against Women 1967 (Art. 5) and the Convention on the Elimination of All Forms of Discrimination Against Women 1979, which states that:

> state parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.
>
> (Art. 9(1))

The European Convention on Nationality 1997 reiterates this (Art. 4(d)). In line with international law, anational citizenship would maintain the principle of independent citizenship for spouses. Spouses would thus retain their original citizenship, which could then be combined with citizenship of the state of their domicile, thereby enabling them to enjoy their multiple connections.

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[45] 67th Congressional Record, 1922, p. 9941.   [46] (1915) 239 US 297.
[47] See s. 3 of the Cable Act 1922.
[48] See Nationality of Married Women (Danzig) Case, Danzig High Court, 30 November 1932, 6 AD (1931–1932) Case No. 130.

The principle of free will

Citizenship based on domicile puts emphasis on the bonds of association that individuals establish as members of a society. As such, it is consonant with human mobility and peoples' right to choose their civic and political home and, indirectly, the rules of the association which govern them. Such decisions almost never take place in a vacuum. External constraints and a myriad of crucial or lesser pressures set the perimeters within which decisions about migration take place. But irrespective of the motives of individuals or other contingencies, the decision of a person to leave his/her state of origin, to settle elsewhere and to become a full member of that community should be fully respected by the home and host states. Respect is manifested by the acceptance of dual citizenship, the recognition of multiple identities and by ensuring the human beings' lives and future prospects are not frustrated by restrictive rules that reflect the whims and prejudices of transient majorities.

It is certainly the case that, within the setting of the nation-state, people have been presumed to be rooted in a national homeland which is taken to be the supreme locus of identification. Accordingly, citizenship is a life-long affair (*semel civis semper civis*) and remains unaffected by the actual loss of all connections with 'one's nation-state', unless, of course, the individual concerned manifests his intention to acquire another citizenship. But even in the latter case, a wish to acquire another citizenship may not be sufficient in bringing about the forfeiture of the original citizenship. In certain states, conditions and restrictions have been attached to the forfeiture of citizenship, such as a prior authorisation from Home Affairs authorities.

Templates of domicile

By drawing on, and weaving together, the earlier mentioned four principles underpinning anational citizenship, we could envision three types of domicile as the basis for citizenship acquisition, namely: (a) domicile of birth (Db), that is, the domicile that a person acquires at birth; (b) domicile of choice (Dc), that is, the domicile that a person of full age may voluntarily acquire by residing in a country other than that of his/her origin; and (c) domicile of association (Da), that is, a domicile that one acquires by being legally dependent. Before elaborating on this typology, I should note here that although an individual can combine any two types of domicile and thus citizenship (Db and Dc, Db and Da and on the age of majority Db and Dc), it would be impossible to possess more than one domicile of the same type simultaneously. Evidently, a person cannot have two domiciles of birth. Similarly, a person would not be able to have two domiciles of choice, since it would be impossible for somebody to have two operative domiciles, signalling bonds of equal intensity and dense and lasting connections with several countries, simultaneously. But a person could combine his/her domiciles and dual citizenship with ordinary or habitual residence in another country, thereby enjoying variable and multiple

modes of belonging. The example of the university professor who spends his summers in Florence is a case in point. His habitual residence in Italy cannot be considered to be an unacceptable gradation of membership culminating in illegitimate exclusions from the perspective of democratic theory.

In addition, while the combination of different domiciles is acceptable, the abandonment of all domiciles would not be possible under my model, since it would result in statelessness. This is due to the fact that no one can be without a domicile, that is, totally disentangled from a social and juridicopolitical network which regulates his/her legal relationships. As mentioned earlier, domicile is deemed to be the connecting factor between an individual and a particular country (or countries) which will continue to exist until a new and different domicile usurps its place.

Domicile of birth

Domicile of birth is the domicile that a person acquires at birth. Domicile of birth is ascribed by law: all those born (including the children of undocumented migrants) within a state's territorial jurisdiction would acquire citizenship at the date of his/her birth (*ius soli*).[49] This does not mean that territorial birthright citizenship is an unchanging status, since it could change following the adoption of a child and voluntary renunciation. Perhaps the most distinguishing characteristic of domicile of birth is that it is presumed to be tenacious: it can coexist with a domicile of choice and, more importantly, can re-assert itself as the actual domicile of a person in the absence of any other domicile – for example, when a later acquired domicile is lost or renounced.[50] This rule would guard against statelessness. Another possibility in such a case would be to make release from a domicile of choice conditional upon acquiring another domicile of choice within a certain period of time. However, this might not be consonant with the principle of free will, particularly if an individual wishes to renounce his/her citizenship in protest for the aggressive foreign policy or human rights record of a country, without acquiring a new domicile. A revival of a domicile of birth, in the absence of any other domicile, might thus be a better policy option.

Domicile of choice

Domicile of choice is the domicile that a person acquires by being an inhabitant of a country for an indefinite period of time. As noted earlier, domicile of choice requires the combined presence of two distinct, albeit related, elements:

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[49] Gerard-Rene de Groot's study of nationality legislation in the European Union and the European Economic Area has concluded that none of the countries now applies a strict *ius soli* rule for the acquisition of nationality. Ireland amended s. 6, which provided that every person born there is entitled to be an Irish citizen in 2005. It now requires that a parent fulfils residency requirements; see de Groot (2005).

[50] In conflict of laws, it is generally recognised that domicile of origin cannot easily be shaken off; See *Udny v. Udny* 1869 1 LR.Sc and Div. 441 H.L. and Briggs (2002, p. 24).

factum – that is, the taking up of residence in a particular country as an inhabitant – and *animus* – a freely formed intention to reside there permanently or indefinitely. If one intends to reside for a limited period or a specific purpose, then domicile cannot be established. A fugitive from justice, for example, who seeks refuge abroad and intends to remain there until the statutory time limitations for his offence have expired, cannot acquire a domicile of choice, since the animus is missing.

Unlike the domicile of birth, a domicile of choice can be easily shaken off. In the same way that its acquisition requires the combination of factum and animus, its forfeiture would require that both elements must be brought to an end. A change of residence must be accompanied by the termination of an intention to reside in the country indefinitely. This may be due to settlement elsewhere. In this case, the acquisition of a new domicile of choice would be contemporaneous to the loss of the previous one. But if an emigrant continues to retain active links with the country of emigration by running his/her business, maintaining his/her property, renewing his/her passport and so on, it is reasonable to suppose that his/her intention to reside there for an unlimited period of time has not withered away. In this case, his/her domicile of choice will continue to exist, unless of course (s)he rebuts this presumption by showing the termination of his/her intention to reside. This could be done by acquiring a new domicile of choice or by renouncing the old one. In the latter case, a person would retain his/her domicile of birth as the actual domicile. Whereas the domicile of birth is granted automatically, acquisition of a domicile of choice would depend on the application of the domiciliary.[51] In assessing the application, the relevant authorities could thus confirm the existence of factum and animus, but their decisions would also be subject to judicial review.

Domicile of association
This is the domicile that a dependent person acquires by virtue of her/his association with a person on whom (s)he is legally dependent. Domicile of association is a derived domicile, that is, it is activated by virtue of the personal link between legally dependent and independent persons. Children would thus acquire a domicile of association, if the domicile of the parents is different from their domicile of birth and the parents wish to pass on their close connections with a country to their children. The domicile of association is thus justified on the basis of the importance that people attribute to their cultural identity and the network of connections with a country, be they actual or dormant. If the parents have different domiciles, they could decide which domicile they wish to transmit to the child. This could be either a domicile of birth or a domicile of

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[51] A domiciliary may decline the citizenship option, preferring, instead, to live in a country as non-citizen resident. This decision must be respected and in so far as the citizenship option remains open, the democratic norm of inclusion would not be violated.

choice. A child under the age of 16 will thus be endowed with a domicile of association which will supplement (or supplant, if the parents so wish) his/her domicile of birth.

When the age of independence is reached, then either the domicile of association is lost by operation of law, and the domicile of birth, if different, takes its place in addition to any domicile of choice that is immediately acquired, or the domicile of association is presumed to continue to exist as a 'deemed' domicile of choice, unless a new domicile of choice is acquired. Countries whose citizenship traditions favour the *ius soli* principle could embrace the former option, while countries favouring the *ius sanguinis* principle could opt for the latter option. At the age of 16, a child would make a declaration as to whether (s)he wishes to retain his/her domicile of association as his/her deemed domicile of choice or whether (s)he wishes to acquire a new domicile of choice. Similarly, a child should be allowed to renounce one of the domiciles upon attaining the age of majority. If a domicile of association has been cast off and a new domicile has not been acquired, the domicile of birth could be revived and assert itself as the person's actual domicile.

Adopted children would be treated in the same way. If the parents have different domiciles, they would decide which domicile the child should take. If the parents are not living together, or one of them is dead, then the child could take the domicile of the person with whom (s)he lives, since his/her home would signal the country with which (s)he is most closely connected. This domicile would be retained until the age of majority. If a mother changes her domicile while the child is a minor, but leaves him/her behind to be looked after by relatives, then her new domicile will not pass on to him/her as a domicile of association. The rule that a minor's domicile of association is the domicile of the parent with whom she lives, therefore, helps address the various issues arising from the break up of families and parents living in different countries and having different domiciles. The same principle would apply to persons suffering from severe mental disorders and thus lacking the legal capacity to form the requisite intention for acquiring citizenship.

Objections

Although throughout the discussion I have sought to anticipate possible objections to my argument, three main criticisms may be raised, which need to be considered in more detail, as follows:

> Objection 1. *As an institution and practice, citizenship can only flourish if people identify with each other and have 'a sense of belonging together'. The model of anational citizenship is premised on weak ties, thereby undermining stability and social cohesion. After all, civic commitments do not develop in a cultural vacuum. Citizenship's social cum cultural underpinnings provide the foundation for interpersonal trust, social cohesion and political integration. For this reason, a polity legitimately confines citizenship to those, who are likely to take its welfare and values*

to heart, and resident migrants, as expected, lack the loyalty required in order to be full members of a political community after a relatively short period of residence.

The nationality model of citizenship is premised on the idea that national belonging gives rise to natural allegiance to the political community and its institutions. As the US Supreme Court stated in *Foley v. Connelie*:

> The act of becoming a citizen is more than a ritual with no content beyond the fanfare of ceremony. A new citizen has become a member of a Nation, part of a people distinct from others . . . The individual, at that point, belongs to the polity and is entitled to participate in the process of democratic decision-making.[52]

Owing to the presumed link between alienage and disloyalty, non-national residents are often deemed to be potential threats to national security and/or the requirements of public policy. In addition, their presumed lack of commitment to the polity raises questions about their citizenship capacity.

Both assumptions, however, are not as unproblematic as they first appear to be. The main problem with making national origin the foundation of loyalty is that it is both over-inclusive and under-inclusive. It is over-inclusive because it is based on generalisations and stereotypical views of people as a group, thereby overlooking that non-national residents often develop loyalties that are as strong as those of citizens. In fact, as Rosberg has observed, 'many aliens will have the characteristics that the state associates with membership in a polity, and by the same token many citizens will not' (Rosberg 1977, p. 328). If security concerns exist, these can be ameliorated by scrutinising the personal conduct of individuals and punishing criminal conduct in the same way that citizens' criminal conduct is punished, rather than by excluding non-nationals as a class from political participation in democratic decision-making. Such exclusion is more likely to reflect an intention to discriminate on the grounds of race, ethnic or national origin. The association of nativism with loyalty is also underinclusive, since it sidesteps the fact that both ethnic and naturalised citizens can act in ways that subvert national security and public order. The ideological clashes of the twentieth century and both right- and left-wing political extremism are pertinent reminders.

Equally problematic is the second assumption; namely, that resident migrants are legitimately excluded from full membership, since they cannot develop an appreciation of, and commitment to, a country's institutions, values and traditions after the short period of domicile. The five- to ten-year residency requirement stipulated by naturalisation laws allegedly furthers social cohesion by giving non-national residents the opportunity to learn and to familiarise themselves with the host society's system, culture and traditions. Similarly, other naturalisation requirements, such as language tests, self-sufficiency tests, knowledge of the history and the constitution,

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[52] 435 US 291, 295 (1978). The Foley Court upheld the constitutionality of a state statute which reserved the post of state trooper for American citizens. For a critical assessment, see Walter (1979).

allegiance oaths and so on, result in selecting out the deserving candidates and ensuring that prospective citizens accept the community's values and traditions as their own. If citizenship is seen as a national project, then the above naturalisation requirements make sense. After all, the goal of any naturalisation policy has, traditionally, been the 'nationalisation' of applicants; that is, aliens have to 'become [like] nationals' (see Chapter 3). Conversely, if emphasis is put on democratic participation and citizenship is conceived of as a network good, then many naturalisation requirements are open to question (see Chapter 3). For all those who have chosen to take part in the life of a community (the objective element of domicile) and intend to reside there permanently (the subjective element of domicile) have made a formal and solemn commitment to the country and its institutions, and, as I argued in the previous chapter, these are the crucial and relevant qualities for citizenship capacity.

> Objection 2. *Citizenship based on domicile holds on to territoriality. But mobile individuals often reside in multiple locations, may not wish to establish single and long-term domiciles and may maintain close links with a society without being physically present. In this respect, the nationality/citizenship link needs to be more radically ruptured, and this can only be done by articulating conceptions of deterritorialised citizenship.*

It is certainly the case that globalising processes and the pace of technological change, the perforation of national borders by flows of all sorts and institutional arrangements below, above and beyond the states have challenged central organising principles of our political life (see Chapter 1). The emergence of new collective actors working within, across and above state lines has exposed the legal fiction of a political universe consisting of states only (Melluci 1996). In addition, this process has shown that claims made by national governments should not always be conflated with the needs or demands of communities, and that the allegiances of citizens are no longer confined within national borders. However, these developments have not rendered the state obsolete, and its alleged loss of sovereignty to regional and global institutions and markets has been accompanied by the occupation of new fields and the extension of its powers of control and repression. Similarly, the pluralisation of identities may have undermined the monopoly commanded by overarching national identities, but it has neither effaced the institutional reality of the state nor undermined the relevance of citizenship. State citizenship coexists with other forms of citizenship, such as European Union citizenship, and is perfectly compatible with cosmopolitan sensibilities, such as a concerted effort to protect the environment, to criticise human rights abuses in the world and to boost the prospects of democracy on a global scale. But apart from the improbability of transplanting state structures to the global level and institutionalising a form of cosmopolitan, universal citizenship which would make all rights and duties portable throughout the world, there is another reason why conceptions of deterritorialised citizenship based on either

universal personhood or membership in global communities defined in ascriptive terms (e.g. gender, disability, sexual orientation, religion and so on) cannot supplant state citizenship. Statal institutional arrangements are not only crucial to enforcing the rights and obligations associated with citizenship, but they are also the arenas within which redistributive politics, comprehensive rights protection, elections, citizen exchanges and other forms of political participation can be realised.

While the deterritorialisation of rights does not undermine the model of anational citizenship, would the phenomenon of new diasporas call into question the emphasis I put on domicile? Given the possibility of combining domiciles and thus citizenship, I do not see why this should be the case. But would the model also apply to 'rootless' business elites, artists and intellectuals, who may have neither an interest nor an intention to settle within a particular country?[53] In response, the reader may recall that a crucial feature of habitual residence is that a person makes a particular country part of the regular order of his/her life for the time being, that is, for instance, for the duration of an employment contract or a postgraduate degree. Residence associated with a completion of a special purpose or project within a certain period of time does not furnish sufficiently strong connections with a community, and quite often mobile individuals move from country to country before they become enmeshed into its network, but it is perfectly compatible with (plural) domicile and thus citizenship. Accordingly, 'rootless' individuals would be able to combine multiple subject and citizen positions: a domicile of birth and a domicile of choice would coexist with residence status in a certain state, thereby activating the general protection of laws, civil rights, perhaps local and regional electoral rights, and certain social rights in the country of employment, but not the full panoply of rights enjoyed by citizens. But habitual residence could lead to domicile, if an individual decides to settle in the country for an indefinite period.

> Objection 3. *The model of anational citizenship outlined in this chapter represents a far-fetched utopia and, as such, it is unlikely to be empirically feasible.*

Even though this line of criticism tends to be a standard response when existing ways of doing things are no longer taken for granted, it is true to say that the empirical feasibility of the model depends on many variables, such as the perceived net benefits of the proposed alternative rules and the qualitative differences that anational citizenship will generate and the state of the international system. But irrespective of the requisite implementing steps, ideas also matter a lot. They matter not only because they tend to make the constraints of

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[53] The issue of migration policy falls outside the scope of this discussion. But I should mention, here, that my arguments are compatible with both liberal migration policies, entailing soft migration controls, and more porous borders. For a discussion on the latter, see Kostakopoulou (1998b, p. 896; 2001, ch. 6).

existing paradigms more visible, but also because they open up future possibilities. On this issue Allott (2001, p. xxxiii) has observed that 'the road from the ideal to the actual lies, not merely in institutional novelties, or programmes and blueprints of social change, but also, and primarily, in a change of mind'. Although national citizenship enjoys a privileged position in theory and practice, it is, in reality, the product of contingent political choices. Accordingly, it has foreclosed other options ('might have beens') which could be re-activated in processes of institutional change. Such a re-activation and exploration of alternative options entails the promise of a better citizenship.

Conclusion

In this chapter I have sought to present an alternative set of ideas on which an anational model of citizenship may be designed. The need for an alternative citizenship design flows from two simple observations. First, democratic decision-making and the flourishing of a political community require the involvement of all the community – and not simply of a segment of it. In the same way that the democratic process cannot exclude the uninterested voter, the non-knowledgeable citizen and the dissident – and any attempt to exclude them would damage the integrity of democracy – it cannot exclude non-national domiciled residents. Secondly, the nationality model of citizenship has thus far failed to provide a fair and satisfactory solution to the unequal membership and political exclusion of non-national residents, and it is very doubtful whether any reformulation of it can do so in the future. As noted above, there exists a long list of externalities which cannot be addressed by the nationality model of citizenship. By rethinking citizenship and rewriting some of the crucial elements of the nationality model of citizenship, the preceding discussion has sought to address its chief weaknesses, furnish a model of citizenship beyond nationality and to defend it against possible objections. Although the model will receive further elaboration in the remainder of this book, what we need to consider at this point is how anational citizenship could be forfeited and its impact on the international domain.

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Anational citizenship in the international public realm

The model of citizenship outlined in Chapter 4 flows from a simple premise: domicile in the territory of a state makes a domiciled individual as much part of the public as any native citizen. It generates an entitlement to equal treatment and a claim to be recognised as a participant in the democratic process and a stakeholder in the future of the political community. This, ultimately, transforms citizenship into a network good which is not linked to nationality status. I have argued that if we wish to take democracy seriously then we need to make citizenship a good of low excludability. I have also elaborated on the principles underpinning the model of citizenship beyond nationality, and defended them against a number of objections. This chapter builds on this discussion and extends it further by examining the external dimensions of the model and its impact on the international domain.

Before proceeding to consider the international aspects of anational citizenship, it is worth reiterating that anational citizenship is not envisaged to affect either the recognition of states in the international arena or their central role. Nor does it threaten to usurp their competence to determine the beneficiaries of citizenship. Nothing I have said thus far implies that determination of the citizenry of a country will be a function undertaken by bodies or organisations other than states. On the contrary. The acquisition, loss and the legal consequences of citizenship will continue to fall within the jurisdiction of states[1] and any disputes that may arise will be adjudicated by domestic courts and tribunals in the first instance, in accordance with domestic, international and European Community laws.[2] Having said this, however, it is true to say that the empirical implementation of anational citizenship will intensify transnational and supranational co-operation. But this is nothing new, given the dynamic and open-ended character of socio-political relations at national,

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[1] See the Hague Convention on certain Questions Relating to the conflict of Nationality Laws, 12 April 1930, Art. 1, 179 LNTS 101.

[2] However, as Plender (1972) has observed, international tribunals tend to deal with cases concerning 'the opposability of nationality' and to avoid questions as to whether domestic nationality law fails to conform to international standards.

international and supranational levels of governance[3] as well as the exigencies of globalisation.

While anational citizenship is not envisaged to encroach upon statehood, the replacement of nationality with domicile cannot but have a profound impact on international law and practice. After all, international law has traditionally been viewed to be the law among nations and not states[4] – notwithstanding Kant's preference for the latter notion. In international practice, too, nationality has been 'the principal link between individual and the benefits of the Law of Nations' (Oppenheim 1955, p. 645), thereby framing the law concerning the responsibility of states and the nationality of claims. In what follows, I would like to consider the implications of anational citizenship for the international domain by looking at a number of issues, such as the entitlement to diplomatic protection, the nationality of claims, loss of citizenship and the exclusion of non-national residents.[5]

Diplomatic protection and nationality of claims

Unlike the territorial jurisdiction of states, their personal jurisdiction is premised on the existence of a substantial connection between individuals and the state. Nationality (and the concept of 'dominant' or 'effective' nationality in cases of multiple nationality) has traditionally furnished the real and effective connection that an individual has with a political community. As the International Court has stated in the *Nottebohm* case, 'nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals'.[6] This, perhaps, explains why the personal jurisdiction of states over their nationals extends beyond their territorial confines. Citizens residing on the territory of another state, for instance, continue to be subject to the personal jurisdiction of the state of origin and have a legitimate claim to enjoy that state's protection in case of need. At the same time, the host state's exercise of territorial jurisdiction over non-nationals residing on its territory is not unlimited; it must observe human rights guarantees, cannot

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[3] The dynamic character of international law has been captured by the Permanent Court in the Tunis and Morocco Nationality Decrees which stated that 'the question whether a certain matter is or is not solely within the jurisdiction of the state is an essentially relative question; it depends upon the development of international relations'; PCIJ Ser. B, No. 4 (1923), p. 24. And as early as 1929, it was acknowledged that 'nationality has no positive, immutable meaning; . . . it may acquire a new meaning in the future as a result of further changes in the character of human society and developments in international organisations'; Harvard Draft on Nationality, 23 AJIL (Special Supplement) 1929, p. 2.

[4] In *Droit des Gens* (Preliminaries, s. 3), Vattel (1758) defined the law of nations as the science of law which applies between nations and the obligations arising from this law.

[5] It is beyond the scope of the discussion to examine the effects of state succession on the nationality of the persons born or domiciled there. On this, see Weis (1956).

[6] *Liechtenstein v. Guatemala* (Preliminary Objection), ICJ Reports 1953, p. 111. Second Phase, ICJ Reports 1955, p. 4.

conscript them into its armed forces and cannot prosecute them for crimes committed outside its territory.[7]

Since the main role of nationality in international law and practice is to assign individuals to particular states, it is plausible to argue that any alternative to nationality must adequately perform this function. Citizenship based on domicile could be a suitable candidate, as it denotes the existence of a genuine and effective connection between the individual and a political community from which rights and obligations flow (see Chapters 3 and 4). Indeed, an important advantage of replacing nationality with citizenship based on domicile is that we would no longer need to differentiate between the external and internal manifestations of an individual's membership of an independent political community, which are, at present, denoted by nationality and citizenship respectively.

Admittedly, such a substitution would not affect the rights of individuals. Citizens would be entitled to diplomatic protection abroad and states would continue to be responsible for the reparation of injuries committed to citizens of other states. For although diplomatic protection is exercised at the discretion of the state – unless, of course, an obligation exists by virtue of national law – it is well established that a state has a legal right to provide diplomatic protection, since the injury of one of its nationals in another state is deemed to be an injury against the state itself.[8] In this respect, citizenship based on domicile could perform the same function as nationality for the purpose of diplomatic protection: if a plaintiff can establish the 'citizenship of the claim', the state with which (s)he has an effective link would be entitled to intervene diplomatically or to lodge a claim for satisfaction before an international tribunal, if (s)he has sustained unlawful injury for which another state is responsible. Similarly, citizenship would furnish the basis for the exercise of civil and criminal jurisdiction even with respect of acts committed abroad.

Although the practical effect of the 'citizenship of claims' is no different from that of the 'nationality of claims', these principles nevertheless rest on different theoretical foundations. The principle of 'nationality of claims' is based on a fictitious identification of the interests of an injured individual with those of the state of his/her nationality. The bond of nationality furnishes this identification in so far as it gives rise to a duty of allegiance on the part of the individual in exchange of protection from the state. Diplomatic protection is thus considered to be an outgrowth of the citizen's allegiance to the state (Guha 1961). By contrast, the 'citizenship of claims' is not premised on an artificial

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[7] Issues concerning jurisdictional competence in criminal and civil matters are beyond the scope of this discussion. It suffices to mention here that, according to the active nationality principle, jurisdiction is assumed by the state of which the person, against whom proceedings are taken, is a national. According to the passive nationality principle, jurisdiction is assumed by the state of which the person suffering injury or a civic damage is a national. International law recognises the passive nationality principle only subject to certain qualifications.

[8] As Vattel (1758) had stated, an injury to a national [citizen] is an injury to the state.

fusion between the injured individual and his/her state; a state would be legally entitled to intervene in order to represent and propitiate the claims made by those who have a genuine connection with it by virtue of their domicile. In other words, in case of an injury abroad, the legal right of reparation would belong to the individual concerned, but state intervention would be warranted if the offending state has failed to make amends for the citizen's injury or if the relief the citizen obtained is deemed to be inadequate. Accordingly, reparation for injuries would not longer be grounded in nationals' allegiance to the state and the ensuing fiction that the state itself is being injured in the person of its citizen. Instead, it would be a service entailed by the network good of citizenship.

Plural citizenship ex lege

Whereas the ideal of monopatride citizen has characterised the nationality model of citizenship, the model of citizenship beyond nationality outlined above embraces plural citizenship. Chapters 1 and 3 addressed the underpinnings and some of the standard concerns associated with dual citizenship. Space limitations will not permit me to repeat them here. For the purpose of this discussion, it will suffice to mention that although we now view allegiance as the corollary of nationality, in reality, not only did nationality arise out of allegiance, but allegiance has also been a precondition of nationality acquisition (Bar-Yaacov 1961). As the foregoing discussion has noted, allegiance denoted the mutual bond between the liege lord and his fideles from which reciprocal obligations flowed. The demise of the feudal world brought upon the replacement of the personal relationship between the lord and his subjects with the political bond between individual citizens and the nation-state. Given that states required overarching identification with, and genuine loyalty to, the national community, the spectre of divided loyalty was perceived to be an anomaly and a problem. In fact, dual citizenship continued to be seen as an inherently self-contradictory status for most of the first half of the twentieth century. True, there have been some notable exceptions, such as, for instance, the German Imperial and State Citizenship Law of 22 July 1913, which provided that the acquisition of 'foreign' citizenship did not effect loss of citizenship, if the individual concerned had obtained the written consent of competent authorities of his home state to retain his citizenship,[9] and the bilateral treaties concluded between Spain and Latin America countries and the Dominican Republic in 1958–59 and 1968 respectively. These treaties openly encouraged dual nationality, 'thereby paying a tribute to the historical lineage and the common fundamental ties' existing between these countries and Spain. In Portugal too, dual nationality was openly accepted.

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[9] Article 25(2); see 8 AJIL (1914) Official Documents, pp. 217 ff, cited in Donner (1983).

Notwithstanding these exceptions, however, the idea of exclusive and over-riding allegiance has been the hallmark of the modern state. In the anarchic and competitive international environment of the nineteenth and twentieth centuries, states had a legitimate interest in ensuring their security was not endangered by disloyal individuals. In addition, tension and complications in bilateral state relations owing to conflicts of national laws concerning a wide range of issues, such as voting, taxation, inheritance and military service, have reinforced patterns of international co-operation with a view to reduce the cases of multiple nationality.[10] But increasing population mobility, the wide-spread incidence of dual citizenship, acknowledgement of the polyethnic and multinational composition of polities, and the construction of 'overseas citizenship' categories in order to garner the economic benefits associated with the maintenance of the special affinity of wealthy members of the diaspora with the country of origin, despite their naturalisation elsewhere,[11] have all con-tributed to the progressive erosion of the international norm against dual nationality. In the new millennium, arguments in favour of single nationality can no longer stand up to critical scrutiny in light of migration patterns, transnationalism and, in particular, the movement back and forth from the countries of origin and domicile and the maturation of EU citizenship (see Chapter 1). Maintaining plural attachments is an expression of plural identities and a reflection of the legitimate and enriching connections that individuals may have with two polities which give rise to rights and obligations (Shaw 2007). International law has been flexible enough to embrace such develop-ments. The European Convention on Nationality (Council of Europe 1997) reflects the changing norms on dual citizenship and the acceptance of multiple nationality. More specifically, the Convention stipulates that the parties should allow children having different nationalities at birth to retain these national-ities and that acquisition of a nationality should not result in the loss of the previous nationality, where renunciation is not possible or cannot reasonably be required.

Anational citizenship is wholly consistent with international law and the applicable international conventions. As stated above, it would be natural for adults to combine a domicile of birth with a domicile of choice and for minors to have a domicile of birth and a domicile of association. In addition, under the civic registration approach suggested in Chapter 3, aspiring citizens would not have to renounce 'all allegiance and fidelity to any foreign prince, potentate, state' in order to acquire the citizenship of their choice. Although the model replaces nationality with citizenship, citizenship anchored on domicile

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[10] See the Hague Convention (1930), the Report of the ILC on Multiple Nationality (1954) (International Law Commission, at 6 UN Doc A/CN.4/83 (1954)) and the 1963 Convention on the Reduction of Cases of Multiple Nationality (Council of Europe 1963, European Treaty Series No. 43, Strasbourg).

[11] See, for example, the 2005 amendment of citizenship law in India and the establishment of 'overseas citizenship of India'.

encapsulates all the principles laid down in international instruments, including the European Convention on Nationality. In brief, it embraces plural citizenship, dissipates the risk of statelessness and affirms the principle of non-discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

And although problems and new issues associated with multiple citizenship can always arise, we should not overlook the fact that international law has devised ways of dealing with such conflicts. One may mention here, for instance, the principle of 'the effective link', that is, the rule that preference must be given to 'that nationality (citizenship) which is dominant or effectively manifested by domicile'. The European Convention on Nationality (Council of Europe 1997) is also a case in point. In this respect, the regulatory framework and international standards pertaining to dual nationals could apply to dual citizens. Dual citizens' military obligations, for instance, could be regulated on the basis of the principle of effective citizenship (i.e., 'the country with which one is most closely connected'), coupled with the rule that individuals need to fulfil military obligations in one state only. Military service, including civil service, carried out in one state, would thus be recognised by another state and minors would have the right to choose at the age of majority where they prefer to perform their military service. The same could apply to exemptions from military obligations and the fulfilment of civil service as an alternative. Dual voting is also unproblematic, since expatriate citizens can participate in two different elections, but with their votes counted only once in each election.

Similarly, a dual citizen would be regarded to be a citizen of the state with which (s)he has the most real and substantial connection for the purposes of diplomatic protection. If questions arise concerning the existence of a close and genuine link between an individual and a state, these would be addressed with reference to the rules of that state. In brief, the application of anational citizenship to the international realm does not appear to create anomalous situations or unsurpassable difficulties. This is because international law recognises multiple citizenships[12] and, in the process, has devised means of dealing with possible conflicts among state laws in fields, such as diplomatic protection, military service and voting rights. These could apply to anational citizenship and could, perhaps, precipitate the development of even more sophisticated and nuanced rules in the future.

Loss of citizenship

Citizenship reflects the effective ties one has with a polity, but these can be severed either voluntarily or involuntarily. By making a voluntary and

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[12] As the US Supreme Court noted in *Kawakita v. US* (1952, 343 US 717), dual citizenship is a 'status long recognised in the law'.

conscious declaration, for instance, a person may state that (s)he no longer wishes to be a citizen of a state. Deprivation or withdrawal of citizenship, on the other hand, refers to the involuntary loss of citizenship by a state act and has traditionally taken two forms: namely, the lawful withdrawal of nationality by denaturalisation and the more problematic case of denationalisation. In both cases, the power of states to withdraw nationality has been viewed as a corollary of their sovereign power of determination of nationality.[13]

Expatriation

Expatriation, which may be defined as the voluntary abandonment of the nationality of origin and its replacement by a new one, logically entails the right of emigration. Individuals can leave the country of origin with the intention of taking up residence and becoming a citizen of another state. This brings about the termination of privileges associated with their former membership in a political community – that is, the termination of civil, political and social rights – but does not affect the property rights that individuals may have acquired.[14] Theorists of the modern state, such as Pufendorf and Vattel, did not hesitate to address the issue of emigration. In his *De Jure Naturae et Gentium Libri Octo*, Pufendorf (1688, ch. 7, book 8) noted that although the regulation of this matter falls within the jurisdiction of the state, in the absence of clear positive rules it must be taken for granted that:

> every free man reserved to himself the privilege of migrating at his pleasure . . . For when a man joins a State, he does by no means renounce the supervision of his own actions and property, but his purpose is to secure himself some excellent protection.

Naturally, in Pufendorf's opinion there existed some exceptions to this rule, such as if a person had contracted a heavy debt or the country was at war. The host state, on the other hand, should not 'eject at its pleasure' a citizen who has not committed any offence. For such an act would contravene the tacit contract that an individual makes with the state when taking up residence there: 'a citizen makes, as it were, an agreement with the state that he cannot be ejected against his will, unless he deserves it'.

The notion of lawful emigration was also addressed by Vattel. In *Droit des Gens*, Vattel (1758) stated that a person had the right to leave his/her country, if the country could not support its members or the sovereign was abusing his power or where intolerant laws forced a person to leave the country for

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[13] But Aleinikoff (1986) has noted that available theoretical justifications of the withdrawal of nationality are neither coherent nor sound.

[14] If citizenship is viewed to be 'the right to have rights', then expatriation is not a right in and of itself; it is the waiver of the right to citizenship. According to Aleinikoff (1986), if expatriation is viewed as a waiver of a right, then Congress may have some power to impose limits on expatriation.

religious reasons. A more communitarian variant of the contractarian per-
spective was furnished by Grotius, who made a distinction between individual
emigration, which was permissible, provided that the country was not heavily
in debt or engaged in war, and mass emigration, which was not permissible,
since it threatened to destroy the fabric of society.

Whereas theorists of the modern state did not hesitate to recognise individ-
uals' right to emigrate, it was only in the eighteenth century that the idea of
expatriation began to take root. As already noted in Chapters 1, 3 and 4,
individuals' allegiance to the monarch was perceived to be indelible; once it
was acquired it could not be forfeited. Until the mid-eighteenth century, for
instance, naturalisation of a US citizen in another country did not necessarily
release him/her from his/her allegiance unless the country of origin stipulated
so.[15] Under English common law too, a subject remained a subject until his/her
death. The enduring quality of allegiance (*nemo potest exuere patriam*), was
upheld by Britain until the enactment of the Naturalisation Act 1870. The
impressment for service in the British navy of British subjects naturalised in the
US and the ensuing war of 1812 between Great Britain and the US, coupled
with the prosecution of the naturalised US citizens who had taken part in
the Fanian rebellion in Ireland in 1848 in Britain, functioned as catalysts for the
establishment of the right of expatriation in the US and elsewhere. In 1868 the
US Congress pronounced expatriation as a 'natural and inherent right of all
people' and stated that naturalised citizens should renounce entirely their
former allegiances and become full American citizens. Indeed, according to
the 1868 Act of Congress Concerning the Rights of American Citizens in
Foreign States,[16] naturalisation abroad resulted in automatic expatriation.
The British Naturalisation Act 1870 also signalled the abandonment of the
principle of indelible allegiance: s. 6 of the Naturalisation Act 1870 stated that a
British subject by birth could cease to be a British subject by acquiring
nationality in a foreign state by voluntary naturalisation. However, under the
same section, British subjects, who had become naturalised in another state
and wished to remain British subjects, could do so by making a declaration and
by taking an oath of allegiance.

Given that expatriation is premised on the liberal doctrine of free will,
international law and practice require the presence of two elements for the
effective renunciation of citizenship; namely, the *bona fide* change of domicile
and *animus manendi*. Expatriation is thus ineffective, if an individual main-
tains his/her permanent abode in the country of his/her origin. Voting in
foreign elections, voluntary renunciation of citizenship, naturalisation in a
foreign state, taking an oath of allegiance to another government, unauthor-
ised service in the armed forces of another state, taking up an important
political post in the government of another state, desertion, treason and

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[15] See *Talbot v. Janson* 3 Dall. 133, 164 (1795) and *Shanks v. Dupont* (1830) 3 Pet. 242.
[16] 15 US Statutes at Large, 223, cited in Donner (1983); see also Borchard (1931).

draft avoidance all have traditionally been seen as acts reflecting *animus manendi*, thereby resulting in expatriation. Conversely, expatriation would not follow, if one were inducted into the armed forces of a foreign country under duress. In *Perez v. Brownell* the US Supreme Court upheld the section of the 1940 Act that denationalised a US citizen for voting in a foreign election.[17] The power to strip citizens of their nationality was seen to flow from Congress's power to conduct foreign affairs. But in *Trop v. Dulles* the US Supreme Court pronounced unconstitutional the imposition of expatriation as a sanction for desertion from the armed forces, thereby setting limits on the government's powers of expatriation.[18] *Perez* was eventually overruled by *Afroyim v. Rusk* in 1967.[19] In that case, the Supreme Court held that the language and purpose of the Fourteenth Amendment supported the view that it is 'completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship'.[20] Citizenship should be only voluntarily relinquished. Similarly, in *Vance v. Terraza*,[21] the court clearly stated that loss of citizenship could not occur without evidence produced by the government that an expatriating act was accompanied by intention to terminate US citizenship. Naturalisation abroad and the taking of an oath of allegiance are still presumed to be voluntary acts showing intent to abandon citizenship, but voting in foreign elections or military service abroad are increasingly regarded as unreliable evidence of an intention to renounce citizenship. And in certain states, an act of expatriation can only produce legal effects, if the consent of the government is obtained.

In the light of this discussion, it is plausible to argue that a voluntary renunciation of citizenship in the manner prescribed by law would bring about the loss of anational citizenship. Voluntary renunciation would apply to domicile of birth, domicile of choice and domicile of association, but, as already stated in Chapter 4, it should not lead to the abandonment of all domiciles and thus to statelessness. While the voluntary loss of citizenship does not appear to give rise to difficulties, the issue of deprivation of citizenship raises intricate questions for anational citizenship, which are considered below.

Deprivation of citizenship

In international law, the power of states to withdraw citizenship has been seen to flow from their sovereign power of unilateral determination of nationality. But the exercise of this power is circumscribed by international law and European Community law.[22] A lawful withdrawal of nationality under

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[17] 356 US 44 (1958).   [18] 356 US 86 (1958).   [19] 387 US 253 (1967).
[20] Ibid. at 267–8.   [21] 244 US 252, 263 (1980).
[22] According to Art. 1 of the Hague Convention of 1930, constraints are imposed by 'international conventions, international custom and the principles of law generally recognised with regard to nationality'; League of Nations Doc C.73 1929 Y. 24, AJIL (1930) Special Suppl. p. 10.

international law constitutes the revocation of a naturalisation obtained 'in fraudem legis'. In this case, the cancellation of naturalisation is seen to be a legitimate penalty for fraud, and both UK and Irish nationality law provide for the revocation of registration or the certificate of naturalisation if it is shown to have been procured by fraud, misrepresentation or concealment of material facts and circumstances. Fraudulent naturalisation or, in the case of the model of citizenship beyond nationality, fraudulent civic registration, at first sight would be a permissible ground for the loss of anational citizenship, since a deceitful individual should not be allowed to benefit from his/her own wrong. However, if the individual concerned has made a country the hub of his activities for a number of years and has been enmeshed within a web of socio-economic and political relations, withdrawal of citizenship is a heavy penalty which might contradict the normative principles underpinning citizenship based on domicile. In such a case, it seems to me that criminal law could furnish a more proportionate penalty for fraudulent naturalisation. In any case, the onus of proving that the citizen concerned procured the privileges of full membership by fraud would fall upon the government, and the decision to revoke citizenship would have to be subject to judicial review.[23] Although the deprivation of citizenship on the basis of 'fraudulent naturalisation' applies in the main only to naturalised citizens, denationalisation, which is discussed below, applies to both birthright citizens and naturalised citizens.

Denationalisation, which may be defined as the deprivation of citizenship as a punishment for treason or other offences, has given rise to much debate. Governments have used denationalisation in order to impose devastating harms on certain individuals,[24] to silence political opposition and dissent, and to discriminate against minority groups. The Soviet denationalisation programmes in 1921 and 1926 (Fisher 1927, p. 45), the denationalisation decrees of the Nazi Regime of 1935 and 1941, which deprived Jewish citizens of their citizenship and Jewish residents abroad of their German nationality respectively (Mann 1973), and the Czechoslovakian and Polish decrees between 1945 and 1946, which effected the denationalisation of persons from the German and Hungarian minorities are notable examples. In the beginning of the twentieth century, violation of laws against subversion, conviction of treason and desertion from the armed forces in time of war could result in denationalisation in the US. Initially, the US Supreme Court upheld the constitutionality of the early denationalisation statutes,[25] but this position

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[23] It may be noted here that a broad interpretation of 'fraud', akin to that of fraudulent natural-isation under US law, which ultimately relies on the nationalist presumption of a single and overriding allegiance to one nation, would be problematic under the model of citizenship beyond domicile.

[24] Justice Warren described denationalistion as 'the total destruction of the individual's status in organised society'; *Trop v. Dulles*, 356 US 86, 101 (1958).

[25] 1907 Expatriation Act; ch. 2534, para. 3, 34 Stat. 1288 (1907); the 1940 Statute, Ch. 876, 54 Stat. 1137 (1940); Act of Separation 27, 1944, ch. 418, 58 Stat. 746; Ch. 1256, para 2, 68 Stat. 1146 (1954).

became difficult to sustain as the protection of the individual against the arbitrary exercise of governmental power gained priority. A line of US Supreme Court decisions beginning with *Afroyim v. Rusk* (1967) has limited the government's power to terminate citizenship to those cases where strong evidence of intent to relinquish citizenship exists.

Although it would be incorrect to say that deprivation of nationality is illegal under international law (Brownlie 1998 [1973], p. 409),[26] under the anational model of citizenship deprivation of citizenship through state action would not be permissible. This is not only because criminal law offers ample scope for punishing citizens' 'inappropriate' conduct. It is also due to the difficulty in justifying why 'inappropriate conduct', such as, the rendering of services to, or the receipt of emoluments from, another state and, generally speaking, acting in manner that seriously prejudices the vital interests of the state, is seen to be an 'expatriating' one, whereas violent criminal behaviour which shatters the lives of people is not. In this respect, it may be concluded that anational citizenship could be lost owing to: (1) the voluntary renunciation of domicile of birth, domicile of choice, domicile of association; and (2) the revocation of civic registration due to fraud or misrepresentation. But, as mentioned earlier in this section, this would only apply to a domicile of choice established within the first three years of residence. Longer periods of domicile would trigger penal sanctions.

But how should prolonged domicile abroad be treated? Existing nationality laws provide for the deprivation of nationality in cases of uninterrupted long residence abroad (Sandifer 1935; De Groot 2005). Would uninterrupted residence abroad thus result in severing the link between the citizen and the country in which (s)he has a domicile of choice or a domicile of birth? In addressing this question, the reader may recall that the anational citizenship embraces plural citizenship and that domicile of birth can coexist with a domicile of choice. While this combination is reasonable owing to the multiple connections individuals may have with two polities, acquisition of a new

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[26] Arbitrary deprivation of nationality, that is the use of deprivation in a discriminatory manner targeting particular groups or resulting in stateless or both, is not permitted. Especially acute is the combination of arbitrary deprivation of nationality with expulsion from the state territory coupled with a refusal to receive back former citizens. This conduct that gives rise to an international delict. Article 51(2) of the Universal Declaration states that 'no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'. See also the Convention on the Reduction of Statelessness (1961). In particular, Art. 8(1) of the Convention on the Reduction of Statelessness states that 'a contracting state shall not deprive a person of his nationality if such deprivation would render him stateless'. Article 9 of the Convention entails the prohibition of arbitrary deprivation or discriminatory denationalisation. Additionally, Art. 3(1) of the Fourth Protocol to the European Convention on Human Rights provides that 'no one shall be expelled by means either of an individual or of a collective measure, from the territory of the state of which he is a national. And Art. 3(2) states that: 'No one shall be deprived of the right to enter the territory of the State of which he is a national.' But it may be observed here that the Convention does not provide adequate guarantees to those individuals whose nationality is withdrawn before their expulsion from the country of their nationality.

domicile of choice in a third country would result in the loss of a former domicile of choice (see Chapter 4). As the discussion on the requirements of domicile in Chapter 4 has shown, individuals cannot have bonds of equal intensity and of lasting connection with two polities simultaneously, thereby justifying the existence of two domiciles of choice, even though a domicile of choice can be combined with habitual residence in other countries. But if extended residence abroad has not been accompanied by the acquisition of a domicile of choice and thus of citizenship, a de facto attachment to another polity owing to long-term residence would not suffice to bring about the loss of citizenship. For as the discussion in the previous chapter stated, animus is also required; in other words, an individual must have the requisite intention to reside abroad indefinitely and to sever the personal and legal ties with the country of his domicile of choice. Although long-term residence abroad might create a presumption to this effect, an individual would be able to rebut a government's claim that his/her prolonged sojourn abroad reveal his/her intention to disconnect with a particular polity, thereby being able to retain his/her existing domicile of choice.[27]

Security of residence

Whereas international law has placed important limits on states' power to expel their own nationals,[28] non-national residents are in a vulnerable position. They can be ordered to leave their home state, despite their denizenship status, which results in the enjoyment of civil, social and often political rights at local government elections. Security of residence thus remains an important marker of distinction between citizens and non-citizens, notwithstanding the variable levels of protection provided under international treaties relating to labour migration.[29] Increasing levels of security of residence have been afforded by the Council of Europe's Conventions on Establishment (1955) and the Legal Status of Migrant Workers (1977), and the UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990). Notwithstanding the existence of such international norms, however, it is generally accepted that the presence of 'aliens' on the host territory depends on the states' consent, which may be withdrawn if state authorities assess that the presence of a person is not conducive to the public good. Over the years, states have furnished a number of justifications for exclusion, namely: insufficient income; inadequate housing; public policy; public security and public health

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[27] This approach is flexible enough to accommodate the re-acquisition of citizenship by former citizens who have established domicile on the territory of a state.

[28] The Harvard Draft Convention on the Responsibility of States, 23 AJIL 1929, Special supplement, 1.

[29] See, for example, the 1949 ILO Convention 97 on Migration for employment, the 1962 Convention 117 on Social Policy, the 1975 Convention 143 concerning Migrant Workers and the 1990 UN Convention on the protection of the rights of all migrant workers.

grounds; criminal convictions; non-compliance with administrative rules concerning their entry; residence and employment; and, as already mentioned above, prolonged residence on the territory of another state.

It is true that international human rights norms and European law have placed important limitations on states' power in this area. The non-refoulement principle enshrined in Art. 33 of the Convention Relating to the Status of Refugees and the Strasbourg jurisprudence concerning Arts. 3 (protection from inhuman and degrading treatment), 8 (respect for private and family life) and 13 (the due process norms mandating access to a fair procedure) of the European Convention on Human Rights (ECHR) are notable examples. In certain European states, too, such as Finland and Denmark, national legislation has incorporated the so called 'sliding scale principle', according to which the longer the period a resident has resided in the country, the stronger is his/her claim to protection against deportation or removal. Certainly, it may be objected here that human rights norms are not always enforced in practice, particularly by lower courts and administrative authorities, and that their protective scope weakens when deportation follows a final criminal conviction or is ordered on national security or public policy grounds. Trivial incidents have thus triggered the deportation of long-term non-national residents, notwithstanding the close connections they may have with the country of residence owing to family ties and the absence of any links with the country of origin. The *Moustaquim* case is a noteworthy example.[30] Moustaquim was a 20-year-old Moroccan national who had migrated to Belgium at the age of one with his mother in order to join his father and had spent all his life there. Following his conviction for offences committed while he was a juvenile, the Belgian authorities ordered his deportation. After a precarious living in Spain, Sweden and Greece, Moustaquim was diagnosed as suffering from depression caused by the disruption of his family ties and applied for a stay of the Belgian deportation order to enable him to return home. When he re-entered Belgium on a temporary residence permit, he challenged the deportation successfully. The European Court of Human Rights held that the deportation order constituted an unjustified interference with Moustaquim's rights under Art. 8 ECHR, considering his strong family ties in Belgium and his weak ties with Morocco. A similar conclusion was reached by the European Court of Human Rights in *Djeroud*, who was only one year old when he migrated to France. According to the Court, Djeroud had 'his family and social ties in France and the nationality which linked him to Algeria, though a legal reality, did not reflect his actual position in human terms'.[31]

Generally speaking, deportation owing to criminal behaviour is either automatic, following final criminal conviction for an offence that carries the

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[30] 193 European Court of Human Rights, 18 February 2001, at 11.

[31] *Djeroud v. France*, Application No. 13446/87, 14 European Human Rights Reports 68 (1992); see also *Beljoudi v. France*, 234 European Court of Human Rights (ser. A) (1992).

statutory penalty of one or several years' imprisonment or for repeated offences, or a substitute for a prison sentence. In the former case, non-national residents face a double punishment; namely, a prison sentence and deportation, which, in turn, is justified on the ground that they represent a threat to the requirements of public policy or public security. This begs the question why non-national resident offenders are deemed to be so much more threatening than national offenders and, therefore, why serving a jail sentence does not suffice for a non-national resident while it suffices for a national who may have committed the same offence. The differential treatment of non-national resident offenders makes clear that their acceptance by the host national-statist community is always qualified. While the host community tolerates the criminal behaviour of compatriots, non-national long-term residents are viewed as undesirable, 'dangerous others' who must be expelled. The discursive construction of 'dangerous otherness' relies on two strategies; namely, (1) the dislocation of the individual from the symbolic membership circle by overlooking his/her connections with the polity and the community and by devaluing the contributions (s)he has made during his/her residence; and (2) the drawing of a sharp demarcating line between citizens and 'aliens', which, in turn, justifies disparate treatment. Yet, non-national residents are neither (full) citizens nor aliens. But their lack of formal citizenship status does not only make their lives, expectations and future less worthy of respect, but it negates them completely. For the central consideration is that 'the deportee has forfeited his or her right to be hosted and is to be sent home' (Bhabba 1998, p. 615).[32]

It must be noted, here, that EU law has placed significant limitations on the sovereign power of the member states in this area. For although the member states may restrict the freedoms of movement and residence of EU citizens and their family members on the grounds of public security, public policy or public health, the European Court of Justice (ECJ) has consistently stated that the latter grounds must be interpreted strictly and that states' measures must comply with the principle of proportionality.[33] Measures taken on these grounds – that is, decisions denying leave to enter or ordering expulsion – shall be based exclusively on the personal conduct of the individual concerned, which must constitute 'a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society'.[34] The same assessment must take place with respect to third country nationals who are spouses of EU nationals, for whom alerts have entered in the Schengen

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[32] This issue was raised by the dissenting judge in *Bouchelkia v France* and underpinned his view that Bouchelkia's ordered deportation was disproportionate; [1997] 1 European Court of Human Rights (ser. A) 47.

[33] Case C-100/01 *Ministre de l'Interieur v. Aitor Oteiza Olazabal*, Judgment of the Court of 26 November 2002; Joined Cases C-482/01 and C-493/01 *Orfanopoulos v. Land Baden-Wurttemberg* [2004] ECR I-5257.

[34] Case 30/77 *R v. Bouchereau* [1977] ECR 1999.

Information System for the purpose of refusing them entry. In commenting on
the relationship between the Schengen Implementing Convention and the
Community law provisions on freedom of movement for persons, the ECJ
has stated that both the member state issuing an alert and the member state
that consults the Schengen Information System state must first establish that
the presence of a person constitutes a genuine, present and sufficiently serious
threat affecting one of the fundamental interests of society.[35] Clearly, member
states cannot order the expulsion of an EU citizen as a deterrent or a general
preventive action. Nor can the derogations be invoked by a member state in
order to serve economic ends. Previous criminal convictions cannot by them-
selves constitute grounds for deportation, but past conduct may constitute
evidence of a present threat to public policy, particularly if the individual
concerned is likely to re-offend. By insisting on a strict interpretation of the
public policy derogations, the ECJ has circumscribed significantly the discre-
tionary power of the states over nationals from other member states. By so
doing, it has reduced the risk of possible 'scapegoating' of 'foreigners' in order
to satisfy public opinion.

Having said this, one may find that national administrative practices, for-
cibly deporting EU citizens by reason of an enforceable criminal conviction,
continue to take place, even though they clearly breach Community law.
According to Advocate General Stix-Hackl, 'the German practice of automatic
deportation, without regard for personal circumstances, justified on the
ground of its deterrent effect on other foreigners and in breach of the funda-
mental right to family life breaches Community law'.[36] The new citizenship
directive (Directive 2004/38) goes a step further in the direction of enhancing
security of residence for EU citizens by requiring member states to take into
account a number of considerations, such as, the length of a person's residence,
his/her age, state of health, family and economic situation, social and cultural
integration and the extent of his/her links with the country of origin before
taking an expulsion decision and by stipulating that the residence of EU
citizens or their family members can be terminated only on serious grounds
of public policy or public security.[37] In addition, long-term resident EU
citizens and minors may not be ordered to leave the territory of a member
state, except on imperative grounds of public security.[38]

Under the model of citizenship proposed in Chapter 4, longstanding resi-
dence would result in absolute protection against expulsion. Shorter periods of
residence, coupled with the fact that domiciled persons are eligible for citizen-
ship after a period of domicile of two or three years' duration, would create a
strong presumption in favour of equality of treatment between citizens and

[35] Case C-503/03 *Commission v. Kingdom of Spain*, Judgment of the Court of 31 January 2006.
[36] See the Advocate General's Opinion in Case C-441/02 *Commission v. Federal Republic of Germany*, 2 June 2005.
[37] Article 28(1) of Directive 2004/38 [2004] OJ L158/77.   [38] Article 28(3) of Directive 2004/38.

domiciled residents. Accordingly, domiciled persons might be expelled only for quite serious breaches of public order and security and deportation must not infringe on their right to family and private life.[39] In such cases, deportation would have to be based on the personal conduct of the person concerned and would no longer be a penal consequence of criminal behaviour or an automatic consequence of a criminal conviction. Finally, very short periods of residence (i.e. less than a year) would not shield residents from deportation either as an act punishment for serious offences or as a security measure.

In the light of the preceding discussion, it may be concluded that anational citizenship does not give rise to insurmountable problems or potentially threatening changes in the international public realm. If considerations of effectiveness and real application are an important yardstick on the basis of which we can judge the merits of anational citizenship, the foregoing discussion has shown that it can be applied coherently in the international realm, and that its ramifications in areas, such as diplomatic protection, the nationality of claims, loss of citizenship and the exclusion of non-national residents, neither undermine the powers of states nor invalidate the rich body of public international law.

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[39] Compare Judge Martens's observations in *Boughanemi v. France*, 22 Eur HR Rep. at 249, Applic/ No. 22070/93.

6

The variable geometry of citizenship

The discussion thus far has focused on the personal scope of a national citizenship and its possible impact on international uses of nationality. Having discussed the conceptual underpinnings of such a model (see Chapters 2 and 3) and the rules concerning the acquisition and loss of citizenship (see Chapters 4 and 5), the discussion will now address the material scope of a national citizenship. The latter entails the substantive dimensions of citizenship; namely, rights, be they socio-economic, political or cultural, duties and civic responsibilities, political opportunities for participation, modes of community incorporation and, finally, identity formation and transformation.

A central question, and perhaps the most appropriate starting point, in such an inquiry is how much weight should be given to the notion of differentiated citizenship. As already mentioned in the introduction and Chapter 1, the idea of differentiated citizenship emerged as a response to the critique of liberal citizenship in the 1990s. Advocates of differentiated citizenship have argued that ostensibly neutral liberal norms and practices are, in reality, partial and biased, and that their 'false' universality has contributed to perpetuating structures of inequality and domination and to the maintenance of institutionally embedded privileges for certain groups. Against this background, differentiated rights and asymmetrical solutions might be an effective means of tackling inequality, empowering discriminated against groups and thus making democratic politics more reflective of diversity. Indeed, it is, precisely, the promise of a more inclusive politics entailed by differentiated citizenship that has made it appealing to diverse theoretical perspectives, such as liberalism, communitarianism and the 'theory of recognition'.

Whereas the scope, underpinning justifications and institutional modalities of differentiated citizenship naturally differ in light of the different theoretical frameworks, most scholars nevertheless believe that contemporary liberal democratic states can no longer be 'difference-blind'. Liberal communitarians (Kymlicka), communitarian liberals (Taylor) and recognition theorists (Young) regard differentiated citizenship as an important means of either addressing national minorities' demands for self-determination and recognition, or of preserving cultures worthy of protection or, indeed, of empowering discriminated against groups and promoting fairer terms of incorporation. In

Chapters 2 and 3, I critically examined Taylor's arguments concerning cultural difference and the politics of recognition. I have also reflected on Kymlicka's notion of 'societal cultures' and raised doubts about the validity of the 'stable cultural context' argument and its nationalist underpinnings.

In this chapter, my inquiry into the substantive scope of anational citizenship will commence with Young's (1989; 1990; 1993) conception of differentiated citizenship. As noted in Chapter 1, differentiated citizenship challenges 'institutional domination and oppression' by entailing 'mechanisms for the effective recognition and representation of the distinct voices and perspectives of groups that are oppressed or disadvantaged' (Young 1990, p. 184). Although Young's account is both insightful and useful, I shall argue that differentiated citizenship is not a novel idea. Differentiation has been inherent in liberal citizenship and has taken various forms. This should not be taken to imply that differentiated citizenship has not much to offer in institutional and political terms. On the contrary. By examining various forms of differentiation that have accompanied citizenship, and drawing on Young's proposals, I shall argue that any credible model of citizenship has to display what may be termed 'a variable geometry'.

Highlighting the variable geometry of citizenship has several important implications. First, it shifts our attention away from the differentiated versus universal citizenship dualism to the need to devise a citizenship design that addresses inequalities, fosters inclusive democratic politics and promotes fairer terms for group incorporation. Secondly, differentiated citizenship ceases to be an exceptional measure to be taken on board on certain occasions only. Nor would it be a second best solution to enhancing substantive equality. Instead, it becomes a necessary means of tackling multifaceted exclusion and patterns of discrimination as well as providing flexible solutions to varying needs.[1] Thirdly, it alerts us to uncritical uses (and potential abuses) of the notion of differentiated citizenship and makes us appreciate fully the normative and strategic importance of embracing full and equal membership status as 'a morality of duty and of aspiration' (Fuller 1964). By paying attention to the variable geometry of citizenship, we would thus be able to

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[1] The discussion here does not focus on national minorities and indigenous peoples. These are distinct categories in so far as they denote a population having historic continuity within a particular territory or territories in a status of subordination, internal colonisation (active assimilation) or oppression, and seeing themselves as a distinct 'people'. One of the main indicia of national minorities is that they form a distinctive unit in a particular area of the state, constitute a substantial majority of the population in this area and often see themselves as nations without states: Guibernau (1999). For a reflection on their claims, see Kymlicka (1995), Chesterman and Galiggan (1998); Havemann (1999); Crawford (2001). This, certainly, does not imply the absence of an overlap of issues concerning non-domination, non-discrimination, recognition and respect for distinctive identities between 'dispersed' and territorially 'concentrated' minorities. After all, it has been argued by Leuprecht (2001) that the distinction between 'new' and 'historic' minorities is highly arbitrary.

capitalise on the potential inherent in differentiated citizenship and to foster a more inclusive politics.

Why differentiated citizenship?

Notwithstanding the existence of a range of institutional manifestations, liberal citizenship is essentially a rights status. All members of the community are, formally, citizens of equal status, endowed with rights and responsibilities. As Shklar (1991) has put it, this status is important because it is 'a certificate of equal membership in the political community'. Since liberalism prioritises the existence of a rule-governed framework within which morally autonomous individuals are able to pursue their chosen form of life, ideas and assumptions about 'the good life' are bracketed. Individuals are thus 'embedded choosers' of a great variety of very different, but equally good, lives (Berlin 1969, pp. 172–4). The liberal theory for individuals is, in turn, linked to a liberal theory of the state, according to which liberal-minded, but cut off from public life, citizenry take responsibility for their lives by exercising their rights and participating in politics by voting.

But this conception of the individual and his/her role within the polity has been contested. As noted in Chapter 1, those who draw on the civic republican tradition of active participation and involvement in public affairs (Sandel 1982; Taylor 1990; Walzer 1983; Cohen and Arato 1992) find it both reductionist and unattractive. Additionally, it has been pointed out that liberal citizenship ignores the substantive dimensions of citizenship and the prior existence of a private sphere of unequal relationships in terms of class, race and gender. Formal equality is not only contradicted by the reality of multifaceted inequality, but it also helps render this reality invisible and inconsequential. As Minow (1990, p. 382) has noted: 'to treat existing arrangements and assumptions as the baseline for rights is to consign persons to an often unfair and prejudicial status quo'.

Reflectivist perspectives, such as feminism, poststructuralism and postcolonial criticism and anti-subordination literature, have taken issue with the disquieting gap between the ideal of universal citizenship and reality (see Chapter 1). True, they did not go as far as to argue that liberal politics is the politics of deception, as Marxists would observe, and that citizenship is essentially 'a ruling class strategy' (Mann 1987) designed to control the masses and to maintain the capitalist mode of production and class hierarchies. Instead, they focused on the contradiction between theory and practice and have argued that unless this contradiction is taken seriously and addressed by the state, the susbstantive aspects of equality that citizenship entails will not be realised. Indeed, by examining the *modus operandi* of liberal democratic politics, reflectivist scholars have pinpointed that the institutional devices for promoting equality on offer have either little relevance in practice and/or limited impact on underlying problems.

Feminism, for instance, has criticised the atomistic conception of the self underlying deontological liberalism and has challenged the liberal idea of universal citizenship by exposing the domination and inequality that pertains the private sphere (Pateman 1988; Okin 1989; Young 1990; Yeatman 1994; Philips 1995). Liberal citizenship is supposed to be gender agnostic, but, in reality, it has been shaped by gender differentials, has sanctioned patriarchy and other structurally embedded inequalities. In the same vein, anti-subordination perspectives have exposed the liberal fiction of universality and, thus, the illusion of race equality by focusing on the reality of oppression and the experiences of black people (Gilroy 1987). By so doing, they have disrupted culturally produced representations and exposed the structures of institutionally embedded racial privileges, inequality and injustice.

In addressing these issues, some theorists have mistakenly advocated a higher ideal of community which domesticates all oppositionality (communitarian universalism). By sketching a vision of community in which power relations, conflict and antagonisms will evaporate through the direct exchange of experience, feelings of empathy and face-to-face communication, these theorists tend to view society as a totality (i.e. as a unified and non-contradictory entity). Difference is seen as something to be overcome. Others, for strategic reasons, see gender as an internally undiffererentiated category defined by its opposition to domination by men (Okin 1989; Flax 1995, p. 508). This results in the underscoring of other differences such as racial, class, ethnic and so on which are constitutive of women's identities. And although some worry that the 'deconstruction' of 'woman' may render this category meaningless, most feminists do not view the 'death' of the unified woman as an obstacle to political action.

Certain multicultural narratives, too, might invoke notions of origin and authentic self in order to depict the hegemonic majority and minority cultures as homogeneous, static and essentially different (Modood 1998). Identities, be they individual or group-related, are not unified, bounded, complete, homogenous and static; they are shifting, interacting entities, and, above all, are subject to processes of adaptation, redefinition and change. This acknowledgement guards us against the reification of difference and the abandonment of universalism altogether. Here, universalism is condemned for suppressing difference and heterogeneity (Lyotard 1984; Lyotard and Thebaud 1985); justice is only local and particular. The paradox in this celebration of particularity is that particularity can only be defended by recourse to universal categories. It also leads to the de-contextualization of difference, that is, to the transformation of differences into categorical oppositions. Young (1997, p. 64) and others have insisted that recognition of differences does not imply the absence of similarities and possibilities for common action. Nor does it preclude the possibility of collective mobilisation or the suspension of critical judgement.

Discrimination, inequality, patriarchy and racism can be adequately addressed and, possibly, remedied, by rethinking existing ideas and commonly

held assumptions and by devising institutional programmes based on alternative concepts and categories. Taking a lead in the search for alternative concepts that would reinvigorate citizenship by making it compatible with difference and which are related, but are not confined, to individual rights, Young has proposed the notion of differentiated citizenship. I consider the latter to be a fourfold model centred: on voice and listening; recognition and respect for difference; acknowledgement of the reality of heterogeneous publics; and justice conceived of as the empowerment of discriminated against groups. For Young, the need for such a model stems from the fact that:

> the attempt to realise the ideal of universal citizenship that finds the public embodying generality as opposed to particularity, commonness versus difference, will tend to exclude or put at a disadvantage some groups, even when they have formally equal citizenship status.
>
> (Young 1989, pp. 256–7)

In this respect, Young praises the empowering, enabling qualities of a heterogeneous public. The latter is conceived of as a public realm which enables recognition of group differences and the approximation of equality by giving groups a 'voice' in all deliberations (1989, pp. 257–8). According to Young, the public should be an open, accessible, differentiated sphere, which neither threatens to assimilate otherness nor to essentialise it – an ideal which is captured by the 'unoppressive city'. In the unoppressive city, strangers and different groups dwell together; they interact with space and institutions they all experience themselves as belonging to, but without those interactions dissolving into a 'community of shared final ends' (1990, pp. 237–8; 1986, p. 21). In a heterogeneous public, 'differences are publicly recognised and acknowledged as irreducible, by which I mean that persons from one perspective or history can never completely understand and adopt a point of view of those with other group-based perspectives and histories' (Young 1989, p. 258). However, in order to support the conception of community governed by an ethic of 'openness to unassimilated otherness', Young has to rely on a sociology of the city and urban life which is characterised by residential proximity but also weak social bonds. This raises the question of whether mere 'awareness of each other's presence' and 'the being together of strangers' are able to promote respectful relationships, foster solidarity and sustain the civic bonds required for redistributive policies. In addition, sociologists have commented on the fragmentation of the postmodern global city and the weakening of its political function owing to globalisation and de-industrialisation (Eade 1996; Sassen 1992, 1996).

Notwithstanding these critical observations, Young's idea of differentiated citizenship is designed to be a political alternative to universal liberal citizenship by providing 'institutionalized means for the explicit recognition and representation of oppressed groups'. This entails guaranteed representation in political bodies, public funds for advocacy groups, veto rights over specific

policies that affect the group directly as well as multicultural rights (i.e. language rights for Hispanics, reproductive rights for women etc.).[2]

Evidently, these proposals sit uncomfortably with liberal citizenship. The way that liberalism has traditionally dealt with difference has been to separate the public domain of disengaged reason from the conflicts of incommensurable differences: it acknowledges that individuals have different identities as members of various groups, but it has always insisted that it is in their capacity as (equal) citizens that they take part in the political realm. Otherwise put, political liberalism's response to controversial difference is to turn differences (religious, ethnic, cultural, sexual, etc.) into matters of 'indifference'. This strategy relies on two co-ordinated moves: (1) the depoliticisation of identity, whereby the most controversial aspects of identity are relegated to the private or non-political sphere, thus, becoming matters of private belief (McClure 1990, pp. 361–91); (2) the drawing of a sharp demarcating line between the public and private domains. But such a strategy does not only presuppose the explanandum (i.e. the distinction between the public identity of the citizen and the personal identity of the private self), but it also regards difference as something transient. In addition, it has been observed that such a strategy actually privileges existing relations and practices by overlooking the question of power.

By contrast, in Young's theoretical account individuals do not have to bracket their particularistic identities and abandon their private interests in order to participate in the public realm. Rather, it is the situatedness within specific contexts and groups that makes them citizens. And because the heterogeneous public does not seek to neutralise existing identifications by absorbing them into a deeper unified communal identity, individuals can participate in the political realm as both citizens/residents and as members of particularistic groups (i.e. nationals, members of a region, ethnic group etc.). This challenges both 'the liberalism of fear' (Shklar 1989) and the liberal assumption that private interest is hard to reconcile with the pursuit of public good. By asserting and defending their 'private' interests, individuals, as members of particular groups, often advance the principles upon which the polity is based. In addition, it is hard to see how democratic communities could ever have been built without the existence of deep discord, historical struggles for inclusion and democratisation, and public discourses seeking to redefine the values underpinning human association and to transform politics (see Chapter 1).

Notwithstanding this historical fact, many believe that differentiated citizenship contradicts the orthodox conception of citizenship as a matter of

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[2] This differs from Kymlicka's distinction among self-government rights applying to national minorities and polyethnic rights and special representation rights which apply to non-territorial minorities. The latter are defined as specific group measures intended to help ethnic minority groups and religious minorities express their cultural particularity and pride. Such official recognition includes the promotion of minority languages, public support for particular cultural practices, exemptions from core legal requirements, permissions granted to religious groups and so on.

isonomia (i.e. legal equality) and equity (i.e. those who are similarly situated be similarly treated). Critics have pointed out that differentiated citizenship inappropriately discriminates among 'similarly situated people' on the basis of irrelevant differences (Miller 1995). Philips has eloquently responded to some of these criticisms (1997, pp. 57–63), but has also noted that group representation entails the dangers of freezing identities, 'group closures' and divisive politics (Philips 1993). Philips' concern is shared by Mouffe (1992), who argues that Young's schema approaches cultural essentialism and runs the risk of transforming identities into reified constructs.[3] In an attempt to avoid the pitfalls of essentialising cultural differences, some scholars have suggested the replacement of the vocabulary of multiculturalism with that of trans-culturalism. The latter pays attention to the interpenetration of cultures and the realities of dialogic communication across cultures and of hybridity. As noted in Chapter 3, Parekh's work is a prime example of this. Avoiding both the idea of an overlapping consensus and the picture of an incommensurable collection of cultures resembling little insular islands, Parekh has highlighted eloquently the benefits of a hermeneutical openness to the viewpoints of others and of dialogic multiculturalism.

While the risks of essentialism and the freezing of identities need to be taken seriously, it is important that the debate concerning multiculturlism (or interculturalism) pays attention to the political context and, in particular, to the politics of collective identity formation. For individuals have multiple selves, move in and out of subject positions and, as Kukathas has pointed out, members of minority groups shift strategies and change objectives depending on opportunities and circumstances. Accordingly, individual identity neither emerges out of a bounded essential cocoon nor does it reflect objectified group identities. Instead, it is formed and transformed in processes of social and political interaction and is almost never unitary. In this respect, Offe's (1998, p. 128) criticism that the 'officialisation of a collectivity, that is, the authoritative assignment of group quality to a collectivity may be overly encompassing, forcibly tying together into a common membership status people who had never thought of themselves as belonging to one and the same group' might not be correct. To use a concrete example to illustrate this point, the concession made to Sikhs wearing turbans and riding motorcycles in the UK does not mean that Sikhs are 'locked into group membership (whether they want it or not)'. Nor does this example of a group right result in making the 'the group, as a collective body, the target of privilege'. Rather, it ensures that no Sikh would have to pay a fine for not wearing a motorcycle helmet and

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[3] Rosenblum (1994, p. 1) criticises Young for failing to designate which groups qualify as constitutive and whether every constitutive group is entitled to have political rights and representation. She fears that Young's politics of empowerment may lead to the exclusion of dominant groups, privileged social groups and unopposed minority groups.

that religious faith is not turned into a disadvantage as people seek to reconcile their religious duties with their legal obligations.

It is often the case that critics of differentiated citizenship overlook the fact that groups do not need differential treatment because they are 'essentially' different, but because they live in a discriminatory society which turns differences, which are irrelevant from a moral point of view, into disadvantages. Social statistics confirm this picture.[4] Bearing in mind social statistics and everyday experiences of discrimination and exclusion, most members of minority groups seem puzzled by the fuss over the wearing of either hijab or niqab in the classroom.[5] As Trevor Philips (2006), former chair of the Commission for Racial Equality, has remarked, tackling problems, such as dress codes in the workplace, 'is not the biggest problem. The tension go much deeper . . . At the CRE we have taken to saying that in the 21st century there are only two big political questions: one is how to live with the planet, and the other is how we live with each other.' Taking diversity and equality seriously may thus well require difference-conscious strategies aiming at empowering disadvantaged groups and at attending to group specific needs (Young 1997, p. 65; Philips, 1997). Although critics fear that group-conscious policies could lead to separatism or to 'mutual mistrust and conflict' (Kukathas 1993, p. 156) or the 'disuniting' of a country (Schlesinger 1992), this argument has to be weighted against considerations concerning the impact of systematic discrimination on social relations and political institutions. Since justice and the 'sense of community' are seriously undermined by oppression and inequality, differentiated citizenship may be capable of restoring the sense of community and creating a richer and more meaningful notion of community membership.

Frazer (1995) has also criticised Young for paying too much attention to the politics of recognition, thereby overlooking issues of redistribution. She concludes that both distribution and recognition are required to overcome multifaceted oppressions – a conclusion that is shared by Young and other theorists of recognition. As Young (1990, p. 251) has argued, 'differentiated citizenship does not concern cultures but rather the empowerment of the members of disadvantaged cultural groups'. By defining empowerment as the 'participation of an agent in decision-making through an effective voice and vote', Young contends that political empowerment cannot be disentangled from socioeconomic improvement. Accordingly, inclusion is not merely an issue of cultural pluralism and diversity, but also of socio-economic inequality. As

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[4] For recent research on the socio-economic disadvantages faced by British citizens from ethnic minority backgrounds, see Platt (2005) and Modood (2005).

[5] I refer, here, to Mr Jack Straw's remark about the wearing of the veil in his surgery and Mrs Azmi's employment tribunal case, owing to her suspension by Headfield Church of England Junior School in Dewsbury for refusing to remove her veil, in October 2006. In France, the debate centres on Law No. 2004-228 of 15 March 2004, on the *application of the principle of laïcite*, which banned 'conspicuous religious symbols' in primary and secondary schools; Journal Officiel de la Republique Francaise, 17 March 2004, p. 5190.

Favell (1998, p. 229) has noted, the real reasons for the exclusion of minority groups are often typically socio-economic and class-based in nature.

But which groups are entitled to collective rights? And further, what qualifies as 'a group' deserving the grant of such rights? It seems to me that an answer to these questions must take into account the context of cultural pluralism. For, as already earlier argued, minority rights and multiculturalism are historically specific political responses not only to the empirical reality of diversity (Parekh 2000, p. 6), but also to historical disadvantages, experiences of oppression, the exclusion and the exploitation of certain groups. Looked at from this standpoint, delineating 'a group' that is entitled to collective rights seems to require the combined presence of: (1) an external, political and historical, point of view; (2) an internal point of view; and (3) the framing of claims and political mobilisation on the part of group members to remove oppression, exploitation and disadvantage. The former, external, dimension implies a sense of 'groupness' imposed from outside, that is, by hegemonic groups, as a rationale for excluding groups on the basis of morally irrelevant characteristics. In all countries, one finds minorities who have been denied the benefits of full membership and face multifaceted barriers to the attainment of their goals and the enjoyment of benefits and resources owing to race, ethnicity, gender, sexual orientation, class, disability etc. The internal point of view (1) refers to identification from 'within', that is, by the members of the group. This inter-subjective consciousness emerges as a combination of an objective component reflecting the distinctive common characteristics (markers) of a group and the subjective dimension of individual members believing that they belong together for some reason. This should not be taken to imply, however, some form of arbitrary group closure or the absence of visible (and invisible) constituencies as well as of intersecting differences within the group. As Wallmans (1983, pp. 69–70) has put it, no one identifies with the same group or in opposition to the same set of others all the time; 'individuals have a more or less extensive repertoire of identity options which they call upon or engage within different contexts and for different purposes'. Nor would it be correct to believe that all members interpret their commitment to the group in the same way. In this respect, the intersection of the internal and the external points of view is crucial, as both form an interconnected system.[6] The importance of dimension (3), that is, of political mobilisation, too, should not be underestimated, for unless group members and elites get politically organised and voice their concerns in the public arena, they will not succeed in gaining recognition.[7]

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[6] Young (1997) distinguishes between a group and a series. A group is a self-conscious, mutually acknowledging collectivity like the members of the suffrage movement. By contrast, the members of a series are unified passively by the objects their actions are oriented around. An example used is people waiting at the bus stop.

[7] The political project of recognition is indeterminate and unfinished. As Tully (1995) has put it, in processes of democratic activity citizens struggle to change the rules of mutual recognition as they change themselves.

Providing a more precise definition of the groups that could be entitled to collective rights may not convince critics of differentiated citizenship who worry about the dangers of group essentialism and divisive politics. Although such criticisms come from a variety of perspectives, it is, nevertheless, true to say that the risk of fragmentation (or balkanisation) features prominently in criticisms expressed from conservatives on both sides of the Atlantic concerned about national unity and Christian values. In an attempt to address this risk, Lister (1995; 1997; 1998) has suggested the notion of differential universalism which synthesises difference and equality. As she has put it (2003 [1997], p. 81), 'a politics of solidarity in difference involves both recognition of differences and an acknowledgement of a commonality of interests'. According to Lister (2003, pp. 91–2), the theoretical challenge is to pursue a pluralist, feminist conception of citizenship without slipping back into a false universalism within the gender categories and to maintain a genuinely differentiated analysis that moves beyond mere tokenism. Such an approach would have to embrace group-specific rights while retaining the egalitarian promise inherent in citizenship, since the latter can form a benchmark against which the inclusion of marginal groups can be measured. A synthesis of the universal and the particular could thus be a creative means of channelling the tensions between universalism and diversity.

Lister's approach is very appealing, not so much because it avoids group essentialism, but because it succeeds in highlighting that the politics of difference does not rest on the abandonment of universality. As Abu-Lughod (1989) has stated:

> to recognise that the self may not be so unitary and that the other might actually consist of many others who may not be so Other after all is to raise the theoretically interesting problem of how to build ways of accepting or describing differences without denying similarities or turning these various differences into a single, frozen difference.

Young (1990, p. 171) has also made the same point:

> . . . in general, then, a relational understanding of group difference, rejects exclusion . . . To say that there are differences among groups does not imply that there are not overlapping experiences or that two groups have nothing in common. The assumption that real differences in affinity, culture or privilege imply oppositional categorisation must be challenged. Different groups are always similar in some respects, and always potentially share some attributes, experiences and goals.

In the light of the foregoing discussion, one may conclude that critics of differentiated citizenship have exaggerated the risks of group essentialism and fragmentation. At the same time, however, advocates of differentiated citizenship have exaggerated the universal character of liberal citizenship. For universality itself is split, since there exists a contradictory relationship between the citizenship ideal (universality) and its empirical context (false

universality). In this respect, universal citizenship, defined as the right to be treated as a full, equal and respected participant in a political community, can only be understood with reference to the (differential) context within which it operates and the (differential) context it helps perpetuate. In the next section I show that differentiation has been a built-in feature of liberal citizenship and argue that almost all models of citizenship exhibit some form of synthesis between equality and difference, which may be used either to induce progressive developments or to sediment exclusionary politics. In this respect, while Lister (2003, p. 197) is correct to pinpoint that the difference/equality dualism leads us into a theoretical and political cul-de-sac, it seems to me that a different approach to differentiated citizenship is needed.[8] Such an approach would have to be based on two central premises. First, the rehabilitation of differentiated citizenship as a normal and an integral dimension of citizenship conceived of as equal membership in a political community. Secondly, rather than viewing equality and difference as incommensurate divides, it would have to acknowledge the patterns of co-determination and mutually reinforcing perforation among them. Table 6.1 outlines the differences between the existing debate on differentiated citizenship and what may be termed 'embedded differentiated citizenship'.

As Table 6.1 shows, embedded differentiated citizenship transcends the universal versus differentiated citizenship dilemma. In addition, it differs from procedural liberalism's scheme of tolerating the differential application of certain rights, provided that a core of fundamental rights applies to all individuals. Unlike liberal approaches, it takes full account of the complex relationship between the universal, that is, the citizenship ideal, and the particular, that is, the empirical context within which the ideal operates, thereby reflecting patterns of differentiation within universal, on the one hand, and the need to realise full and equal citizenship as much as possible, on the other. 'Difference' thus becomes a means of removing disadvantage and reinvigorating citizenship. To this end, the implicit background conditions become the foreground for an analysis of citizenship and there is a constant move backwards and forwards, as we weigh the normative weight and the relative priority of demands in the light of the equal citizenship ideal.

Differerentiated citizenship revisited

The argument I wish to put forward in this section is that differentiation is a normal and integral dimension of citizenship. Citizenship has always been differentiated in institutional design or implementation or in both, and liberal

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[8] Lister's proposal for a common grammar of politics featuring in differential universalism must leave room for the 'acceptance of reasonable disagreement all the way down not only over different conceptions of the good within the framework of fundamental principles of justice, procedures of deliberation or constitutional essentials but over any such framework as well': Tully (2002). See also Gianni (1998).

Table 6.1

	Differentiated Citizenship	Embedded Differentiated Citizenship
Link with liberal citizenship	Antithetical	Complementary and mutually determining
Link with wider political narrative	Contingent – emerged as a critique of liberal citizenship	Embedded in a deep grammar of aspiration which makes it a normal and necessary part of citizenship – addressing variable needs and historical wrongs
Link with immediate or longer-term aspirations	Differentiated citizenship is a short-term measure or weakly linked to 'imagined futures'	Differentiated citizenship is a long-term measure and often relates to extensive 'imagined futures' – part of a coherent and planned citizenship programme
Institutional dimension	More narrowly focused	Extensive, using diverse sources of information
Focus and detail	Few variables are considered	The design is detailed and policy implications seriously considered
Functional dimension	Narrowly defined domains and spatial horizons	Broad and varied domains and horizons
Communities and groups	Mainly 'onlookers' or 'weak framers'	'Strong framers' and active participants
Financial dimension	Key concern and constraint	Aware of financial issues, but these do not influence decisions
Use of social capital	Low – tactical solidarity	Extensive social capital is mobilised to underpin inclusive politics
Reflexive dimension	Uncritical uses to reinforce group essentialism	Critical examination of various articulations and deployment of theses concepts and categories to bring forward progressive developments for out-groups and to realise inclusive citizenship as much as possible

citizenship constitutes no exception. I will focus on three facets of differentiation to illustrate my point. First, I will draw on UK citizenship and nationality law in order to reveal its complex differentiation patterns diachronically. Secondly, the discussion will adopt a synchronic point of view by focusing on patterns of group differentiation inherent in contemporary citizenship legislation. Thirdly, I will demonstrate the conservative implications of uncritical articulations of group differentiated citizenship by discussing the inequitable status of long-term resident third country nationals in the European Union and the notion of 'civic citizenship'.

Patterns of differentiation in UK nationality and citizenship law

The formation and development of British nationality and citizenship law has been underpinned by differential membership statuses and shifting patterns of inclusion and exclusion of 'aliens'. Since the thirteenth century there have

existed numerous classifications of membership status which have, in turn, been subdivided into various classes, each entailing its own set of privileges and degree of disability. More specifically, in the late thirteenth century, allegiance, which has been the cornerstone of UK nationality law, characterised the territorial scope of the lord or king's legitimate power. All persons born within the king's dominion automatically became his subjects and owed faith and allegiance to him. This rule applied irrespective of parentage and alienage, and had already been crystallised in common law before its codification by statute in 1367. Whereas in the thirteenth and fourteenth centuries alien status was defined by birthplace alone (i.e. to be born within or out of the king's ligeance) and thus the king's fideles comprised men of various ethnic origins, in the fifteenth and sixteenth centuries the notion of faith and allegiance (loyalty) to the king superseded the spatial meaning of ligeance. The kingdom was 'conceived as a quasi-spiritual union of people bound together by the bond of faith and allegiance to a mystic body'.[9] Accordingly, foreign birth was no longer a mere spatial and factual matter; it meant alien status. And alien status meant legal disability.[10] According to sixteenth-century jurists, allegiance – that is, the bond between the king and his subjects – was grounded on the law of nature. As the court stated in the *Calvin* (1608): 'as the literatures or strings do knit together the joints of all parts of the body, so doth ligeance join together the sovereign and all his subjects . . . ligeance and obedience of the subject to the sovereign is due by the law of nature; ergo it cannot be altered'.[11]

Allegiance shaped the common law rules on nationality decisively by framing political belonging in terms of the neat distinction between subjects and aliens. As Coke and Bacon stated in *Calvin*: 'Every man is either an alien born or a subject born.'[12] In the sixteenth century Bodin also defined citizenship as the reciprocal bond of allegiance linking the sovereign with his subjects: 'It is the acknowledgment and obedience of a free subject towards his sovereign prince, and the guidance, justice and the defence of the prince towards the subject which makes the citizen and which is the essential difference between a citizen and a foreigner.'[13] Subjects owed allegiance to the king and had an automatic right to enter and live in the UK. By contrast, aliens 'were born out of the King's ligeance and within the ligeance of some other state'.[14] Aliens, defined as non-nationals, could not own or inherit land,[15] did not enjoy the unrestricted exercise of certain economic activities and parity before the courts, and were asked to pay higher customs' duties.

For economic purposes, however, foreign skilled workers who entered Britain under royal privilege in order to boost and modernise the economy in the thirteenth and fourteenth centuries were granted letters of denization.

[9] Kim (2000, p. 142).   [10] Kim (2000, p. 163).
[11] *Calvin's Case* (1608) 7 Co Rep 1a, Jenk 306; 77 ER 377 at 282.   [12] See above.
[13] Bodin (1576).   [14] Per MacDonald CB in *Daubigny v. Davallon* (1794) 145 ER 936 at 937–8.
[15] Nicol (1993, p. 254).

The latter entailed the grant of trading and legal rights. In the early sixteenth century restrictive policies were adopted forbidding aliens to work in certain industries, which were deemed to be in need of protection, or certain districts and withdrawing rights of denization.[16] Henry VIII delegated the power to grant denizenship to the Lord Chancellor and the Master of the Rolls. Under Elizabeth I, the encouragement of denization of aliens engaging in the glass-making, printing, woollen and linen industries was accompanied by the grant of trading privileges to her subjects. The Navigation Acts, which had been established in 1381, are examples of this. By a statute of 1660, trade between England and the colonies had to be carried by English owned or manned ships 'for the increase of shipping and encouragement of the navigation of the nation'. Foreigners could not own a British-registered ship. However, the needs of the linen cloth and tapestry manufacturing industry in the second half of the seventeenth century prompted the liberalisation of naturalisation policy so that, after three years' residence, European settlers could enjoy parity of status with natural-born subjects. Bills aimed at simplifying the natural-isation procedure were debated in 1667, 1672, 1680 and 1693.

Following the Parliamentary Act of Union which united England, Wales and Scotland into the United Kingdom of Great Britain in 1707, the status of British subject formed the basis of eligibility for all the rights and privileges normally associated with citizenship, the free exercise of economic activities and property rights. In the seventeenth century, all persons born within the Crown's Dominions were subjects of the Crown. Children born to Crown subjects outside the Dominions acquired the same status, while all non-subjects were aliens. A liberal naturalisation Act was adopted in 1708 requiring simply the taking of the Oath and Sacrament. Foreign Protestants were encouraged on a large scale by the offer of a simpler form of naturalisation. But the 1708 Act for Naturalising Foreign Protestants was short lived; it was repealed in 1711. For almost 240 years (1707–1948), subjecthood was conceived as a personal relationship between the individual and the sovereign and its main indicia was allegiance to the British sovereign, who, in turn, owed protection to all those born in the UK and in the dominions of the British Crown. As Blackstone stated in his *Commentaries on the Laws of England*, 'all those born within the dominions of the crown of England are subjects'.[17]

It was in the British Nationality Act 1948 that allegiance became concep-tually separated from nationality, by becoming an incident of it rather than its basis.[18] More specifically, the British Nationality Act 1948 created a citizenship of 'the UK and Colonies'. As former colonies were gaining independence, it was necessary to create a category of nationality that not only reflected political reality, but it also accommodated a person's 'local' (i.e. substantive)

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[16] See Page (1893).   [17] Blackstone ([1803] 2007, vol. I, ch. 10).
[18] Citizenship was not distinguished from nationality. As Fransman (1998, p. 125) has observed, 'citizenship has no legal meaning outside substantive nationality law'.

nationality to which the premier nationality status of citizen of the UK and Colonies could be attached.[19] Those who had connections with the UK and with those colonies, which were not yet independent, became citizens of the UK and Colonies. The status of British subject was confined to nationals of the independent countries of the Commonwealth.[20] British subjects living within the territories of the Commonwealth who did not acquire the citizenship of the independent country in question were considered to be citizens of the UK and the Colonies – unless they were seen to be potentially citizens of the independent country in question and were thus regarded as British subjects without citizenship.[21] Citizens of the newly independent countries lost the citizenship of the UK and Colonies status and gained the citizenship of the new Commonwealth country. However, this change of status did not affect their right to enter and reside in the UK; they could move freely to the UK and had the right to acquire citizenship of the UK and Colonies. British protected persons were also excluded from migration controls.

Subsequent migration laws, such as the Commonwealth Immigrants Acts of 1962 and 1968 and the Immigration Act 1971, introduced migration controls, thereby restricting the right of abode in the UK not only for citizens of independent Commonwealth countries, but also for some citizens of the UK and Colonies who did not have connections of birth or descent with the UK.[22] The Immigration Act 1971 did not only embrace the idea of migration control, but it sought to refine and strengthen it. More specifically, the Immigration Act 1971 introduced the concept of patriality, thereby confining the right of abode to patrial citizens of the UK and Colonies, that is, to those citizens who had acquired citizenship in the UK or had an ancestral connection with the UK. Belonging to Britain was thus defined on the basis of ethno-cultural and racial considerations. As 'non-belongers', non-patrials were subject to migration control.[23]

Patriality transformed citizens of the UK and Colonies lacking connections of birth and descent with the UK into aliens. Conversely, it gave a privileged status to patrial citizens of independent Commonwealth countries who were not citizens of the UK and Colonies. Whereas non-patrial Commonwealth citizens who became settled in the UK on or after the date of the commencement of the Act had to go through a process of registration akin to naturalisation, patrials from Commonwealth countries, who were not citizens of the UK and Colonies, had the right of abode and could still be registered as such of right under the old procedure whenever they settled. These changes reflected

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[19] See Fransman (1998, p. 141); see also Blake (1996, p. 680).   [20] S. 1(3) of the 1948 Act.
[21] S. 13 and Sch. 3.   [22] See Bevan (1986).
[23] Under the Immigration Act 1971, s. 2, citizens of the UK and Colonies were patrials if: (a) they were born or adopted in the UK or were registered or naturalised there; (b) they were born or adopted by a parent who fulfilled the above qualifications or a parent of such a parent; (c) they had at any time been settled in the UK, and at such time had been ordinarily resident in the UK for five years.

not so much Britain's retreat from the imperial stance, rather its eagerness to limit the settlement of black migrants.

The Nationality Act 1981 also aligned citizenship with immigration status: citizenship was linked to a person's relation to migration control. Scholars have noted that the concept of British citizenship has not been dictated by normative principles and international obligations, but by the need to deny entry and settlement to those of non-European ancestry (Anwar *et al*. 2000). More specifically, the Act abolished the citizenship of the UK and Colonies and replaced it with three new statuses: British citizenship, British Dependent Territories citizenship and British Overseas citizenship. British citizenship was confined to citizens of the UK and Colonies who had the right of abode. This is normally acquired by birth, descent, registration or naturalisation. The status of British citizen was thus conferred on citizens of the UK and Colonies who were patrial before 1 January 1983 and those born in the UK on or after 1 January 1983 if either of the child's parents is a British citizen or is settled in the UK at the time of the birth. 'Settlement' required both 'acceptance for settlement' by the Home Office and 'ordinary residence'.[24] Persons born outside the UK after 1 January 1983 to a parent who is a British citizen could be British citizens if certain conditions were met.

British Dependent Territories citizenship was conferred on former citizens of the UK and Colonies who were connected with an existing colony or dependency, but were not patrial. This status did not confer the right of abode on the holder.[25] The status of British Overseas citizenship applied to former citizens of the UK and Colonies who did not acquire British citizenship or British Dependent Territories citizenship on commencement and who could mainly claim a connection with a former British territory.[26] This is both a residual and contracting category: it will die out with its present holders, as their children will gain citizenship by birth abroad. In the 1980s people from the Falklands Islands were granted British citizenship under the British Nationality (Falklands Islands) Act 1983, and legislation prior and after Hong Kong's return to China in 1997 gave people from Hong Kong initially the right to acquire the status of British Nationals (Overseas) and then the opportunity to register as full British citizens.[27]

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[24] White and Hampson (1982).

[25] Exceptionally, BDTC from Gibraltar are classed as British nationals under EC law and can exercise the free movement rights within the Union, including the UK. In this respect, they can settle in the UK under EC law and can acquire British citizenship here after five years' residence, should they wish so.

[26] It is interesting to note here that initially two types of citizenship were proposed: British citizenship and British Overseas citizenship. Due to objections raised by the Dependent Territories, however, the Conservative government produced a White Paper suggesting the category of British Dependent Territories citizenship (Cmnd. 7987).

[27] See the British Nationality (Hong Kong) Act 1990; the Hong Kong (War Wives and Widows) Act 1996; and the British Nationality (Hong Kong) Act 1997.

In addition to the three categories mentioned above, three other types of British nationality were envisaged: British Nationals (Overseas) for British Dependent Territories citizens from Hong Kong who applied for this status before 1997 and did not, or could not, register as British citizens under one of the 1990–97 Acts; British Protected Persons and British Subjects. The latter term referred to British subjects without citizenship of any Commonwealth country and to their spouses.[28] The British Overseas Territories Act 2002, which received Royal Assent on 26 February 2002, redesignated British Dependent Territories citizens as British Overseas Territories citizens, and by virtue of the Act anyone who was a British Overseas Territories citizen before 21 May 2002 was automatically granted British citizenship and obtained the right of abode in Britain.[29] People who were British Overseas Territories citizens by descent will become British citizens by descent. People, who become British Overseas Territories citizens following the commencement of the Act (21 May 2002), will be able to apply to be registered as British citizens. The Secretary of State has discretion over registration.[30]

The acquisition of another nationality does not affect British nationality, unless the applicant has formally renounced British citizenship.[31] The only exceptions to this are British subjects without citizenship and British protected persons who will lose that status if they acquire citizenship or another nationality.[32] People from Caribbean countries which became independent after 1981, gained the citizenship of the new country. However, they could also retain their British citizenship if they had lived in the UK for more than five years and were settled before independence.[33]

The foregoing discussion clearly shows that differentiation has been intrinsic to UK nationality and citizenship law. Its impact has been both deep and wide-ranging, in view of the fact that it has been used to graft an exclusionary category of citizenship and to turn insiders into outgroups.

Group differentiated citizenship

All contemporary citizenship laws contain provisions that apply differentially to various categories of people. Broadly speaking, such patterns of differentiation can be found in provisions associated with both the personal and the material scopes of citizenship. As regards the former, it is true that

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[28] These are transitional statuses and do not differ from the status of British Overseas citizenship. They entail the availability of passports and consular facilities, allegiance to the Crown and the right to settlement after five years' residence in the UK (s. 4).

[29] British Overseas Territories Act 2002, s. 3.

[30] British Nationality Act 1981, s. 4A, as amended by the British Overseas Territories Act 2002.

[31] A British citizen who had to renounce that citizenship for the purpose of acquiring another citizenship has the right to resume it.

[32] British Nationality Act 1981, s. 35.

[33] This applies to people from Belize, St Kits and Antigua, Barbuda and Bermuda.

contemporary citizenship laws prescribe that foreign-born children of nationals of a country have to fulfil different requirements for citizenship acquisition from children born in the country. Differential provisions for citizenship acquisition also apply to the spouses of nationals in countries where the principle of independent nationality of the spouses has not been adopted. In the UK, for example, EU and EEA nationals who have exercised their free movement rights and reside in the UK are deemed to have been settled for nationality purposes and thus, under the 1981 Act, their children are born British. However, in *Gal*, an Immigration Appeal Tribunal ruled that since EU nationals' stay may depend on the exercise of a particular activity to which a time limit may be attached, they could not be regarded as 'settled' for nationality purposes.[34] Accordingly, EU and EEA nationals' children born in the UK are not automatically British. The decision was a controversial one and the case collapsed before reaching the Court of Appeal. Notwithstanding the tribunal's decision, the Home Office continued the policy of conferring citizenship on the children of settled EEA and EU nationals. But the Home Office has changed its policy and children born on or after 2 October 2000 will not be British.[35] Drawing on the tribunal's reasoning, the European Economic Area Regulations 2000 (reg. 8) state that most EEA nationals exercising their free movement rights are to be treated as having restrictions on the period of their leave and thus will no longer be regarded as 'settled' for nationality purposes.

The provisions concerning the acquisition of British citizenship by registration constitute another example of group differentiated citizenship in the UK. Reflecting the legacy of Britain's Commonwealth connections, acquisition of British citizenship by registration is available to people under 18 years of age and to a small group of Hong Kong British nationals and British nationals in Gibraltar and the Falkland Islands. More specifically, British Overseas Territories citizens, British Overseas citizens, British protected persons, British subjects and British nationals (Overseas) have the right to obtain British citizenship by registration if they meet the following two requirements: (a) lawful residence in the UK for at least five years and physical presence in the UK on the date five years before they apply ((s)he must have spent no more than 90 days abroad in the fifth year of residence); and (b) they must have had indefinite leave to remain in the UK for at least one year prior to their application for registration.[36] The successful applicant becomes a British citizen otherwise than by descent. The Nationality, Immigration and Asylum Act 2002 provides for the registration of British Overseas citizens, British subjects and British protected persons who do not possess any other citizenship or nationality, provided that the person concerned has not voluntarily relinquished or lost his/her citizenship or nationality after 4 July 2002. The

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[34] (10620), cited in Fransman (1998, p. 291).   [35] See Seddon (2002).
[36] See Walmsley (1998).

possibility of registration of certain persons born between 1961 and 1983 is also provided for by the 2002 Act.

Children of third country nationals who are born in the UK, but are not British, may be able to register as British citizens after their birth if their parent becomes settled or if they live in the UK for several years. The minimum age requirement of ten has recently been removed by the Nationality, Immigration and Asylum Act 2002. Children born overseas to parents who are British citizens by descent have the right to register overseas within a year of their birth, if they have a parent who has lived in the UK for three years prior to their birth. In this case, the child becomes a British citizen by descent, thereby lacking the capacity to transmit citizenship to his/her children born abroad. If the family decides to return to the UK, the child has the right to register as a British citizen in the UK, if the child and both parents live in the UK for a continuous period of three years and the registration is made before the child reaches the age of 18. In that case, registration makes the child a British citizen 'otherwise than by descent' and thus able to transmit citizenship automatically to his/her children born abroad. In all cases, the person concerned must take the required citizenship oath and pledge.

As regards the material scope of citizenship, differentiation is, broadly speaking, justified on the basis of differential needs and special situations. Benefits granted to war veterans and to families of deceased veterans, for example, fall within the latter category. Reproductive rights, embracing contraception, abortion, compulsory screening for breast and ovarian cancer, and reproductive health, on the other hand, fall within the remit of the former category. Means tested benefits are also a good example. 'Work-welfare' programmes in the UK and 'work-fare' programmes in the US, which apply to workseekers, blend differential needs with special cases: they are designed to address the position of unemployed claimants and seek to sediment the New-Right's emphasis on individual responsibility and the obligation of the unemployed to be available for and/or to undertake paid work. 'Targeted' policies are thus, invariably, examples of differentiation; in this case, universalist disributions aim at addressing group-specific needs.

Institutionalising differential membership status: The idea of civic citizenship

While the foregoing sections focused on patterns of differentiation inherent in citizenship law and practice, this section will discuss the risks inhering in uncritical uses of the notion of differentiated rights and conservative interpretations of group differentiated citizenship. I will use the case of long-term resident third country nationals in the EU to make my point.

For more than four decades of European integration, long-term resident third country nationals in the EU were not seen as participants in the European project. They have been excluded from enjoying free movement and residence under the EC Treaty and from EU citizenship. This was due to the fact that

nationality has been the qualifying condition for eligibility to the benefits of free movement and residence afforded by Community rules and to EU citizenship, which was established by the Treaty on European Union (in force 1 November 1993) (see Chapter 1). The only EU citizenship rights that apply to third country nationals are the rights to petition the European Parliament and to complain to the European Ombudsman. It is true, of course, that a small percentage of third country nationals could claim derived rights as family members of Union citizens, as employees of Community-based providers of services providing services in another member state, or as beneficiaries of the differential and partial rights entailed by the Association and Co-operation agreements concluded by the European Community and third countries. As already noted in Chapter 1, the Community has accepted restrictive definitions of community membership existing in national laws, thereby excluding migrant communities from full membership (Safran 1997; Guild 2004). And as Groenendijk (2001, p. 226) has argued, Community law functioned as a means of 'legitimisation' of their unequal treatment. But the unequal treatment of long-term resident third country nationals is very difficult to justify from a normative point of view, bearing in mind that they are an integral part of the European Community, by being *de facto* members of and contributors to European societies.

After four decades of invisibility and indifference, remedying the unjust treatment of third country nationals became a priority on the Community's policy agenda in the late 1990s and the new millennium. This is partly due to the fact that the adoption of measures in this area does not any longer fall within the remit of intergovernmental co-operation in the context of the so called 'third pillar'. A new dynamic was generated by the partial Communitarisation of the Third Pillar of the TEU, one of the most important innovations of the Amsterdam Treaty (1997, in force on 1 May 1999). Empowered both constitutionally and institutionally by these developments, the Commission managed to place on the policy agenda issues, such as ensuring 'fair treatment of third country nationals' and devising 'a more vigorous integration policy' with the aim of granting settled third country nationals 'rights and obligations comparable to those of Union citizens' (European Council 1999).

Instead of embracing a participatory model of incorporation which would give settled third country nationals a formal stake in the European polity and would officially recognise their multifarious contributions to the flourishing of European societies, the institutional proposals on offer entailed a harmonised denizenship status across the European Union, coupled with the grant of a European denizenship, that is, mobility rights under circumscribed conditions. In such a scheme of group-differentiated EU citizenship, EU nationals are treated as full and privileged citizens while settled non-EU migrants have the status of second class 'civic citizens'. Accordingly, they are deprived of political membership and the full panoply of equal rights and opportunities in the European and national polities that EU nationals enjoy.

Considering the incremental character of European integration, the grant of civic citizenship might be conceived of as a first step towards inclusion. But it is equally plausible to argue that 'civic citizenship' may sediment the differential treatment of settled third country nationals, thereby making it easy for restrictive trends to slip into the framework in the future. Difficult as it may be to predict the future, it is nevertheless the case that the use of the term 'civic citizen' shows that EU citizenship does not, by definition, exclude resident third country nationals. Rather, the latter are excluded at present because nationality has commonly been taken as a proxy for defining the political community, and national executives have succeeded in grafting this logic onto the European constitutional structure.

More specifically, on 13 March 2001 the European Commission proposed a Council Directive on the Status of third country nationals who are long-term residents under Art. 63(3)(a) and (4) EC. The directive was designed to approximate national laws governing the conditions for the acquisition and the scope of long-term resident status, and to grant long-term resident third country nationals the right of residence in other member states. The approximation was justified on both normative and pragmatic grounds: fair treatment; the needs of European employment markets and the existence of skill shortages; the effective attainment of the internal market; demographics concerns about low fertility rates and the ageing European population and the enhancement of economic and social cohesion. Political agreement for the directive (2003/109/EC) was reached in June 2003 and, following long discussions and negotiations, the Council adopted a watered down version of the directive in November 2003.

According to the directive, after five years of continuous legal residence, a member state shall grant long-term resident status to third country nationals[37] who have stable and adequate resources to meet their own subsistence needs and those of their family members, and are covered by sickness insurance. Absences from the territory of the member state for a period of less than six consecutive months or for a longer period, owing to important and specific reasons (military service, secondments for work purposes, serious illness, maternity, research or studies), will not be regarded as interrupting the period of residence. Member states can, however, require third country nationals to comply with integration conditions, in accordance with national law (Art. 5(2)). The addition of this provision during negotiations in the Council of Ministers has given rise to criticism: it is vague and broad and leaves wide discretion to national authorities to 'define integration', adopt restrictive and compulsory integration tests and eventually exclude those who are deemed not

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[37] The personal scope of the directive excludes students and those following vocational training, the beneficiaries of temporary or subsidiary forms of protection, refugees, temporary residents and those holding diplomatic and consular protection; Art. 3(2) of Directive 2003/109 OJ L 16/44, 23 January 2004.

to have been integrated into the host society. Assuming that a long-term resident migrant meets the integration conditions that member states may require, and so long as there exist no public policy or domestic security concerns, a member state must grant long-term resident status if the acquisition criteria are met (Art. 7(3)) within six months from the date of the submission of an application for LTR status. The long-term resident status can only be withdrawn on certain grounds set out in the directive; namely, absence from the territory for 12 consecutive months, fraudulent acquisition of status, adoption of an expulsion measure under the conditions set out in Art. 12 of the directive, and acquisition of long-term resident status in a second member state (Art. 9). The status cannot be withdrawn owing to unemployment and reliance on public funds. Procedural guarantees against the withdrawal of status are provided for by Art. 10. As proof of the right of residence, a long-term EC residence permit will be issued, valid for five years and renewable upon application by the person involved on expiry. This will be uniform throughout the Community.[38] Since the permit is not constitutive of the right of residence, its expiry can never constitute a ground for deportation.[39]

As a consequence, long-term resident third country nationals will enjoy enhanced protection against expulsion (Art. 12) and are entitled to equal treatment as regards access to employment and self-employed activity, conditions of employment and working conditions, education and vocational training, including study grants, recognition of qualifications, social security and health care, social assistance, social and tax advantages, access to goods and services including public and private sector housing and freedom association and union membership, and free access to the entire territory of the member state concerned. Although this list seems impressive, in reality it merely replicates the existing core of socio-economic rights granted by the member states to permanent settlers as well as to EU and EEA nationals. Article 11 of the directive also envisages the possibility that member states may decide to restrict the application of equal treatment (Art. 11(3) and (4)). In addition, migrants' civic involvement and participation do not extend to the political field; electoral rights are excluded from the material scope of the Directive. However, the member states may decide to extend equal treatment to matters that are not referred to in Art. 11(1).

Similar concerns surround chapter III of the directive. The latter outlines the conditions for the exercise of 'the right' of residence in the other member states, thereby implementing Art. 63(4) EC and reflecting Art. 45(2) of the European Union Charter of Fundamental Rights. More specifically, long-term resident third country nationals, who are not service providers or posted

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[38] This will be in accordance with the specifications laid down by the Council Regulation proposed by the Commission on 23 March 2001 (2001/0082 (CNS), COM(2001) 157 final).

[39] Case 48/75 *Royer* [1976] ECR 497, [1976] 2 CMLR 619; Case 175/79 *Stanislaus Pieck* [1980] ECR 2171, [1980] 3 CMLR 220.

workers,[40] have the right to reside in a second member state for long stays in order to pursue an economic activity as employed or self-employed persons, for study or vocational training purposes or for all other purposes provided that they are self-sufficient and have sickness insurance (Art. 14). By analogy with EU law, temporary incapacity for work as a result of illness or accident, involuntary unemployment and entitlement to unemployment benefits in case of unemployment do not constitute grounds for the loss of worker status. In cases of voluntary unemployment in order to embark on vocational training, the ECJ's ruling in *Lair* applies; that is, there must be link between the previous employment activity and the training to be pursued (Art. 16(2)).[41]

When the application for a residence permit is lodged in either the first or second member state, the authorities in the second member state may require documentary evidence that the applicant has stable and regular resources in order to avoid becoming a burden on the social assistance system of the member state concerned and sickness insurance. The host member state may also require the applicant to comply with integration measures, including language classes (Art. 15(3)). Entitlement to freedom of residence presumably applies to workseekers, by analogy with *Antonnisen*.[42] The family members of the long-term resident also enjoy a right of residence, subject to certain conditions. If the migrant's family, however, was not already constituted in the first member state, the Council directive on family reunification will apply.[43]

As soon as they have received the residence permit in the second member state, long-term residents will, in the main, enjoy all the benefits, which they enjoyed in the first member state under the same conditions as nationals. But the member state may restrict their access to employed or self-employed activities. Family members are entitled to the rights conferred by Art. 14 of the Council directive for family reunification; that is, access to education, to employment or self-employment and vocational training. The directive also provides for the acquisition of long-term resident status in the second member state: although migrants will retain their status in the first member state until they have acquired the same status in the second member state, they can apply for LTR status in the second member state following a short period of residence there (three months). Clearly, long-term resident third country nationals are treated as European 'denizens'; they do not enjoy the Community law rights of free movement and residence on the same terms as European citizens. They continue to be viewed as a subject class falling within the jurisdiction of the member states and this view appears to justify a presumption of differential treatment (Kostakopoulou 2002).

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[40] Their legal status is governed by the relevant Commission proposals; see above.
[41] Case 39/86 *Lair v. Universitat Hannover* [1988] ECR 3161, [1989] 3 CMLR 545.
[42] Case 292/89 *R v. Immigration Appeals Tribunal, ex p. Antonissen* [1991] ECR I-745.
[43] Directive 2003/86/EC on the right to family reunification OL L251/12 3 October 2003.

Although the grant of a kind of European denizenship to third country nationals is a welcome development since it widens the circle of 'belongers' to the European civil society, I would argue that a more vigorous and consistent rights-based approach is needed in order to remedy their inequitable position in the European polity. The issue of political inclusion also remains to be addressed. It is noteworthy that the harmonisation of national denizenship rules does not include the grant of electoral rights throughout the EU. Long-term resident third country nationals are not recognised as full and equal participants in the European and national polities, thereby lending credence to conservative articulations of 'differentiated citizenship' and/or 'differential incorporation', which reserve full political participation to nationals and grant other, weaker, forms of (non-political) citizenship to domiciled non-citizens on the basis of the length of their residence. This is essentially 'a concentric circles approach' to membership: full citizenship centred on equal participation in political life is accompanied by a form of civic citizenship (i.e. qualified admission and civic participation in civil society, in local and regional affairs and the duty to pay taxes) and further by denizenship (i.e. the grant of civil, economic and social rights to residents). But, as the case of long-term resident third country nationals in the EU shows, such an arrangement does not only undermine the equality requirement inherent in citizenship but it also, ultimately, creates hierarchical communities of unequal status. The chief weaknesses of such articulations of differential incorporation, namely, the institutionalisation of exclusion and the reinforcement of traditional national mythomoteurs of togetherness in relatively stable and unified communities into which 'others have to integrate', confirm the importance of embracing fully the normative ideal of equal citizenship.

The variable geometry of citizenship

In making the case for differentiated citizenship, the foregoing discussion unravelled the many faces of differentiation existing within citizenship. This is something that both advocates and critics of differentiated citizenship have overlooked. Whereas the latter have exaggerated the universality of equal citizenship, the former have sidestepped the differentiation existing within it. But while differentiation does, and should, characterise the material scope of citizenship, the egalitarian promise of equal membership that underpins the personal scope of liberal citizenship must remain intact. Indeed, any attempt to split the personal scope of citizenship into various forms of differentiated membership (i.e. partial citizenship, variable citizenship, civic citizenship and so on) is bound to yield exclusionary results. One must thus be sensitive to possible undesirable permutations of group differentiated citizenship, and the discourse on civic European citizenship, discussed above, is a good case in point.

Acknowledging these difficulties, however, is not a good enough reason to justify the abandonment of the concept of differentiated citizenship. Alas, the

true challenge is to take difficulties seriously and to address them by devising a nuanced and theoretically rigorous framework which could capture the variable geometry of citizenship. This is precisely what I intend to do here. More specifically, in what follows I shall draw the insights of the previous sections together in order to furnish a coherent citizenship design that is inclusive and empowering. The basic premise of a framework of variable geometry is that differentiation is not a hindrance to equal citizenship. Instead, it is an integral and necessary dimension of it. As the paths of differentiation and equal citizenship begin to converge, not only liberalism's longstanding failure to deliver on the promise of equality – be it racial, gender, social or class – becomes apparent, but we also cast doubt on the commonly held assumption that differentiated citizenship necessarily implies some form of (reverse) discrimination. For commitment to non-discrimination, which entails not only the obligation to treat similar cases alike, but also the prohibition against treating different cases in a like manner, unavoidably involves some form of differentiation.

Keeping in mind the synthesis of differentiation and equal citizenship, I see the variable geometry of citizenship as being guided by three main objectives, namely: (a) it must further the realisation of equal and full citizenship, promote equality and cannot be used to encourage retrogressive steps; (b) it must respect the equal dignity of all human beings and implement international human rights standards; and (c) it has to enhance democracy and closer co-operation among constituencies and individuals. Objective (a)'s rationale is to prevent permanent divisions between first and second class citizens in society and the formation of an underclass, while objectives (b) and (c) would ensure that all members are included as full, equal and respected participants in the polity. The variable geometry of citizenship could, in turn, be justified on grounds, such as: (a) the differential needs of individual members as individuals and members of groups (special needs); (b) differential socio-economic positions; (c) the need to overcome institutional barriers to equality, domination and disadvantage by taking into account structural positions, institutionally embedded forms of privilege and the imperative of reversing the consequences of wrongs suffered by discriminated against groups; (d) the need to recognise and explicitly value diversity; (e) ensuring all individuals' access to the institutions of society and their full participation in all sectors of society, and (f) as a tool for managing complexity in a flexible way.

From this it follows that the forms of differentiation entailed by the variable geometry framework would be fourfold; namely, enabling, corrective, institutional and case-by-case differentiation. An example of enabling differentiation would be the organisation of special courses and training schemes for disadvantaged members of ethnic communities. Corrective differentiation, on the other hand, would be manifested in the establishment of special representation schemes in politics, education and so on, the setting of recruitment targets for public bodies and the adoption (or the amendment) of anti-discrimination

legislation. Another example would be the provision of grants or incentives to local authorities in order to make the literature of under-represented groups available in libraries or to support arts from cultures around the world. Institutional differentiation would range from the recognition of the special status of certain minorities in law to exceptions from laws that impose an unfair burden on cultural practices, such as those relating to animal slaughter, food labelling and turban wearing cyclists. Institutional differentiation could incorporate both interim strategies and long-term measures. Finally, case-by-case differentiation would address special cases. Needless to say that all forms would require well-defined policy aims and targets, regular policy reviews and impact assessment of various policies and measures.

Moving on to the design of the institutional setting of the variable geometry of citizenship, it seems to be that it could be built on three variables; namely, time, space and issue or subject matter. 'Time' would refer to temporal differentiations, such as, for example, laws and policies regulating the residence, employment and protection of newcomers and persons 'in transit'. These would have to be guided by international and European law conventions. 'Space', on the other hand, would address issues of territorial differentiation, such as the special needs of disadvantaged regions, regional rights entailing, among other things, the protection of regional languages, an organised setting for district, local and neighbourhood assemblies in which all residents would participate and so on. This should not be taken to imply the existence of separate communities applying different standards or different zones having different rules and enjoying special privileges. Rather, it prompts us to recognise that fulfilling the abovementioned common objectives requires recognition of the disparate socio-economic development of regions and its effects on the lives of residents and of the need to empower regional communities.[44]

Differentiation on the basis of 'issue' or 'subject matter' would entail the recognition of the political relevance of 'difference', be it gender, race, class, ethnicity, age, sexual orientation and so on. Reproductive rights, mobility rights for the elderly and the disabled, family-friendly policies, including parental leave, child care provision, services for the homeless, social assistance benefits for the low paid, basic income proposals and rigorous anti-discrimination legislation all are examples of differentiation on the basis of 'subject matter'. By taking into account differential 'structural positions' and the multiple and cumulative disadvantages arising from the combination of various structural positions, the variable geometry design would address the needs and aspirations of citizens qua members of ascriptive groups, all of which are entitled to equal status and protection. As such, it would help tackle inequalities in education, health care delivery, employment and other social and structural impediments, and facilitate the identification of groups at risk of falling through the net of social protection, such as the elderly, single mothers,

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[44] Compare Hirst (1994); Hirst and Bader (2001).

homeless, the disabled, migrant and refugee communities, the unemployed etc. Accordingly, programmes catering to the specific needs of certain groups at risk, measures designed to open up the labour market through education, training and lifelong learning and institutional co-ordination would be at the heart of differentiated citizenship.

Special forms of representation for under-represented groups would also fall within this category. True, special representation on its own does not guarantee that the substantive outcomes of decision-making processes are just. It does, however, ensure that decision-making is more inclusive, which, in turn, increases the probability that its outcomes will be more responsive to the needs of marginalised groups. Affirmative action strategies also 'provide a critical take off point for accelerated progress' (UNDP 1995, p. 109, cited in Lister 2003, p. 160) by correcting imbalances in the representation of groups in decision-making bodies. Although quotas and targets seem to be objectionable to many, the institutionalisation of affirmative action in the US has generally accomplished a great deal for American society, by expanding access to higher education, businesses and professions for minorities and women. Similarly, Philips (1995) has demonstrated the implications of the adoption of gender quotas for the selection of parliamentary candidates by political parties in the Scandinavian countries: by 1990 the proportion of women in legislative assemblies reached 38 per cent in Sweden and 34 per cent in Norway and Finland. At the same time the number of female MPs in the UK did not exceed 6 per cent. And although it is true that affirmative action has benefited only a segment of the targeted groups, especially middle class and upper middle class and has run into a firestorm of political opposition on the basis of white males' fears of losing out and the fear of hardened group identities, these criticisms should be a point of departure for the re-evaluation and re-design of affirmative action and not for rolling back policies and measures that target present discrimination and biased selection criteria. In the European Union, the ECJ's interpretation of Art. 2(4) of the Equal Treatment Directive (76/207) which allows for measures of positive action designed to eliminate or reduce everyday inequality between men and women has shifted from the outlawing of national rules that give absolute and unconditional priority for appointment or promotion to women[45] to the acceptance of soft quotas which provide that the priority given to women candidates can be overridden by criteria that tilt the balance in favour of a male candidate (the so-called 'savings clause').[46] Crucial, too, was the Amsterdam Treaty (1997) amendment which allows member states to maintain or adopt measures granting 'specific advantages' to 'make it easier for

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[45] Case C-450/93 *Kalanke v. Freie Hansestadt Bremen* [1995] ECR I-3051.
[46] Case C-409/95 *Marschall v. Land Nordrhein-Westfalen* [1997] ECR I-6363; Case C-158/97 *Badeck and others* [2000] ECR I-1875.

the underrepresented sex to pursue vocational activity or to prevent or compensate for disadvantages in professional careers' (Art. 141(4) EC).[47]

The establishment of group councils or umbrella associations of councils endowed with a consultative role would also strengthen both civic participation and more inclusive representation. Critics may also object here that it is doubtful whether inclusive representation can change the social structures of inequality and the systematic marginalisation of groups. It is equally true, however, that listening to the others' point of view 'forces participants in a discussion to take reflective distance on their own assumptions and think beyond their own interests' (Young 1994, p. 136). The significance of the latter increases in what Mansbridge (2000, pp. 114–19) has termed 'contexts of communicative distrust and uncrystallised interests'. In such cases, descriptive representation provides a means of encouraging communication by members of one's own group and of airing and defending group concerns with rigour on the basis of one's own personal experience. In this respect, 'full and equal citizenship of members of marginalised groups depends upon their participation in processes of political decision-making, and these processes must be conducted in a manner that is open to the reasons that marginalised groups bring to them' (Williams 2000). The variable geometry framework would thus open up the possibility for enhanced political presence, active involvement and participation of underrepresented groups in formal and informal politics. On this very issue, Norris and Lovenduski (1995) have suggested wide-ranging reforms in the political system, which include the institutionalisation of proportional representation and more 'family (and care)-friendly' parliamentary institutions and culture. In the realm of informal politics, too, membership in community groups, voluntary associations and social movements could become more relevant, if there existed formal channels of interaction and communication between the latter organisations and political and administrative agencies.

Finally, differentiation in the variable citizenship institutional design would be accompanied by solidarity mechanisms, thereby making variable geometry a community issue, rather than a group demand. The solidarity mechanisms, which would flow from, and enhance further, the implementation of the objectives of the variable geometry of citizenship mentioned above, are: redistribution, inclusion, non-discrimination, protection. These solidarity mechanisms, which will receive full exposition in Chapter 7, would connect citizenship with antipoverty and anti-discrimination policies and strategies.[48] Although critics would raise questions concerning fiscal issues and the

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[47] Compare also Case C-79/99 *Schnorbus v. Land Hessen* [2000] ECR I-1099 and Case C-407/98 *Abrahamsson v. Fogelqvist* [2000] ECR I-5539.

[48] Edelman (1987) has convincingly linked an anti-poverty strategy with an equal protection argument. As he has put it: 'if government policy has created conditions which have helped some to prosper mightily and left others in a state of total and absolute deprivation, it has denied the latter the equal protection of the laws, and steps must be taken to remedy that denial'.

effectiveness of such policies and strategies – some of which will be addressed below, it seems to me that a pro-active approach to tackling racism, sexism, poverty and discrimination is a precondition for full and equal membership in a political community. For membership in the polity is denuded of meaning not only as a result of political powerlessness, but also owing to poverty, discrimination and oppression.

Conclusion

The main aim of this chapter has been to examine the material scope of denationalised citizenship. In searching for a balance between universal citizenship on the one hand and proposals for a group-differentiated citizenship on the other, I have argued that the academic literature's preoccupation with dualisms, such as universality versus particularity, the politics of solidarity versus politics of cultural pluralism, identity versus community and cultural pluralism versus the politics of social justice, has concealed the complex and necessarily differentiated nature of citizenship. I have mentioned three examples to substantiate my point, and pinpointed the risks inherent in uncritical notions of differentiated citizenship. In this respect, I argued that, whereas differentiation is an integral part of the material scope of citizenship, the universality underpinning its personal scope must remain unsplit. For the ideal of equal membership is both politically meaningful and normatively compelling. I then proceeded to furnish a theoretical framework for what may be termed the variable geometry of citizenship. This provides scope for flexibility and institutional adaptation, but at the same time it preserves the ideal of equal and respected membership in the polity. By blending equality with flexibility, the foregoing discussion highlighted two key issues underpinning the reconstruction of citizenship as a political project, namely: (a) the need to turn 'difference' from a 'disadvantage' to a means of identifying sedimented hierarchies, tackling discrimination and multifaceted exclusion, and empowering citizens; and (b) the challenge of responding to complexity by making flexible arrangements that address the differentiated needs of individuals and the multifaceted sources of inequality.[49] Echoing the insights of this chapter, the subsequent chapter will draw together the various elements of my argument by examining more closely actual and future pathways to inclusion.

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[49] It is true that in France, and in certain other countries, any suggestion for a group-centred approach would be perceived as undermining national unity. The state does not officially recognise racial, ethnic or religious minorities as groups with distinct needs and experiences, thereby following an individualist approach in tackling inequalities. However, EU equality laws might change French equality laws and practices by permitting targeted or mainstream initiatives and the possibility of compensatory measures for disadvantaged groups. It is worth noting, here, that Ramadan (1999) has provided a different interpretation of the 'laicité' principle which reconciles state neutrality with the provision of state support for all religions on an equal footing. See also Balibar (2004).

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Pathways to inclusion

In Chapter 6 I defended the merits of a variable geometry design for citizenship. Underlying such a design is the belief that exclusion, subordination and discrimination are impossible to reconcile with the principle of equal citizenship and that flexible arrangements are needed in order to tackle inequality, multifaceted exclusion and cumulative disadvantages. In this chapter, I will attempt to link the normative template and the theoretical issues pursued in previous chapters with matters of public policy and public service delivery. Guided by what has been argued thus far in the context of both the design of denationalised citizenship and the variable geometry paradigm, and reflecting on existing policies and institutional cultures, the discussion in this chapter will centre on institutional frameworks for minority incorporation and on proposals for policy reform.

Public policy undoubtedly impacts on the character of the citizenry in a profound way and shapes (in my opinion, more than it reflects) conceptions of majority and minority group identity and membership. Promoting an inclusive conception of membership requires an array of procedural and substantive measures in a number of domains, such as economic life (labour market policies, parity in employment earnings and income), political life (equal representation, participation in decision-making processes in formal and informal politics), law (anti-discrimination legislation, soft law instruments and their implementation), social citizenship (healthcare, social security, social protection, and housing), education, culture and the media.[1]

The discussion in this chapter is structured as follows. In the first section I examine several modes for the incorporation of minority groups. I argue that assimilation and the fashionable language of integration[2] that has accompanied

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[1] These do not constitute an exhaustive list. Rather, they form part of my modest exploration of possible ways to realise equal citizenship and to challenge structural inequalities through institutional change.

[2] As Trevor Philips, the chairman of the Commission for Racial Equality, has stated, 'multi-culturalism' is not useful. 'Multiculturalism suggests separateness. We are in a different world from the 1970s. What we should be talking about is how we reach an integrated society, one in which people are equal under the law, where there are common values – democracy rather than violence, the common currency of the English language, honoring the culture of these islands, like Shakespeare and Dickens.' (Philips, 2004).

the retreat of multiculturalism in the Netherlands, the UK and elsewhere since the late 1990s, are politically dated and normatively deficient approaches to diversity. 'Living together' in a radically plural and increasingly interdependent world might thus require the replacement of the vocabulary of integration with that of equal participation in practices of sociopolitical co-operation. I furnish the necessary ingredients of such a pluralistic mode of inclusion in the second section. Relying on a presumption in favour of the equal participation of minority constituencies in democratic governance, the following two sections bring the threads of theory and policy together by examining policy options designed to remove barriers to socio-political inclusion, equal participation and to respectful recognition.

Typologies of incorporation

Most theorists agree on the merits of a pluralist mode of minority incorporation, notwithstanding disagreements over the details of its scope and nature. Some argue that the constitutional framework of a democratic Rechtstaat can guarantee the co-existence of 'equally legitimate forms of life' (Habermas 2001). Others advocate a more dynamic form of constitutionalism centered on an ethic of listening to a variety of perspectives and on mutual respect for, and affirmation of, cultural diversity (Tully, 1995). Philips (1995), for instance, is keen to accommodate diversity within the basic structure of liberal democracy, while Young's notion of differentiated citizenship requires more radical reforms. Taylor and Kymlicka's contributions, on the other hand, respond to the demands made by 'territorially based constituencies' (i.e. national minorities), but their 'enclave-multiculturalism' is unresponsive to the needs and experiences of ethnic and migrant groups.

   The divergence in responses to diversity is not confined to the academic literature. In practice, too, states have responded differently to diversity in light of their distinctive historical experiences, political realities and culture. Notwithstanding policy divergence in this area, however, it is true to say that difference has traditionally been seen as a nuisance and/or a problem for social integration. Not only is there a strong legacy of aggressive consensualism in many states which has placed non-white 'foreigners' and residents outside the scope of the community,[3] but also insider out-groups have been under immense pressure to conform to the norms defined by hegemonic groups and systematically devalued.

   Drawing on a range of state responses, the variety of logics underpinning them and the concrete effects, the literature has suggested six modes of minority incorporation; namely, separation, assimilation, integration, the

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[3] Compare, for example, *Elk v. Wikins* 112 US 94 (1884) and *Dred Scott v. Sanford* 60 US (19 How) 393 (1857). See also Martin, (1985).

millet mode, proceduralism and pluralism (Table 7.1). Whereas these modes have been premised on racial, ethnic and religious diversity, I believe they have more general application. For example, in the 1970s and 1980s, children with disabilities were told that they should be educated in the mainstream schools and that the distinctions between very different disabilities should be blurred in the UK. Accordingly, following the Education Act 1981, special schools were closed, irrespective of their merits, and children with 'learning difficulties' were integrated in the classroom, often to their detriment. Teachers often had no training in special needs and many children suffered exclusion under the guise of inclusion. In addition, it may be argued that transnationalism represents a new approach and an alternative to both assimilation and pluralism.[4] Although transnationalism entails many fruitful insights, it is difficult, in my opinion, to make the existence of transnational communities a template from which principles capturing how transmigrants enjoying linkages to multiple states should be treated by the host state can be deduced.

In the light of Table 7.1, separation places minority groups outside the scope of the community defined in primordial or ethnonationalist terms; that is, on the basis of blood loyalty, common ethnic origin and a homogeneous culture. Being excluded from political participation, migrants are essentially denied civic standing and the authorship of political decisions. Assimilation requires minority communities to renounce their particular ethnic or cultural identity and to embrace the culture of the majority community. This policy is captured by the traditional portrait of the US as a melting pot in which old traits would be eradicated and replaced by a new national identity. France, too, has embraced assimilation designed to maximise national cohesion and to enhance the French national identity.[5] Pursuing a colour-blind approach to diversity, French policies have, allegedly, reflected 'a logic of equality' – and not a 'logic of minorities'.[6] Migrants are thus molded into French citizens via processes of socialisation, compulsory primary education and military service.

Integration, on the other hand, tolerates differences in so far as they are confined to the private realm. In the public realm, minorities are required to embrace the nation's ideals and to identify with the common culture of citizenship, as defined by the majority community. This invariably tends to be Anglo-Saxon and Christian in the UK. As Connolly (1996, p. 66) has noted, national pluralism consists of a national trunk rooted in the soil of Christianity, 'with numerous limbs branching out so far as their connection to the trunk allows'. The proceduralist mode, according to Parekh (1998; 2000), requires a formal, neutral framework upon which some kind of minimal agreement has to be secured. This mode is characterised by the cautious recognition of group identities, the arrested development of diversity and the promotion of civic national belonging. Like the language of integration, 'the

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[4] Faist (1996); Schiller *et al.*, (1995). But compare Favell 2003.
[5] But compare, Kivisto (2002; 2003)   [6] On this, see Favell (1998); Hargreaves (1995).

Table 7.1 Typologies of incorporation[7]

	Separation	Assimilation	Integration	Millet	Liberal	Pluralist
Rationale	Preservation of the bounded community of ethnicity or culture	Conformity to hegemonic culture and shared values	National cohesion, political unity	Combining central authority with communal self-determination	Promotion of a liberal democratic public sphere	Equal and respectful participation
Ideology	Primordialism or ethnic nationalism	National communitarianism	Civic Nationalism	Plurinational empire	Constitutional patriotism	Radical pluralist democracy
Implicit Cultural Values	Homogeneity, exclusiveness	Conformity	Consensus on values, a unified public	Establishing equilibrium	Egalitarianism	Mutual recognition and equal membership
Difference	Suppressed	A problem to be reduced or absorbed	Tolerated in the public sphere	Accommodated	Arrested development	Valued and promoted
Rights	Basic human rights	Socio-economic rights, associational participation	Socio-economic rights, associational participation and possible participation in municipal elections	Extensive	Socio-economic and political	Extensive collective rights
Citizenship Prospects	No	Low to medium	Low to medium	Medium	Medium	High, encouraged
Ethnic Identity	Isolated or defiant	Mobilised	Variable	Assertive	Variable	Assertive

[7] An earlier version of Table 7.1 and the typology appeared in Kostakopoulou (2002a).

Table 7.1 (*cont.*)

	Separation	Assimilation	Integration	Millet	Liberal	Pluralist
View of Solutions	Institutional Discrimination	Formal commitment to non-discrimination Education and cultural change will remove institutional barriers	Formal commitment to non-discrimination Education and cultural change will remove institutional barriers	Internal self-determination	Formalisation and commitment to equality	Commitment to equality and non-discrimination, targeted programmes aimed at promoting minorities' advancement
Communal Relations	Conflict	Suspicion, discontent concerning discrimination	Hierarchy, equilibrium	Weak	Sensitive equilibrium	Mutual symbiosis, contestations, solidarity politics
Concrete Practices	Limited access and bigotry	Policies, statements about equal opportunity	Policies, statements and diversity action plans	Unclear	Policies, statements, diversity awareness and action plans	Multifaceted policies aimed at promoting minorities' advancement

proceduralist view offers an incoherent account of the unity of the state and leaves diversity to the precarious mercy of the dominant culture' (Parekh 1998, p. 80). The millet mode, rooted in the Ottoman multinational empire, privileges communal membership. It views the state as a formal institution designed to ensure that distinct cultural communities are free to pursue their traditional ways of life and their separate development. By so doing, it encourages the development of a sense of primordial belonging in cultural collectivities, thereby enhancing the power of ruling elites and their hegemony in defining the 'authentic core' of the culture in question. As such, it is prone to creating exclusive orthodoxies and to silencing internal dissent.

By contrast with the modes just mentioned, the pluralistic mode does not condition political belonging on cultural conformity. This is reflected in its relaxed and inclusive attitude towards migrants who are seen as citizens in waiting. The pluralist mode also recognises that migrant groups require public recognition and support in order to become equal and full members, thereby sketching a vision of society in which different communities 'by interacting with each other in a spirit of equality and openness' (Parekh 1998; 2000) create an open and plural collective culture. This is essentially a vision of community where belonging is defined in terms of being together in a common adventure and sharing responsibility for institutional design and democratic dialogue, rather than on pre-political commonalities. The bonds that hold a pluralistic community together are political; namely, the members' commitment to an (open-ended) future, in the sense of working together, communicating and engaging in the design and re-design of institutions that accommodate differences and respond to distinct as well as common needs. Young (2000) makes the point that multicultural politics imposes a duty on all citizens to enter into communicative engagement with one another, and puts forward suggestions as to how minority constituencies can be heard and recognised as legitimate partners. The participation of all members in such a 'community of concern and engagement' (Kostakopoulou 1996; 1998; 2001) cannot but have a profound impact on their identities and culture, in the sense of making them more critical towards their own culture and more open towards others.

It is, perhaps, pluralism's emphasis on distancing from one's own culture and engaging in critical reflection that have generated strong reactions against multiculturalism and diversity. As argued above, critics on both the right and the left of the political spectrum worry that multiculturalism leads to an essentialised vision of culture and the creation of bounded, homogeneous communities, having little interaction among themselves. The image of 'a society of multiple enclaves' and the risk of political fragmentation feature centrally in such critiques, which more often than not downplay the commonalities that exist among the various communities and their shared citizenship practices. Following 9/11, Islam has become a key marker of 'otherness' in the eyes of the media and political elites as well as a vehicle for political opportunism. Islamic traditions and beliefs are seen to threaten the values and the

cohesion of national cultures and, more worryingly, any criticism and expression of discontent on the part of Muslim communities is swiftly interpreted as a prime manifestation of 'their failure to integrate or to assimilate'.[8]

By avoiding the unhelpful dualism of conformity (i.e. cultural compatibility) versus defiant difference (i.e. 'cultural incommensurability'), the pluralist mode opens up space for the continuing interaction and co-operation of the various constituencies and for mutual respect. As Connolly (1996, p. 57) has eloquently put it:

> is it possible to imagine a multicultural pluralism where the centre itself is more pluralised? To imagine, for instance, multicultural differences and interdependencies across several overlapping dimensions, where no single source of morality inspires everyone and yet where the possibility of significant democratic collaboration cross multiple lines is very much alive? Is it possible to imagine a multicultural regime in which a floating majority, if and when it exists, becomes less anxious to fundamentalise what it is?[9]

In this respect, the demands made by disadvantaged groups are not judged with reference to an ideal form of social cohesion. Rather, they are understood with reference to the deeper questions of power they implicate and the institutionally embedded forms of inequality and domination they seek to challenge. For pluralist democracy does not seek to insulate the political process from discordant controversies. Instead, it aims at building a framework of trust by addressing legitimate grievances and the discourse and modes of power that relegate people to the peripheries of political communities.

Such questions are, invariably, overlooked by accounts that portray diversity as a threat to social cohesion. Often such perspectives belittle the actual contributions and sacrifices made by non-white citizens and residents who are told that their own lives' work and their parents/grandparents' multifarious contributions lead to the weakening of the fabric of society. Because national majoritarian discourses portray minority groups as somehow deficient and inferior, they search for 'solutions to the problem of integration' in practices of acculturation – and not participation and non-discrimination; that is, in changing minority members by instilling the host nation's values, by improving their knowledge of the history and the traditions of the host society, enlightening them and emphasising their responsibility to integrate (Table 7.1). The overall aim of this strategy is thus one that assumes a deficiency in minority groups and demands their compliance with the terms prescribed by the hegemonic groups, while leaving the structures and discourses that keep them apart unchanged. Accordingly, the legitimate concerns

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[8] This was the case, for instance, in France in 2005. The riots in the suburbs were interpreted as manifesting the French Muslims' opposition to the republican model of integration. They were not seen as a reflection of political disaffection owing to their disadvantaged socio-economic status.

[9] Compare also Honig (2001).

of minority groups, including their frustration about continuing discrimination and racism, are interpreted as expressions coming from disloyal and troublesome minorities who must 'learn to respect the laws, codes and conventions as much as the majority' (Crick Report 1998, pp. 17–18).

This is not to deny the fact that multiculturalism has raised some hard questions about how to go about nurturing and strengthening the ties that bind multi-ethnic democratic polities, how to promote interpersonal trust and to encourage full political participation by all citizens, irrespective of their ethnic background. The issues of religious education, the imposition of a quota of pupils from other faith groups[10] and state funding of denominational schools, for example, have shown the importance of reconciling legitimate concerns about promoting capacity for citizenship and civic engagement with the need to avoid the institutional privileging of one religion over others.[11] But these cases, including the debate about wearing the hijab (headscarf) in schools in France two years ago, and the niqab (the full veil) in Britain in 2006, have also demonstrated how easy it is for different interpretative communities to engage in overreactions and to fuel divisive politics by stereotyping Islam, promoting a frozen, essentialist identity and by conveniently ignoring that treating all religions equally is the best means of affirming a sense of community and equal citizenship.

The key difference, and, in my opinion, the appeal, of the pluralist mode of incorporation is that it uses a social engagement model with dynamic learning in action that applies to everyone; that is, to newcomers, settled and autochthonous members. It welcomes minority constituencies as participants enjoying equal status, protection and opportunities in the workplace, society and politics, and more importantly, it recognises that conversations across lines of difference require a reciprocity of understanding, that is a mutual understanding of each other's perspective and a commitment to 'a journey toward broader horizons through a process of reciprocal learning' (Dallmayr 2001, p. 346).

Pathways

Having compared and contrasted the pluralist mode of minority incorporation with other approaches, the following discussion will now address possible pathways for minority inclusion. It must be noted at the outset that my intention here is not to provide an exhaustive list of pathways. For such a task would, indeed, be impossible within the narrow confines of a chapter. Rather, my objective is to identify constructive policy options that reflect the variable geometry design of citizenship, by focusing on some key vertical and

[10] This idea was first floated in the Cantle Report (2001). In 2006, David Cameron's speech to the Conservative Party conference raised the issue, and it was immediately taken up by the Government which said that it would adopt the idea and require that new, state-funded, faith schools should be encourage to admit a proportion of their intake from other backgrounds.
[11] On the recognition of religious groups, see Modood (1998).

horizontal pathways. Vertical pathways relate to specific policy fields, such as employment, education, housing, health, anti-discrimination law and community relations, whereas horizontal pathways provide the rationale and objectives that guide policy interventions in all the above areas. The discussion will commence with horizontal pathways.

Horizontal Pathways

Providing responsive and inclusive public services

Theoretical controversies and policy accounts surrounding minority incorporation generally focus on how minorities adapt to mainstream society and on the forces that promote or impede their incorporation. Although these perspectives enhance our understanding of the processes and forces that impact on minority incorporation, a contextual factor that does not often receive much emphasis is the level and scope of public service delivery. Adequate resourcing, planning and delivery of public services hold the key to promoting inclusive communities, and this can be achieved by listening to people and by taking into account their diverse needs. By making groups critical partners in policy design and service delivery, government initiatives are more likely to elicit public support and promote a sense of belonging to the polity.

Bearing in mind that discrimination always benefits specific groups, the goal would be to provide inclusive public services. The greater the inequalities in the provision of public services, be they in the workplace, schools, hospitals and neighbourhoods, the more difficult it is to build a pluralistic community of trust. As Parekh (1998, p. 83) has eloquently observed:

> the state loses its legitimacy when its institutions act in a partial and biased manner, favoring one group against another, coming down heavily on the minor picadillos of one group but conniving at the major misdeeds of another. In the modern state, four institutions namely the civil service, the police, the army and the courts of law lie at its heart. They constitute what Hegel called the universal class, a class embodying exercising and scrupulously living up to the norms inherent in the universality of the state. It is therefore essential that these institutions should be manned by individuals of merit and integrity, their exercise of authority regulated by clearly defined procedures, their actions above suspicion, and their acts of partiality subject to severest censure and punishment. When we talk of state building, we mean cultivating an appropriate professional ethos in these four institutions, and firmly insulating them against partisan political pressure. There is no multicultural society many of whose problems and tragedies are not caused by the blatant partisanship of the institutions of the state.

Mainstreaming equality

A crucial horizontal pathway, which is closely related to the provision of responsive and inclusive public services, is the mainstreaming of equality.

Mainstreaming equality refers to the systematic consideration of the differential structural conditions, positions and needs of people in processes of policy-planning, delivery and implementation. As such, it strikes at the heart of the variable geometry of citizenship design outlined in Chapter 6. Gender mainstreaming strategies have been successful in integrating a gender perspective into all levels of decision-making processes and thus promoting gender equality. Building on the mainstreaming of gender equality, mainstreaming could be extended to other important forms of inequality (e.g. race, ethnicity, class, sexual orientation, disability, age) as a means of promoting minority incorporation and changing institutions from arenas of injustice into providers of equal opportunities. Risk and impact assessments of policies and legislation promise to make public policy more inclusive.

Equality mainstreaming could only be a fairly effective tool for political transformation and a catalyst for social change, if it were accompanied by the establishment of a positive duty on all public authorities to eradicate discrimination and to strengthen the enforcement of anti-discrimination laws. For instance, following the inquiry into the death of Steven Lawrence, the 2000 amendment to the 1976 Race Relations Act established an enforceable, statutory duty on public authorities to tackle race discrimination and to take all positive measures to promote race equality and good race relations. This has led public bodies to update their policies, adopt action plans, organise race awareness initiatives and inform their staff about their obligation to recognise and combat racism. Although much more needs to be done in monitoring the implementation of anti-discrimination policies, providing effective protection against victimisation and, generally speaking, in developing stronger and coherent strategies, it is, nevertheless, the case that a rigorous, effective and proactive approach to equality is the key to combating exclusion and continuing discrimination.

Encouraging participation

As I have argued throughout this book, political participation strikes at the heart of citizenship. True, there exists considerable divergence over the desirable level of participation. As noted earlier, the liberal conception of citizenship is less demanding than the civic republican one; it is enough for citizens to obey the law and take part in national elections. By contrast, the civic republican conception of citizenship requires active involvement in public affairs and in civic associations. Despite their divergence over conceptions of citizenship and philosophy, both perspectives, nevertheless, adhere to the view that citizenship norms require some form of political involvement. At the bare minimum, citizens need to be concerned with politics in order to sustain the benefits of the community, even if they are not engrossed in politics. It is equally true, however, that the above conceptions of citizenship have more strength at the level of political thought. For in real life, citizens and groups do not find it difficult to reconcile private interest with the pursuit of public good

(see Chapter 6). Opposition to institutional discrimination, marginalisation and oppression, for instance, blends private motivations with public interests, and such experiences leave hardly any choice as to whether one should involve oneself in collective struggles and political action. And although political participation is a vital means of challenging hierarchies and structures of inequality, it can also be a vehicle for bringing diverse communities together and for shared citizenship practices.

Public policy must thus ensure that diverse communities are collectively able to engage with the decision-making processes at all levels. The role of non-state institutions in fostering interaction and practices of co-operation must also be recognised and promoted. Although in the past political parties served as vehicles of political incorporation, in the present political landscape civic associations, local groups, religious associations and political action committees provide opportunities for interaction and political involvement. Research on migrants' civic participation in Amsterdam has demonstrated that 'civic engagement is the most powerful determinant of the quality of multicultural democracy', by promoting closer involvement in public affairs and a sense of belonging to the polity (Fenemma and Tillie 1999, p. 722). The more ethnic members are engaged in their own community's affairs the more they participate in local politics and trust political institutions (Fenemma and Tillie 1999). In this respect, encouraging participation is an imperative and every effort should be made to eliminate barriers to civic participation and representation, especially by tackling institutional prejudices and rendering decision-making processes accessible and more inclusive.

Critics may observe, here, that having an effective political voice requires time, money and pre-existing associational networks. Given that such resources are scarce, it is difficult for certain groups to escape political marginality. In addition, critics might point out that group membership is often a matter of degree and individuals tend to belong to plural communities in varying degrees. After all, race, class, gender, disability, age and sexual orientation cut across group categorisations and group members often have different views and differentiated experiences about the same reality. Although such observations are, undoubtedly, correct, I do not view them as impediments to community mobilisation. This is so for two reasons. First, certain identities may be more defining than others in certain contexts. For instance, the rate of unemployment for black and Asian people is two and half times greater that that for whites in the UK, and over 50 per cent of Pakistani and Bangladeshi households, and one-third of black Caribbean are in the 10 per cent most deprived wards in England (Platt 2005). In France too, migrant youth from underprivileged neighbourhoods experience high levels of unemployment, a lack of residential mobility and exclusion from the educational system (High Council on Integration 2004). Secondly, community membership sustains practices of co-operation to overcome structural disadvantages and makes available an extensive support network for individual members.

Changing attitudes and culture

What underpins the above pathways on minority inclusion and sustains the variable geometry of citizenship is the cultivation of those citizenship qualities mostly associated with critical citizenship. Exclusion and subordination have thrived within environments characterised by constructed racial hierarchies, patterns of prejudice and assumptions concerning the inferior traits of certain groups. It is certainly the case that the modalities of racism, sexism and other institutionalised prejudice change over time, but it is equally true that prejudicial views are deeply embedded within the society and institutions resulting in practices of discrimination and subordination. In this respect, changing attitudes and culture ought to be a key objective of policy interventions in favour of minority incorporation.

Regrettably, policies are often driven by a desire to appeal to conservative attitudes and to produce eye-catching initiatives that will attract voters. In addition, principles, such as respecting the equal dignity of all residents and their human right to develop and realise their potential unhindered by unnecessary obstacles and prejudice, are often ignored in the pursuit of narrow political expediency. More importantly, the long-term effects of particular governmental initiatives on community relations often pass unnoticed. For example, when policies and official discourses narrow the circle of belonging and illegitimately stigmatise certain groups, individuals feel that it is acceptable to display their hostility, resentment and prejudices in the workplace and society and to target certain groups. The targeted groups, on their part, often pursue strategies of inversion, that is, they respond to what they perceive as the mainstream society's rejection by rejecting the mainstream and its organizing principles (Gibson 1989).[12]

For this reason, inclusion and respectful belonging require the cultivation of an ethos of respect and responsibility, which would obligate officials, educators, legislators and persons working in the media to abstain from discriminatory, racist and xenophobic speech and to ensure that policies, laws and administrative provisions treat each individual as a respected member and full participant. The enhancement of human dignity should be integrated into policy, politics and culture. Fair and balanced media reporting and the display of respectful public attitudes towards all groups would also contribute to the institutionalisation of a civic culture of anti-discrimination and anti-racism and to cross-cultural communication and understanding. Such a civic culture would foster what Young (1990, pp. 82–5) has called 'a spirit of openness to unassimilated otherness', that is, the positive recognition of the Other as both 'other' and 'co-other' and the establishment of strong links among communities.

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[12] As the Foreign Policy Centre in the UK has found, open criticism of the Muslim culture in the UK has led to an increased self-identification as 'Muslims' and the adoption of Islamic dress codes by women and beards by men: 'Born in the UK: Young Muslims in Britain': http://fpc.org.uk/fsblob/792.pdf.

Having outlined some horizontal pathways to inclusion, the discussion will now focus on vertical pathways, commencing with education.

Vertical pathways

Education

Education has been, and continues to be, important for citizenship. Nation-building processes have relied on centralised educational systems in order to inculcate a common national identity and to create patriotic citizens. Notwithstanding this fact, however, it is generally acknowledged that education not only encourages the development of individuals' personality, potential and capacity for critical thinking, but also equips them with the knowledge and skills they need in order to function as responsible and active citizens. Indeed, it is the latter element of civic education that Rousseau extolled in *Emile* and which has since been praised by civic republicanism. Very much a feature of citizenship education in contemporary democratic states is a shift of focus away from using education to mould people into a homogeneous nation towards fostering an appreciation of the contributions made by different communities and cultures and of the wider order beyond the national culture, be it transnational, international or supranational.[13] As Dewey (1923, p. 452) observed in 1923:

> We need a curriculum in history, literature, and geography which will make the different racial elements in this country aware of what each has contributed and will create a mental attitude toward other people which will make it more difficult for the flames of hatred and suspicion to sweep over this country in the future, which indeed will make this impossible, because when children's minds are in the formative period we shall have fixed in them, through the medium of schools, feelings of respect and friendliness for the other nations and peoples of the world.

But the goals of citizenship education are undermined not only when education is used to consolidate the cultural and ethnic overtones of national identity, to promote homogeneity and to eliminate dissent, but also when the educational institutional system tolerates discrimination and inequalities. For this reason, both international and European Community laws have made it clear that multicultural education is not discretionary. Given that states are no longer viewed to be private clubs run by hegemonic groups, they are required to take measures to foster the knowledge, history, language and religion of minority communities and to provide opportunities for instruction in minority languages. A critical and reflexive approach to history, the interpretation of key events from multiple perspectives, a more intercultural curriculum, emphasis on multilingualism and encouraging interfaith dialogic exchanges

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[13] On the origins of the project of education for world citizenship, see Heater (1999).

can contribute to instilling a pluralist and democratic ethos in schools. More intercultural education policies and reflective approaches to curriculum design, however, need to be accompanied by effective policies for countering racism, bullying and intolerance at schools, promoting the pupils' ability to recognise prejudice, and including intercultural, anti-sexist and anti-disability discrimination education in teacher training curricula. As regards the latter, equal opportunities in education are essential. Remedial action to reduce disadvantages in the early years and under-achievement is thus necessary to promote inclusive belonging and less unequal citizenship. Reviewing the performance of different ethnic groups at key stages of compulsory education and in higher education, providing pre-school language training for migrant children, examining drop-out rates for minority groups in primary and secondary schools and having a comprehensive system of quality education for all children, irrespective of socio-economic status, are some examples of measures fitting the variable geometry of citizenship.

In addition, educational systems must be sufficiently flexible in order to accommodate variable needs. For instance, special schools, be they schools for special needs pupils or faith-based, can coexist alongside mainstream schools. As noted above, directing special needs pupils to mainstream classrooms as a matter of policy can result in underestimating specific needs and can affect a pupil's own image of himself/herself and his/her abilities. Similarly, criticisms of faith-based schools can only convince if they take into account their important contribution to education in general. In British education, for instance, denominational schooling has, in the main, been effective, and Catholic schools have acquired a reputation of being more socially and ethnically inclusive than other schools, as well as academically very successful.

Having said this, one must also bear in mind that the inclusion of faith-based schools within the scope of public funding is the result of struggles and compromise, rather than the instantiation of 'universal and perennial principles grounded in commitments to pluralism or to religious freedom' (Judge 2002, p. 427). And since the relation between the church and the state varies between states, any attempt to prescribe a single path of regulation of religiously affiliated schools would be both ahistorical and futile. In France, for example, the principle of *laicite* on which the French Republic is based does not give much room for the grant of public funding to faith-based schools. By contrast, in Britain religiously affiliated schools, such as Jewish and Catholic, have received state support as a result of sustained protests against the hegemony of the Anglican Church. And although governmental policy in this area reflects an untidy mix of compromise and volatile political alliances (Judge 2002), governments find it difficult to resist demands for the extension of state funding to other religions. Various communities in the UK have questioned the hegemonic status enjoyed by Protestant, Catholic and Jewish schools and demanded admission to 'the favoured circle' not so much on the ground that religious education yields better academic performance, but on the basis of the

principle of equal recognition of all religions.[14] Certainly, determining which faiths or religions are entitled to such support may be a process riddled with difficulties, but genuine, dialogic exchanges and flexible accommodation on the part of the state and religious communities can overcome at least some of such difficulties.

Housing

Access to housing is necessary for maintaining quality of life and active citizenship. Governments need to ensure the provision of adequate low-cost housing and to facilitate access to it to those on low incomes. It is crucial that public sector housing is allocated on the basis of objective criteria that are published in advance. These must ensure equal access to all those eligible, irrespective of ethnic/racial origin and must be regularly reviewed and monitored. The government needs to enforce legal remedies against discrimination in public and private housing and to monitor practices by private landlords and professional agents. It is noteworthy here that the Racial Equality Directive (2000/43/EC)[15] prohibits discrimination with respect to 'access to and supply of goods and services which are available to the public, including housing'. However, doubts exist as to whether this provision applies to private housing as well. Government intervention in this field can nevertheless promote equality by ensuring that reduced-rate mortgages are not confined to national workers, that subsidies for the construction of and ownership of middle class homes extend to low-income people and that private housing protects the family life and secures the human dignity of occupants. Tax incentives could also be offered to developers who intend to construct adequate, but affordable, housing or to renovate existing rental housing with a view to attracting low income tenants.

Housing policies which encourage the development of housing associations and take measures to ensure that people on low incomes can progressively move into the ownership sector and are, generally speaking, afforded freedom of choice of accommodation comparable to that pertaining to higher income groups are essential too. The provision of public assistance with rent payments or of rental vouchers would be an important step in this direction – perhaps as important as the provision of jobs entailing good wages. Urban decline and the formation of urban ghettos can be combated by urban regeneration and development schemes which deliver affordable housing and ensure the participation of local residents themselves in the design of planning policies. Such schemes can also provide employment opportunities for unemployed local residents and women interested in flexible job schemes. But special efforts may

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[14] According to *The Sunday Times* (22 October 2006, p. 14), in Britain there exist 6,850 Christian and Jewish Schools, accounting for one-third of all state schools, 7 Muslim and 2 Sikh schools which are state-funded.

[15] See Art. 3(1) of Directive 2000/43, OJ 2000 L 180/22 (the so-called Race Directive).

be needed to ensure that group members define their needs, articulate their expectations and put forward their suggestions in areas under restructuring.

Health

Equal citizenship is undermined by persisting health inequalities. When the overall health profile and experiences of people vary in accordance with class, gender, ethnic and racial characteristics, then citizenship becomes a socio-economic or ethnic lottery in health care settings. Persistent inequalities in the distribution of health care among people from different socio-economic, racial and ethnic backgrounds can be found in most western European states. In the UK, health inequalities which reflect trends in income inequality have increased substantially. Income inequality rose markedly in the 1980s and has been sustained throughout the 1990s and into the 2000s, thereby leading to a social and spatial polarisation of life chances. Although the New Labour government expressed a commitment to reduce health inequalities, and in 2001 announced two national targets for 2010 – namely, to reduce the gap in infant mortality across social groups and to raise life expectancy in the most disadvantaged areas – recent research by the Department of Health's scientific reference group shows that the relative gap between the fifth of local author-ities with the lowest life expectancy in England has increased as a whole by 2 per cent for men and 5 per cent for women between the periods 1997–99 and 2001–03. Over the same period, the gap between the mortality rate for babies with fathers in 'routine and manual' occupations and those in the population as a whole rose from 13 per cent to 19 per cent.[16] And while New Labour has been prepared to lift some sections of the population out of poverty, the government has shied away from tackling the wider issue of inequality. More potent and redistributive measures that go beyond the minimum wage, new deal and tax credits are thus needed in order to reduce inequalities in health and poverty.

Access to health services can also be impeded owing to economic reasons, physical inaccessibility and informational/cultural barriers. All three variables must be taken into account in designing complex interventions in the light of the variable geometry of citizenship with the view to making health facilities and services affordable for, and accessible to, all. Certain groups refrain from seeking medical treatment because of their inability to miss work and inability to find child care and elderly care helpers. Those working at the lower levels of the employment hierarchy may also be reluctant to request time off to seek health care. As regards the physical accessibility of health services, the location, distance and timing of opening hours of health services may pose problems for certain groups, including residents of rural areas. Finally, adequate interpre-tation services for minority patients, the provision of information about health care, family planning and maternity care by health care professionals to

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[16] BMA news, Saturday, 20 August 2005, p. 3.

targeted groups, training health care professionals to increase their cultural awareness and the avoidance of discrimination will result in the greater equalisation of opportunities for access to health services. Notably, the Race Relations (Amendment) Act 2000 has placed a general duty upon public authorities to work towards the elimination of unlawful discrimination and to promote equality of opportunity between persons of different racial groups. Primary health care trusts may have to implement these priorities locally, through targeted resource allocation, while the Commission for Health Care Audit and Inspection will monitor the allocation of resources and assess their impact. Equally important is organisational change and the elimination of institutional racism by improving ethnic monitoring, promoting anti-discriminatory practices and better policy frameworks, providing appropriate and responsive services and enhancing community engagement.[17]

The differential needs of certain groups must also be taken into account in order to help make equal citizenship a reality. For example, programmes for the early detection of breast and cervical cancer, designed to reduce disparities in mortality due to cancer by targeting primarily low income women, have delivered notable improvements in access to screening for minority groups. Specialist health care centres for homeless people also promote equal citizenship by taking into account the fact that such patients have multiple and different needs which cannot be met by an ordinary five- to ten-minute consultation. In this respect, not only do they make it easier for homeless people to access mainstream services, but they also make them feel more confident that they will not be stigmatised and penalised if they are unable to keep an appointment made several days in advance, which can be difficult given their circumstances. Critics may argue here that my recommendations cannot but add more strains on a health system that is already failing to cope with diminished resources and increased demand.[18] However, if health systems are to evolve in ways that meet the society's complex needs, then we must embrace the design of flexible system that does not fear innovation, change and the remodelling of processes, roles, organisations and culture.

Anti-discrimination legislation

Legislation has played a key role in institutionalising decades-long overt discrimination against minority groups in an array of fields, such as education, employment, naturalisation, property ownership, marriage, migration and so on. Regrettably, laws have often reflected social ideologies and patterns of prejudice and have been instrumental in reinforcing racial and gender

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[17] Compare, here, Department of Health's consultation paper, entitled 'Delivering Race Equality: A Framework for Action', London: DoH, 2003.

[18] After all, not all configurations of services and processes are costly. The provision of hala, kosher and vegetarian foods in hospitals, of an accredited list of specialists providing male circumcision and the prompt release of the bodies of deceased relative for burial are services that do not carry extra costs for the NHS.

subordination. Yet there has been genuine progress post World War II. Anti-discrimination legislation since the 1960s has reversed inequalities and has shown that legacies of discrimination can be chipped away effectively, if legislation works in tandem with non-discrimination policies and initiatives. In the US, the civil rights legislation of the 1960s, coupled with the Immigration Act 1965, which removed discriminatory national origin quotas for migrant workers, exemplified the federal government's commitment to formal racial equality. Certainly, the US Supreme Court had made important interventions in the pre-1965 era by prohibiting public school segregation in 1954 (*Brown v. Board of Education*), racially restrictive housing covenants in 1948 and California's anti-miscegenation law (*Perez v. Sharp*) in 1948. But, as the discussion in Chapters 2, 3 and 4 has noted, non-discrimination initiatives will only be partially effective in combating racism, if they are confined to internal race relations. Instead, a genuine commitment to race equality must include the removal of attitudes of prejudice that have found their way into the framing and administration of citizenship and migration laws. For the denial of basic rights and the sanctioning of discrimination against migrant groups tends to reinforce patterns of prejudice and a racial hierarchy against citizens from minority backgrounds (Kostakopoulou 1998; Hepple 2004). In addition, measures to tackle racism, harassment and xenophobia are essential for promoting inclusive communities. These often range from the criminalisation of racist offences, racially motivated violence and incitement to racial hatred to introducing effective judicial and administrative measures that provide fair and effective access to justice. Policies outlawing harassment and bullying, coupled with codes of practices for behaviour at work, can safeguard the dignity and integrity of all members of staff and ensure that all individuals can realise their potential in a working environment free of discrimination. Such policies need to be accompanied by informal and formal complaint procedures, so that employees can raise their concerns without the fear of victimisation. In addition, governments must ensure that there is adequate legal and psychological support for victims of discrimination and victimisation.

The importance of effective laws against discrimination has been recognised by both the Council of Europe and the EU. In particular, Art. 14 of the ECHR and Protocol 12 to the ECHR, which goes beyond the principle of non-discrimination stated in Art. 14 by providing a freestanding right to freedom from discrimination, have contributed to the advancement of equality. EU legislation has also been pivotal to the introduction and modernisation of anti-discrimination legislation in the member states. In the UK, the Equal Pay Act 1970, the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976 and the Disability Discrimination Act 1995 all have been amended to conform with Community law, be it gender equality legislation or the two anti-discrimination directives based on Art. 13 EC; namely, the Race Directive (2000/43) and the General Framework Directive for Equal Treatment in Employment

and Occupation (2000/78).[19] The latter have institutionalised a new and wider definition of indirect discrimination, the statutory prohibition of (racial) harassment, which in the past was considered to be a form of unlawful direct discrimination, and a shift in the burden of proof to the employer upon the applicant establishing a prima facie case of discrimination. The shift in the burden of proof has had major impact on discrimination cases by requiring respondents to provide evidence to support any denial of discrimination or racial harassment and by enabling employment tribunals to draw inferences of discrimination in the absence of such evidence.

Despite the dissemination of anti-discrimination norms throughout the EU and elsewhere, however, discrimination continues to be a serious problem. Extending anti-discrimination legislation to areas beyond the labour market might be a promising means of realising equality.[20] Race and gender conscious measures might also be more effective in tackling inequality and exclusion than the individual justice model upon which anti-discrimination legislation is predominantly based (McCrudden 2001, p. 297; Chalmers 2001) True, affirmative action has been the subject of much debate.[21] Its proponents view it as a key to advancing racial justice and sex equality, whereas its critics observe that it is rooted in gender or race-based classifications which are morally irrelevant. According to critics, affirmative action programmes can only fuel assertive identity politics and create zero sum situations, whereby the gains of one group tend to be losses for another.[22] While the arguments made by both proponents and opponents of affirmative action are complex and multifaceted, its political and historical context does not always receive the attention it deserves (see Chapter 6). For although affirmative action is premised on the belief that race consciousness is a necessary response to liberalism's longstanding failure to deliver on the promise of racial (and gender) equality, it would be inaccurate to portray it as a matter of a choice between a 'colour blind' ideology and cherished value commitments, on the one hand, and colour-conscious visions, on the other. For as noted in Chapter 6, affirmative action seeks to address the institutionally embedded forms of racial privilege and patterns of prejudice

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[19] See Equal Pay Act (Amendment) Regulations 1983, SI 1983 1794; Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations, SI 2001/2660; Race Relations Act 1976 (Amendment) Regulations 2003, SI 2003/1626; Disability Discrimination Act 1995 (Amendment) Regulations 2003, SI 2003/1673; Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660; Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661.

[20] Compare here Art. 3(1) of Directive 2003/43 (OJ 2000 L180/22) and Directive 2004/113 on Implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ 2004 L373/37).

[21] The first reference to affirmative action was made in President J. F. Kennedy's Executive Order 10925 of 1961 that forbade racial discrimination by federal contractors. The creation of the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act 1964 was the key to the development of affirmative action.

[22] For a discussion of soft positive action measures versus hard-quotas and preferential hiring, see Skrentny (2001).

which have not been uprooted by liberal civil rights policies and to help people overcome penalties imposed by society owing to morally irrelevant characteristics. By taking into account the fact that privileges are awarded and handicaps are imposed on the basis of race, affirmative action in the US has breached the exclusive boundaries of sectors of the industry, education and of organisations. As Dworkin (1977, p. 239) has noted:

> if we misunderstand the nature of that injustice because we do not make the simple distinctions that are necessary to understand it, then we are in danger of more injustice still. It may be that preferential admissions programs will not, in fact, make a more equal society, because they may not have the effects their advocates believe they will. That strategic question should be at the centre of debate about these programs. But we must not corrupt the debate by supposing that these programs are unfair even if they do work. We must take care not to use the Equal Protection Clause to cheat ourselves of equality.

Accordingly, if we agree that achieving equality in practice is a worthwhile ideal, then we should not shy away from contemplating societal transformation and from challenging policies that create or maintain disparate outcomes in employment, health care education, housing and so on. In this respect, the goals of affirmative action measures cannot be narrow and need to work in tandem with other polices and programmes. Ensuring better compliance with anti-discrimination laws and norms is also essential. Many employers' commitment to diversity is not complemented by a rigorous and effective implementation of laws and guidelines. Accordingly, stricter monitoring of organisations' compliance with anti-discrimination legislation and their duties to preclude discrimination in the workplace and to promote equal opportunities is necessary. This could take the form of requiring employers to submit detailed reports on their employment patterns, the ethnic composition and career progression of minority staff, as well as explicit plans of reviewing existing procedures and practices and remedying inequality. While the former could include diversity action plans and audits, the latter could entail special promotion and special management training for under-represented groups aiming at securing their advancement and promoting inclusion.

Political participation

The variable geometry design embraces political participation at all levels of governance and in the voluntary sector. Although the citizenship as status versus citizenship as practice dualism dominated political theory in the 1980s and 1990s, citizenship practice has been, and continues to be, an expression of, and a means of realising, equal citizenship. As argued above, electoral rights are a manifestation of equal and respectful belonging to a political community. But electoral participation needs to be accompanied by other forms of civic participation, such as citizen involvement in local politics, school committees,

employer boards and trade unions, housing associations and non-governmental organisations. Democratic governments can play an important role in fostering political participation by encouraging and facilitating citizens' involvement in decision-making and consultative bodies, by awarding grants to civic associations operating in the social field and by supporting organisations seeking to combat discrimination and human rights abuses. Similarly, structures can be adapted to enable minority groups to take part in developing, planning and implementing policy and specific recruitment targets can be set for key institutions and public bodies with a view to promoting equal representation. Under the Race Relations Act 2002, for example, public sector bodies have a duty to monitor ethnic minority representation on its committees. And although the results of such monitoring may not necessarily effect change, the instutionalisation of such a duty, nonetheless, makes it clear that minority representation and institutional racism continue to be serious matters of concern.[23] The focus on equal participation, therefore, has a twofold objective: (1) it highlights the importance of equal participation in realising equal citizenship; and (2) it draws attention to the fact that disadvantages do not simply disappear by adopting measures designed to 'protect' the disadvantaged. Rather, they can only be remedied by empowering the disadvantaged and by ending their political marginality.

Labour market participation

Participation in the labour market provides the financial security and economic independence required for personal well-being and access to social rights, such as health insurance, pension entitlement and so on. Beyond that, it facilitates social co-operation and nurtures self-esteem by fulfilling the individuals' needs for recognition and advancement. It is important, therefore, that citizens have an equal chance to form and realise their professional aspirations and have equal access to job recruitment, training and promotion.

In this respect, anti-discrimination legislation and, in particular, the mainstreaming of equality in the workplace has had positive impact. However, even after 30 years of sex and race equality legislation, women and ethnic minority staff are still paid less than their male and white comparators respectively, and are disadvantaged in the allocation of discretionary payments and bonuses, in promotion and selection for redundancy. As noted above, realising equal citizenship would require a more sustained effort in combating discrimination

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[23] The MacPherson (1999) inquiry into the death of Stephen Lawrence, the teenager who was murdered by a group of white youths in South East London on 22 April 1993, defined institutional racism as: 'the collective failure of an organization to provide appropriate and professional service to people because of their colour, culture or ethnic origin. It can be detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.'

and the adoption of forms of positive action. Combating barriers to recruitment, selection and advancement in employment, the use of targets for the minority representation in the workforce and the adoption of broad framework policies could be effective ways of ensuring equal access and treatment in employment. To this end, equality commissions could provide advice concerning the implementation of framework policies, as they have done thus far with respect to existing codes of practice for employers concerning the promotion of equal opportunities in employment. Structured dialogue with local authorities, NGOs, social partners, group representatives can also provide information on labour market participation and the effectiveness of existing policies and practices.

Minority groups often do not get the service they are entitled to in the field of self-employment, too. Qualifications obtained in non-EU countries are not readily recognised and the possibility of attending short courses in the country of residence in order to complement existing qualifications is not always available. Governments can do a lot in this area by adopting a range of initiatives in partnership with businesses and local government, ranging from providing incentive schemes to attract business and investment in urban areas of industrial decline and training for young entrepreneurs, to providing access to business contacts, financial support and placement schemes with schools, higher education institutions and businesses. Regular reviews of existing regulations and practices to ensure that minority groups have the same opportunities as other groups to set up and develop businesses would promote the advancement of disadvantaged groups.

In addition, the variable geometry model would require identification of the groups that are economically disadvantaged and thus at risk of exclusion from the labour market, and a thorough examination of their training and educational needs. Special programmes could be directed at specific groups, such as young school leavers from low income families, children who have dropped out from school, young mothers whose education has been disrupted, mothers who seek to re-enter the labour market and so on. Their main aim would be to reduce educational and economic disadvantage by enhancing the knowledge base and professional skills, increasing job search awareness and self-presentational skills and boosting the confidence and motivation of the participants. The provision of supplementary education courses and training schemes, however, would be more effective if public officials, instructors and teachers were trained to understand peoples' special needs and to appreciate the multiple disadvantages they may face owing to differentials in class, race, gender etc. It is undoubtedly the case that the 1990s have been characterised by a decline in full employment and a corresponding increase in part-time, flexible, short-term employment, home-working and tele-working. This has not only created fiscal imbalances in welfare states, but it has also led to an increase in the number of people whose earnings cannot sustain a livelihood. Citizenship theory and practice need to take into account the

facts that full-time employment is no longer a certainty, part-time jobs do not pay enough. In addition, people may not be able to find jobs owing to disability or the lack of sufficient skills. Furthermore, it is often the case that people may have skills but are unable to find employment because their regions have been hit by high unemployment owing to the decline of certain sectors or because their mobility is constrained owing to family commitments. In such cases, social citizenship must obtain priority on policy agendas, and governments must recognise that unemployed people, women, old people, ethnic and religious minorities, people with disabilities, informal careers, the homeless and travellers are at great risk of social exclusion. True, a strategy for growth and job creation is vital. But vital, too, is the acknowledgement that the problems of unemployment and social exclusion will not be automatically solved by economic growth. Social solidarity cannot be built on the commitment to enhance economic competitiveness and a strategy of job creation alone. It requires not only the strengthening of the cluster of social rights, but also well designed and coherent anti-poverty and anti-homelessness programmes. The success of such programmes would depend on both the forging of partnerships among all actors and agencies involved in the fight against poverty and the adoption of multi-objective policies and strategies, since social exclusion is more often than not the result of structural weaknesses in several policy areas.

Moreover, although paid work still remains at the heart of attempts to develop a more inclusive society, it is important to recognise that paid work may be a necessary, but not a sufficient condition, for participation in society and for combating social exclusion. It is thus important to open up access to social rights and benefits to those who take part in socially productive, albeit not economically productive, activities.

Evidently, the pursuit of such policies goes against the grain of the neo-liberal agenda of strong anti-inflationary policies and deregulated labour markets. But economists do not preclude the possibility of combining tactical interventions in the labour market with a monetary and exchange policy aiming at maintaining price stability. Reducing poverty goes hand in hand with including people into the active economic sphere by giving them an opportunity to work, to earn a decent income which keeps them above the poverty line and to make contributions in the workplace and society. It is interesting to note here that following the Lisbon summit in March 2000, the European Union's Strategic Guidelines of a European Social Agenda 2001–2005 included a number of goals, such as job creation to reduce unemployment, balancing flexibility and security in the labour market, fighting poverty and all forms of exclusion and discrimination, modernising social protection schemes in the member states and promoting equality between men and women. And although there are large macroeconomic issues at work here, the Lisbon guidelines signalled the importance of ensuring that citizenship is not denuded of meaning as a result of poverty and inequality.

Conclusion

The discussion in this chapter has centred on reinvigorating institutional capability and finding ways of making equal citizenship a reality. It is true that the articulation of a set of horizontal and vertical pathways to inclusion will still leave us with many difficult questions, such as how to deal fairly with exceptional cases, how to prevent misunderstandings among groups, how to eradicate bigotry and prejudice and how to respond to the claim that the majority is applying its own rules and principles in an unfair and selective manner. Complex issues arise all the time requiring complex solutions. I do not purport to have answers for all the above. I do believe, however, that democratic participation can channel legitimate frustrations and grievances and can bring people together to engage with, debate and solve matters of common concern. Collective participation in decision-making, however, is not equivalent to participating as a consumer of public services or to enhancing the visibility and credibility of the claims of disadvantaged groups. A focus on participation points to a more promising political direction; namely, to a politics of empowerment and of meaningful citizenship practices with the view of building a democratic society in which everyone is encouraged to participate and contribute as an equal and respected member.

Conclusion

In much of the citizenship literature it is often considered, if not simply assumed, that citizenship is integral to the character of a self-determining community and that this process, by definition, involves the exclusion of resident 'foreigners'. The foregoing discussion has called this assumption into question. I have argued that 'aliens' are by definition outside the bounds of the community by virtue of a circular reasoning which takes for granted the existence of bounded national communities, and that this process of collective self-definition is deeply political and historically dated. And although I share the view that citizenship would mean very little if citizens belonged to borderless communities, maintaining a sharp distinction between 'us and them' in a globalised and plural world seems to me to be quite problematic. This is not only because it screens out the various connections and ties of interdependence between 'insiders' and 'outsiders' and the responsibilities we owe to distant, and not too distant, others. It is also due to the fact that exclusionary conceptions of citizenship undermine the normative principles on which relatively egalitarian and democratic states are based. In this respect, political exclusion and the transformation of democracy into an ethnarchy should no longer be seen as necessary, albeit unfortunate consequences of a community's right to democratic self-determination. Instead, they should be viewed as contingent consequences of a historical model of citizenship and community that has taken root in the modern national statist world and which may be in need of correction in the new millennium.

The crucial question is, therefore, whether an alternative model of citizenship that is inclusive, egalitarian and democratic can be developed. The foregoing discussion has expressed a resounding 'yes' and my intellectual endeavours have been devoted to designing such a model and discussing the conditions for its implementation. Irrespective of whether one agrees with either the broad outline of denationalised citizenship entailed in Chapters 3 and 4 or the more detailed explication of the institutional arrangements concerning its personal and material scope (Chapters 4, 5, 6 and 7), it seems to me that if we are to develop a more satisfactory account of citizenship in the twenty-first century, we need to embrace wholeheartedly three basic guiding principles, namely: (a) internationalism; (b) the duty of theoretical and institutional reconstruction; and (c) the duty of humanising citizenship.

The principle of internationalism is not a mere expression of the fact that international, supranational and transnational developments have prompted a rethinking of the central organising elements of citizenship. Rather, it takes as its starting point that the world is rapidly changing in a non-deterministic way and that the institutional order that affects our interests as citizens is no longer partial and geographically limited. Ongoing processes of globalisation, internationalism and supranationalism are thus integral to, and to an increasing extent determinants of, state policies, structural adjustments and institutional change. Instead of being seen as an optional extra to the study of citizenship, internationalism should thus be viewed to be a permanent feature of citizenship theory and practice. Focusing on the wider order beyond the state enables us to learn from the successes and mistakes of the past and to avoid recurring error. It also helps us appreciate the evolving nature of citizenship, owing to border crossings of all kinds, the human rights discourse, terrorist and counter-terrorist politics, concerns about ecological sustainability, European integration and the political mobilisation of a nascent global civil society (Held 1995; Zolo, 1997; Delanty, 2000; Dallmayr 2003).

The second principle of institutional reconstruction refers to the responsibility that each generation has to redesign institutions so as to take into account radically changed circumstances and views of the world. It is true that, more often than not, generations are living through a new set of circumstances without perceiving or utilising their immense spiritual and ethical significance. Hence, their habits of thought remain unchanged and their institutions barely respond to pressing problems. Notwithstanding any delay in appreciating 'the new', however, generations are bound to face critical junctures; that is, points in time when the old order is called into question and transformation is seen as inevitable. At such junctures, a question that is often asked is: 'how and what can we build from the old as to produce a more efficient and normatively defensible political arrangement?'.

Bearing in mind the historical legacies of exclusion, subordination and oppression of minority groups that have accompanied (mis)uses of citizenship, it is the intellectual task of the twentieth century to ask the above question and take the step of reconstructing citizenship along more inclusive and pluralist lines. Given that the old, closed world of dogmas and metaphysics has been superseded by a world in motion, flux and of complexity (Urry 2003), citizenship needs to be made more responsive to the increasingly complex, fragile and interconnected world in which we live (Lister 2003; Frei 2003). True, the weight of the past, narrow-minded political games, the 'politics of fear', ideologies of racialised ethnicity and parochialism (Kivisto 2002, p. 191) will continue to cast their shadow upon the way we understand the past and sketch the future. But, I believe, there is a value in actively seeking to ensure that all the above represent mere shadows over, and not determinants of, citizenship politics in the new millennium.

The third duty of humanising citizenship could be read as a plea to affirm the equal dignity of human beings and to make equal citizenship more meaningful. Citizenship can no longer reflect patterns of prejudice and supremacist ideologies in the contemporary pluralistic world. Nor is it appropriate that citizenship is used by hegemonic groups as a basis for discrimination, exclusion or subordination. Broadening the conception of citizenship in order to reflect the commonality of human experience, to resolve the common problems and meet shared aspirations, to distribute resources and privileges more equally, to establish connections, to recognise mutual cultural influences, dynamic interdependences and the constant border crossings of all kinds is thus an imperative. In Chapters 1 and 2 I argued that citizenship has been undermined from within. The idea of an all-embracing, unified community shaped by a common national culture can no longer successfully conceal the extent to which cohesion has been contrived and unity and sameness were valorised over diversity and difference. Nor can the nation any longer be the only object of identification. Citizens' identifications are multiple and variable. In addition, many peoples' daily lives revolve around interconnections across two or more countries, and often experience citizenship as a journey back and forth among multiple histories and identities. Accordingly, citizenship can no longer be an exclusive national statist affair.

Going beyond the national framework is a plausible, albeit challenging, proposal. As earlier argued, making citizenship an affair primarily of being together, doing things together and taking part in decision-making as equal and respected members (i.e. citizenship as a network good) opens up fruitful possibilities for a transformative politics. Given the weakness of liberal nationalist justifications for the nationality model of citizenship (see Chapters 2, 3 and 4), the need for a defensible alternative should not be underestimated. A reason for the appeal of the theoretical schema suggested in this book is that it does not presuppose that territorial borders will become redundant. On the contrary. Borders will continue to circumscribe membership in political communities, but the latter will no longer be defined by hard-edged boundaries and sharp divisions (Kostakopoulou 1996; 2001).

It would also be a mistake to assume that what I have said thus far denies that citizens do have special duties towards the polity and their fellow citizens. For the proposed citizenship model is designed to work within communities that are responsible for the welfare of their citizens and can respond to collective action problems (see Chapters 5, 6 and 7). Accordingly, under my schema, patriotic loyalties, commitments and communal solidarity will not evaporate. Instead, they will merge in wider moralities. Nor does the proposed citizenship model presuppose the eradication of nationality. People will continue to enjoy their national attachments, however the latter may be defined, but these would be weightless for both citizenship status and practice.

From this standpoint, citizenship would remain a work in progress and thus an ethical and political challenge. It would reflect the challenge of creating

political communities in which all domiciled persons, without discrimination, seek and enjoy the benefits of co-operation in ways that are consonant with their dignity and worth as human beings. Anational citizenship would ensure that all citizens are afforded the space and the opportunities within it to grow as personalities and flourish, and are regarded as respected participants in the making of the only real values there are – the values of the human spirit.

True, critics might object here that the likelihood of adopting denationalised citizenship in the post-9/11 era is slim. In these unsettling times, when violence has been unleashed in the world and has corroded respect for human life, the duty of governments is to ensure homeland security by hardening external frontiers, increasing internal surveillance and restricting the term citizen to nationals and to those who wish to act like nationals. While terrorist threats should not be taken lightly, it is important to remember that the goals of citizenship policy and security policy are very different. It would be wrong to mix them or to conflate them, by using, for example, citizenship policy as a means of increasing security or as a reaction to perceived fears about national security threats. In turn, devising effective policy tools to deal with terrorism or suspected terrorist threats must be done with sensitivity, accord full respect for civil liberties and be regularly reviewed for its impact on vulnerable minority groups. Counter-terrorist measures which reinforce or increase the exclusionary character of citizenship policy or restrict fundamental rights violate the grammar of liberal politics and should be resisted.

Another related criticism might be that the model of denationalised citizenship outlined in this book is nothing more than a thought experiment and a utopia. Even though this tends to be a standard line of criticism when existing ways of doing things are no longer taken for granted, it must, nevertheless, be taken seriously. But in so doing, one must bear in mind that the question of feasibility is not a fact that can be verified in advance. For the feasibility of any institutional design depends on a number of variables, including the perceived net benefits of the proposed alternative rules, the state of the international system and the timeliness of the proposal. More importantly, since 'the road from the ideal to the actual lies, not merely in institutional novelties, or programmes and blueprints of social change, but also, and primarily, in a change of mind' (Allott 2001, p. xxxiii), ideas and proposals do matter for a number of reasons. First, they help clarify issues. Secondly, they make the constraints of existing institutions and paradigms more visible. Third, they enable us to put several options on the table, compare them and debate their merits and weaknesses (Goodin 1995; 1996). By so doing, they present future policy as a menu of choices. In this respect, the challenge of feasibility does not only comprise questions, such as 'How do we get there?' and 'When we will get there?'. It also revolves around more modest questions, such as 'Do we see what is missing?', 'Can we fix it?' and 'Are we moving in the right direction?'.

National citizenship may have enjoyed a privileged position in both theory and practice, but, I have argued above, its remarkable elasticity has reached its

limit. It has come up against a complexity barrier, a certain point beyond which it cannot go. To continue to sustain the exclusion of non-national residents from the democratic process on the basis of nationalistic reasoning would be fundamentally inconsistent with the egalitarian premise of citizenship and the inclusive nature of democracy. In this respect, the case for changing the basic premises of citizenship is normatively compelling. But, throughout the discussion, I have seen the design of a different citizenship model not only as an issue of conceptual feasibility, but also in terms of designing an institution and a detailed set of rules that can be implemented in reality, by being grafted onto the existing state system.[1]

It is true that a citizenship model that looks to the future, without advocating a world community and an abstract notion of a single cosmopolitan citizenship, reflects a very different set of social and political ambitions from one that is largely defined by its past. As expected, readers will quickly be divided between those who will defend the existing model of national citizenship and those who might be more favourably disposed towards the proposed institutional configuration. The former will view my model as a direct challenge to the very ideational foundations of liberal democracy and condemn it as an anathema. Others espousing subtler, perhaps less polarised, opinions may see my theoretical endeavour as offering a 'temporary relief' to the externalities of national citizenship by reflecting 'the spirit of our time'. By the latter, I mean the disposition to take the margins into account when investigating the centre and to examine institutions and the socio-political life not merely from the inside out, but also from the outside in. Both points of view are to be expected and are, thus, equally, legitimate.

However, such views can also obscure the many things that 'traditionalists' and 'visionaries' have in common. And by the latter, I do not merely imply the unwavering delight in conversation, argument and the play of ideas they share. What I have in mind is their belief that ideas can make a difference in the real world, by addressing problems that are pressing. In this respect, given that the existing nationality model of citizenship is beset with difficulties, 'traditionalists' could win 'visionaries' over, if they demonstrated that national citizenship can adequately address the political context that generates alternatives to it, by being responsive to exclusions and to new developments. They would thus have to show that it can effectively serve as a counterweight to processes of neo-nationalisation and the construction of friend/foe polarities that have saturated the public realm in the post-9/11 era. But more importantly, critics would also need to show that the nationality model of citizenship can still do what I believe it cannot; that is, to capture the existing complexity, deepen democracy, create inclusive political communities and make the distribution of resources and opportunities more equal.

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[1] Of course, nothing I have said in this book prevents parallel processes of thinner or thicker democratic orderings of global affairs (Held 1995, p. 270).

But there is also another angle to this tradition versus innovation dilemma that merits close attention. One recalls, for instance, that in the fifteenth century the state broke away from the divine and religion was replaced by the profoundly anti-medieval concept of the nation. Traditionalists stood in the way of such change, despite the fact that the principles of the old order did not simply disappear; many survived and were grafted onto the new institutions, traditions and practices. This is hardly surprising. In most transitions, 'the new' is, unavoidably, the byproduct of a reflexive understanding of the past and a critical assessment of its limits and possibilities. What matters in such processes is the choice of the elements of the polymorphous past which will form the key blocks that will carry the past into the future without at the same time making the future a mirror image of the past.

From this standpoint it would be erroneous to depict the nationality model of citizenship and the denationalised paradigm suggested above as a sequence of discontinuous paradigms interrupted by unbridgeable gaps, whereby the new institutional design constitutes the negation of everything that has preceded it. For there exist many ideas, principles, concepts and practices that link quite closely the past, present and future. The mature jurisprudence concerning domicile and the weight of the principles of *ius soli* and sex equality in matters concerning the acquisition of citizenship are threads that connect the present/past with the future. The grant of electoral rights to domiciled residents in certain states and the reforms that European citizenship has effectuated in domestic arenas are also connecting threads. More importantly, we must not forget that in the seventeenth and eighteenth centuries aliens had voting rights as inhabitants of the states in which they lived and it was only in the nineteenth century with the rise in national consciousness that the equation of voters with citizens began to occur in the US. Legislation introduced in the 1920s ended alien suffrage. All these examples serve to illustrate that moving from one phase to another is almost never the result of a radical break. Rather, it is a transition; that is, a matter of moving backwards and forwards, of managing mutations that are occurring and defining possible choices, of critically reflecting on settled institutional forms and making effective interventions.

By rethinking national citizenship and rewriting some of its central premises, the discussion in this book has sought to shed light onto an array of possibilities inherent in citizenship. The thought-out possibilities can, in turn, be used as methods for making over and improving it. The potential benefits from such a bold experiment in public policy should not be underestimated. After all, few matters deserve higher priority than institutional changes that deepen and extend democracy, and concern for improving the quality of citizenship points unmistakably towards more democracy.

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