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National Community, Citizenship and Cultural Diversity

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Abstract

The study addresses the question of citizenship and identity in the European Union. It is argued that access to citizenship in the EU is a neglected but important element in the construction of a community of citizens, not least because Member states face substantial immigration of third country nationals. Four policy options for harmonising access to individual membership in the Community are examined. The solution which is proposed strikes a balance between the normative principle of equality of access, the practical and ethical problem of integrating third country nationals, and the need to preserve national sovereignty to the largest extent possible.

Questions of citizenship are inherently linked with the construction of collective identity. Any model of citizenship is based on a certain understanding of what the collectivity of citizens has in common. The “rights deficit” of Union citizenship which is due to the lack of substance of the respective provisions corresponds to an “identity deficit” in the EU. Neither national, republican, nor societal approaches to identity formation seem appropriate to accommodate and articulate the various national identities at the European level. Therefore, only a hybrid form of identity is likely to develop based on multinational federalism and common citizenship.

Zusammenfassung

Die vorliegende Studie behandelt die Frage von Bürgerschaft und Identität in der Eurpäischen Union. Es wird argumentiert, daß der Zugang zur Staats- bzw. Unionsbürgerschaft in der EU ein wenig beachtetes, aber wichtiges Element in der Konstruktion einer Bürgergemeinschaft bildet - nicht zuletzt weil die Mitgliedstaaten mit beträchtlicher Immigration von Drittstaatsangehörigen konfrontiert sind. Es werden vier Optionen der Harmonisierung der Zugangsbedingungen zum Bürgerschaftsstatus in der Gemeinschaft analysiert. Die vorgeschlagene Lösung zielt auf eine gleichgewichtige Berücksichtigung des normativen Prinzips des gleichen Zugangs, der praktischen und ethischen Probleme der Integration von Drittstaatsangehörigen und der Notwendigkeit, nationale Souveränitätsansprüche im größtmöglichen Ausmaß zu bewahren.

Fragen der Bürgerschaft sind mit der Konstruktion einer kollektiven Identität aufs engste verknüpft. Jedes Bürgerschaftsmodell basiert auf einer bestimmten Vorstellung von dem, was die Bürger eint. Dem “Rechtsdefizit” der Unionsbürgerschaft, das sich aus dem Mangel an Substanz der entsprechenden Bestimmungen ergibt, korrespondiert ein “Identitätsdefizit” in der EU. Weder national orientierte, republikanische noch gesellschaftszentrierte Ansätze der Identitätsformierung scheinen geeignet, die verschiedenen nationalen Identitäten auf europäischer Ebene miteinander zu vermitteln. Wahrscheinlich kann sich in der EU lediglich eine hybride Form der Identität entwickeln, die sich auf Formen des multinationalen Föderalismus und einen einheitlichen Bürgerschaftsstatus stützen könnte.

Note

This study is part of the project “On a European Union of Citizens”, commissioned by the Austrian Federal Chancellery.

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Zusammenfassung

Dieser Teil des Projekts untersucht die Frage, inwiefern im Rahmen nationalstaatlicher Demokratien entwickelte Konzeptionen der Staatsbürgerschaft auf eine sich erst herausbildende europäische politische Gemeinschaft übertragbar sind und ob die ausgeprägten nationalen Identitäten auf der Ebene der Mitgliedstaaten und nationaler Minderheiten unüberwindliche Hindernisse für dieses Projekt einer europäischen Bürgerschaft bilden.

Unter Bezug auf eine breite Debatte in der historischen Soziologie und der politischen Theorie wird der Begriff der Staatsbürgerschaft in verschiedene Dimensionen gegliedert und anschließend untersucht, welche davon in der gegenwärtigen Konstruktion der Unionsbürgerschaft ungenügend entwickelt scheinen. Die wesentlichen Aussagen sind:

1. In der Dimension der Mitgliedschaft ist die derzeitige Regelung des Zugangs über die sehr unterschiedlichen Staatsangehörigkeitsgesetze der 15 Mitgliedstaaten unbefriedigend, weil sie ungleiche Standards des Zugangs zur gemeinsamen Unionsbürgerschaft festschreibt und ungerechtfertigte Formen des Ausschlusses von Drittstaatsangehörigen erzeugt. Unter mehreren Reformvorschlägen wird eine parallele Harmonisierung der Rechtsstellung von Drittstaatsangehörigen und des Staatsangehörigkeitsrechts der EU-Mitgliedsstaaten befürwortet.

2. In der Dimension der Rechte und Pflichten wird auf die magere Liste von spezifischen Bürgerrechten und das völlige Fehlen entsprechender Bürgerpflichten in den Verträgen von Maastricht und Amsterdam verwiesen. Eine nähere Analyse zeigt, daß die Unionsbürgerrechte sich historisch aus dem Kern der Freizügigkeit und des Diskriminierungsverbots entwickelt haben. Für das Projekt eines europäischen Verfassungspatriotismus wäre eine Bündelung und Ausweitung der Bürgerrechte im Unionsvertrag sicherlich günstig gewesen. Das kommunitaristische Projekt einer stärkeren Betonung von Bürgerpflichten erscheint im Gegensatz dazu auf der Ebene der Union wenig angemessen.

3. Als Alternative oder Ergänzung zum Diskurs über neue Bürgerpflichten bietet sich eine Betrachtung von Bürgerschaft als Praxis und Verhaltensdisposition an. Der Bericht unterscheidet soziale, politische und "heroische" Bürgertugenden. Für die Entwicklung europäischer Praktiken der Bürgerschaft wird es wesentlich sein, transnationale Formen der Öffentlichkeit, der zivilgesellschaftlichen Vereinigungen und der politischen Partizipation zu fördern. Das ist jedoch ein langfristiges Projekt. Vorläufig gibt es eine europäische Zivilgesellschaft nur für kleine ökonomische und politische Eliten. Für die große Mehrheit der europäischen Bürger bleiben ihre nationalen Gesellschaften der

wesentliche Rahmen jener Erfahrungen und Praktiken, aus denen sich politische Identitäten nähren.

Der Amsterdamer Vertrag hat auf dieses Dilemma geantwortet, indem er die Bewahrung der nationalen Identitäten der Mitgliedstaaten als Aufgabe der Union festgeschrieben hat. Wird das Projekt einer politischen Gemeinschaft der Bürger auf Ebene der Union durch diese Betonung nationaler Identitäten gefährdet? Diese Frage verweist auf eine föderalistische Perspektive für die Entwicklung der Europäischen Union. In der alten Debatte, ob die Union sich in Richtung Bundesstaat entwickelt oder ein Staatenbund bleibt, geht es um den vertikalen Transfer von Souveränität. Es gibt jedoch ein zweite weitgehend vernachlässigte Dimension des Föderalismus: die Anerkennung und Repräsentation der Vielfalt der konstituierenden Teilen des Bündnisses. Im Gegensatz zum US-amerikanischen oder deutschen Typ des Föderalismus beruht der kanadische oder belgische auf diesem Prinzip der Multinationalitität. Die These lautet, daß die politische Union in der EU nur mit einer multinationalen Konzeption der Föderalismus verstärkt werden kann. Mit zunehmender politischer Integration werden die Ansprüche auf Berücksichtigung von kulturellen, sprachlichen und nationalen Differenzen nicht abnehmen, sondern zunehmen. Eine pluralistische Auffassung des Föderalismus begreift einerseits den Willen zur Bewahrung nationaler Identitäten im Rahmen der Nation nicht mehr als absolutes Integrationshindernis, ermöglicht es aber andererseits auch, Ansprüche auf partielle Autonomie von subnationalen Einheiten (vor allem die von nationalen Minderheiten besiedelten Regionen) zu begründen.

Als politische Implikation ergibt sich ein verstärktes Augenmerk auf schwelende nationale Konflikte und eine vorausschauende Politik der kulturellen Integration auf europäischer Ebene, welche nicht primär nach dem gemeinsamen "europäischen Erbe" sucht, sondern den Respekt vor kulturellen Vielfalt fördert sowie institutionelle Mittel entwickelt, mit denen diese sich auch im supranationalen Rahmen der Union artikulieren kann.

Introduction

The idea that the European Community ought to evolve from a common market and a community of states towards a community of citizenship has been rhetorically invoked at many occasions. Citizenship has been a European buzzword of the 1980s and 1990s and a positive value supported by a very wide political spectrum from Thatcherite conservatives to the democratic left. However, the introduction of a formal concept of Union citizenship in Article 8A-E of the Maastricht Treaty has been strongly criticised as an ad hoc response and largely symbolic exercise which was merely meant o make the project of integration more attractive for the citizens in the member states without actually introducing any substantial new rights.

Would a more comprehensive conception of European citizenship be an important element for further integration? It is not obvious that this is a demand supported by large parts of the electorate in many member states. Still, if political integration is to continue it must go beyond the integration of *political institutions* and towards the integration of a European *polity*, i.e. a political community of citizens. Rather than dismissing the discourse on European citizenship as a merely rhetorical exercise in selling the Union, one should see this as a logical step which flows from the exigencies of political integration between highly developed democracies. Just as economic integration, once it went beyond the mere abolition of tariffs required the establishment of a shared and new legal order, so political integration cannot proceed much further beyond present limits without a shared conception of a European polity that legitimates further transfers of resources and of political power.

The main task of this paper is to explore debates on citizenship and national identity which have emerged within recent political theory and to see whether the various conceptions developed there could have some relevance for policies at the Union level that want to strengthen a “citizens’ Europe”.

In the first part, I will outline the main dimensions and conceptions of citizenship, in the second I consider how Union citizenship as a status of membership in an emerging political community relates to nationality in the member states and reasons for harmonising nationality laws. The third section of the paper discusses the specific contents of Union citizenship (the rights of free movement and non-discrimination which have formed the core of Union citizenship and the later development of voting rights) and argues for promoting also “good practices” of citizenship. In the final section I propose to give another twist to the debate on European federalism. The debate whether the Union will remain a confederation of states or will gradually move towards a federal state has focused on the transfer and balance of sovereignty between member states and Community institutions. What has not been given proper consideration is the issue of national diversity which must loom large in any conception of a more integrated European polity. I will try to show that it is possible to give due regard to this concern in a pluralistic conception of federation without seeing national identities as an ultimate limit to

integration (as did the German Federal Constitutional Court in its judgment on Maastricht)[1] . Such a conception of multinational federation would also allow to address more directly nationality conflicts which emerge within member states or across their borders and involve national minorities.

Different from other papers in our project, this one is not concerned with the historical origins of ideas about community that have shaped the path of European integration, nor is it concerned with the practical questions of implementing the ambitious targets set out in the Agenda 2000 statement of the CEC. It aims at interpreting the evolution of citizenship in the Union by drawing on legal and policy documents as well as on political and academic discourse. On the one hand, such an exercise can provide the necessary conceptual clarification and starting points for further policy-oriented research which we have proposed for subsequent stages of our project. On the other hand, there is also an immediate relevance for policy-making. Each step forward towards widening the Union and deepening its integration has shown that there is a need for policy makers to explain to their electorates the legitimacy of transferring elements of national sovereignty or of including new members. Monetary Union and Eastern enlargement are clearly the most far-reaching steps in this regard. Without a plausible language and attractive conception of the kind of polity to be built, popular resistance and populist mobilisations of the electorate are likely to grow in some of the present member states.

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[1] BVerfGE 89, 155.

1. Thin and Thick Conceptions of Citizenship

I start with a preliminary and somewhat makeshift definition of citizenship as a status of equal and full membership in a polity. Let me briefly explore the key elements of this definition. First, it uses the term 'polity' rather than 'state' or 'society'. From an external perspective the state can be seen as the basic unit of the international political system, while from an internal one it is an ensemble of institutions exercising political authority in a certain territory. A polity is the population permanently subjected to this authority when seen as a political community. In contrast with the notion of (civil) society the concept of polity implies a discourse of political legitimation and a (formal) structure of membership. Political authority must at least claim to be in the common interest of those who are subjected to it. And the polity is understood as an intergenerational community whose members share in benefits and burdens which derive from living under a common political authority.[2]

However, according to the definition not any kind of membership in any kind of polity can be properly called citizenship. Citizenship requires equal and full membership and both qualifications combined presuppose a *democratic* political community. First, as members of the polity citizens are *equal* however unequal they may be in other social spheres. And, second, citizenship is *full* membership when it is linked to the notion of popular sovereignty. Political authority is not merely exercised on behalf of the citizens, but they are understood to collectively rule themselves by mandating all such authority. Full membership implies therefore *comprehensive* powers as well as an *inclusive* definition of the set of persons who are members of the polity. Let me give two simple illustrations: Multiple votes for members of specific groups would make citizenship *unequal* while a denial of the franchise for certain groups creates *partial* citizens. J.S. Mill's endorsement of multiple votes for educated elites would have created unequal political citizenship (Mill 1972:306–14).[3] Minor children, inmates of prisons or psychiatric hospitals and foreign residents are residual categories of partial citizens in contemporary Western democracies.

These examples already show that the major benefit of citizenship lies in the rights that come along with membership. Rights are not an accidental side-effect, but a constitutive dimension of citizenship. The standards of equality and full membership can only be defined with regard to a comprehensive bundle of rights shared by all citizens. And these rights are not merely moral entitlements but are necessarily specified within a system of laws. In a polity of citizens collectively binding decisions must be formulated as laws and are thus constrained by the general conditions for the rule of law, such as internal consistency of the body of legal rules

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[2] See Bauböck (1998) for a more extension discussion of the difference between polity, society and cultural community

[3] It is interesting to note that the norm of equality applies only to the individual right to vote, not to the aggregate effects of representation which are often highly unequal in federal systems. A Senator from California represents about 60 times as many voters as one from Wyoming.

and an independent judiciary. As Jürgen Habermas has explained, the basic rights of liberal democratic citizenship are those which citizens must mutually grant each other if they wish to regulate their coexistence by means of positive law (Habermas 1992:151–165).

If membership and right are two dimensions of citizenship, a third one is to regard citizenship as a practice. Sustaining citizenship requires some activity on the part of citizens. Imagining oneself as a member of a political community will have to be supported by practices of "good citizenship" ranging from narrowly political behaviour such as participating in elections to the ordinary virtues of civility in everyday life. The polity disintegrates when only few citizens care to vote, when only tiny minorities engage in debates, associations or movements about issues of common interest, when laws regulating taxes or employment are routinely ignored, or when there is a general lack of trust in public encounters between anonymous individuals of different religious creeds, ethnic origins or phenotypes. Obviously, in a liberal democracy practicing good citizenship is not an individual precondition for being a member and enjoying rights. However, a certain level of habitual citizenship practices will be necessary in order to support the imagination of a shared political community and to empower individuals through the system of legal rights.

A comprehensive theory of citizenship has to address all three dimensions, but different conceptions emphasise and interpret them differently. One way to represent this conceptual field is to distinguish between thin conceptions which regard citizenship as a strictly legal relation and thick ones which emphasise the aspect of community. Let me briefly explain how various thin and thick conceptions define citizenship along the three dimensions.

Table 1: Conceptions and dimensions of citizenship

DIMENSIONS	CONCEPTIONS thin ⟵⟶ thick		
	legal positivism libertarianism	civic republicanism	nationalism communitarianism
membership	legal status	political identity	cultural identity
rights	negative liberties	rights as obligations	moral duties
practices	passive citizenship	civic virtues	heroic virtues

1.1 Membership

At the thinnest end of the spectrum citizenship boils down to the notion of 'nationality' as it is used in international law. In this sense, nationality has nothing to do with being a member of a nation understood as a political and cultural community, but simply signifies a legal status that links individuals to states. Formulated within a framework of legal positivism this concept does also not carry explicit normative connotations. The relation is understood to be an empty one which can be filled with various kinds of rights or obligations but does not conceptually presuppose any of those which have been traditionally associated with citizenship.[4] What it does presuppose are sovereign states that effectively exercise political authority not only in a territory, but also over a population who are the addressees of their laws. The basic relation is therefore one of subjection of individuals to states and of mutual recognition between states. Citizenship in this narrowest sense links individuals to states rather than to political communities and it does not distinguish between different regimes. Authoritarian states have their national citizens just like democratic ones.

At the other end of the spectrum citizenship is much more than merely one kind of membership in a specific type of association alongside others. It is a collective cultural identity which identifies for outsiders who the individual members of the polity are and for themselves how they ought to see each other. The thickest versions attribute a special importance to the polity as the *largest* collectivity which defines individual identities as well as the most *important* one to which all other identities are subordinated. This is characteristic for nationalist ideologies. There are, of course, many different varieties of nationalism. For ethnic nationalists the nation is first a cultural community which precedes the polity, for civic nationalists it is first a political community which assimilates all citizens into a shared culture. Although their starting points may differ, most nationalisms strive thus for congruence between political and cultural boundaries (Gellner 1983:1). The same term 'nationality' is therefore used to characterise the thinnest and the thickest conceptions of citizenship, which is a source of considerable confusion in the literature.

Republicanism is a broader and much older tradition than nationalism and reaches back via Rousseau to Machiavelli, the ancient Roman republic and, in certain interpretations, to Aristotle's theory of the polity (Aristotle 1981). It differs from nationalism in its emphasis on the political rather than cultural nature of membership. Contemporary civic republicans often contrast citizenship as a collective identity of free members in a self-governing polity sharing a common future with nationality as an unreflective and ascriptive membership in a community of shared culture and origin (Viroli 1995). For civic republicans citizenship is a common bond that must be *strong* in order to unite the members of a liberal democracy who are thoroughly divided by their private interests and affiliations but need not be *thick* with cultural particularity.

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[4] See, for example, de Groot (1989:13).

1.2 Rights and Obligations

If we take as our starting point citizenship as a legal status of nationality, the thickness of conceptions increases not only as we move towards the right column but also as we move down the rows and add the dimensions of rights and practices to our theory. Although the content of rights of citizenship may be seen as indeterminate in legal positivist approaches, it is hardly possible to deny that the very idea of the rule of law must address the citizen as a bearer of what the legal theorist Georg Jellinek called subjective public rights (1892). Hannah Arendt has defended a corresponding view of citizenship as “the right to have rights” (Arendt 1967:296). She thought that being a citizen of a particular polity is a fundamental precondition even for the enjoyment of supposedly universal human rights. During the post-war period this ‘paradox of human rights’ has been resolved at the conceptual level, although certainly not yet in political practice, by including a right *to* citizenship in an expanding catalogue of human rights.[5]

The specific rights *of* citizenship can be usefully distinguished along the well-known trichotomy of civil, political and social rights developed by T. H. Marshall (1949/1965) and half a century before in quite similar terms by Jellinek. Yet if we want to link citizenship as a bundle of rights to its external aspect as a legal status of persons in international law, there is another relevant distinction which has found much less attention in the theory. Citizenship rights may be external in the sense of being enjoyed also by those who live outside their state of nationality, or internal because they depend on residing in the territory. On the one hand, citizens travelling or living permanently abroad enjoy a number of rights that retain their link with the state whose passport they carry. The most important among these is the right to return to this state without being subjected to immigration restrictions.[6] The other fundamental external right is that to diplomatic protection. However, many states go far beyond this minimum by also granting their citizens an absentee franchise or the right to pass on their citizenship to their children born abroad. On the other hand, under international law external citizenship also involves rights towards the state of residence. Foreign citizens are, in some aspects, even privileged compared to internal citizens. The property and liberties of the former are to a lesser extent exposed to the jurisdiction of their state of residence and diplomatic protection itself is a significant exemption from the general rule of territorial sovereignty.[7] However, it is also obvious that internal citizens enjoy a much more comprehensive set of rights than both citizens outside the territory and foreigners in the territory. Some of these internal rights have over time become

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5 See Universal Declaration of Human Rights, Art. 15, International Covenant on Civil and Political Rights, Art. 24.

6 The British definition of nationality after the end of the Empire is exceptional in this regard because it has excluded several categories of holders of British passports from free entry. The attempt to curb immigration from former colonies has in this case overruled concerns about compliance with international standards. Dummett and Nicol argue that this oddity is partly due to the heritage of an imperial conception of subjecthood (1990).

7 see Goodin (1988) for a list of such privileges and an interesting discussion of their implications for a theory of political obligations towards citizens and foreigners.

tied to residence or employment rather than to the formal status of citizenship so that they can now also be enjoyed by foreign immigrants. Tomas Hammar has introduced the ancient English term 'denizen' to characterise the legal position of long-term foreign residents which since 1945 has gradually approached that of citizens in a number of Western democracies (Hammar 1990). A thin conception of citizenship as a bundle of legal rights can therefore reach beyond the narrow framework of 'nationality'. The status of citizenship generates rights outside the sphere of territorial sovereignty, and rights have expanded beyond the formal status within this sphere.

Thin conceptions of citizenship differ from thick ones in regarding rights as prior to obligations. This is a defining characteristic of liberal *political* theory which distinguishes it from liberal *moral* philosophy where the opposite priority is asserted by deontological as well as consequentialist paradigms.[8] The fundamental reason for the priority of rights is that every political order is coercive (Larmore 1996:137–8, 220). Individuals can only rationally consent to being subjected to an authority that may legitimately coerce them if this order not only respects their freedom and rights but is necessary to maintain them in the first place The basic obligation of citizenship to obey the law is therefore conditional upon the rights provided by the same legal order. As T. H. Marshall pointed out, other moral duties "to live the life of a good citizen, giving such services as one can to promote the welfare of the community" are rather vague "because the community is so large that the obligation appears remote and unreal" (Marshall 1965:129). This asymmetry characterises not only the liberal legitimation of political authority but also the bundle of legal rights and obligations of citizenship in liberal democracies. There is "a changing balance between rights and duties. Rights have been multiplied, and they are precise" (ibid. 129). But the core legal obligations are few – paying taxes, compulsory education and military service – and they are not *equal* obligations for *all* citizens in the same way as basic rights are – except for compulsory education which is a universal obligation but at the same time the most fundamental right of social citizenship. In order to become universal, rights such as the franchise had first to be disconnected from obligations of taxpaying or conscription.

Thick conceptions of citizenship often accept this development as a correct diagnosis of contemporary liberal democracy, but deplore it from a normative perspective. Socialist, nationalist and communitarian theories fear that the liberal priority for rights promotes the bourgeois rather than the citizen, disconnects the individual from the causes of the nation and encourages the narrow interests of particular groups against the common good of the polity. Although the community is large and anonymous and although the rights they enjoy no longer depend on their individual contributions, citizens should learn to think about the polity as if it were an extended family, a circle of friends or an association whose members are tied to each other by special obligations. Excessive individualism and group particularism are the major ills

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8 see Habermas (1996:296) for a recent statement of this difference.

of liberal democracy which can only be cured by inculcating in citizens a strong sense of obligation.

Civic republicanism appears to occupy again a middle ground. Libertarian liberals emphasise rights like freedom of association and the protection of property which impose *corresponding* obligations of non-interference on other citizens and on the state. At the heart of the republican vision are rights which are *simultaneously* obligations for their bearers. And while enjoying the former rights make individuals members of a civil society only the latter make them members of a self-governing polity. Core rights which fall into this category are those of public education, political participation, resistance against oppression and military service in the defence of the republic. These republican rights are at the same time moral duties and where citizens fail to perform them states can legitimately turn them into legal obligations. All states do so with regard to public education, but they may also extend the scope of rights as obligations by drafting soldiers or by obligatory voting.

1.3 Practices and Virtues

The communitarian and republican emphasis on obligations leads quite naturally to the idea of citizenship as a practice rather than a mere legal status of bearers of rights. Of course, all rights of citizenship create ranges of action protected by the law. However, while thin liberal citizenship protects autonomous practices of citizens who pursue their own goals in life, it does not necessarily generate *practices of citizenship*. The liberal regime of rights merely allows for active citizenship but cannot directly bring it about. If civil and political rights are formulated as negative liberties, this means that refraining from a protected action is just as legitimate as performing it.[9] Social rights are positive, but generally involve entitlements to benefits which address the citizen as a passive recipient rather than as an agent. Citizenship may then remain a merely passive status. For some approaches this is not to be deplored. In a Schumpeterian theory of democracy, it is safer to leave the business of governing to competent elites and to reduce the involvement of citizens to a periodic opportunity to deselect bad leaders (Schumpeter 1950). For libertarians extending citizenship beyond negative liberties entails a dual danger of empowering the state to encroach on individual freedom (e.g. by levying taxes for redistributive social rights) and of empowering tyrannical majorities (e.g. through plebiscitarian forms of political participation).

For thick conceptions, the egotistic individual who uses her liberties only in order to pursue private interests and the passive citizens who does not care to form and defend a political opinion or to cast a vote are not full members of the polity. In their view, the polity is not only sustained by a mode of legitimation which emphasises mutual obligations, but also by practices in which citizens must engage so that the imagined political community becomes a

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[9] For the distinction between negative and positive liberties see Berlin (1979)

real experience in their daily lives. In this regard the idea of citizenship as a practice goes beyond the moral discourse about political obligations.[10] A political community that lives up to the standards of communitarian or republican expectations is one where citizens do not have to be reminded of their obligations but identify their private interest with the common good and habitually engage in public practices of good citizenship. Civic virtues are different from legal obligations and moral duties in the sense that they do not present themselves as commandments issued by an external authority or an internal conscience that defends a higher moral standpoint detached from individual interests.

When nationalists write about the virtues of citizens they emphasise their readiness to kill or die in battle for the survival or the expansion of the community. In a liberal-republican conception we can distinguish three kinds of citizenship virtues: Heroic virtues which involve risking one's social status, livelihood or life would be called for not in a blind defence of one's country (right or wrong), but only in the defence of liberty (and of those political arrangements and institutions in one's country which sustain liberty).[11] This virtue does therefore not only back up a moral obligation of citizens to defend freedom in their country against external aggression, which in times of war are anyway enforced as a legal obligation, but involves more importantly a readiness to defend democracy and liberty against their internal foes. One of the main virtues of a stable liberal democratic society and international order is that such virtues are rarely called for. The major and constant danger in liberal democracy is slackness of citizenship practices. Education is not enough to acquire the civic virtues which are immunise against this danger and their rhetorical invocation is not sufficient to sustain them. What is needed is constant practices which make good citizenship a widespread habit. In a certain sense, these citizenship practices can be learned only 'on the job.'[12] In this area we can further distinguish between civic and social virtues. The former concern the citizens' participation in the political process. They include habits like informing oneself about political matters, taking positions and defending them with arguments addressed to others, using one's franchise and accepting public office when one is asked to. A widespread absence of such civic virtues undermines the legitimacy of democratic representation even if equal rights are guaranteed. Finally, there are social virtues which are linked to citizenship more indirectly by creating and maintaining the social capital and a vibrant civil society needed as a background for a stable liberal democracy. The two most important among these are probably first, a general willingness to engage in voluntary associations for some broader purpose transcending economic self-interest, and second, civilised behaviour towards anonymous others and respect for difference of opinion, cultural belonging, gender identity, way of life, faith, sexual orientation,

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[10] The emphasis on virtuous practices is also characteristic for an Aristotelian tradition in moral philosophy which contrasts with the obligation-based approaches of deontological as well as utilitarian theories (see Larmore 1996, chapter 1).

[11] see Viroli (1994)

[12] See Gunsteren (1992) for an approach which traces citizenship practices in different activities and spheres of social life.

etc. In recent years, liberal political theories have increasingly recognised the importance of such virtues of civility and engagement.[13]

There are three different ways how to look at these controversies about citizenship. One is to regard them as irreconcilable opposites between which we have to choose. It is either thick communitarian citizenship or a thin libertarian one. The second perspective is to see them as poles on a continuum. Positions somewhere between the extremes, like liberal republican ones, are then not necessarily messy compromises but could be coherent and intellectually appealing. I would, however, prefer a third approach which may be called a cumulative one: We may choose one position as a starting point rather than as a complete conception and expand it gradually as we find it necessary to include the concerns addressed by what appear to be rival theories. In this way we could chart a path through the conceptual maze of citizenship. Unless we already have a clear target before our eyes we will need a sort of compass for this venture. The norms of equal and full membership which I have suggested initially as a definition could serve as such a guideline.

Starting from thick normative conceptions of citizenship carries not only the danger of producing a sterile contrast between idealised assumptions about political community, on the one hand, and 'degenerate' citizenship in actually existing liberal democracies, on the other hand. It will also blind us to some of the most important challenges for citizenship in contemporary societies which have to do with the allocation of membership and rights. Historically, thick conceptions of citizenship have served to justify the exclusion of three kinds of dependants: those who are subject to another sovereign (foreigners), who are unfree in their personal status (slaves, serfs, women and minor children) or who are economically dependent (workers). Contemporary thick conceptions normally take for granted that only foreigners can be formally excluded and still enjoy some basic human rights. They thus assume that questions of membership and rights have been largely settled and see the central task in enriching these dimensions with obligations and virtues. Their view of the polity is an internal one which presupposes clearly defined external boundaries, full inclusion and equal rights as given features of democratic nation-states. However, none of these achievements is really so obvious and unchallenged. This is all the more true if we consider the task of constructing a novel citizenship of the European Union.

Stopping at thin conceptions of membership and rights would entail the opposite danger of underestimating the importance of building a European political community. I do not want to claim that it is impossible to develop a coherent theory of citizenship in the European Union based exclusively on thin conceptions. There are three candidates for such an attempt: In a legal positivist view rights and obligations of citizens are merely a contingent result of legislation rather than normative presuppositions for the validity of democratic legislation. In a

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[13] see, for example, Macedo (1991), Galston (1991, chapter 10).

realist view of the state, which dominates in theories of international relations, citizenship may be seen as a form of political control over individuals which adds to, and refines, their territorial sovereignty. Finally, for market libertarians, citizenship centres on the negative freedoms of property, association and exchange. What is needed to maintain these liberties is the rule of law, a *Rechtsstaat* which protects property and enforces contracts, but not necessarily a democratic polity. The beneficiaries of these rights of market citizenship are legal persons. In this conception, corporations may enjoy “citizenship” in the very same way as natural individuals. Each of these versions could do without the idea of a political community. However, this would be quite unsatisfactory also from a policy perspective because questions of democratic legitimacy which are continuously raised in the process of European integration cannot be addressed in this framework.

2. Membership Criteria for European Union Citizenship

2.1 Rules for Determining Citizenship

Starting from a thin conception of membership in the European Union means focusing first on citizenship as “nationality”, i.e. a legal status that relates a person to a state, and on the rules which determine who will be counted as a “national”. Every sovereign state has today a set of rules for the acquisition and loss of its citizenship. And sovereignty extends to the determination of citizenship itself, allowing for a great variety of procedures. The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 1930, Art. 1 declares that it is for each state to determine under its own law who are its nationals.

International law stipulates some constraints. Article 15 of the Universal Declaration of Human Rights postulates everybody’s right to a citizenship and that nobody shall be deprived arbitrarily of his or her nationality nor be denied the right to change it. The 1966 UN Covenant on Civil and Political Rights only insists in its Article 24, paragraph 3 that every child has the right to acquire a nationality. In 1961 the United Nations adopted a Convention on the Reduction of Statelessness. The 1963 Strasbourg Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality was only signed by a relatively small number of member states of the Council of Europe.[14] In an important 1955 decision the International Court of Justice specified a number of criteria for determining the prevailing citizenship in cases of multiple nationality. According to this decision, citizenship requires effective links between a person and a state, indicated by the centre of the individual’s interests, family ties, participation in public life and attachment shown for a given country and

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[14] Most of the 13 states which have ratified the Convention nevertheless frequently permit immigrants who naturalize to retain their original citizenship.

passed on to the family.[15] Yet all these constraints leave a wide scope for states to determine themselves who are their citizens.

There are rules for the acquisition and the loss of citizenship. Acquisition may occur at birth or after birth. Acquisition at birth is automatic and ensures the continuous intergenerational reproduction of a polity. The basic rules are ius sanguinis (determination by descent from a citizen parent) and ius soli (determination by birth in the territory). A few European states, among them Austria, have a pure system of ius sanguinis. More common is, however, some combination of the two rules. Even those states with straightforward ius soli such as the USA normally have a parallel system of ius sanguinis for their citizens' children who are born abroad. In Europe France, Belgium and the Netherlands have a system of double ius soli, i.e. automatic citizenship acquisition at birth for the "third generation", if one parent has already been born in the country. It is important to understand that the present rules for acquisition at birth inevitably creates multiple citizenship. Dual nationality emerges at birth in two cases: first, in a gender-neutral system of ius sanguinis when children of mixed parentage inherit both their parents' nationalities and, second, from a combination of ius soli and ius sanguinis. Only if all states adopted either pure ius soli or ius sanguinis from only one parents' side could multiple citizenship be consistently avoided. Yet gender discrimination in citizenship has been outlawed by norms of international and domestic law and those countries which adhere to ius soli within their territory mostly attribute citizenship iure sanguinis to children born to their citizens abroad. Given these facts there is no possible rule which could be adopted by all states in order to avoid multiple nationality.

Acquisition after birth may be based on entitlements (usually optional acquisition by declaration) or on a discretionary decision by authorities after individual application. Birth in the territory can also be a relevant criterion for acquisition after birth, e.g. by creating an entitlement to citizenship at majority. Other common entitlements are those derived from a longer period of residence, from having a citizen spouse, from the extension of individual naturalization to family members or from belonging to an ethnic group which corresponds to the dominant national identity in a state of immigration. Discretionary naturalisation involves an even broader set of criteria; the most frequently employed ones are length of residence, absence of a criminal record, sufficient income, proficiency in an official language or general cultural assimilation, and a proclamation of loyalty. Apart from the irregularity of stateless persons, persons who acquire a citizenship after birth normally already possess another citizenship, which can be lost when acquiring a new one. In many cases, however, a former citizenship may be retained or may be regained later on, which is the third way how multiple nationality can come about. While no member state of the European Union any longer tries to prevent the emergence of dual citizenship at birth, some (among them Austria, Germany and Luxembourg) still insist that naturalisation should in most cases involve renunciation of a

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[15] ICJ Reports 1955, discussed in Bar Yaacov (1961)

previous citizenship. The general tendency is, however, towards increasing toleration of multiple nationality also among naturalised immigrants.

A loss of citizenship may again occur voluntarily or involuntarily. In the former case it is called expatriation, in the latter denationalisation or denaturalisation. The right to expatriation is today considered a basic human right which is, however, still denied by a number of states that consider citizenship as membership in a national community which cannot be abandoned at will. Expatriation is generally not permitted for those who live in the territory and would by this act become stateless. As already mentioned in some states expatriation is a precondition for acquiring their citizenship by naturalisation. States may also denationalise their citizens, i.e. deprive them of their nationality against their will or without asking for their consent. In liberal democracies, denationalisation can be a consequence of serving in a foreign army, holding a public office in another state, or of voluntarily acquiring another citizenship. Naturalised citizens may be denaturalised when the authorities think their admission to citizenship was based on false statements or was otherwise not valid. One of the most intractable problems in citizenship policies is the reallocation of nationality after the break-up of states (or the restoration of annexed states). In such cases, the members of a minority may be indirectly denationalised by not obtaining the citizenship of the newly formed state in which they reside.[16] This may either produce mass statelessness or affiliate such minorities to an external homeland confirming thus their status as aliens.

Multiple nationality requires some international coordination between states in order to regulate conflicting obligations (e.g. of military service) or application of legal norms (e.g. in family law); mass denationalisation is a serious violation of human rights and a source of conflict between states. This is generally recognised by Western states and leads to a number of efforts at intergovernmental and international levels. In Europe, the organisation which has been most active in this field is the Council of Europe. Its 1997 European Convention on Nationality[17] responds both to the break-up of former socialist states and the admission of new members from Eastern Europe as well as to large scale immigration in Western Europe and a changing attitude towards naturalisation and multiple nationality.

2.2 Reasons for Harmonising Rules within the Union

The European Union has so far developed no initiatives along similar lines and considers the citizenship policies of its member states as a matter falling entirely within the scope of their national sovereignty. This may seem surprising, given the fact that citizenship of the Union

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[16] Among the successor states of the Soviet Union, Latvia had the most restrictive provisions on access to citizenship for its large Russian minority most of whom had become stateless after independence. A referendum of 4 October has finally paved the way for integrating them into Latvian citizenship.

[17] The convention has been signed by 12 member states of the Council of Europe on 6 September 1997 but will only come into force after three ratifications. (As of September 1998 only Slovakia and Austria have ratified it.)

formally established with the Maastricht Treaty is derived from possessing the nationality of a member state. While the status itself is a common one with a common set of rights that can be exercised throughout the Union, the rules for acquiring or losing it are thus different in each member state. In this section I will consider the implications of this architecture of European citizenship and will explore possible remedies for inequalities and other problems that result from this peculiar disconnection of membership status from control over admission.

One possible response is to see this discrepancy as adequate for the loose type of federation which the Union is at the present moment. In European federal states such as Austria, Germany or Switzerland there are federation-wide nationality laws but naturalisation lies within the competence of Länder or Kantons and these enjoy considerable discretion in interpreting and implementing these laws. The most extreme case of decentralisation of membership decisions is Switzerland. Admission to Swiss nationality is really a result of gaining the citizenship of a Kanton and a municipality rather than the other way round. Yet the complete absence of any common norms governing the attribution of membership at the federal level makes the citizenship of the European Union still unique compared to the division of legislative matters in other federal regimes. In this respect it is also noteworthy that the United States had a uniform naturalisation regime at the federal level (since the 1790s) long before all persons born in the territory were recognised as citizens of the federation and were guaranteed the equal protection of the law (in 1868) and before immigration policies became a federal matter (since the 1880s).

One can also maintain that the very act of introducing a Union citizenship has already indirectly established a Community responsibility for basic standards of citizenship policies of its member states. Elspeth Guild points out that the ECJ may now apply human rights norms to policies of EU member states: "[I]f the laws on loss of nationality of a member state result in the loss of citizenship of the Union then these laws must indeed by a matter of concern to the Court of Justice" (Guild 1996:46). However, this is only a minimal constraint which, by itself, will have no effect of harmonising the different nationality laws.

Should this be regarded as an anomaly and should the institutions of the Union develop a policy of coordination and harmonisation with regard to the nationality laws of their member states? At present there seems to be little awareness of a problem that ought to be addressed. On the contrary, any move in this direction may lead to considerable resistance from governments of some member states. Nationality laws are highly charged symbols of national self-determination. Just as a club would be seen to lose its freedom as an autonomous association once it can no longer chose itself whom to admit as a new member, so a democratic state could be regarded as losing its core sovereignty once a supranational federation determines the rules for the acquisition of its citizenship. Although generally nationality laws today are topics for political concern mainly with regard to the conditions of

naturalisation of immigrants, once the Union tried to put them on its agenda, they could quickly become a symbol of national resentment against turning the Union into a federal state.

Harmonization of nationality laws could still emerge from two different sources. First, the present lack of coordination may paradoxically have negative impacts on just the kind of sovereignty over defining their own national citizenry which most member states are so keen to defend. Second, the existence of a common status may eventually highlight exclusionary citizenship towards third country nationals in some member states and stimulate pressure for domestic or Union-wide reform. If the former phenomenon became significant, harmonisation would result from the individual member state's pursuit of their national self-interests, i.e. for the same reasons which have spurred economic integration as in the best interest of European nation-states. For the latter kind of reasons to prevail a different approach to integration would be required which places greater emphasis on further political integration towards a common democratic European polity.

The first reason for harmonisation of membership rules emerges from the combination of exclusive national control over admission to citizenship with a Union-wide scope of rights for those admitted. This may lead to some irritation between member states. Third country nationals who are naturalised in one member state may use their rights as Union citizens to migrate and settle in another member state where they then enjoy free access to employment as well as municipal voting rights. A country which wants to exercise control over third country immigrants by restricting their access to labour markets as well as to naturalisation may see these efforts undermined by other member states' more open citizenship policies. Because of the right of free movement and settlement within the Union the more liberal standards in some member states may thus be "exported" into other countries. One could also imagine a situation where third country immigrants choose their first destination country according to how easy it is to be naturalised there and then use their status as Union citizens to move to their final destination in another member state. These problems are, however, at present largely hypothetical. The already implemented provisions of the Schengen and Dublin agreements on common standards for external border control and asylum and the removal of internal borders between member states have done much more to erode national control over immigration.[18] Access to EU citizenship via naturalisation is not perceived as adding significantly to the loss of state sovereignty in this area. This is due to the long minimum period of legal residence for obtaining citizenship anywhere in the Union,[19] to the small volume of migration of EU citizens

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[18] The existing harmonization of immigration control still does not amount to a European migration policy. A proposal for a Europeanization of migration and asylum policy has been submitted to the European Council by the Austrian presidency in September 1998. The new German government has also supported such harmonization and demanded concentrating all competencies in matters of migration and asylum with a single European Commissioner (Koalitionsvereinbarung 1998, IX.6, 7).

[19] The lowest residence requirements for ordinary non-EU applicants for naturalization are those in Ireland (4 years). 5 years is a more common threshold (in Belgium, Finland, France, Netherlands, Sweden and UK).

compared to third country nationals[20] and to the fact that the incentive of easy naturalisation plays a minimal role for the choice of first destination compared with factors such as employment opportunities and the presence of other family members and ethnic networks. If migration within the Union increased to the volume of, for example, internal migration between the states of the USA, this would certainly raise much stronger concerns about greatly different rules for naturalisation and could well prompt efforts to define common standards. As the problem would affect those states with more restrictive citizenship policies, such efforts would aim at fixing minimum requirements for naturalisation and access to Union citizenship which no member state would be allowed to waive. Harmonisation of naturalisation would in this scenario be driven by the same logic as with regard to immigration control and asylum procedures. It would be aimed at preventing individual states from relaxing their controls because of fears by other states that they might end up hosting migrants admitted in these states. However, for the reasons already mentioned, this is currently not a likely development.

Other reasons for harmonisation point in the opposite direction and would promote more liberal admission policies in those countries which currently restrict access by a combination of ius sanguinis and difficult naturalisation requirements. There are three ways how to argue this case. One reason simply accepts the interests of immigrants themselves as relevant. A second emerges from a domestic politics perspective of the member states. A third reason argues that the project of Union citizenship requires liberal admission independently of, or even overriding, the desire of member states to control the determination of national membership.

From the first perspective it seems obvious that immigrants have substantial interests in a better legal status which secures their residence rights and protects them against deportation, guarantees their re-entry from abroad and their rights to family reunification in the host country, gives them free access to employment and the same social and economic rights as native citizens. What is less obvious is that naturalisation is the only route to achieve this legal integration. If immigrants were offered all these rights as permanent foreign residents, they would have less incentives to naturalise. The additional rights of the national franchise and access to public office which are normally tied to citizenship are rarely sufficient reasons for adopting a country's citizenship.

Only the domestic perspective of countries of immigration reveals a number of reasons why rights derived from residence might not be enough. First, social exclusion and marginalisation are especially disruptive when associated with an easily identifiable outsider group in society. It is well known that certain immigrant populations concentrate in deteriorating urban areas and face extremely high rates of unemployment in some member states. A better legal status and access to naturalisation obviously are no sufficient remedies against these social ills. But if

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[20] According to a recent estimate there are no more than 740.000 EU citizens working in a EU country of which they are not nationals (Migration News, Oct. 1998).

groups who are disproportionally affected by such social marginalisation can be identified as foreigners this encourages political responses to deal with the problem by terminating their residence. Automatic citizenship at birth and easier access to naturalisation would statistically reduce the foreign population and correct the misperception that even those born in the country are second or third generation "immigrants". Second, this would also partially remove a highly controversial issue from domestic political agendas which has been exploited by xenophobic movements and right wing populist parties. Some member state governments have been under considerable electoral pressure to retain highly restrictive policies. Even the most generous system of rights for foreign residents is always liable to revisions in changing political circumstances. Only the rights of citizens are reasonably secure in democratic polities. If access to citizenship is open to immigrants and taken for granted for their descendants this constrains the available policy options and reduces the danger that democratic governments will bow to pressures of anti-immigrant forces. Third, a proactive citizenship policy will also help to counter the argument that immigrants are illoyal towards their host states or only want to benefit from the rights they enjoy as residents without sharing all the obligations of citizenship. In 19th century France a widespread resentment that children born to immigrants were exempt from military service prompted a change from ius sanguinis to ius soli in 1889.[21] Fourth, inclusionary citizenship policies would also respond to the democratic challenge that the transition from societies of emigration to societies of immigration poses for most member states of the Union. This challenge is to ensure the legitimacy of a democratic order by an approximate congruence between residents who are subjected to a legal order and citizens who are represented in legislation via their democratic votes.[22]

This second perspective would support *parallel* domestic reforms in many member states but it still does not provide good reasons for an effort towards *harmonisation* throughout the Union. Some of the arguments just mentioned will carry little weight in a country such as Greece which has mainly accepted immigration of its ethnic Diaspora and has not itself caused immigration from other sources by former colonial ties, guestworker policies or generous asylum provisions.[23] More generally, one has to take into account that it is a difficult task to disconnect conceptions of citizenship from traditional conceptions of national identity which in Europe are often based on particular cultural traditions and ethnic identities. Even if one thinks that such traditions should be overcome in order to cope with the present realities of ethnically diverse societies of immigration, this may still be best achieved in national debates which generate broad popular support for domestic reform rather than by a common European agenda. Instead of disconnecting citizenship from national identities, such an approach would argue for transforming national identities so that they reflect a liberal conception of citizenship.

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[21] see Brubaker (1992), Weil (1996).

[22] see Koslowski (1994).

[23] However, in the 1990s Greece has been exposed to large scale immigration. Its recent amnesty program for illegal Albanian immigrants (which expires in October 1998) accepts these as future legal residents and will in time raise the further issue of admission to citizenship. Regardless of whether a liberal democracy has invited immigration from diverse origins or not, it may ultimately have to adapt its rules for membership to this fact.

A policy which promotes inclusion of immigrants into citizenship may therefore still argue for preserving the right of every member state to define its own membership and against establishing a Community competence with regard to the citizenship policies of member states.

The upshot of these considerations is that a consistent argument for harmonisation rather than spontaneous convergence towards liberal standards requires a third perspective which is that of building a political community of citizenship at the level of the Union itself. This is the question raised by article 8 of the Maastricht Treaty. Before Maastricht the citizens of member states already enjoyed specific citizenship rights (such as those of non-discrimination and free movement for employment purposes) derived from Community law. It would have been possible to extend these rights along the lines of articles 8A-D without attaching them to a common citizenship of the Union. Even if the personal status of Union citizenship is derivative from nationality of a member state, it still conceives of the direct relation between individuals and the institutions of the European Union as analogous to the relation between citizens and their national government. The question is therefore what conception of political community corresponds to this new citizenship. The negative answer to this is that it cannot be a community-based on a pre-political social identity of shared history, culture, language or ethnicity.

This is generally accepted by the most severe conservative critics of European integration as well as by those who defend the project of political integration. One reason frequently given for this impossibility of thinking of European political community in terms of shared nationhood is that cultural differences between European nations are too profound to be overcome in an overarching identity and that its long history of conflict and war divides rather than unites the subcontinent. But such heterogeneity is not an insurmountable obstacle. There are other nations which have been unified through the experience of (civil) war between their various parts (such as the US) or which have been created from even more heterogeneous cultures (such as Indonesia). The real obstacle for shared nationhood is not Europe's past, but its future. When political communities are imagined as nations this always involves a reference to a well-defined membership and territory. However, the emerging European political community has a variable and expanding geography and population. In this respect it resembles an empire rather than a nation.[24] At the same time, this polity is constructed as a federation of democratic states. Its final source of political legitimacy is therefore popular sovereignty which is utterly different from delegated divine authority or inherited dominion in monarchical empires or also from an ideology such as Marxism-Leninism which for a short time succeeded in supporting multinational states or empires. Membership in this political community must be conceived as open for new polities which may join it while accountability of political authorities must not only refer to the governments of its states but also to the European citizenry as a whole. In this

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[24] see Guéhenno (1994).

sense, the idea of a common European Union citizenship contains a transnational or even postnational conception of the polity which is still constrained by the present architecture and thin content of the provisions in the Treaty. We may call this a free-standing conception of Union citizenship. Although it relates in various ways still to be explored to citizenship in the member states, it has its own distinctive characteristics and rationale.[25] That rationale is the goal of political integration towards a common European polity in which federal institutions will be accountable not only towards national governments but also towards the citizens of the Union taken as a whole.[26]

If references to common culture, history or descent cannot serve to underpin the idea of an emerging European polity which the nationals of member states are to become citizens of, what then can be the common identity that makes plausible the claim of belonging to a federated political entity? There seem to be two answers to this. One, which we may identify as a republican approach, has become associated with the idea of constitutional patriotism, the other one may be called a societal conception of the polity. While the former emphasises common political principles and values that are supposed to provide the common identity of membership in a European polity, the latter idea would rather stress the sharing of a common space, the shared impacts of the common legal order and a future merging of national civil societies. I will return to the implications and limitations of both approaches below and will suggest a synthetics between them. For the question which is at stake here, it is sufficient to point out that both answers would make the rules for acquiring membership of the Union a matter for Community concern. Whether citizenship in the Union is based on shared principles of democracy and the rule of law or whether it is derived from permanent residence, a national rule of ius sanguinis combined with difficult naturalisation requirements will have the effect of excluding from Union citizenship those who ought to be given access. Just like a national sports association should not allow its local clubs to exclude devoted and talented persons from joining because of their religion, language or other irrelevant criteria, so a European Union should not tolerate that member states acting as gate keepers deny access to citizenship to persons who would qualify under the Union's own republican or societal approaches to citizenship. Even if one grants that individual member states may have historical or demographic reasons for defining their citizenship along lines of common descent and culture, once they are or become part of the Union they should have to accept that this emerging polity and its membership require a different conception.

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[25] I introduce the notion of a "freestanding conception" of citizenship as a rough analogy with John Rawls' idea of a freestanding conception of justice which represents an overlapping consensus between comprehensive reasonable (religious or philosophical) moral doctrines (Rawls 1993). In Rawls' theory a freestanding conception must have its own reasons which support it, but must at the same time be supported from the various particular moral perspectives present in the society (or in our case in the wider European Union). The analogy is that the same relation holds between Union citizenship and the particular political memberships in the Union.

[26] see Lehning (1997) and Foellesdal (1998) for similar normative conceptions of Union citizenship.

2.3 Policy Options for Harmonisation

This arguments is of course not a prognostic, but a normative one. The mere introduction of a common citizenship will not by itself unleash a dynamic which can overrule the much thicker national conceptions of membership. The argument merely points out that in the democratic tradition citizenship refers to individual membership in a polity and that a European polity understood as an expanding federation of democratic states cannot consistently support restrictive rules for access to citizenship which prevail in some of the member states. Only this third perspective would then require both a harmonisation and a liberalisation of admission criteria at the European level.

This leaves still open various ways how this goal might be achieved. The basic decision in this respect is whether to retain or to sever the present link between nationality of member states and Union citizenship. The difficult task of making nationality laws of member states a matter of concern for Community institutions arises only if one opts for retaining them. The political obstacles for this path seem so formidable that some authors have found the alternative course more attractive. If a postnational European citizenship should be understood as a free-standing conception why should it then not become manifest in a separate legal status which can be gained or lost independently from member state nationality?

The scope of such a reform will still be quite limited. Any plausible independent conception would have to include automatically all persons who have been admitted as citizens at birth or through naturalisation by the individual member states. European citizenship can only be more but not less inclusive than the nationality laws of member states. An independent set of rules for Union citizenship could only apply to third country nationals who are not admitted by the member states wherein they reside or who do not want to become citizens of these states. There are three alternative policies which could be suggested. The most radical proposal would be automatic access to Union citizenship through either birth or residence in the territory. A second policy option would make European citizenship optional by establishing a separate naturalisation procedure alongside those for national citizenship. A third proposal would create a separate status of denizenship for third country nationals which provides them with all rights of European citizens with the exception of the franchise for the European Parliament.[27]

One problem with the first and second option is that they do not fit into a federal conception where every citizen is at the same time a member of one of the subunits and of the federation as a whole. In the special type of federation that the EU is, inclusion in the thinner layer of rights guaranteed by Union citizenship does not entail the more substantive protection derived from being a national of a member state. In this respect the Union is still like antebellum US where the Bill of rights was meant to protect state government from the legislative powers of

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[27] I have briefly discussed the merits and problems of these possible reforms elsewhere and will here only summarize my evaluation (Bauböck 1997).

Congress but did not guarantee equal protection to all citizens throughout the federation.[28] Second, in such a context granting a group regarded as outsiders unconditional access to federal citizenship without providing for their simultaneous inclusion in state citizenship may be a dubious gift. It will do little to remove their stigma of being foreigners but will at the same time devalue Union citizenship in the eyes of many native groups and may contribute to blocking a strengthening of the attached rights. A separate and easier road to Union citizenship for immigrants would highlight this status as a less substantial form of membership and would do little to build a deeper sense of belonging to a wider political community and popular support for a further enrichment of Union citizenship. Third, this decoupling of nationality and citizenship would considerably weaken the political urgency of the normative arguments for liberalisation of nationality laws in the member states. By granting resident foreigners a thin Union citizenship which does not imply rights of political participation at national level, national governments will find a good excuse for maintaining exclusionary citizenship laws.

The two proposals of automatic or optional naturalisation into Union citizenship differ with regard to the balance they strike between the goals of inclusion and of consent. The former may be criticised on the grounds that it deprives immigrants of a choice they would like to make and which is firmly established in the nationality laws of all democratic states. Attributing citizenship at birth may be justified because the person concerned cannot yet exercise a meaningful choice and is in need of protection by a state. Imposing citizenship automatically on adults who do have on ongoing legal, political and cultural affiliation to another states, is a quite different matter (even if they are allowed to retain that existing citizenship). The second option of establishing a procedure for voluntary acquisition of Union citizenship would take this into account. Seeing that immigrants have to choose citizenship would also do more to emphasise its value and to dispel fears about political disloyalty among those who have not grown up in a member state. However, such a naturalisation requirement would either leave a great majority in the status of foreign residents or would cast doubt on their motives for choosing citizenship. If their status as legal residents is reasonably secure, there are considerably less incentives for foreigners to choose Union citizenship rather than the more substantial citizenship of their state of residence. And if their status is insecure, then the reason for choosing Union citizenship will be correctly seen as instrumental for gaining access to employment and mobility rights rather than as an expression of some durable attachment to a wider European polity.

By focusing on a prior requirement to provide foreign nationals with such a secure status the third option takes these objections into account. It suggests to provide immigrants with a quasi-citizenship which may not involve full political participation rights but will still create legal equality with regard to rights of association and free speech, access to courts, public welfare and rights of residence, mobility and employment. A "denizenship" of the European Union

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[28] see Amar (1998)

would involve two additional elements which bring the status of resident foreigners closer to that of citizens: the right to participate in municipal elections (which today is already granted to third country nationals in all Scandinavian states, in the Netherlands and in Ireland)[29] and free movement in a Union-wide labour market. This agenda will certainly meet strong resistance. In a communication of 1994 the European Commission has proposed a number of less ambitious targets which would involve some harmonisation of existing national legislation, including an improvement of the legal position of legal foreign residents and of conditions for their social integration. Since then there has not been any substantial progress in these matters.[30] Developing a European denizenship would require convincing the governments and parliaments of the member states to abandon a further traditional element of state sovereignty which consists in the absence of positive international obligations towards aliens apart from respecting their human rights and their external citizenship that ties them to a state of origin. Direct inclusion of foreign residents into Union citizenship seems to bypass this obstacle, but it is even less realistic to assume that the member states will ever be willing to let the Community institutions simply override their prerogative of regulating the status of aliens. A strategy of gradual harmonisation and improvement will therefore have to count on combining Community initiatives with domestic reform.

When seen as an alternative to harmonising nationality laws, the denizenship proposal still has some serious drawbacks: First, while immigrants may have good reasons to prefer denizenship to full citizenship (e.g. when they intend to return to their countries of origin), this status is not sufficiently immune from changing preferences of voters and legislators.[31] Second, it could even aggravate the democratic inclusion deficit. Union denizenship for third country nationals may serve as a good excuse for restrictive admission to national citizenship. And immigrants themselves will be unlikely to opt for naturalisation if the costs are high but there is little to gain from this change of status.

I want to suggest therefore, that this solution will only work in tandem with an effort at a simultaneous harmonisation of nationality laws. Union denizenship and optional naturalisation should be seen as complementary and mutually supporting policy proposals. Under conditions of denizenship access to high public office and the franchise for national and EP elections could remain tied to member state citizenship without a serious problem for democratic legitimacy. Foreign residents can choose to obtain these core rights of political citizenship by naturalising. Moreover, immigrants would then no longer naturalise in order to escape legal

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[29] In 1997 the Italian government introduced a bill to establish the municipal franchise for foreign citizens which was, however, subsequently blocked in parliamentary committees questioning its conformity with the constitution. In October 1998 the newly elected German government included the municipal franchise for non-EU citizens in its coalition platform (see Koalitionsvereinbarung 1998, chapter IX.7).

[30] The creation of a Vienna-based observatory on Racism and Xenophobia seems to be the only concrete result that has emerged from this initiative.

[31] Two traditional liberal countries of immigration, the US and Australia, have during the 1990s deprived resident foreigners of some of their previously established rights to public welfare benefits.

discrimination to which they are exposed as aliens. Removing this instrumental incentive may still lower application rates but will also create conditions under which naturalisation can be motivated by a wish to fully belong to the polity and by a commitment to participate in its political affairs, i.e. the kind of reasons communitarian and republican conceptions of thick citizenship are keen to promote while avoiding their exclusionary implications.

While a European guideline for the acquisition of national and Union citizenship can leave a considerable scope for national legislation it ought to fix some basic common standards and constraints on laws and administrative practices regulating access to citizenship in the member states. As pointed out above, the reasons for this are normative. They centre around ideas of equality and inclusion: First, if citizenship is a status of equal membership in a wider European political community, then the conditions for admission to this membership should not be vastly different in various European states. Second, if the cohesion of this political community cannot be derived from common culture and history, but only from common political principles and growing integration between societies, then the rules for admission ought to correspond to societal and republican conceptions of a European polity.

The first and most important implication of this is that some form of ius soli should be applied in defining the legal status of the children of immigrants. The most obvious form of inequality of citizenship in present Europe is the fact that in some countries the children of permanent residents or of foreigners themselves born in the country are automatically nationals and European citizens by birth, whereas in others they inherit only their parents' foreign status. For a common European standard it is neither necessary to completely abandon ius sanguinis nor to adopt a US version of ius soli which turns into a citizen anybody who happens to be born in the territory.[32] Yet the children of permanent residents ought to be given an unconditional right of access to citizenship (either automatically at birth, or later on through declaration by their parents or by themselves after reaching a certain age).

Second, there should be an upper limit to the required time of residence before naturalisation which is lower than the current maximum of ten years.[33] The other conditions for naturalisation (such as costs, requirements of assimilation, economic independence, good character and loyalty) should not act as deterrents for applicants. Most importantly, renunciation of a presently held citizenship should not be a general condition for naturalisation. Although this requirement may be regarded as the ultimate proof of loyalty by a republican conception of citizenship, it has long been undermined by factual as well as normative considerations.[34] On the factual side it has to be pointed out that the largest numbers of dual citizens emerge at

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[32] There may be, however, good reasons in the history of the US for this strict rule of ius soli. On this debate see Schuck and Smith (1985), Martin (1986), Carens (1987).

[33] A regular ten year waiting period for discretionary naturalization of third country nationals is currently required in Austria, Germany, Italy, Luxembourg and Spain.

[34] For a more extensive argument in favor of a general toleration of dual citizenship see Spiro (1997).

birth (from the combination of ius soli in the country of residence and ius sanguinis in the country of the parents' origin, or from ius sanguinis from both parents' side in mixed marriages). The legal consequences of dual citizenship by birth are the in almost all respects the same as those of dual citizenship resulting from naturalisation. The idea of a profound and irresolvable conflict between the personal jurisdiction of sovereign states has therefore been disproved by the absence of legal conflict in most cases and the development of legal instruments to deal them in the few cases where they arise. The reason why conflict is not endemic and generally not difficult to resolve is that for most purposes of law only the citizenship of present residence is active while a second citizenship remains dormant. For migrants, holding a dual citizenship may nevertheless be an essential interest because it guarantees them the unconditional right to return to their country of origin and to reactivate thereby their full citizenship rights there. This is an interest which a receiving society of immigration has generally no reason to deny. Such arguments gain additional force at the European level where the presumption of a general incompatibility between the citizenship of several member states is certainly at odds with the already firmly established common legal order and the goal of further political integration.

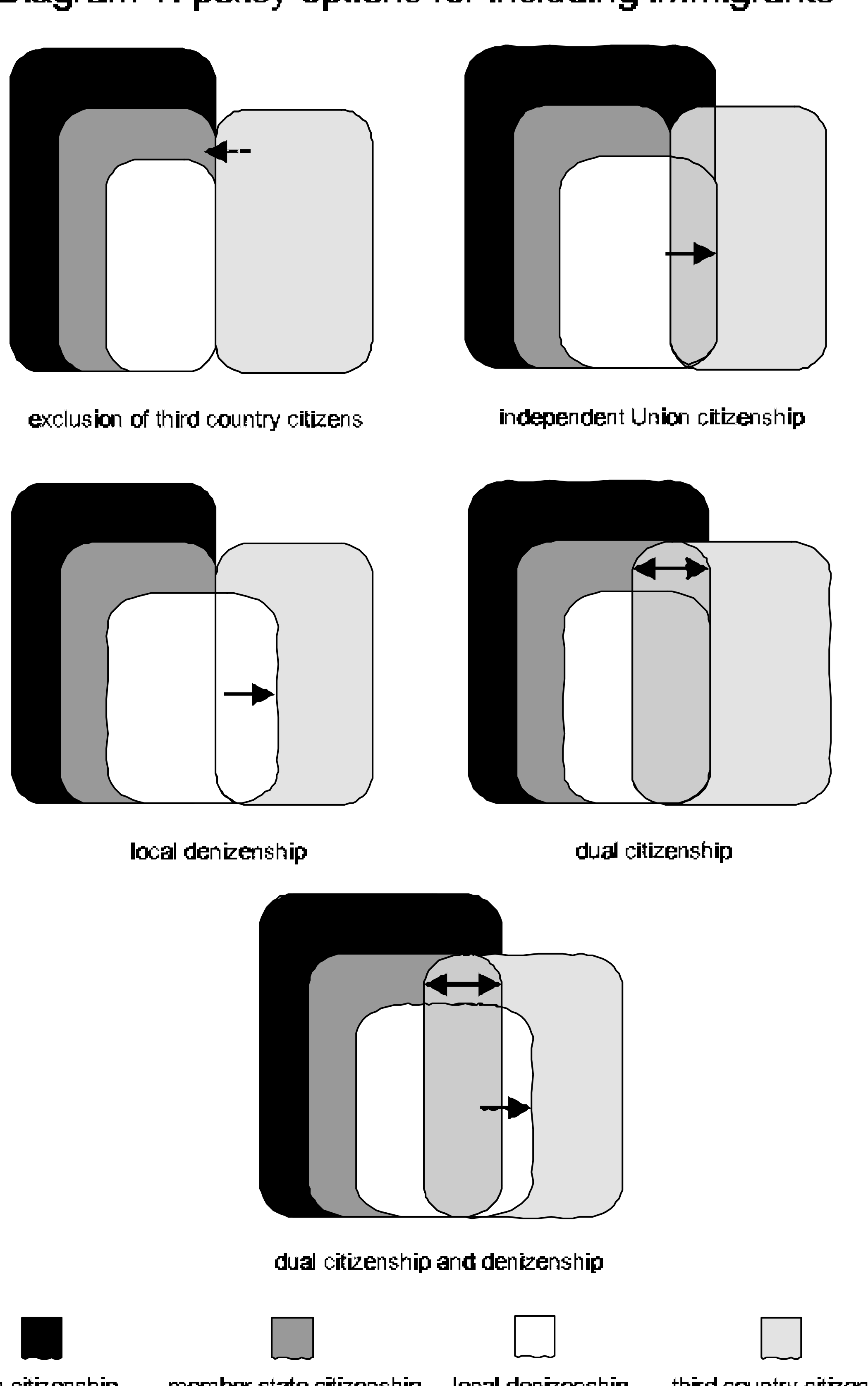
The normative arguments for retaining the link between national and Union citizenship are also supported by a pragmatic assessment of the feasibility of the alternative options. The Amsterdam Treaty has effectively blocked any decoupling by adding the following clause to Article 8(1) of the Maastricht Treaty: "Citizenship of the Union shall complement and not replace national citizenship." At the same time, it has to be acknowledged that the proposed interpretation of Union citizenship as a potentially free-standing conception is not supported by the current text and spirit of the Treaty. This becomes especially clear in the statement of objectives in Article B which specifies that the reason for introducing Union citizenship is: "to strengthen the protection of the rights and interests of the nationals of its Member States". Although this does not to rule out making the legal status of third country nationals and their access to Union citizenship a concern for the Community it shows that in the present interpretation the link is not merely that nationality of a member state is the condition of access to Union citizenship. The reference to member state nationality also exhaustively defines the collectivity whom citizenship is meant to benefit. A more free-standing, inclusive and egalitarian interpretation of Union citizenship can therefore presently only be considered a political desideratum, but not an explicit goal of the Treaties.

Even if the normative argument for harmonisation through initiatives of Community institutions is, in my view, a strong one, the more likely prospect today is a gradual convergence from below, along the lines of the second argument for harmonisation which I have sketched above. Over the last years, nationality laws have been changed in several European states. There is no clear tendency towards shorter waiting periods for naturalisation but the other two requirements of introducing elements of ius soli and tolerating the retaining of a previously held citizenship are more and more accepted in member states of the Union. This is largely due to

domestic developments (a growing recognition of the ongoing integration of immigrants as well as an attempt to cut off some ground from xenophobic movements and parties) but may also involve some effort to conform to implicit European standards. The most important test for this will be the announced reform of the German nationality law of 1913. This law and the low rates of naturalisation among non-German immigrants have been a focus of international critique for some time. With the introduction of a moderate form of ius soli (for children whose parents have been in the country since the age of 14) Germany would join states like Belgium, Britain, France, the Netherlands and Sweden whose citizenship rules have ensured the inclusion of the vast majority of the "second generation".

The following page shows a graphic representation of the different policy options which I have discussed. The diagrams distinguish three levels of membership: Union citizenship, member state citizenship and local denizenship. Denizenship is here understood as a status and bundle of rights derived from long term residence and politically articulated at the local level. The left side of each diagram symbolises the nested structure of Union citizenship which is composed of national citizenships but has also its independent components of federal citizenship (the franchise for the European Parliament) and of local denizenship (the local franchise Union citizens enjoy in other member states). In the first diagram, third country nationals are structurally excluded from Union citizenship. They can be individually admitted only by acquiring the citizenship of a member state (symbolised by the dotted arrow). The second diagram illustrates the proposal to expand Union citizenship (and EU denizenship as a consequence) to include long term residents among the immigrant population from outside the EU. This policy option would leave the rules for admission to nationality of a member state unaffected. In the third diagram, third country nationals are directly included as local residents enjoying the same rights as Union citizens living in another member state (with the exception of the franchise for the EP which remains attached to Union citizenship). The fourth diagram shows the effect of focusing instead on harmonising access to national citizenship. Easier naturalisation and a general toleration of dual citizenship would increase the numbers of immigrants who are full included at all three levels of membership. Finally, the last diagram sketches the combination between the third and the fourth approach which I have advocated above: A harmonisation of the legal status of third country residents throughout the Union will be important even if naturalisation becomes easy. Union denizenship would provide a secure intermediary status for first generation immigrants who will ultimately choose to naturalise as well as an alternative option to naturalisation for those who do not want to stay for good.

Diagram 1: policy options for including immigrants



3. Rights, Obligations and Practices in Union Citizenship

3.1 Four Layers of Union Citizenship

Citizenship as membership in a political community divides populations into distinct, but in cases of multiple citizenship partially overlapping, sets. The rights of citizenship define the internal relations between individuals and state authorities within each of these sets. However, state authority is not only limited by boundaries of membership, but even more so by territorial borders. As explained above, this duality of state sovereignty makes for, on the one hand, the power of states to submit non-citizens in their territory to their laws, and, on the other hand, for an external dimension of citizenship that a number of rights and obligations creates for international travellers or foreign residents relating them to the state whose nationals they are. This intersection of spatial and membership boundaries results in three basic positions for individuals who may claim particular rights from a particular state:[35] first internal citizenship for those residing in the state whose nationals they are, second, alien and denizen rights for foreigners submitted to the laws of their state of current residence and, third, external citizenship for those living outside that state's territory.[36] Citizenship of the European Union is specific because it creates one additional distinction: rights which are internal to the Union but external to the state of a person's nationality.[37] The peculiarity of the conception of citizenship which emerges from the Maastricht Treaty is that this "inter-Union citizenship" is the only dimension which is developed to a certain extent whereas the other three (general internal Union citizenship, rights for non-citizen residents and rights outside the Union territory) exist only in the most rudimentary forms.

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[35] A fourth position is that one from which human rights claims can be raised. Human rights depend in their content neither on citizenship nor on residence, although the claims are generally addressed to the state of present abode or to a state which has an obligation to admit certain groups of persons into its territory (such as refugees or family members of residents).

[36] I have first introduced this distinction in Bauböck (1991).

[37] In federal states this differentiation remains mostly invisible because federal citizenship is normally much more substantial than provincial or state citizenship. Antebellum US illustrates the instability of arrangements where the rights of members of one federal subunit living elsewhere in the Union require specific protection.

Table 2: Four layers of Union citizenship

residence/nationality	citizenship position
anywhere in the EU as a national of a member state	internal Union citizenship
anywhere in the EU as a third country national	Union denizenship
in a member state of the EU as a national of another member state	inter-Union citizenship
outside the EU as a citizens of the EU	external Union citizenship

The content of European citizenship in terms of rights was developed to a considerable degree before the formal status itself was introduced. From its very beginning the European Community had a specific dimension of individual rights which were added to the rights guaranteed by citizenship of the member states. The core rights which were already laid down in the Treaty of Rome were those of free movement of persons and of non-discrimination between nationals of member states. These are the two fundamental elements of inter-federal citizenship in a liberal democratic federation. When Article 8(2) of the Maastricht Treaty says that "citizens of the Union shall enjoy the rights conferred by this Treaty" this does not only refer to the following Articles 8A-E, but includes all rights incorporated in the text since the Treaty of Rome. The specific rights of Articles 8A and B in the Maastricht Treaty can be understood as extensions of this original inter-Union citizenship: free movement of persons is reaffirmed in Article 8A and extended to include free choice of residence *within* each member state.[38] The provisions on voting rights in municipal and European parliament elections of Article 8B attach political participation rights to those of free movement and prohibit discrimination between nationals and Union citizens in this area.[39] Article 8D (the right to petition the European Parliament and to complain to its Ombudsman) is an element of internal Union citizenship. As it is formulated in the section on Union citizenship this right belongs to citizens but does not at all depend on residence and can be exercised by those living in the member state whose nationals they are, by those living in another member state and also by

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[38] see Guild (1996:36).

[39] Every Union citizen living in another member state has the right to vote and to stand as a candidate at municipal and European Parliament elections "under the same conditions as nationals of that State."

Union citizens living outside the Union territory. Article 138e, however, which defines the competencies of the Ombudsman extends this right further to “any natural or legal person residing in or having his registered office in a Member State” so that it has also to be seen as an element of Union denizenship.[40] While this provision is therefore the most inclusive one with regard to its beneficiaries its content as a mere right of complaint is of course quite limited. Article 8C, finally, creates the weakest possible form of external citizenship by entitling Union citizens residing in third countries to diplomatic protection by other member states only if the state whose nationals they are is not represented in that country.

Rather than merely taking stock of the thin bundle of rights attached to Union citizenship in its present form I suggest to examine their potential for contributing to a stronger version of a community of citizens at the level of the Union.

3.2 Free Movement and the Fusion of Citizenship

For the generation of Monnet and Schumann the European Community was primarily an attempt to forge a political union between the states of Europe that would rule out a future possibility of war between them. The main dynamic which pushed the Community into successive waves of deeper integration and geographical expansion was, however, not political but economic. In this perspective, free movement as the core right of Union citizenship may appear as a mere spin-off effect of market integration, as only one, and probably the least important one, of the four economic freedoms.

However, a rarely quoted passage in Marshall’s analysis of the evolution of citizenship points to a larger importance of this freedom for the creation of a common European polity. After distinguishing conceptually civil, political and social rights, Marshall points out that in the premodern period, these “three strands were wound into a single thread” (Marshall 1965:79) because the institutions supporting them were amalgamated and operated at the local level. Modern national citizenship emerged from local forms by a double process of fusion and separation: “The fusion was geographical, the separation functional” (ibid. 79). Functional separation associated civil rights with a national system of courts, political rights with parliament and social rights with public education and welfare. But how was the geographical fusion of rights originally attached to rather autonomous local communities brought about? It was the effect of, on the one hand, central state intervention into local self-government in order to enforce national decisions and norms during the age of absolutism and, on the other hand, of the uprooting of rural populations during the age of industrial revolution. The geographic mobility which this latter process unleashed was of a new kind, different from previous forms of mobility of artisans, traders and cultural, military and political elites. Migration for industrial work implied a permanent shift of residence for large groups of the population. The perception

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40 see also Guild (1996:38).

that the permanent population that lives within the borders of a state forms a single society has become so familiar in modernity that it is all too frequently projected back into the past. Yet it takes this twin process of geographical fusion to conjure up the image of large societies which coincide with territorial polities. State regulation becomes a pervasive force shaping the opportunities and life prospects of all subjected to a common law only in modernity. The most important aspect of this penetration of societies by the state is the formation and inculcation of national cultures through public education. The removal of internal restrictions of economically driven migration creates for the same population a perception of the state territory as a wider space for seeking opportunities within which they still remain subject to the same political power and may use the cultural resources provided by a national system of education.

There some obvious differences between this process of nation-building and the nascent Euro polity and these go a long way towards explaining why there is as yet little popular support for the idea of a larger European political community. First, there is no attempt to forge and impose a common European culture and, second, the level of geographic mobility of Union citizens is rather low. Still, Article B of the Amsterdam Treaty links free movement with political integration in a rather straightforward manner when it lists among its objectives: "to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured …"

What is important about geographic mobility as a right of citizenship is that it is not easily reserved for citizens only. Free movement is the prototypical negative liberty. It consists in the absence of obstacles for travel or relocation of residence. If the European Union wants to create a zone of actually free movement which matches the model provided by current liberal democratic states, it can achieve this simply by abolishing border controls, visa requirements and residence permits for everybody travelling within this area. The beneficiaries of this would not only be citizens but also all third country nationals who have been admitted to this territory.[41] It is not by accident that the paragraph just quoted speaks of the free movement of *persons* rather than citizens. While the implementation of the Schengen agreement is a move towards a geographical fusion of citizenship in the Union it strengthens at the same time an important element of denizenship by giving third country nationals who have been legally admitted to one member state unlimited freedom to travel within the Union. This is, however, only one element of free movement. With regard to free choice of residence throughout the Union there are still some limitations even for Union citizens (whose right of residence in another member state depends on having sufficient means to support themselves) and there is still no such right for third country nationals. Union denizenship as discussed above would involve a much more extensive freedom of choice of residence and access to employment for

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[41] The right of free movement *within* a state is today considered a universal human right rather than a specific right of citizenship (see Universal Declaration of Human Rights, Art. 13(1), 4 Convention on Civil and Political Rights, Art. 12(1), Protocol No.4, Art. 2, European Convention for the Protection of Human Rights and Fundamental Freedoms.

all who legally reside within the territory of the Union. This may still be a far-away goal but it is supported both by the task of further economic integration (towards a single labour market) and by the logic of expanding citizenship.

Movement across the borders of the Union from outside is a different matter. In this area, the citizenship perspective requires an unconditional right for citizens to enter the territory of their political community, but not open borders for other groups. While free movement within the Union has a positive spillover-effect for non-citizens, it has a constraining effect for non-citizens' admission to member states. Still, the shift of emphasis during the Schengen process from the target of free movement toward the primacy of immigration control has certainly not contributed to building public awareness about a geographical fusion of citizenship which is underway. It is also interesting to note that the provisions on free movement in the Maastricht Treaty do not mention the external dimension, i.e. the right of a citizen of the Union arriving from a third country to be admitted to any other member state.[42]

The more important critique of the way in which immigration control has been handled is, however, that both the republican and the societal conceptions of citizenship may not support open borders, but will in various ways impact on immigration control for third country nationals. Both approaches will require that immigration control must be non-discriminatory (e.g. with regard to gender, race, religion and ethnic origin) and that specific groups be exempted. Thus, for a republican conception the admission of refugees has always been a test for the political principles it defends. Those who have a well-founded fear of persecution by their government, or of being insufficiently protected by it from oppression and violence in their societies, have de facto lost their citizenship and their government has forfeited its moral claims to rule them. Liberal states have to treat them as stateless persons and should not use their formal citizenship as a ground for excluding them from their territory. Yet the current use of visa requirements as a means for reducing the possibility of asylum claimants to enter a EU member state operates just in this way. A societal conception would additionally defend strong rights to family reunification. These are not only seen as human rights of those living abroad waiting to be reunited with their families (in which case a policy of enforced return migration would satisfy their claims as well) but also as particular rights of those already resident in the country to stay there without remaining separated from their close relatives. A societal perspective may furthermore demand that existing migratory chains which create social ties between countries have to be taken into account when deciding on future immigration targets or quota.

The Amsterdam Treaty has taken an important step by shifting asylum and immigration control from the Third Pillar into the EC Treaty. Yet there are still three essential limitations. First,

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[42] As Elspeth Guild points out, a test case for this right may be when a third country deports a Union citizen not to her country of nationality but to the geographically closest member state (see Guild 1996:44).

Community action towards harmonisation can be easily blocked for five years after the Treaty comes into force by the unanimity requirement in the Council where the Commission shares its right to initiative with the member states.[43] Second, the Treaty fails to go substantively beyond the existing material provisions for free movement. For Union citizens, free settlement in another member state remains tied to economic purposes or independent income; for third country nationals it is more strictly limited to a free travel within a three months period.[44] Third, while the abolition of internal borders and harmonisation of asylum procedures and external border controls have to be completed within five years, the more sensitive issues of immigration policy, such as long term visas for immigration and residence of labour migrants, family reunification and of a transfer of residence rights to other member states have been specifically exempted from this time limit.[45]

3.3 Non-Discrimination and Social Discrimination

Just like free movement, non-discrimination is originally an implication of economic integration or “market citizenship”. Only lately has non-discrimination achieved a broader scope and interpretation as a core feature of a European political community and legal order. The primary intention of outlawing discrimination according to nationality between citizens of the Union was to create that kind of basic legal equality between providers and consumers within the European Community which is essential for eliminating national protectionism and creating a single market. With regard to the protection this principle granted to natural persons its scope was limited to citizens of a member state and later on extended to include citizens of the European Economic Area.

In a broader interpretation, anti-discrimination laws attempt to guarantee equal opportunities and the equal value of rights and liberties by outlawing discriminatory distinctions both in relations between individual and government agencies as well as between individuals and various types of organisations in the economy and civil society. This goes beyond what a market economy requires, because deep-seated and widespread prejudices against certain groups will be reflected in the outcomes of free market interactions. In free markets independent agents optimise their utilities by acting according to their given preferences which include such prejudices. While in the US-American context, racial and gender discrimination were equally important for the development of an extensive anti-discrimination legislation since the mid 60s, gender issues were clearly pivotal in the European context. This is one area where the evolution of civil rights developments at national levels has spilled over to the European level early on. The main institutional actor pushing this development was the European Court of Justice. The ECJ has, however, also drawn a line where it believes that programs go too far towards establishing a preference for women.

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[43] Article 73o(1)

[44] Article 73j(3)

[45] Articles 73k(3)(a) and 73k (4)

After some debate during the Intergovernmental Conference the Amsterdam Treaty included a broad itemised article on anti-discrimination which refers to sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation.[46] While the original principle of non-discrimination between nationals of member states by definition excludes foreign citizens from the range of protection, the logic of these new anti-discrimination provisions makes it difficult to constrain them in this way. In this regard, they operate similarly as free movement where the absence of border controls creates a general liberty for everybody who is within the territory. However, anti-discrimination policies are also different in that they require positive action by political authorities in order to combat pervasive discrimination in society. In this sense, the commitment to fight group disadvantages in society takes some steps towards a "thicker" conception of Union citizenship.

There are again, some serious limitations to this new commitment which is also linked to a general concern of the Commission and the European Parliament about growing racism and xenophobia in Europe. Anti-discrimination policies will also require unanimity in the Council but, unlike the apparently more urgent tasks of harmonising immigration control, no deadline has been set for taking such measures.

3.4 Voting Rights and the Integration of the Polity

The peculiar features of citizenship in the emerging Euro polity become more visible when we examine the franchise as the core element of a republican conception in which the people are understood to give to themselves, in the final instance, the laws under which they will be governed. This idea requires of course, not merely a universal, equal and direct suffrage in parliamentary elections, but also that the body of representatives be mandated with the supreme legislative power. The European Parliament with its consultative and co-decision-making powers is still far from becoming a legislative assembly. However, increasing its powers in this regard would necessarily weaken the presently dominant mechanism of democratic accountability which is via the representation of member state governments in the Council who are themselves accountable to national parliaments. This dilemma of how to resolve the democratic deficit in the Community is a well-trodden theme and need not concern us here except for the obvious conclusion that more powers for the EP would strengthen European citizenship relative to national citizenship and would create a more direct link between the individual members and the bodies making collectively binding decisions within the Euro polity.

What is more important for our purpose is, once more, the territorial and nationality aspects of the franchise that comes with Union citizenship. Between the first direct elections to the EP in June 1979 and the adoption of the Treaty on European Union in 1992 the image of the Euro polity corresponding to the definition of the franchise was that of an aggregate of member state

[46] Article 6a

polities within each of which the national citizenry decided on the composition of its group of parliamentary representatives. Article 8B(2) of the Maastricht Treaty disconnects this franchise from residence in the country of one's citizenship and thus creates for the first time a European-wide electorate. Yet this is only a structural precondition for the emergence of a polity of European citizens. In representative multiparty democracies the awareness of the collective identity and power of the enfranchised citizenry is primarily stimulated by the competition of political parties for votes. As long as the number of Union citizens living in other member states remains generally low, they will not be perceived as a group whose interests have to be catered to and whose votes may be critical for electoral success of the national parties running for European elections. To go beyond this framework would not only require a larger volume of intra-Union migration, but also the development of a truly European party system.

The municipal franchise of Article 8B(1) is even more interesting. It links citizenship in the Union to political participation in a local community. Making the local franchise an element of Union citizenship seems in line with other efforts of Union institutions to bypass national governments by establishing direct links with regional or local governments.[47] However, what is at stake in this case is not the allocation of common funds or of symbolic recognition (as in the nomination of cities as cultural capitals of Europe), but self-government at local levels, i.e. a purely internal matter. It seems therefore surprising that a federal political community built from sovereign nation states would impose on its members a requirement to open the electoral process at the subnational level for citizens of other member states. The decisions taken by municipal councils are certainly less connected to decision-making at the Union level compared to those in national parliaments where intra-Union migrants are not represented. It is only a societal conception of citizenship which explains the significance of the local franchise. Different from the national level, membership in a local political community is acquired by simple residence. In modern societies, municipalities are structurally open for internal migration within the state and do not ascribe a formal membership status derived from birth or consent. Still, they can function as political communities in which local matters are decided by democratic representation. The people who are to be represented in local democracy are in this view the residents of the municipality rather than those who have been formally designated as citizens of a larger political unit.[48] This justification for a residence-based local franchise is rejected by a traditional understanding of sovereignty which views the local electorate as only a subset of the national citizenry because local government derives its authority exclusively from popular sovereignty at the national level. This interpretation underlies the German Federal Constitutional Courts' rejection of the local franchise for foreign residents in Hamburg and

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[47] "The union has sought to strengthen its own institutions by setting up bargaining relatioins with regional and city governments, which natioinal governments have tolerated as the price for gaining access to these funding streams" (Rustin 1998:110).

[48] see Bauböck (1993).

Schleswig-Holstein in 1989 and 1990.[49] The subsequent amendment of several constitutions of member states in order to comply with the Maastricht Treaty provisions was generally justified by invoking the principle of reciprocity and rejecting thus a societal conception of citizenship which would have made it difficult to deny the same right to third country residents. The question which cannot be resolved by that kind of reasoning is why it was important to connect European citizenship with the local franchise in the first place. Only a societal conception makes this plausible, but the same perspective must deny that such a right can legitimately exclude some residents because of their nationality. Rather than opening a European debate on this issue, the Maastricht provisions were interpreted as closing an earlier debate on local citizenship and franchise for third country immigrants. A movement towards reform in this area will today rather emerge from domestic developments in countries like Italy or Germany. At the European level the initiative for norm-setting with regard to the political participation of foreigners at the local level lies today with the Council of Europe rather than with the European Union.[50]

3.5 Towards a European Bill of Rights?

The point of the distinction between the four layers is to show why the present conception of citizenship is not only deficient in its disregard for the rights of non-citizens, but also with regard to the specific rights attached to being a full member of the European polity. It is very unlikely that citizens of the European Union will ever attribute strong importance to this status and develop a sense of belonging to this wider political community if nearly all of the rights that are attached to this status become relevant only once they reside in another member state. How could this deficit of internal Union citizenship be overcome? Paradoxically, the high level of internal national citizenship rights in the member states and the existing harmonisation of basic standards for rights through European conventions adopted outside the framework of the Union[51] may be an obstacle for enhancing the citizenship of the Union. What would be the use of formally declaring all these rights which are already guaranteed by domestic constitutions and international agreements to be elements of Union citizenship? In contrast with all other continents, Europe has already a system of human rights protection that makes it possible for individual citizens to appeal to an international court against their own governments. Scepticism against a “rights inflation” or a duplication of international judicial competencies at the European level is not unreasonable. However, the final answer to this question depends, again, on how we conceive of the future of the Union as a project of political integration. If the Union’s internal decision-making has increasingly immediate and direct effects on all its

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[49] BVerfGE83,60 II vom 20.2.1989 and BVerfGE 83,37 II vom 31.10.1990.

[50] The 1992 Council of Europe’s Convention on the participation of foreigners in public life at local level envisages a right to vote and to stand for election in municipal elections after 5 years of residence. Eight states have so far signed the convention. In 1997 it has come into force in the Netherlands, Norway, Sweden and Italy, with the latter country opting out of the provisions on municipal franchise.

[51] most importantly the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the European Social Charter of 1961, both of which were adopted within the Council of Europe.

citizens, then it will require a stronger democratic legitimation that visibly protects and empowers the citizens and makes them see themselves as members of a federated political community. A democracy of this sort needs a constitution which restructures the proliferating patchwork of disparate provisions resulting from the amendments of the Treaties in Maastricht and Amsterdam. As in most liberal democratic nation-states such a Union constitution would have to address two fundamental tasks: first, revising the vertical and horizontal division of powers between member states and Community institutions and, second, adopting a Bill of Rights which spells out the legal content of Union citizenship as well as the rights which are granted to all residents in its territory.

Although various initiatives had been taken during the IGC, it has essentially failed, or rather refused, to face this task. The dominant agenda for the coming years (monetary union and Eastern enlargement) will make it difficult to put a constitutional entrenchment of comprehensive citizenship rights again on the European agenda. However, no long term strategy for building the Union as a Community of citizenship will be able to avoid it forever.

3.6 Obligations of European Citizenship

In the first section of this paper I have shown how republican and communitarian conceptions of citizenship shift the emphasis from rights towards obligations. Their hope is that this will do much more to strengthen a collective identity at the level of the polity than either individual liberties, which produce an atomised society of individuals pursuing their self-interest, or the proliferation of group entitlements in welfare states which mobilise interest groups against each other. For these approaches, the rights of citizens derive from prior obligations they have towards their political community. Citizenship of the European Union could provide a test case for this reversal of liberal priorities. If political community is grounded in obligations then a polity in the making which does not correspond to any given pre-political cultural and historical community ought to place heavy emphasis on the citizens' duties (just like a nation in the making will always stress its members' duties to establish or defend its sovereignty and security).

Yet the present conception of Union citizenship certainly does not fit this approach. If the rights of Union citizenship are thin, its obligations are virtually absent. Although Article 8(2) of the Maastricht Treaty says that "citizens of the Union shall enjoy the rights conferred by this Treaty and shall be *subject to the duties imposed thereby*" (my emphasis) one searches in vain for a further specification of what these duties might be. This duty deficit of European citizenship has been noted by some authors.[52] However, it is difficult to see what could or should be done about it. The core areas of legal obligations of citizens towards their state, military defence and taxation of individual income, are still firmly within the realm of national

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[52] see Shaw (1997:89f.).

sovereignty. Even if coordination for defensive purposes led to an integration of European armies, this would be a professional and volunteer force rather than an army of drafted citizens. And even if taxes on income, wealth and consumption were eventually harmonised throughout the Union these taxes would still be raised by the individual member states so that a citizen duty towards the Union would remain a strongly mediated one. Obligatory voting in EP elections could theoretically increase public awareness about European issues but given the dominant tradition of voluntary franchise in the member states it would be impossible to introduce compulsory voting at the Union level.

If it is hard to imagine a specific set of legal obligations beyond those of national citizenship which would bind individual citizens directly to the Union, it is even more difficult to explain distinctive moral duties. A duty of all citizens to be loyal towards the Union, to obey its laws and to contribute to its common good would be so empty of content and so disconnected from practical experience that declaring it could only be counter-productive. One could certainly think of a more specific duty to maintain the Union and to contribute towards further integration or of a duty of fairness and solidarity across national boundaries of member states that would imply support for redistributive programs. However, these are duties primarily addressed to member state government and parliaments. It would be wrong to think that citizens have even a mediated general duty to support government policies which promote a further integration of the Union. Such a moralising conception of citizenship obligations would constrain the democratic process in which groups of citizens may legitimately fight their government's policies on issues which do not concern basic human or citizen rights. The general remoteness of duties for citizens in democratic welfare states which was already noted by T. H. Marshall becomes thus even more accentuated at the level of the Union. The symbolic integration of national community which hides the asymmetry between duties and rights to some degree is absent here. And this asymmetry is enhanced by the direct effect of some legislative activity of the Union on the citizens' rights, on the one hand, and the strongly mediated character of their contributions and involvement with the larger polity, on the other hand.

An emphasis on citizenship obligations would therefore be misconceived. Still, there is some truth in the idea that cohesion in a community of citizens needs more than rights. Although I have argued above that a more comprehensive and extensively distributed set of rights is essential for democratic legitimation of further political integration, it would be wrong to think that rights will by themselves generate a closer identification of the citizens with the Union. The problem has been identified by opinion pollsters as a widespread malaise and uneasiness with the idea of an ever-closer Union. The policy prescription that has been generally derived from this diagnosis is: Bringing the Union closer to the citizen. This slogan has been interpreted in basically two different ways. One emphasises the transparency of decisions, the accessibility of institutions at the Union level and the services provided by them for citizens, the other puts the stress on subsidiarity and wants to reassure citizens that national governments, which see themselves as much closer to the citizen, are still in control. The former effort is important as a

contribution towards public accountability, but it does not respond to the question how citizens can be seen as active and contributing members rather than as consumers and clients. The second interpretation may even aggravate the problem if it succeeds in bringing the governments' policies on Union issues closer to the national citizens but at the same time widens their cognitive and emotional distance from the idea of a common and shared European citizenship. Filling this motivational gap requires not only bringing the Union closer to the citizens, but also conversely bringing the citizens closer to the Union.

3.7 European Citizenship as a Practice

If my sceptic arguments against strengthening legal obligations or rhetorically invoking moral duties of Union citizenship are plausible, this does not render the question obsolete and there may still be reasonable answers which refer to citizenship practices and virtues.

In contrast to obligations, virtues rely on the social inculcation of norms, not on external legal sanctions or universal moral laws. The social and civic virtues which I have briefly listed in section 1 will be in greater demand the more politically integrated the Union becomes and the more socially diverse it becomes due to enlargement and immigration. The question is whether and how these virtues can be acquired and disseminated.

Obviously, public education will have to play an important part. Learning about Europe can and should become a growing part of curricula in public schools in all member states. This will affect history and civics curricula as well as options for learning other European languages. However, there are constraints of resources and time for such efforts and their impact on a shared sense of membership in a common polity may remain quite marginal. The content of teaching will only matter insofar as it resonates with the children's practical experiences and provides them with social opportunities in a wider European society. Public education has forged early modern European societies into nations by mixing children of different social backgrounds and by teaching them basic skills of literacy and numeracy which became useful "cultural capital" within the wider national society. Nothing of this sort can be achieved on a European scale. But one key to a successful education of a new generation of European citizens is certainly to promote their mixing and mobility both during school years (by schemes of student exchange) and after those years by orienting them towards, and training them for, a European labour market and University system.

If civic and social virtues can only be learned properly "on the job", i.e. by exercising them in a social environment which supports them, then educational programs will not be enough. A number of authors have recently suggested that what would be really needed is a European civil society with parties, movements, interest groups and other types of voluntary associations organising transitionally and with a common public sphere sustained by European mass

media.[53] This is an ambitious goal and it seems so difficult to reach that the prospects for widespread and self-conscious practices of European citizenship would be rather dim, if they depended on such preconditions. First, there is very little that the institutions of the Union and national governments can do to promote this development apart from removing some of remaining political, legal and material obstacles. Second, the participants in transnational associations and the audience of European mass media which already exist today represent a small, wealthy, highly educated and politically powerful elite. And the electorate of pan-European or cosmopolitan parties would hardly reach beyond this. It is thus quite likely that the project of a European civil society will not overcome the present horizontal segmentation of national civil societies, but will merely produce a further vertical segmentation between an elite for whom the Europe of the Union becomes in fact the most relevant social space for their activities, and the mass of the population who do not share this experience of Europe as a space of opportunities.

However, this pessimistic prognosis still owes too much to the historic model of European nation-building. It hinges on the assumption that a full horizontal integration of national civil societies is a necessary precondition for a widespread identification with a European polity. The alternative approach is to "Europeanise" civil societies within the member states while accepting that major barriers for their transnational integration are here to stay for an indefinite time. In the concluding section of this paper I will sketch an argument why an adequate conception of European federalism should even affirm some of the cultural differences which present obstacles for the integration of a common European civil society. With regard to the social practices of European citizenship, the essential task is to disconnect habits of civility and resources of solidarity from the idea of a closed national community of citizenship.[54] This can and must be achieved in local and national contexts. Changing nationality laws in the way I have suggested above without disconnecting them from European citizenship is, for example, a public policy which introduces a European conception of citizenship into the established national traditions. A European anti-discrimination policy which addresses persistent social disadvantage attached to gender, "race" or ethnic origin and other markers of group identity will have a similar effect of constraining and re-orienting practices in civil society. The Europeanisation of civil society will depend less on integrating populations through associational networks and geographic mobility within a common geographic space than on overcoming national practices of exclusion within each member state. The same is true for civic virtues of political participation. Being informed on European issues, forming an opinion on them, arguing for it and casting a vote in European elections is not necessarily attached to living and moving within the wider European society. Whether the levels of participation

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53 see, for example, Beck (1998), Seyla Benhabib (1998).

54 David Miller maintains that national community is the precondition for developing such habits and solidarities (Miller 1995). However, in a multinational or multicultural society, solidarity which is confined to co-nationals or presupposes the cultural assimilation of minorities is destructive for civil society and practices of common citizenship.

approach those in domestic affairs depends largely on the willingness of the institutions of the Union to expose crucial issues about its further development to democratic deliberation and votes in the member states and on the willingness of domestic political parties and governments to campaign on European issues and to demonstrate their salience for the electorate. The strongest campaigns of this kind have so far been waged by the opponents of further integration or enlargement. Both social and civic virtues that relate citizenship practices to the larger European polity can therefore be developed at home, in the national context.

4. National Diversity and Pluralistic Federalism in the European Union

4.1 Varieties of Federalism

The European Union derives its political identity from the moving targets of further integration and geographical expansion. As I have argued in section 2 this rules out any pseudo-national conception of citizenship which refers to the three traditional ingredients of statehood as historically given: a territory, a people and a sovereign power. In the European context, republican conceptions, which focus on constitutional principles, and societal conceptions, which focus on the inclusion and representation of a diverse civil society, are not only normatively more desirable (this they are in liberal democratic nation-states as well), but they seem the only sustainable ones, too. In the final sections of this report I will suggest why they should be combined with each other and with a third federal dimension that is essential to the project of political integration. The conception of citizenship which emerges from these three elements is a profoundly pluralistic one.

Much of the debate about the nature and the future of the European Union has focused on the question whether it is a confederation of states on its way to becoming a federal state. The dominant consensus today is that it is neither the one nor the other but a federation sui generis, a multi-level system of governance in a supranational polity. According to a generally accepted definition "[f]ederalism is a political organisation in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions" (Riker 1975:101). A confederation would be characterised by a system of governance in which each member state has a veto power over joint decisions and thus the final decision-making power. The expanding area in which the Council may take majority decisions would then be an indicator for a gradual move of the European Union beyond confederation.

A second criterion has been suggested by John Stuart Mill who distinguishes two kinds of federal unions: those whose decisions are binding only for governments and those which "have the power of enacting laws and issuing orders which are binding directly on individual citizens"

(Mill 1972:400). Confederations of liberal democratic states[55] would fall into the first category, whereas some laws and constitutional rights in federal states apply directly to each individual citizen. The direct effect of Community decisions and the formal establishing of Union citizenship in 1992 are then other indicators that the Union has already, however hesitantly, moved beyond a mere confederation of states.

The criteria of final decision-making, direct effect and federal citizenship all measure the vertical dimension of federalism: its distribution of political powers between central and local government and whether the whole system is an aggregate of independent polities or an integrated multilevel polity. What is still absent here, and has been largely missing in the debates about European federalism, is a horizontal dimension which considers the nature of the constituent parts and their relations with each other. In this regard a US or German model of federalism is all too often implicitly taken as the relevant benchmark. Charles Tarlton (1965) and Arend Lijphart have labelled this model "congruent federalism" which they define as "composed of territorial units with a social and cultural character that is similar in each of the units and in the federation as a whole" (Lijphart 1984:179). By contrast, in incongruent federations there is a substantially greater homogeneity in these regards within the federal states or provinces compared to the federation as a whole. "In incongruent federations, these [religious, ethnic] boundaries tend to coincide, but they tend to cut across each other in congruent federal systems" (ibid. 180). This definition does not easily permit clear-cut distinctions. Isn't Germany or the US also incongruous because Bavaria or Utah are in religious and cultural terms relatively homogenous compared with the profound diversity of both societies at federal levels? And how are we going to measure social and cultural character anyway? Still, there is an important difference between US and German federalism on the one side, and Canadian or Belgian on the other side.

I suggest therefore the following modified definition: In incongruous federalism perceived differences of collective identity are represented in divisions between federal units so that such groups exercise powers of self-government within some or all of the units. In incongruent territorial federations, borders between federal provinces or states are drawn so as to guarantee for particular groups a stable local majority of the population in that territory. The point of incongruous federalism is the *representation of difference* between various groups in the wider society. The basic feature of this representation is territorial self-government limited by federal law. In fully federal systems[56] this is enhanced by mechanisms of special representation in

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[55] The qualification "liberal democratic" is important here, because we can imagine federal empires which would satisfy Riker's criterion without defining individuals as citizens and bearers of rights and obligations at the federal level. This would be something like the Ottoman millet system with a far-reaching autonomy for the various groups in society while the central state coerces the community governments to collect taxes or draft soldiers.

[56] Unitary or congruous federal states sometimes grant special status and powers of self-government to certain indigenous groups or populations in outlying territories without granting them special representation at the level of federal government. The US is, for example, a congruous federation with regard to its dominant political structure, but a partially incongruous federation with regard to the status of native Indian tribes, Puerto Rico or

federal institutions, such as a second federal chamber of parliament, reserved seats in government institutions or courts, or veto powers for national minority delegates in certain decisions that affect their constituencies. By contrast, in congruous federations the constitutive units are merely regarded as subdivisions within a single polity. Although the borders between these units are generally historical ones which are rarely changed, they are contingent from the perspective of the federal constitution. The character of the federation itself would remain the same if the internal borders were drawn differently.

An incongruous federation which satisfies this definition is not necessarily a territorial one and it can be divided along different criteria such as language, ethnicity, “race” or religion.[57] However, the most common type is the multinational territorial federation where some or all of the subunits are regarded as separate political communities identified by a particular language or religion and a long history and aspiration for self-government. Where multinational federations have existed for a long time there is normally a nested structure of national identities which regards both the smaller units and the larger federation as nations.[58] This is certainly true for Canada, to a lesser extent also for Belgium or Britain, but was generally a contentious claim for the former Czechoslovakia or Yugoslavia. Multinational federations are rarely of a purely incongruous type where each subunit coincides with a distinctive national territory. Canada, for example, is both a bilingual federation and a federation of ten provinces. Québecois claims to be a distinct society are contested by Anglophone provinces which regard the territorial division as a congruous one.

4.2 Respecting National Identities in the Union

The European Union is quite obviously not a congruous federation, but a multinational one. And it has been constructed in a way that this is no merely a transitional, but a permanent feature. Not permanent in the sense that it is impossible to change – nobody can imagine today what Europe would look like after another pan-European war – but in the sense that it is not meant to change. The *telos* of deeper political integration is not to overcome the multinational structure of the federation, but to preserve or even strengthen it. In a multinational federation there is no contradiction between integration and the assertion of difference between national units, because integration is simultaneously across and between the units. If one side of this

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Guam (Kymlicka 1995, 1998). Daniel Elazar has called such special arrangements outside the dominant structure of representation federacies (Elazar:1987, Kymlicka 1998: 136–38).

[57] Karl Renner and Otto Bauer proposed a non-territorial federal scheme of personal-cultural autonomy for nationalities in the late Habsburg Empire. The regime of “ethnic proportionality” inside South Tyrol is in aspects an arrangement of this sort. The Ottoman millet system can be mentioned as a historic examples or of non-territorial religious federalism.. Apartheid South Africa was formally constructed as an incongruent federation of “races”. Israel has certain features of both religious and ethnic federalism (concerning the status of Israeli Arabs and strictly Orthodox Jews). Antebellum USA may even be considered a federation divided by the social practice and ideological defence of slavery.

[58] Miller (1998)

dynamic became permanently preponderant, the outcome would be disintegration. The dissolution of a multinational federation may result from either a transformation towards a confederation (as in the first steps of breaking up the Soviet Union) or from an attempted transformation towards a congruous federation or a unitary state which generates secessionist movements reacting against it. Both dynamics are much less developed in traditionally congruous federations which are therefore more stable and show a long term tendency towards strengthening federal authorities at the expense of state and provincial governments. Given the multinational character of the European Union there is little reason to fear, or hope, that the eventual outcome will be a unitary state of the French type or a federal state of the German and US type. But this does not at all imply that political integration towards a community of citizens will soon have reached a point of saturation. Democratic multinational federations like Canada have a federal citizenship which is not thinner in terms of its contents of rights, obligations, and practices than that of unitary or congruous federal states.

Of course, the European Union is a very specific type of multinational federation. In the vertical dimension, the specificity is that it is not a state, but a system of governance and that it is not a nested nation containing various nations inside itself, but a multinational federation which is not itself a nation (or about to develop into one). In the horizontal dimension it is a pure type of incongruous federation. Although not all groups in the EU claiming to be nations are independent member states, all its internal borders are understood as borders between distinct nations and none has the contingent quality of being merely a provincial border that could be shifted without changing the character of the Union itself.

The multinational character of the federation is expressed very clearly in the Treaties when they define the fundamental goal as “an ever closer union among the peoples of Europe”. The Amsterdam Treaty makes this even more explicit by adding that “the Union shall respect the national identities of its Member States” (Article 1(8)). The subsidiarity principle which limits the accumulation of competencies by authorities at the federal level has been sometimes misinterpreted as a corollary of this multinational character. But the two principles involved here are quite distinct: Whereas the former is about the vertical allocation of political powers and acts to some extent as a brake on further integration, the latter is about the affirmation of horizontal difference between the member states as constitutive units and is compatible with further integration. A second misinterpretation is to see this renewed emphasis on national identity merely as a desire to take some steps backwards towards a looser and more confederal type of Union. Quite on the contrary, the expectation in a multinational setting is that the importance of affirming identity differences will grow as more and more policy areas come under federal control. A confederation is an alliance for limited purposes such as military defence or a free trade zone. Policy coordination in these areas does not raise the need for participants to seek recognition of their particular national identities. With regard to their interests they are essentially similar and with regard to their political power they are sufficiently independent and do not have to fear for their identity. It is only when the project of forming a

common polity emerges that the question of respect for national identities is posed. Multinational federalism constructs this polity as a composite of essentially different parts who may in the process of integration lose much of their independence but are simultaneously assured that they can still maintain their difference.

A more serious concern is that affirming the multinational character of the Union will prevent just the kind of internal transformation of national definitions and self-conceptions of membership that has been advocated in the second section of this paper. But this is again neither supported by much comparative evidence from the history of democratic multinational federations nor theoretically convincing. The historical record is that for national groups like the Scots, Catalans or Québecois a more open and less ethnicized conception of national identity has developed alongside the fight for, or actual exercise of, substantial autonomy.[59] The theoretical consideration is that a territorial multinational federation constrains the powers of self-government of its various entities in important ways in order to establish a common liberal citizenship. It does not grant them national self-determination in the sense that they are free to determine their territory or membership. First, their self-rule does not extend to regions and citizens outside the province who speak the same language or are of the same ethnic stock. Second, they have to treat federal citizens of other national affiliation living within their territory as full citizens of the province as well who enjoy the same rights as members of the local national majority (and possibly additional rights as a protected minority). Third, they cannot seal their borders with the other states or provinces but must respect the right to free movement and settlement within the federation at least up to the point where the traditional local majority is threatened to be outnumbered. Even in this extreme case, the principle of multinationality can still be honoured by adjusting internal borders to demographic changes rather than restricting free movement.

Taken together similar liberal democratic constraints on multinational federalism would allow the Union to remove all remaining barriers to free movement, to develop a much more comprehensive federal citizenship and to harmonise the nationality laws of its member states so that they no longer exclude relevant parts of their population from their own citizenship and from Union citizenship. If respect for national identity is incompatible with all this, then the endeavour of building the Union as a democratic multinational federation is bound to fail. However, respect for national identities need not imply preserving them in those aspects which are difficult to reconcile with liberal democracy and with the project of Union integration. National identities evolve and change anyway in response to domestic modernisation, immigration and the external impact of regional or global environments. What respect for national identities requires is not freezing them in their present content but creating conditions under which they can change and adapt to the goals of supranational integration without fear of being assimilated into other national cultures our outnumbered in their own territories. Given

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[59] see Carens (1995)

the strength of national traditions and the powers of self-government of member states within the European Union such fears would be rather far-fetched. Even in the most liberal state, the public spheres of civil societies will to a large degree be always dominated by the cultural and historic traditions of majorities, and especially by their languages. And the involvement of states in reproducing this public culture, most importantly through a system of public education, reinforces this majority effect. This observation answers also to the question raised above in section 3.7 whether an integrated European civil society is a necessary precondition for developing a common citizenship within a federated polity. The civil society of many democratic multinational federal states is deeply segmented along territorial and linguistic lines and it is hard to see why this ought to be different for the much more pronounced incongruity of European federalism.

One indicator for the multinational character of the European Union project is the fact that it has chosen for itself a rather costly policy of using practically all the official languages of its member states as official languages in its internal operations.[60] In contrast to the Union, international organisations like the UN or the Council of Europe, which do not aim at building a common federated polity, can easily select a limited number of official languages (six in the UN and two in the Council of Europe). When Poland, Hungary, Czechia, Slovenia and Estonia join the Union there will be 16 official languages and 240 translation combinations between them (Kraus 1998). It seems obvious that at some point the initial principle of equal recognition for all national languages will have to be abandoned (it has anyway never been implemented for the de facto working languages in the Commission where only French and English are used). The difficulty at the institutional level is about symbolic recognition, not about the mere communicative function of languages. Although the symbolic importance of official languages for the internal operations of the Union should not be underestimated, this is ultimately a cost-benefit issue. Even if the Union should eventually settle for the least costly solution of adopting English as the official language, this would not change its multilingual character as a federation. As long as national languages are kept alive within the member states the Union itself will be multilingual in the sense that its basic texts will be published and its debates will be carried on in the member states in all the various national languages. At the level of citizenship the Union will remain split into various national and linguistic publics whose communication with each other is facilitated by English as the de facto lingua franca, but which remain the more separated the more citizens participate in debates. Opponents of a stronger European integration often point to this fact while proponents tend to downplay it. An alternative approach would embrace multilingualism as a distinctive feature of the European project at the societal level. While the Union may have to settle for one common lingua franca or a small number of official languages, it should actively promote bi- and multilingual education

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[60] In the current 15 member states there are 13 official state languages, all of which except Irish and Letzeburgish are official languages of the Union (Kraus 1998).

programmes in all member states for a wide range of languages and give special support to the smaller language groups.

A legitimate worry about multinational federalism is that it strengthens the position of dominant national majorities but is not responsive to minority claims. This is certainly true for multinational federalism in authoritarian regimes which enhances the power of local majorities to coerce their members into conformity and to suppress or assimilate minorities. In liberal democracies the opposite effect is to be expected. Affirming national identities and cultural differences through the federal structure exposes majorities to claims of minorities, whose members enjoy equal citizenship, that they be granted similar or compensatory rights. Liberal unitary states or congruous federations generally pretend to be neutral between different cultural affiliations in society. While this is an impossible goal with regard to linguistic difference, it will at least guarantee minorities equal individual rights to use their language and to pool their resources for maintaining it. However, such arrangements will generally not promote specific minority rights, such as extensive language programs in public education, which take into account the disadvantage resulting from living in a public culture shaped by dominant majorities. By contrast, once multinational federations acknowledge that members of minorities have a right to equal respect and concern, they are more likely to grant minorities additional protection. The danger is then a proliferation of claims for recognition and special rights rather than an enhanced assimilationist pressure on minorities.

For the European Union respecting the national identities of its member states should therefore neither be understood as an obstacle to further political integration nor as a policy of non-interference with regard to cultural minorities in the member states. Federal protection for smaller or dispersed minorities which cannot form self-governing territorial units within the federation is a common feature in many countries (especially for indigenous minorities). Rather than regarding minority policies as purely internal affairs of its member states, the Union may increasingly have to address the grievances of smaller minorities living there.

An obvious case for such special protection which will become relevant with enlargement of the Union is the situation of the Roma population in Central Eastern Europe. The Council has made a first moves towards recognizing the importance of this issue by adding minority rights as further criteria for membership to the other political principles of Article F. The initial evaluation of candidates in the Agenda 2000 document stated that only Slovakia does not meet this criterion, but has also noted problems in Estonia and Latvia whose large Russian minorities have been for a long time deprived of citizenship and has pointed out that the discrimination of Roma is a general problem throughout much of this region. However, the institutions of the Union have not yet acknowledged that the treatment of national and ethnic minorities cannot merely be used as a one-time screening device before a country is admitted to membership, but ought to be persistently addressed also after admission (and not only in

Central European states). In this regard, as in many others suggested in this report as areas for policy development in the Union, the initiative has so far been with the Council of Europe.[61]

5. Conclusions: a Republican, Societal and Multinational Citizenship of the Union

I have shown that this multinational character of the federation can be interpreted in a way which need not conflict with a republican or societal conception of citizenship. In my conclusions I want to strengthen this point by arguing that none of the three conceptions is fully adequate when taken alone and that they can and ought to be combined.

The republican conception is strongly associated with the idea of civic as opposed to ethnic nationalism. In this view, a nation is not a community of shared culture and (imagined) descent, but emerges from the experience of collective self-government. The proper focus of loyalty and collective identity are therefore the institutions and rules which allow a people to govern itself. This has often been seen as the essence of "Western," French and US-American nationalism. Jürgen Habermas has popularised the related idea of constitutional patriotism (originally coined by Dolf Sternberger) first in the German context and has later applied this idea to the European Union.[62] Bernard Yack criticises the myth of civic nations "as voluntary associations for the expression of shared political principles" (Yack, 1996:197). He argues that it fails to explain why loyalty and attachment are supposed to bind individuals to their particular nation rather than to any other one whose constitution supports the same liberal and republican principles. In his view, a constitutionally focused patriotism makes sense only within the cultural horizons of an already given German, French, American or Canadian nation (ibid. 199). If this is true, the European Union which has no similar shared cultural horizon will face great difficulties in developing a constitutional patriotism strong enough to support the project of further enlargement and integration.

The societal conception could be seen as answering to this with a more down-to-earth perspective of citizenship. When asked how to identify the community of citizenship and who ought to be included in it, this approach answers by pointing to the living reality of societies which are already in many ways bounded by existing states and shaped in their structures by the exercise of state power. At the level of the Union the problem with this idea is that it would require a geographical fusion through mobility and the evolution of an integrated European civil society with a common public sphere and a dense network of transnational associations to make plausible the claim that European citizenship can be based on the actual experience of living in a single European society.

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[61] See the Council of Europe's 1995 Framework Convention for the Protection of National Minorities.

[62] see Habermas (1990, 1996, chap. 4).

The multinational dimension of European citizenship replies to this deficit by showing how incongruous federations, which are divided along cultural and territorial lines, can nevertheless form relatively stable federations with a common citizenship no less comprehensive than that of nation-states. In such federations citizenship is a nested structure of membership so that each individual is simultaneously represented at the federal level and in one of the constitutive units. The problem with applying this conception to the Union is that citizenship may be nested in this way, but national identity is not. While democratic multinational federations may successfully develop a sense of common “civic nationhood” rooted in a shared history, the future-oriented project of building the European Union provides no such background. This is why a republican and societal conception is needed for the citizenship of the Union. This conception will necessarily also impact on and transform to some extent the national definitions of citizenship in the member states.[63]

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[63] The difference in character between Union citizenship and nationality of member states has been pointed out by Joseph Weiler in his critique of the Maastricht judgment of the German Federal Constitutional Court (1995). My disagreement with his analysis is that I see the two conceptions as interdependent. There will be no European *demos* as long as *ethnos* prevails within the national conceptions of citizenship.

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