

**Political Implications of European Citizenship
for a Federal European Union**

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Introduction

Of the 13 million resident aliens in the EC, five million are citizens of EC member states residing in other member states (EC Commission 1986, 20). These resident aliens present a problem for maintaining democratic inclusiveness while EC member states undergo integration. As a Commission report put it,

At present over four million Community citizens are deprived of the right to vote in local elections simply because they are no longer in their Member State of nationality. In a Community of Member States whose basic common characteristic is that they are all democracies, implementation of one of the four fundamental freedoms provided by the Treaty has by virtue of national legislation, led indirectly to the loss of certain political rights. This paradox in the building of Europe cannot be allowed to continue if the principles underlying the democratic political systems of the Member States are to be respected (EC Commission 1988, 26).

The problematic national legislation is a combination of electoral laws that restrict voting rights to citizens and citizenship based on ancestral lineage (*jus sanguinis*) which makes naturalization very difficult.

The above paradox is symptomatic of a deeper underlying theoretical problem: In the context of migration, forms of citizenship based on ancestral lineage, inclusive democracy, and federalism conflict.¹ In this paper, I explore this theoretical dilemma by focusing on the political consequences of intra-EC migration and the attempted solution provided by European citizenship.

It is often assumed that the boundary of the *demos* coincides with the geographical boundaries of the democratic state.² Increasing international migration, however, disconnects the *demos* from the boundaries of the state that the *demos* theoretically rules. This discontinuity is marked by growing numbers of resident aliens who are excluded from the *demos* and thereby call the inclusiveness of democracy into question. Ascribing citizenship at birth primarily on the basis of *jus soli* (birthplace) minimizes this problem because citizenship is automatically granted to the children of resident aliens. The problem is also minimized when naturalization is based on *jus soli*, i.e., on permanent residence in a given territory. When citizenship is based on *jus sanguinis* in both ascription and naturalization, the presence of permanent resident aliens challenges the legitimacy of democracy because, regardless of their length of residence, resident aliens are denied political rights. Moreover, their children do not become citizens in their country of birth and are also denied political rights.

The federation of democratic states that define citizenship by ancestral lineage, as do most EC member states, differs from federation among states that define citizenship by birthplace, as was the case during the founding of the United States. With *jus sanguinis*, resident aliens and their children from federating states are more likely to be denied political rights than if citizenship of all states in a federation is based on *jus soli*. This denial of political rights raises political dilemmas likely to provoke conflict. To illustrate, think of the problems that would arise in the United States if a Maryland couple moved to Pennsylvania and Pennsylvania granted citizenship neither to them nor to their children born in Pennsylvania. Yet this is currently the case for Italians who are permanent resident aliens in Germany, and of Germans in Italy.

Commission member, Carlo Ripa di Meana, singled out the establishment of local voting rights in the EC member state in which these resident aliens live as being crucial to fostering European identity because it would be a "decisive step toward involving the Community's ordinary citizens in their common destiny" (Commission 1988, 5). EC member states have taken that step with the establishment of European citizenship in the Maastricht agreement. European citizenship would give citizens of one member state who are permanent resident aliens in another the right to vote and stand for office in local and European Parliamentary elections in their place of residence. The new European citizenship decreases, but does not eliminate, this particular form of "democratic deficit." Moreover, European citizenship restructures the European *demos* in a way that illuminates the conflict between democracy and federalism.

The argument proceeds as follows. In the first section, I outline the conflict between democracy and federalism in the abstract and identify problems that will be elucidated using historical and contemporary examples in the subsequent sections. In the second section, I demonstrate the problem resident aliens pose for democracy, examine the distinction between *jus soli* and *jus sanguinis* and review the political problems of inclusion that arise from that distinction. In the third section, I describe the development of European citizenship leading up to the Maastricht Agreement. In the fourth section, I argue that dual state\supra-state citizenship is hallmark of federalism but, due to the nature of European citizenship, the political union emerging from the Maastricht agreement differs from traditional federal models such as the United States and Germany³. In fifth section, I assess the recent controversy over European citizenship and argue that the differing structure of political union resulting from European citizenship could make the European Union susceptible to unconventional sources of jurisdictional and political conflicts, change the political dynamics of the accession of new members, and severely complicate any future act of secession. In sixth section, I assess trends in intra-EC migration and evaluate their political significance for the future. In the conclusion, I summarize the core argument and offer a research agenda in the form of an exploration of possible theoretical solutions to the dilemma initially posed.

Democracy and Federalism

Although the Commission reports recognize the paradoxical loss of political rights concomitant with further labor market integration, the underlying theoretical incompatibility among citizenship based on ancestral lineage, inclusive democracy and federation has been overlooked in analyses of European political integration.

Federalist visions of Europe emphasize the development of formal European political institutions (Spinelli 1966), but recent theoretical works on EC federalism (Forsyth 1981; Pinder 1986; 1991; Burgess 1989; Wistrich 1991) do not take into account the stress migration combined with citizenship based on lineage places on federal institutional arrangements. Interestingly, Friedrich (1969) addresses the subject of intra-EC migration by undertaking a detailed examination of guest workers from Italy and France in Germany, but he does not explore the bearing of intra-EC migration on federalism. In a comparison of federalism in the US and the EC, Garth (1986) offers an excellent assessment of rights of mobility and citizenship and their consequences for social welfare, but he does not identify problems of political participation and their consequences for a federal union. Lepsius (1992) identifies conflicts between democratic legitimation and the drive for an American-styled federal state in Europe in an examination of federal models for Europe. He is sensitive to the problems of national identity and citizenship based on national rather than European identity. Unfortunately, he does not take the differing principles of citizenship into account nor does he investigate the consequences of intra-EC migration in conjunction with these principles.

Neo-functionalism assumes that a European political identity will develop in the course of increasing economic integration (Haas 1958, 16) without fully examining the political ramifications of the free movement of workers with respect to member state citizenship. Ireland (1991) points out that migration will produce some political "spillover" in the form of EC-level immigrant interest groups, but he does not investigate problems of citizenship based on *ius sanguinis* and the consequences of intra-EC migration for political union resulting from the dominant form of citizenship in Europe. The major exception to the above literature review is Evans (1991) who argues that European integration challenges established citizenship laws of the member states. Evans does not, however, take the argument in the other direction. That is, he does not explore the consequences of member state or European citizenship laws for federalism.

The theoretical conflict between democracy and federation is also not addressed in general federal theory (Wheare 1963; Riker 1964; Duchacek 1986; King 1982; Elazar 1987). This omission is rooted in the powerful example of the invention of modern federalism with the complementary development of democracy in the United States. The American experience inspired theorists (Kant 1795; Saint-Simon 1814; Tocqueville 1835 and 1840; Mazzini 1864, 275; Friedrich 1968, 196-199; Duchacek

1986, 96-97) to view democracy and federation as basically compatible.⁴ American exceptionalism, this time in its form of citizenship, was not taken into sufficient account in the process of theoretical generalization.

The problem can perhaps be best approached by examining Carl Friedrich's understanding of the relationship between democracy and federalism. Friedrich identified "absolutist democracy" as unrestrained majority rule and acknowledged that it "is incompatible with federalism because it does not permit an effective division of power" (1968, 197). He credits this incompatibility for part of the opposition to European federalism among radical democrats, particularly the British Labour Party, but then argues,

These difficulties can be resolved, if a constitutional democracy, instead of an absolutist one, is taken as the basis of theoretical analysis and of practical operation. All that is required is to recognize that every member of the inclusive political order is part of, that is to say, a citizen of, two communities operating on two levels, the regional and the national (federal). A given group of persons, A1, A2, A3...., and another group, B1, B2, B3, "belong" not only to community A or B, but also to community AB, which includes them both and is therefore a composite community. The participating decisions of these persons, their "will" in the old-fashioned terminology, shape communal decisions of AB as well as either A or B. The inclusive community as well as the included community being politically organized, democracy, far from clashing with federalism, now is seen to require it whenever a composite community exhibits more than one level of effective communal existence in terms of distinctive values, interests, and beliefs (Friedrich 1968, 197).

This argument only holds universally if there is no migration between A and B. If B3 migrates to A, three options exist. One, B3 becomes a citizen of community A and ceases being a citizen of community B. Two, B3 stays in A but does not become a citizen of community A and remains a permanent resident. Three, B3 becomes a citizen of community A, but also retains the citizenship of community B.

All three options can occur at the level of A and B within the context of the formation of the composite community AB, but only option one (B3 becomes a citizen of community A) enables the formation and functioning of AB to develop as Friedrich describes. For B3 to be able to become a citizen of community A, however, the citizenship laws of community A could not be based exclusively on *jus sanguinis*. At least naturalization would have to be governed by *jus soli*. In the context of migration, Friedrich's argument only holds if citizenship in A and B are based on *jus soli*.

With option two (B3 stays in A but does not become a citizen of community A),

the democracy of A is compromised by the exclusion of B3. By remaining in community A, B3 becomes a permanent resident alien. Excluded from community A's *demos*, B3's status challenges the inclusiveness of democracy in A.⁵

Option three (B3 becomes a citizen of community A, but also retains the citizenship of B) introduces dual membership, not only in terms of the individual belonging to both community A and the federal composite community AB, but also at the level of A and B. That is, as soon as B3 becomes a member of A and retains membership in B, both A and B become composite communities themselves. Rather than maintaining two distinct communities and having a composite one formed by their union at the federal level, three composite communities would form. The inclusiveness of democracy in A and B might be less compromised than with option two, but the nature of democracy in A and B would be altered by the change delineating A and B as communities. In this way, A and B do not retain their distinctive identities at the subunit level as Friedrich implied. By making A and B composite communities and altering the nature of their democracies, such dual membership becomes a source of potential political conflict within A and B and between them that, in turn, reverberates through the federal composite community of AB.

The permutations of such dual membership can vary greatly on several dimensions including civil rights, social rights, political rights and military obligations. Full citizenship status in both A and B (i.e. multiple citizenship) is at one end of the spectrum of this variation. A set of mutual guarantees against discrimination based on nationality in employment, remuneration and work conditions (i.e. Title III, Articles 48-51 of the Treaty of Rome) is at the other end. Forms of dual membership between these extremes include social rights such as mutual provision of social security, health benefits and transferable pensions, as well as political rights such as permitting one another's citizens to vote and run in labor union elections and the partial inclusion of one another's citizens in the *demos* as established by European citizenship.

Migration, Principles of Citizenship and Democratic Inclusiveness

Although the issues resident aliens raise for justice have been explored by Walzer (1983), the problem resident aliens pose for democracy has received little attention in recent democratic theory.⁶ This omission is understandable given that democratic theory usually assumes a bounded group of people who comprise the *demos* that rules (Whelen 1983). By the end of World War II, universal adult suffrage became the generally accepted standard for defining the *demos* in most democracies. Once this happened, debates over which parts of the population should be enfranchised subsided and democratic theorists could focus almost exclusively on the self-government of already constituted *demoi*.

Conceptualizing the *demos* in this way can conflate geographic boundaries with the boundaries defining membership in the *demos*. An individual joins an existing *demos* when he or she becomes a citizen and can exercise full political rights. One can cross the geographic borders of the state and live there for the rest of one's life without ever crossing the boundary of the *demos* and entering the realm of citizenship. Universal adult suffrage may establish an inclusive *demos* generally regarded as legitimate, but as the number of inhabitants without citizenship increases, the legitimacy of the delineation of the *demos* by universal adult suffrage is more susceptible to challenge.

Along with Whelen, Dahl is one of the few democratic theorists to seriously consider the problems involved in bounding the *demos*. After examining the problem of inclusion, Dahl stipulates as one criterion of the democratic process that, "(t)he *demos* must include all adult members of the association except transients and persons proved to be mentally defective" (Dahl 1989, 129). Unfortunately, Dahl too casually accepts the rightful exclusion of "transients." By focusing on tourists rather than permanent resident aliens, Dahl neglects the fate of millions of European guest workers.⁷

Because resident aliens are foreigners who are, technically speaking, transient, one can argue that they should be excluded from the *demos*. Because they are subject to the laws of a democratic polity, participate in its society and culture, contribute to its economy, and pay taxes, one can also argue that they should be included.

To illustrate the argument for exclusion of transients, Dahl gives the example of a tourist who happens to be in Paris on election day. Even if the tourist met all the qualifications for voting, she could leave after the election and not bear responsibility for the decisions she made. Therefore the tourist "ought to be excluded under the assumption that binding decisions should be made only by members" (Dahl 1989, 128, note 11). The problem then becomes one of defining "transient." Dahl does confess that "the definition of adult and transients is a potential source of ambiguity" (Dahl 1989 129). He then explores the ambiguity of adulthood, but drops the subject of transience and does not broach the subject of whether or not to include children born to transients.⁸

Dahl's argument for excluding transients from the *demos* does not hold when those transients are temporary workers who become permanent resident aliens. One can argue that guest workers' rights to reside in host countries are of a contractual nature, in many but not all cases,⁹ and therefore they freely consented to their transient status. Walzer counters that this kind of consent is not sufficient in a democracy: "Political power is precisely the ability to make decisions over periods of time, to change rules, to cope with emergencies; it can't be exercised democratically without the ongoing consent of its subjects." (1983, 58). Consistently subject to the laws of a democratic polity, permanent resident aliens have resided in their host

countries long enough to suffer the consequences of laws they could have participated in making had they been given the political rights to do so. The analogy between resident aliens and tourists only holds for some limited amount of time.

Once resident aliens become permanent, one can make a strong argument that denying them political rights and denying their children citizenship are both unjust (Carens 1989). Walzer goes as far as generating his reconceptualization of justice by pointing out the constitutive nature of a community's decision rule regarding new members.

The idea of distributive justice presupposes a bounded world within which distributions take place....The primary good that we distribute to one another is membership in some human community. And what we do with regard to membership structures all our other distributive choices (Walzer 1983, 31).

While European welfare states achieve a high degree of equality for their members, Walzer argues that it is not the members'

equality but their tyranny that determines the character of the state....Democratic citizens, then have a choice: if they want to bring in new workers, they must be prepared to enlarge their own membership; if they are unwilling to accept new members, they must find ways within the limits of the domestic labor market to get socially necessary work done (Walzer 1983, 61).

Although the questions of justice are very salient with respect to resident aliens, the problem of resident aliens goes beyond issues of distributive justice -- the status of resident aliens can be considered a touchstone of democracy in a highly mobile world. Just as decisions that bound a community precede distributive justice, defining a *demos* precedes democracy (Whelen 1983, 15-16; Dahl 1989, pp 193-209). For instance, the initial boundaries of the geographical units that the established *demos* of Western Europe now rule are historically given, which often means that they are given by a long history of war (Tilly 1975). The geographical boundaries of these states may have bounded their *demos* well enough at the time of the inception of democracy in each of these states, but these same boundaries cannot adequately delineate the *demos* in the context of extensive migration. If inclusiveness is a fundamental criterion of the democratic process, present decisions on who is allowed to join the *demos* are indicative not only of how just a society is but also of how democratic a polity is. Only recently, as guest workers became permanent resident aliens in established European democracies that base citizenship on *jus sanguinis*, have the inherent theoretical problems posed by resident aliens become evident in political practice (Miller 1978; Bernard 1978; Heisler and Schmitter Heisler 1985).

As modern citizenship developed, democratic states adopted either the *jus sanguinis* or the *jus soli* principle for delineating which inhabitants of the state could become citizens and therefore be included in the *demos*.¹⁰ Rooted in the English feudal law stipulating that those born on the land of a lord were his subjects, *jus soli* became the primary rule for delineating who was or was not a subject of the king of England (Dummet and Nicol 1990, 24) and, thereby, became an initial qualification necessary for political participation.¹¹ British subjects in America who renounced their adherence to Britain nevertheless retained *jus soli* for regulating the ascription of citizenship and naturalization in their new states. Also, countries formed through immigration, such as the United States, Canada, the Latin American countries and Australia, tended to base citizenship primarily on *jus soli* because the principle permits more rapid assimilation of immigrants (Hammar 1990, 71-72; Brubaker 1990, 169-172).¹²

With few exceptions, *jus sanguinis* became the norm ascribing citizenship at birth on the European continent,¹³ but rules governing naturalization differ greatly. In Germany, *jus sanguinis* has strictly governed both ascription at birth and naturalization.¹⁴ In France, ascription of citizenship at birth is based on *jus sanguinis*, but *jus soli* is extensively used in naturalization. The citizenship laws of most other continental countries fall in between these two extremes. Brubaker (1992 1-6) persuasively argues that sequencing of state-formation was crucial to the differing paths of citizenship development in France and Germany. French citizenship became inclusive and assimilationist in character because it developed in the context of a territorially defined state. German citizenship came to be understood in ethno-cultural terms because it developed in the context of defining a nation prior to a unified state. Moreover, Hammar (1990, 71-72) and Brubaker (1990, 169-172) point out that countries experiencing great out-migration, such as Germany, the Scandinavian countries and Italy, tended to base citizenship primarily on *jus sanguinis* because it encourages emigrants to retain their citizenship and pass it on to their children so as to facilitate their return and closer ties with their homeland.

Although adoption of *jus sanguinis* often coincides with high rates of emigration and *jus soli* with immigration, the principles of citizenship are not dependent on the direction of migration.¹⁵ Practically speaking, however, the distinction between *jus soli* and *jus sanguinis* is a function of migration. As Brubaker (1989b, 102) notes, "In a zero migration world, they would have identical effects: every person born of citizen parents would also be born in the state's territory, and vice versa." Once a child is born to a foreigner, a state must choose whether or not to grant citizenship to that child. Such a choice instantly sets a precedent and forces every state to base citizenship on one principle or another.

Neither principle of citizenship is absolute in its application. Ascribing citizenship at birth strictly by the principles of *jus soli* or *jus sanguinis* leads to practical difficulties which have prompted some moderation of each principle with

certain attributes of the other (Brubaker 1989b, 102-108). Without moderating the principle of *jus soli* by adding a degree of *jus sanguinis* in naturalization, for example, an American tourist's child born in Germany could become a citizen neither of the US nor of Germany. In practice, the United States grants citizenship to such children upon their return through a simple act of registration. Without moderating the principle of *jus sanguinis* in ascription, the American descendants of 19th century German immigrants would continue to be not only US citizens but also German citizens, regardless of whether they had any allegiance to, or even interest in, Germany. The 1913 German citizenship law (upon which current law is still based) revoked the citizenship of German emigrants who voluntarily took on the citizenship of another state or failed to fulfill military obligations, but made it possible for them, or their descendants, to regain it.¹⁶ Nevertheless, inclusive interpretation of Article 116, Section 1 of the Basic Law¹⁷ has effectively extended citizenship to ethnic Germans from Eastern Europe upon arrival in Germany, even to those descended from the Germans who settled in Romania and Russia centuries ago.

Until the late 1960s few Europeans considered the problems resident aliens raised for West European democracies. Many politicians simply thought the problem would go away as unemployment increased and guest workers returned home. When guest workers' temporary contracts expired, host countries did not enforce contractual obligations through expulsion because, as liberal democracies, their own principles of civil rights constrained them (Hollifield 1992, 169-213). As host countries accepted the fact that many guest workers were becoming permanent resident aliens, these countries developed various approaches to ameliorate the situation. In some cases, countries encouraged naturalization (De Rham 1990), paid guest workers to leave (Hammar 1990, 18-19), or gave them more civil rights (Hammar 1990a), economic rights (Vranken 1990; Brubaker 1989c), and even limited political rights short of the vote (Miller 1981; 1989).

Assimilation of migrants by naturalization remains difficult because almost all continental European countries ascribe citizenship at birth primarily on the basis of ancestral lineage. *Jus sanguinis* is a manifestation of an ethnically-based national identity. As Brubaker put it, "*Jus soli* creates and recreates a territorial community, *jus sanguinis* a community of descent" (1990, 168).¹⁸ Anyone can "become" an American or Canadian, because citizenship is the manifestation of political identity toward a territorial community and it is realized through taking on new political loyalties. In contrast, not everyone can "become" a German or Swede in the same way because German or Swedish identity is ethnically delineated.

When ascription of citizenship at birth is governed by *jus sanguinis*, inclusion of the children of permanent resident aliens in the *demos* requires the addition of the principle of *jus soli* in naturalization, as has been most extensively done in Europe by France. The children of resident aliens in France automatically become French citizens unless they explicitly refuse¹⁹, thereby giving France a relatively high

naturalization rate (Brubaker 1992, 77-84). Naturalization based on the principle of territory also includes migrants who have established residency for a prescribed period of time.

The role of *jus sanguinis* in constructing ethno-national identity can make simultaneously maintaining *jus sanguinis* and encouraging naturalization somewhat contradictory in both host and home countries. If foreigners are routinely naturalized as citizens of the host country and their children and grandchildren become citizens by virtue of lineage, the practical distinction between *jus sanguinis* and *jus soli* dissipates and citizenship is eventually divorced from ethnicity. Difficulty of naturalization marks the degree to which *jus sanguinis* has an implicit ethnic content. Although some countries that base citizenship on *jus sanguinis* accept the reality of immigration and encourage naturalization, like Sweden and the Netherlands, others, like Germany and Switzerland, maintain that they are not "immigration countries" and therefore have discouraged naturalization.²⁰

Even if a host country added some naturalization laws based on *jus soli* to a set of citizenship laws primarily governed by *jus sanguinis*, thereby offering migrants easier naturalization, *jus sanguinis* in migrants' home countries inhibits naturalization. For instance, Italian guest workers find German citizenship difficult to obtain not only because German laws discourage naturalization, but also because Italy's own laws encourage these guest workers to keep their Italian citizenship. In addition to basing citizenship on *jus sanguinis*, some states prohibit renunciation of citizenship by emigrants attempting to naturalize in another state until they pay for the education they received and/or complete required military service (Hammar 1990, 8, 116). For example male children of Greek or Turkish parents born in West European countries may also still be subject to conscription in their parents' home countries if they ever return to visit, even if they have served in the military of the country in which they were born and eventually naturalized. They are then left with the choice of naturalizing to their country of birth and not returning to their parents' home country, naturalizing and serving in the military of both countries, or not naturalizing (Hammar 1990, 116-117). Moreover, Turks who renounce their Turkish citizenship cannot own or inherit land in Turkey (Carens 1989, 47). Such circumstances, combined with restrictive naturalization rules governed by *jus sanguinis* in many host countries, keep naturalization rates low, as has been the case in Germany (Hammar 1990, 84-105, Brubaker, 1992 77-84). Achieving high rates of naturalization may, therefore, also require a shift in citizenship laws from *jus sanguinis* to *jus soli* in immigrants' home countries.

Host countries could lessen this problem by allowing migrants to retain their home country citizenship, i.e., allow multiple citizenship. Secondary to the international norm that everyone should belong to one state or another, however, is the norm that everyone should belong to only one state (Council of Europe 1963). Following the logic of the classical European states system, multiple citizenship is a

"contradiction in terms" (Aron 1974, 638). Nevertheless, increasing migration and evasion of the conventions against multiple citizenship have led to its proliferation in practice.²¹

Faced with the difficulties inherent in naturalization and the dilemmas of allegiance and military service involved in multiple citizenship, some countries have opted to partially include into their *demos* those resident aliens who do not naturalize. Sweden granted resident aliens the vote in local elections in 1975 and, thereby, challenged the standards of democratic inclusiveness elsewhere in Europe by offering countries with high proportions of resident aliens an alternative to dealing with the problem that stopped short of abandoning *jus sanguinis*.²² In the late 1970s and early 1980s most EC countries introduced similar proposals. Denmark and the Netherlands followed Sweden's example,²³ but electoral reforms were stymied in Belgium, France and Germany, often by extreme right-wing movements directed against foreigners (Rath 1990).

The Development of European Citizenship

European citizenship is rooted in workers' rights to free movement enshrined in the Treaty of Rome and the political rights that are implicit in the institution of the European Parliament²⁴. The gradual development of European citizenship has been governed by a dynamic of the Commission, Parliament and Court of Justice securing the Treaty's guarantees of free movement and the Commission and Parliament pushing for the establishment of political rights implicit in the Treaty.

The drive for political rights began with the Parliament's 1960 draft convention on direct elections to the Parliament. The draft called for a uniform electoral system across member states that also enabled citizens to vote and run in elections in the member state in which they resided. The proposal did not garner sufficient support in the Council and progress on political rights was postponed until the 1970s. In order to secure direct elections the Parliament moved more to the lowest common denominator of agreement when the issue was pursued again before the 1974 Paris Summit (Commission 1975). This meant that uniformity of electoral procedures, especially regarding resident aliens, went by the wayside. Eventually, some member states allowed resident aliens from fellow member states to vote in their place of residence and some member states did not. Some provided consular voting facilities for their citizens in other member states, some did not (van den Berghe 1982, 133).

Member states first considered extending local voting rights to resident aliens from fellow EC-member states at the 1974 Paris Summit and instructed the Commission to prepare a report on the subject. The report stated that full political rights at all levels of member state government would be "desirable in the long term from the point of a European Union" (EC Commission 1975, 28). Such constitutional changes, the report acknowledged, would not be possible for the time being and,

therefore, advocated local voting rights as an interim solution. Even this limited proposal died along with the uniform electoral procedures for Parliamentary elections in 1979.

Eventually, the issue of political rights for resident aliens was revived by the Single European Act (SEA) because it was anticipated that the SEA's goal of eliminating barriers to the movement of persons, services and capital would eventually increase international population mobility within the EC. In June, 1985, the Committee on a People's Europe, chaired by Pietro Adonnino, called for expanding political rights for resident aliens in European Parliamentary as well as local elections (EC Commission 1985). After the European Parliament voiced its support of local suffrage later in November, the Commission prepared a report (EC Commission 1986) for the Parliament to be transmitted to the Council. The report considered electoral reforms in Sweden, Denmark, the Netherlands and Ireland as potential models for Community initiatives on local voting rights. It also analyzed the legal and constitutional frameworks of member states within which reforms would take place as well as EC demographic statistics on resident aliens. The report pointed out that resident aliens from fellow EC member states were effectively disenfranchised by moving. This loss of political rights violated the principle of equality for those EC citizens who availed themselves of the opportunities made possible by the SEA and was itself a barrier to movement. In 1988, the Commission proposed that the Council should issue a directive establishing local voting rights (EC Commission 1988).

Members of the Council did not act on the Commission's initiative until Belgium (1990) included a proposal for European Citizenship in its memorandum to its fellow Council members advocating an intergovernmental conference on political union. Once the Kohl-Mitterand letter to the Irish Presidency made it clear in April 1990 that such a conference would take place, Prime Minister Gonzalez of Spain proposed to the members of the European Council that European Citizenship be introduced into the Treaty. In September of 1990, Spain became the primary advocate of European citizenship when it proposed that the Treaty on European Union should include a separate Title on European citizenship and offered a working draft (Spain 1991).

The Spanish proposal proved quite popular. Greece (1990), Denmark (1990), and Portugal (1990) voiced their support through memoranda during the prelude to the intergovernmental conference.²⁵ The European Council statement issued after the Dec. 14-15, 1990 meeting in Rome noted the "consensus among Member States that the concept of European Citizenship should be examined" (EC Council 1990). Indeed, it became one of the five subjects to which the Council instructed the intergovernmental conference to give particular consideration.

Eventually, the Treaty on European Union incorporated most of the original

Spanish draft. Written as a separate part of the Treaty, European citizenship entitles every citizen of a member state citizenship of the Union. This citizenship provides the right to move and reside within the Union, the right to vote and stand for election in local and European parliamentary elections in the citizen's place of residence, the right to diplomatic and consular protection of fellow member states in countries in which the citizen's member state is not represented, the right to petition the European Parliament and the right to register complaints to Community institutions (except the Court) with an Ombudsman (Council and Commission 1992, 15-16).

European Citizenship and EC Federalism

Given that the majority of EC member states base citizenship on *jus sanguinis*, resident aliens from fellow EC member states are often excluded from the *demos* in which they reside even after their residence becomes permanent.²⁶ In this way, inclusive democracy, forms of citizenship based on lineage, and European political union conflict. To have all three, there must be a compromise of either democratic inclusiveness, *jus sanguinis*, or the traditional federal political structure envisioned by the Community's founders and many current European leaders. This conflict has become evident in the compromise solution adopted to mitigate it, namely European citizenship and its concomitant restructuring of the European *demos*.

If the Treaty on European Union is eventually ratified by Denmark and Great Britain, the particular form of European citizenship incorporated in it would make an emerging European federation different from the traditional models of federalism followed in the United States or Germany. Federalism denotes the division of powers between a general government and the governments of the federation's constituent geographical subunits (Wheare 1963, 2; Riker 1964, 11). In traditional models of democratic federal systems, each level of government has a different *demos*, but the *demos* is layered telescopically. Every member of the *demos* of a smaller subunit is a member of the larger unit to which it geographically belongs. European citizenship would bound political units so that the composition of European Parliamentary and local electorates would vary from the national and regional electorates depending on the level of intra-EC migration.

As Dahl points out, the subunits of a federal system are not just "creations" of the national government and the subunits' jurisdiction is not simply delegated to them by the national government. Were it so, these systems would not be federal but rather "unitary" because the national government would have control over the agenda of political life and a national majority could overrule subunit decisions (Dahl 1989, 197-98).

Dahl then refers to the EC's transnational federalism as a "mirror image of federalism within one country" (Dahl 1989, 198) and uses this analogy to argue that

the questions federalism pose for democratic theory are not obsolete. Dahl shows that advocacy of unitary democracy is usually based on the pervasive assumption of the nation being the focus of central government rather than the nation being a subunit in a transnational federal system. He then discusses the issue of appropriateness of the democratic unit in a dialogue between Jean Jacques (a proponent of unitary democracy) and James (a proponent of federal democracy). Through this dialogue, Dahl shows that the location of agenda setting power in either the national government or the subunits, as well as which majority rules, is not based on any inherently democratic principles; it is the result of history. Decisions about agenda and which majority rules are thus more arbitrary than one may suppose. Dahl concludes,

we cannot solve the problem of the domain and scope of democratic units from within democratic theory... The criteria of the democratic process presuppose the rightfulness of the unit itself. If the unit itself is not proper or rightful -- if its scope and domain is not justifiable -- then it cannot be made rightful simply by democratic procedures. (1989, 207)

Dahl does propose, however, a set of criteria upon which to judge the proper domain and scope of a democratic unit. The first is that the "domain and scope be clearly identified. It is particularly important that the domain -- the persons who comprise the unit -- be clearly bounded." (1989, 207) By extending the vote in local elections to resident aliens, the Netherlands, Denmark and Ireland have blurred the domain of the democratic unit. On the national level, the domain is bounded by national citizenship. On the local subunit level, theoretically, a citizen from any other country in the world could be within that domain.

By enfranchising resident aliens in local elections, the Netherlands, Denmark and Ireland have set a standard for democratic inclusiveness and the new European citizenship has, in part, incorporated that standard. This "European solution" will extend resident alien suffrage legislation in countries where it was previously rejected. Suffrage will be limited to citizens of EC member states and to local suffrage, however, instead of encompassing full suffrage extended to all resident aliens. While European citizenship might make democracy in France, Belgium and Germany more inclusive, it also makes the exclusion of non-EC citizens politically more acceptable.

If the Treaty on European Union is ratified, however, the resulting political union and the European federation projected to emerge from it would not be "a mirror image" of national federalism, as Dahl contends, because the European Union would have segmented citizenship.

To clarify the notion of segmented citizenship in the European Union it is useful to make an analogy to the United States, comparing the US federal

government to the EC, American states to EC member countries, and American cities to European cities. It would be as if in the United States, someone born in Philadelphia who then moved to Los Angeles retained her Pennsylvania "citizenship." She could vote for the mayor and city council of Los Angeles. She could also vote for the governor and state legislature of Pennsylvania. In congressional and presidential elections, she could vote for a member of either the California or Pennsylvania delegation to Congress and the Electoral College.

Such segmented citizenship violates Dahl's criterion that the boundary of the *demos* be clear. Essentially Europeans face a dilemma between the democratic criterion of inclusiveness and Dahl's practical criterion of clear boundaries. Dahl argues that "the more indeterminate the domain and scope, the more likely that the unit would, if established, become embroiled in jurisdictional squabbles or even civil wars" (1989, 207).

Basing citizenship on *jus sanguinis* inhibits the naturalization of people moving from one EC member state to another and consequently minimizes the incorporation of intra-EC migrants into the polity in which they live. Since residence rather than citizenship is the criterion for political participation in states, the resident of one American state moving to another need only change voter registration to be included in the new polity. Even that process will be simplified by the so-called "motor-voter" law which enables people moving from one state to another to register to vote when they apply for a new driver's license.

One may argue that this comparison between the US and the EC is unfair because the US is a federation and the EC can at best be characterized as a *sui generis* polity between confederation and federation. This rebuttal does not hold because full political rights were given to people who moved from one state to the other before the US Constitution was ratified.²⁷ Retaining the English common law principle of *jus soli* and following electoral practices established in colonial America (Bishop, 1968), property and residence entitled a free man to political rights in the early American states. Naturalization generally involved acquiring property and establishing residence for a specified period,²⁸ except in certain less-populated territories over which states had conflicting claims.²⁹ In 1781, the Articles of Confederation established equal rights for inhabitants of one state in the others.³⁰ By 1785, the decrease of wartime suspicions and resolution of conflicting territorial claims enabled *jus soli* to become well established as the principle governing naturalization of citizens from other states (Onuf 1983, 64). This enabled the states to avert problems two years later at the Constitutional Convention in Philadelphia. Citizenship based on *jus soli*—effectively eliminated—problems of maintaining democratic inclusiveness while establishing a federation with a highly mobile population.

European Citizenship: Current Controversy and Potential Consequences

Some day a federal Europe may have a form of European citizenship giving full political rights to residents of one EC member state who move to another, as hoped for by the Commission (1975) and advocated by federalists like Wistrich (1991, 90). In such a system, for example, a British citizen who established permanent residence in Paris could vote in elections for the mayor of Paris, a member the French Parliament and a member of the French delegation to the European Parliament.

Such an "American solution" seems quite remote given the opposition in France to even giving British citizens the vote in local elections. French center-right and right-wing parties voiced their opposition in the referendum on ratification of the Maastricht accord. When the Maastricht Accord was signed, the Rally for the Republic (RPR) party's General Secretary Alain Juppe (now foreign minister) said that the agreement contained "some good things" but European citizenship was "unacceptable" and that the RPR would oppose changing the constitution in order to give non-citizens the vote (Agence France Press, Dec. 11, 1991). A National Front candidate argued against European citizenship by calling attention to the threat posed by the British who had moved to France's Dordogne region, one of the most contested regions during the Hundred Years' War (Pfaff 1992). Given that European citizenship entails constitutional changes, in the face of neo-Gaullist opposition leading up to the parliamentary debate on ratification of the Maastricht Treaty, the Socialist government was forced to accept an amendment diluting the provision giving resident aliens the vote in local elections (Reuters, June 17, 1992). Given the landslide victory of the center-right coalition in the recent French Parliamentary election, it is not likely that the French government, nor the French electorate for that matter, would consent to full political rights for resident aliens in the foreseeable future.

Although French opposition to local voting rights has received much attention due to the razor thin margin of the French referendum on the Maastricht agreement, it is doubtful that an American-style federal system granting full political rights to migrants from fellow EC-member states would currently be acceptable to any of the EC member countries. One need only look to EC applicant Sweden, the most liberal European country in this respect. Resident aliens are permitted to vote not only in local elections but in regional ones as well. The Swedish Parliament, however, rejected resident alien voting in national parliamentary elections (Rath 1990). Even if several EC member states eventually granted full political rights to resident aliens from fellow member states, unanimity of the twelve member state governments is required for treaty revisions. The absence of full political rights for resident aliens in any EC member state combined with the necessity for unanimity means that the chances are rather remote for EC constitutional development to follow the traditional model of federalism in the foreseeable future.

If the traditional model of federalism is not on the horizon and the Treaty on

European Union is eventually ratified, the restructuring of the European *demos* may yield unanticipated consequences.

For example, the new electoral system arising from European citizenship may provoke problems based on the differences between the EC member states that are unitary democracies (France) and those that are federal (Germany). Resident aliens from France voting in local elections in Germany would participate in setting the agenda and, if part of a majority, rule on issues within the local subunit's jurisdiction. Resident aliens from Germany voting in local elections in France, however, would find the agenda of their political choices set in Paris in a system in which as German citizens they would have no say. As European citizens voting for a strengthened European parliament, however, Germans would be part of yet another *demos*. Through supporting certain constitutional and policy changes at the EC level, these same Germans could help set agendas for, and overrule, the national French majority. Moreover, divergent naturalization principles could intensify discrepancies over time because children born of German parents in France would automatically become citizens when they became eighteen while children of French citizens born in Germany would not automatically become German citizens.

Also, the new European citizenship is a form of "deepening" the EC that may preclude some "widening."³¹ Granting full EC membership to countries such as Poland, Romania, parts of the former Yugoslavia or Turkey would entail giving the vote in local elections to resident aliens, whose aspirations for rights (the least of which, being the right to stay) have already triggered nationalist reactions in many EC member states. Accession to the EC would then take on a new meaning, changing the terms of debate on accepting new members in the domestic politics of member states. European citizenship would also have ramifications for the domestic politics of countries aspiring to EC membership. For instance, if Poland became a member of the EC, resident aliens from Germany would be able to vote in local Polish elections. By altering the framework of domestic politics regarding accession, within both EC members and applicants, European citizenship adds a new dimension to international relations in Europe.

The potential of member state secession from a future European federal union including states that retain citizenship primarily based on *jus sanguinis* is more politically explosive. In a discussion of EC federalism, James Buchanan argues,

There must also be some explicit acknowledgement, in the contract of establishment, of the rights of citizens in the separate units to secede from union, upon agreement of some designated supra-majority within the seceding jurisdiction (1990, 7).

The mechanics of secession could be bedeviled by large populations of resident aliens from fellow EC member states. For instance, a supra-majority of a member state's

citizens might vote for secession in a national referendum. In contrast, if all its "European citizens" (the member state's citizens plus resident aliens from fellow EC member states and their descendants) were allowed to participate in the referendum, the same supra-majority necessary for secession might not be attainable.³²

Intra-EC Migration: Trends and Significance

One may argue that the political consequences of intra-EC migration are not all that important because, contrary to previous expectations, European integration has not greatly increased intra-EC migration. Based on this past experience, economists have argued that the Single European Act's partial removal of barriers to labor mobility will probably not increase the migration of industrial workers within the EC (Straubaar 1988; Werner 1992). Nevertheless, other changes may eventually increase the number of resident aliens from fellow EC member states, the occupational mix the existing flow of migration is changing and the political significance of migration is not simply a function of its magnitude.

First of all, Maastricht's formalization of European citizenship divorces permission to reside in a fellow member state from employment, meaning that opportunities increase for migration beyond traditional industrial labor flows. Moreover, due to the European wide recognition of professional credentials stipulated by the General Systems Directive (Orzack 1991), professionals will be enabled to provide their services anywhere in the EC, students will be freed from career limitations on getting degrees in other countries and professionals nearing retirement will be able to purchase homes abroad and still practice part-time. The internationalization of European business has also led to a restructuring of firms that fosters migration of highly skilled corporate employees (Salt 1992). An increase of migration of the highly skilled has already been documented and is anticipated to continue in the future (Werner 1992).

The number of resident aliens from fellow EC member states is not completely dependent on current trends of intra-EC migration. For instance, as resident aliens have children in countries that define citizenship by lineage, their numbers increase. Also, if the EFTA countries, Turkey, Poland, Hungary, the Czech Republic, Slovakia, or Slovenia and Croatia are admitted to the EC in the future, more of the approximately thirteen million resident aliens currently in the EC would be redefined as resident aliens from fellow EC countries joining the present five million people already in that category. Some resident aliens in these newly admitted countries, for example Germans in Poland or Hungarians in Slovakia, would also fall into the overall EC category of resident aliens from fellow EC member states and increase the total.

From the standpoint of empirical social science, it can be argued that the political significance of the situation of resident aliens from fellow EC member states

is marginal because they only constitute approximately 1.45% of the EC's total population. Resident aliens from non-EC member states, however, constitute 2.32% of the total population, yet few political scientists today would argue that these migrants are not politically significant. Is there some threshold between 1.45% and 2.32% of a population at which point their situation becomes politically significant?

If magnitude of migration flows alone is not enough to determine significance, one must look to the composition of those flows. Resident aliens from EC member states are more likely to be of similar racial, ethnic, religious and socioeconomic backgrounds. Therefore, one may argue that the fewer the differences between resident aliens and members of the host society the less likelihood for conflict between them. While this line of reasoning intuitively makes sense, it may not be germane with respect to questions of the political rights of ostensibly "European citizens" and equality of treatment. That is, in the context of greater similarities, the outstanding difference -- citizenship status -- is more pronounced.

This factor may prove especially important when one pauses to consider the consequences of increased migration of professionals, corporate managers, entrepreneurs, highly skilled laborers and middle class retirees. Since the degree of political participation is correlated to education and income, the changing composition of the migrants may lead to more demands for political rights by the migrants themselves. For instance, a property-owning, tax-paying professional who cannot participate in the decision-making regarding local issues such as, police and fire protection, health care, education, etc., which affect her family's daily life may be more inclined to demand political rights than a poorly-educated, low-paid construction laborer. Middle-class professionals are also more apt to muster the political power necessary to realize their objectives.

The political significance of intra-EC migration also goes beyond questions of magnitude because, in constitutional and legal terms, the circumstances of resident aliens take on meanings of a somewhat absolute nature. Denying political rights to five million citizens is not "less unconstitutional" than denying political rights to fifty million. It only takes discrimination against one individual to bring a case forward that sets a legal precedent. Even the relatively small movement of people within the EC during the last three decades has forced decisions in test cases regarding the status and rights of EC member state citizens in other member states. For instance in the 1985 *Gravier* judgement, the Court held that charging registration fees to vocational training students from EC member states that host country students do not have to pay constituted discrimination and violated Article 7 of the Treaty (ECJ 1985). In the 1989 *Cowan* judgement, the Court held that a British tourist who had been assaulted after leaving a French subway station should receive compensation for damages entitled to French nationals because he had received services and, therefore, for France to deny his case standing would violate the non-discrimination provisions of Article 7 of the Treaty (ECJ 1989). Such decisions set precedents that

have proved pivotal in using the Treaty of Rome's provisions for free movement to transform the treaty into a constitution, much as the enforcement of civil rights cases based on the United States Constitution's interstate commerce clause strengthened the federal government vis-a vis the states (Lenaerts 1992). This "constitutionalization" of the Treaty of Rome (Stein 1981; Mancini 1991) has, in turn, laid the legal foundation for an integrated economy and polity (Cappelletti, Secombe and Weiler 1986; Burley and Mattli 1993).

If the Treaty on European Union is not ratified, it is unlikely that the issue of European citizenship will fade away. The issue of political rights for resident aliens from fellow EC member states will probably be raised again in any event, given the widespread support of EC member states for the concept, the changing socio-economic composition of intra-EC migration and the potential for increasing numbers of resident aliens. Whether or not European citizenship would be included in a scaled-down treaty revision would most likely rest on the position of a France governed by a center-right parliamentary coalition opposed to local voting rights cohabiting with a president who supports the measure.

Conclusion

When a federation is forged by countries that base citizenship on *jus soli*, the stage is set for a transition to a traditional federal system with a telescopically layered *demos*, as in the US. Establishing such a traditional federal system essentially requires full political rights for permanent resident aliens of fellow federating states and their descendants, meaning effective abandonment of part of the doctrine of *jus sanguinis*. If all or some of the federating states retain *jus sanguinis* in both ascription at birth and in naturalization, as is currently the case in Europe, the domain of the various *demos* at different levels within the federation would become increasingly blurred and subject to challenge.

With no migration, citizenship based on *jus sanguinis*, inclusive democracy, and federation, are compatible because the practical distinction between *jus sanguinis* and *jus soli* would dissolve and the entire adult population could vote in all elections. Everyone subject to national and federal laws and policies, as well as decisions of joining and leaving a federal union, would have a say in their making. With large scale migration, however, the federation of states which base citizenship on *jus sanguinis* may be possible, but the inclusiveness of these states' democracy or consanguinity of their citizenship would have to be compromised. If *jus sanguinis* is maintained and the national *demos* become increasingly exclusive, the legitimacy of democracy becomes contestable, the boundaries of each political subunit become less clear, and the potential for conflict within the federation increases. If democratic inclusiveness is maintained by giving up *jus sanguinis*, the ethnic delineation of political identity must erode as well, and new foundations of identity must be developed.

Several tentative theoretical solutions to this dilemma with respect to the EC provide an agenda for further empirical research, theoretical reflection and policy analysis. To maintain inclusive democracy in a future EC federation, those "non-immigration countries" which conceive themselves to be "communities of descent" could alter this self-conception and the citizenship laws it engenders. Uniform adoption of *jus soli* by all the member states, that is, the American solution, has been an option implicit in the above analysis.

If the "non-immigration" EC member states could at least include the citizens of other member states, the solution of European *jus sanguinis* could develop. This would be analogous to the 19th Century solution of German unification. German states essentially based subject status or citizenship on *jus sanguinis* before unification in 1871 (Brubaker 1990, 122-150) and after unification Germany did so as a whole. Practically speaking, EC member states would initially permit dual citizenship for citizens of fellow EC member states but not for citizens from non-EC member states. They would treat each other's citizens according to the principles of *jus soli* and citizens from non-EC member states according to *jus sanguinis*. All those born to citizens of EC member states would have full citizenship in all of its constituent states. They would vote in their place of residence in all elections, regardless of their member state of birth. All those not descended from citizens of EC member states would be excluded.

Finally, *jus sanguinis* and inclusive democracy may coexist with a different form of federal political organization, e.g., non-territorial federalism (Renner 1907, 1918) or federalism combined with consociationalism (Althusius 1603; Lijphart 1985, Taylor 1990). Drawing the analogy from the political structure of the Netherlands, Belgium and Switzerland, in a form of European consociationalism, the European *demos* would be divided along ethno-national as well as territorial lines and non-territorial representation would be institutionalized at all levels of the political structure of the European Union. Although this solution may be very complex, the willingness of European member-states to accept the complications inherent in the current compromise version of European citizenship indicates a tolerance for such complexity and may be indicative of a further evolution of political union in this direction.

Endnotes:

1. My argument at times seems critical of citizenship based on ancestral lineage, but my intent is to describe and analyze this principle of citizenship with respect to democracy rather than to prescribe adoption of *ius soli*. *Ius soli* is not a cure-all. For instance, ascription of citizenship at birth based on *ius soli* raises other problems for the definition of the *demos*, particularly with respect to the children of illegal aliens and expatriates (Schuck and Smith 1985). Similarly, I am not making an argument for or against European federalism or European citizenship as embodied in the Maastricht agreement. I merely wish to examine some of the political consequences of migration for both.

2. From the Greek, *demos* means the people who rule (*kratos*) in a democracy. Because I am primarily concerned with actually existing modern representative democracy or "polyarchy" (Dahl 1989, 218-219) in this paper, the *demos* refers to citizens with full political rights and coincides with the electorate. The problem of bounding the *demos* is addressed by Dahl (1956, 1970, 1989) but it is most thoroughly discussed by Whelen (1983).

3.3. One may argue that discussion of EC federalism and comparison with the United States (or Germany) is inappropriate. The US is, a "federation," whereas the EC could only be characterized as a "confederation" (Taylor 1975; Forsyth 1981; Wallace 1982) in the process of becoming a federation (Pinder 1986) or a new polity between confederation and federation (Hoffmann 1992, 206). There is a long history of comparing the US to Europe (Bowie and Friedrich 1954, Macmahon 1955; Forsyth 1981). This tradition continues (Cappelletti, Secombe and Weiler 1986) even though the EC is not a federal state because it is a polity with distinctive federal characteristics that can be illuminated through comparison (Elazar and Greilsammer 1986; Sbragia 1992). The major alternative to analysis focusing on federalism, neo-functionalism (Haas 1958; 1970), has been recently resurrected (Keohane and Hoffmann 1990, Tranholm-Mikkelsen 1991; Burley and Mattli 1993). While deemphasizing examination of formal political institutions in favor of a focus on less formal processes of integration, neo-functionalism, nevertheless, essentially maintains federal aims (Groom 1978; Tranholm-Mikkelsen 1991). Therefore, the consequences of integration must eventually be examined in terms of federal political institutions. Moreover, European citizenship itself adds to the reasons for considering the federal dimension of the EC because dual state/suprastate citizenship is a defining characteristic of a federal polity (Wheare 1963, 2; Nathan 1991). Although British insistence kept reference to a "federal goal" out of the final text of the Treaty on European Union, nomenclature is not necessary for practice, as the absence of the word "federal" from the US Constitution amply demonstrates.

4. Several conflicts between democracy and federalism are well known and were often acknowledged by these authors. For instance, if democracy is viewed in terms of unrestrained majority rule, federalism can conflict with democracy when majorities at the federal level differ with majorities in the states (Calhoun 1953). Similarly, states rights delineated in federal constitutions impose limitations on majority rule within the federation as a whole (e.g. the US Senate was originally elected by state legislatures and the German *Bundesrat* is composed of representatives of the governments of the constituent *Laender*). Conversely, the claiming of states' rights enabled the effective denial of voting rights to blacks in the South and gave federalism an anti-democratic connotation in the United States. Neumann (1957, 216-232) argued that even the limited states' rights provided by the Weimar constitution permitted the protection of nascent anti-democratic political movements in inter-war Bavaria and pointed out the anti-democratic potential of federalism in general. Carl Schmitt (1992, 54-56) argued that democracy was anti-federal because democracy fostered a unity of the people that transcended the boundaries of the constituent states which in turn laid the foundation for a unitary state. Although Schmitt argues for the necessity of "homogeneity" of the states in a federation, he primarily discusses homogeneity of the form of government (i.e. monarchy or democracy) and does not specifically address citizenship.

5. The democracy of B may also confront challenges. B3 may still participate in community B and the composite community AB through his or her membership in community B, but only if B3 can vote by absentee ballot, vote in community B's consulate in A or return to B for each election. Given these circumstances, the consistency and quality of B3's participation in community B may suffer after prolonged absence. If so, the other members of community B have reason to question B3's continuing membership. In fact, some countries do not allow citizens living abroad to vote in local and national elections (Hammar 1990, 118).

6. This problem has been explored by scholars who study migration in Western Europe in the fields of comparative law (Evans 1991; Neuman 1992), and comparative politics (Miller 1978; Heisler 1985; Brubaker 1989a; Hammar 1990; Hollifield 1992), as well as by political theorists focusing on migration (Schuck and Smith 1985; Carens 1989; 1992). Recent general works in democratic theory, however, offer hardly a word on the issue. In addition to Dahl 1989, see Arblaster 1987; Barber 1984; Bobbio 1987; Connolly 1991; Held 1987; Keane 1988; Lijphart 1984; Mansbridge 1980; Riker 1982; Sartori 1987.

7. Democratic West European governments recruited guest workers from Southern Europe and Turkey for dangerous, dirty and menial jobs left unfilled by citizens (Castles and Kosack 1973). Guest workers came in large numbers from the early 1950s until the recession of 1973-74. Although employers and host country politicians assumed that guest workers would return to their countries of origin, many made host countries their new homes and sent for their families to join them. It soon became evident that temporary guest workers were becoming permanent resident aliens (Castles 1984). According to a 1986 EC Commission report, there were 12,889,000 foreign citizens living in European countries (EC Commission 1986, Table 1, p. 20). Migration scholar Tomas Hammar considers 7.5 million of these permanent resident aliens (Hammar 1990, 22). Children born to resident aliens constitute a significant proportion of all births in many West European countries: 11.7% in England and Wales, 10.7% in France, 11.7 in Germany, 32.2% in Luxembourg, 6.8% in the Netherlands, 10.2% in Sweden, 15.4% in Switzerland. Figures are for 1989, except for the Netherlands and Sweden which are for 1990 (OECD 1992, 19). Except for some of those born in England and Wales, these children are not born into citizenship. Only those born in France automatically become citizens at age 18 unless they refuse. Although the general argument regarding resident aliens and democracy will be initially made with reference to guest workers in Europe from both EC member states and non-members, the central argument of the paper is only concerned with those citizens of EC member states working and settling in fellow member states.

8. The definition of membership in the association is also somewhat ambiguous. After Dahl lays the grounds for accepting the presumption of personal autonomy, "In the absence of a compelling showing to the contrary everyone should be assumed to be the best judge of his or her own good or interests," (1989, 100) he asks the reader to "call the adult members who satisfy this presumption *citizens*; collectively the citizens constitute the *demos*, *populus*, or *citizen body*" (1989, 108). What is not clear is how membership in the association is delineated, particularly with respect to qualifications for citizenship beyond the presumption of personal autonomy. It is in the delineation of membership that the rules of citizenship ascription at birth and naturalization become critical. These rules will be explored in detail in the next section.

9. The residence rights of migrant workers from one EC member state working in another (Italians working in Germany or Spaniards in France) are based on the host country's EC treaty obligations rather than on individual labor contracts.

10. John Armstrong suggests that the principle of *ius sanguinis* originated with nomadic societies that stressed ancestry and kinship to delineate tribal membership, whereas *ius soli* originated with settled agricultural societies (Armstrong 1982). While the adoption of *ius sanguinis* by agricultural societies in Europe during modern times may be understood in terms of atavism, the 18th and 19th Century circumstances of European mass migration abroad yielded a nomadic component to European societies. As American political institutions and citizenship laws developed in the context of immigration, European institutions developed in the context of millions of emigrating Europeans. Only in the 1970s did the centuries-long net migratory flow from Western Europe to the rest of the world reverse direction (Widgren 1990, 752).

11. *Ius soli* was retained as certain subjects of the British empire came to be considered British citizens and others citizens of newly independent states, but the British nationality act of 1981 constricted that principle with *ius sanguinis* provisions. Now, a child born of aliens in the United Kingdom becomes a citizen only if at least one parent is a legal permanent resident alien with no time limit on his or her stay. Children of illegal aliens, students, and those with limited visas are not automatically considered citizens. Previously, birth in a British colony entitled one to citizenship in The United Kingdom and Colonies, whereas now it only yields British Dependent Territories citizenship, with British citizenship reserved for those born in the United Kingdom itself (Brubaker 1989b, 105-106; Dummet and Nicol 231-259).

12. In the Americas, only Panama and Haiti base citizenship on *ius sanguinis* (Brubaker 1990, 169)

13. Portugal is the primary exception. Spain combines *ius soli* and *ius sanguinis* equally (Brubaker 1990, 167, fn. 16).

14. Until passage of the 1990 Foreigners Act in Germany, naturalization required at least ten years of residence, knowledge of the German language and society, good behavior, sufficient means of support and a naturalization fee of 75% of ones monthly salary. Moreover, naturalization was not considered a right but rather a matter of administrative discretion governed by the interests of the Federal Republic (Hammar 1990, 87; Brubaker 1992, 77-79). Germany's fundamentally *ius sanguinis* naturalization laws changed as of January 1, 1991 when the Foreigners Act went into effect. The reforms introduce *ius soli* into naturalization law and make naturalization easier for foreigners aged 16-23 who have lived continuously in Germany for eight years (OECD 1992, 36) and naturalization cannot be arbitrarily refused to those raised and educated in Germany or maintaining permanent residence for at least fifteen years (Brubaker 1992, 173). Although the Foreigners Act loosens regulations on the naturalization of children born to migrants, Liselotte Funcke, the federal official responsible for making policy recommendation dealing with immigration, does not expect significant increases in naturalization because the law does not provide for dual citizenship (Brubaker 1992, 194).

15. For instance, British citizenship is primarily based on *ius soli* even though Great Britain has consistently maintained a high rate of emigration (Kotkin 1992, 22) and Germany bases citizenship on *ius sanguinis* even though it experienced great immigration during turn of the century industrialization (Hollifield 1992, 47).

16. One could also apply to retain German citizenship after naturalization elsewhere, children of German emigrants born abroad who became citizens of *ius soli* countries at birth did not lose German citizenship, and military requirements were made easier to fulfill (Brubaker 1992, 115).

17. "Unless otherwise provided by law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German stock (*Volkszugehoerigkeit*) or as the spouse or descendant of such person" (Hucko 1987, 255).

18. For a detailed discussion of the relationship of *ius sanguinis* to ethnicity see Brubaker 1990, pp. 278-289.

19. The child of foreign parents receives French citizenship at the age of eighteen if the parent was also born in France (including pre-independence Algeria). A foreigner's child who has lived in France for at least five years also gains citizenship at age eighteen. During the 1980s, the National Front attacked these *jus soli* principles and in the 1986 campaign the center-right parties advocated limiting them. Nevertheless, the *jus soli* principles governing naturalization remained in place despite this persistent opposition (Brubaker 1992, 138-164). Now after a resounding victory for center right parties in France's recent Parliamentary elections, the future of naturalization laws based on *jus soli* is not as secure.

20. The German administrative guidelines on naturalization (*Einbuengerungsrichtlinien*) state that, "the Federal Republic is not a country of immigration (and) does not strive to increase the number of its citizens through naturalization." Quoted in Brubaker 1990, 261.

21. France, Austria, Denmark, Germany, Italy, Norway, Luxembourg, Sweden and the Netherlands ratified the Council of Europe's convention on the reduction of cases of multiple nationality and dual military obligations, while Britain, Ireland and Spain agreed only to the provisions dealing with military obligations. Britain does not require those who naturalize to renounce their previous citizenship, France uses loopholes in the convention to enable more than one million of its naturalized citizens to keep their previous citizenship and the Netherlands took over 20 years to ratify the convention (Hammar 1990, 109-114). In 1990, Switzerland, one of the strictest *ius sanguinis* countries, also dropped its requirement that aliens undergoing naturalization renounce their citizenship (OECD 1992, 36).

22. Although the Swiss canton of Neuchatel enfranchised resident aliens in communal elections in 1849 and Ireland extended local voting rights in 1963, the Swedish case was precedent-setting because it was explicitly enacted in response to guest worker migration. A logical extension of the Scandinavian tradition of local political participation, the idea of extending local voting rights had been initially proposed in 1968 but it did not gain sufficient support until after the Nordic Council advocated reciprocal voting rights extension among the Scandinavian countries in 1973. Moreover, non-socialist parties rejected extending resident alien voting rights to national elections and the socialists gave up as it became apparent that the majority of the Swedish electorate were not in favor (Rath 1990). Had resident aliens gained the vote on all levels, *ius sanguinis* would have effectively become a moot point in terms of political rights.

23. In Great Britain, Portugal and Spain, certain groups of resident aliens can vote. After Irish independence in 1949, Irish citizens retained the right to vote in Great Britain and Commonwealth immigrants also retained voting rights. In response, Ireland gave local voting rights to foreigners in 1963 and the vote in national elections to British citizens in 1984. Brazilian immigrants can vote in Portugal. The Spanish constitution bestows voting rights to citizens of countries which allow Spanish citizens the right to vote in their local elections and implicitly offers the same right to citizens of other countries on the same reciprocal basis (Rath 1990).

24. For an overview of the development of freedom of movement see Plender 1988. For a discussion of the legal evolution of European citizenship, see Evans 1984. For a comprehensive overview of the development of the political rights of European citizens, with special attention to the problem of resident aliens of EC member state voting in direct elections of the European Parliament, see van den Berghe 1982.

25. The Luxembourg delegation initially had reservations regarding local voting rights given that 27.9% of its population is composed of resident aliens from EC member states (Vanhoonacker 1992). The final clause of the Article 8b of the Treaty on European Union allows "derogations where warranted by problems specific to a Member State," thereby ameliorating these concerns.

26. This problem can be further compounded by the fact that Great Britain, one of the few EC countries that bases citizenship on *ius soli*, does not automatically grant its citizenship to the children of British citizens resident in other member states, leaving them stateless should they be born in member states that base citizenship on *ius sanguinis*. Since these potential consequences might inhibit free movement, Community law may require changes in British nationality law giving special treatment in such cases (Evans 1991, 192).

27. Of course this excludes blacks, native Americans, women and the unpropertied. Nevertheless the political practices of including inhabitants of other states into each state's polity increased a dimension of inclusiveness that avoided destabilizing conflicts among those who wielded power -- white propertied males.

28. For example in the 1776 Pennsylvania Constitution, the *Declaration of the Rights of the Inhabitants of the Commonwealth, or State of Pennsylvania* maintains, in clause seven, "That all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or to be elected into office." For those who did not already inhabit the state, Section 42 states: "Every foreigner of good character who comes to settle in this state, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land or other real estate; and after one year's residence, shall be deemed a free denizen thereof, and entitled to all the rights of a natural born subject of this state, except that he shall not be capable of being elected a representative until two years residence."

29. The principle of *ius soli* governing Pennsylvania's naturalization laws (see previous note) was challenged by Connecticut settlers sponsored by the Susquehannah Company who moved to the Wyoming valley in order to effectuate Connecticut's challenge to Pennsylvania's territorial claims. Many settlers were not permitted to participate in local elections, partly because they refused to take Pennsylvania's oath of allegiance. Eventually, many did take the oath and their participation in Pennsylvania's general election further established Pennsylvania's jurisdiction over the territory in question (Onuf 1983, 49-73).

30. Article IV states: "The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states;...."

31. Of course, European citizenship is not the only reason that deepening (further political integration) may conflict with widening (accepting new members). For a general discussion of this issue, see Nugent 1992.

32. Similarly, the definition of citizenship was critical to the secession of America's southern states and the formation of the Confederacy. Given that blacks constituted a high proportion of the population of southern states (Archdeacon 1983, 25), had they been citizens, it is questionable as to whether majorities in favor of secession would have been attainable in many of the southern states. I owe this analogy to Jack Nagel.

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