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EUROPEAN CITIZENSHIP
AND
POLITICAL IDENTITY

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ABSTRACT

The provisions of the EC Treaty on citizenship of the Union introduce a fundamental democratic element in the process of European political integration. The focus of integration is no longer on an economic factor of production (workers) but on politically self-determined citizens. Citizenship of the Union, however, does not constitute a full status of European citizenship, because of its incompleteness in terms of entitlements and its dependence on Member States' nationality. The development of Union citizenship into a complete status of citizenship depends on Member States' determination to transfer essential aspects of sovereignty to the Community and achieve full political integration.

If Union citizenship is to evolve from the current form of derived status of Member States' nationality into a more complete and independent European citizenship, it must be followed by a parallel evolution in the field of collective identity of the citizens. In the EU legal order, citizenship, if taken in its 'national meaning', could be a fundamental element in the consolidation of the Union as a 'state-like phenomenon'. The current 'national understanding' requires the existence of a common national identity (based on culture, language, traditions and in some cases ethnicity) to sustain the legal and political framework made of rights and obligations of membership.

At European level, however, this approach is unlikely to work because of the different national and cultural identities of the people of Europe. Alternatively it is argued that Europe needs a radical change in the conception of citizenship and democracy to proceed in the direction of political integration. Only a strictly political European identity based on association and participation could co-ordinate the different allegiances that European citizens already have towards institutions and groups other than the Union, and at the same time create a common political bond among them. Despite this fundamental change, the extension of citizenship beyond the national boundaries should take place without endangering those citizens' rights, which have been developed in the context of the nation-state, in particular the principles of liberty and equality. The great challenge faced by the European Union consists in dissociating those rights from the tie of nationhood.

On a point of eligibility, European political identity could not be used to exclude 'cultural outsiders' from European citizenship, regardless of whether they come from a Member State or a third country. As European identity would lack a common cultural basis, the same concept of 'cultural outsider' would not apply to European citizenship. As a result such type citizenship would be naturally open to non-European immigrants, who already reside in the Union, but who are excluded from national citizenship, and to prospective third country immigrants. The openness of a politically based European citizenship and identity contrasts with the restrictive European Union immigration and asylum policies (fortress Europe). In the absence of cultural or ethnic common grounds, fortress Europe seems to be based mainly on contingent economic reasons, such as the protection of the European labour markets and welfare systems. It appears that in the long term, due to demographic changes, these economic reasons might disappear together with the restrictive immigration policies. In the meanwhile, however, there seems to be no excuse for the non-integration of resident third country nationals into European citizenship.

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INTRODUCTION

- ‘1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.’

(Article 8, EC Treaty)

Citizenship of the Union is the latest cryptic formulation of the concept of membership in a political community. The emphasis on the idea of ‘citizenship being established’ does not correspond to a substantial ‘new status’. The large majority of the rights listed in Part II of the EC Treaty (‘Citizenship of the Union’) are re-statements or re-formulations of individual rights, which were already part of the *acquis communautaire*. Furthermore, Union citizenship maintains the ‘exclusiveness’ of national citizenship, in so far as only a ‘person holding the nationality of a Member State shall be a citizen of the Union.’

It appears that, apart from the symbolic value of calling some Community individual rights ‘rights of citizenship’, Union citizenship is a ‘pooling of national citizenships’, rather than a status in its own merit. At this point one might wonder whether the symbolic value of having established a ‘citizenship of the Union’ is sufficient to justify engaging in a work of research on a concept, which not only does not add substance to individual rights under Community law, but also does not change the basic characteristics of national citizenship. The answer is yes and is based on the ‘idea of citizenship’ rather than on the substantial impact of ‘Union citizenship’.

The insertion of the provisions on citizenship of the Union in the new EC Treaty¹ (Articles 8 to 8e EC) has given new strength to the long standing debate on political integration in Europe. Citizenship introduces a fundamental democratic mechanism in the process of European political integration. Until the Treaty on European Union (TEU) this process had taken place via a transfer of political and economic powers from the Member States to a set of

¹ As amended by the Treaty on European Union (TEU), signed at Maastricht in December 1991, O.J. 1993 C 224, and by the Amsterdam Treaty, signed at Amsterdam on 2 October 1997, CONF 4005/97.

unelected and mostly unaccountable European institutions.² The citizens played an extremely marginal role in the shaping of political Europe. If the provisions on EU citizenship do not represent a dramatic change in the direction of a more integrated and more democratic Europe, they have nevertheless the merit of changing the terms of the debate: the focus is now on the citizen as well as on the European institutions and the nation state.

In the EU legal order, citizenship, if taken in its 'national meaning', could be a fundamental element in the consolidation of the Union as a 'state-like phenomenon'. The current 'national understanding' of citizenship requires the existence of a common national identity (based on culture, language, traditions and in some cases ethnicity) to sustain the legal and political framework made of rights and obligations of membership. At European level, however, this approach is unlikely to work, because of the different national and cultural identities of the peoples of Europe. Alternatively, it is argued that Europe needs a radical change in the conception of citizenship and democracy to proceed in the direction of political integration. Despite this fundamental change, the extension of citizenship beyond the national boundaries should take place without endangering those citizen's rights, which have been developed in the context of the nation state, in particular the principles of liberty and equality. The great challenge faced by the European Union consists in dissociating those rights from the tie of nationhood (Bauböck 1991).

1. Citizenship and equality

In modern times the concept of citizenship has generally been associated with the status of membership of the nation state, which in the external sphere takes the form of nationality. Citizenship and nationality are often confused. A conceptual compromise is one which assigns to citizenship the task of defining the internal relationship between the state and its citizens, made of reciprocal rights and obligations, and to nationality the task of defining the rights of individuals in the external sphere, that is to say, vis-à-vis their state of membership and the other nation states.³

To this 'national legal distinction' between nationality and citizenship (respectively

² With the exception of the directly elected European Parliament, which, however, holds the smallest share of powers.

³ See, Gamberale (1995) and Bauböck (1991).

external and internal spheres of membership) it is possible to oppose another distinction based on identity, which relates the concepts of nationality and citizenship to the self-perception of individuals in the community. In this second distinction citizenship is linked to the political community, where the identity of the citizens is based on 'association', including participation in public life and self-determination (political identity). Nationality on the other hand refers to the pre-political community, which brings together individuals by means of relationships of 'kinship' such as common ethnicity, culture, language and traditions (national identity).⁴

The history of the nation state, nonetheless, has seen a combination of national and political elements, which can be traced back to the French Revolution (*infra*, p. 8, and Chapters II and III), so that the concepts of nationality and citizenship have lost much of their original meaning.

Article 116 of the German Constitution (Basic Law) defines 'German nationals' as persons who either possess German citizenship or have been admitted to the territory of the German Reich as a refugee or expellee of German stock as of 31 December 1937. The German nation is made up of all the members of the *volk*, which is a natural, pre-political, ethnic community. All the members of the *volk* are entitled to German citizenship, including those ethnic Germans who have returned to Germany after the second world war from Eastern Europe and the former USSR. Recently the criterion of *ius sanguinis*, which allowed access to German citizenship only to persons who could claim blood links with people of German stock, was slightly relaxed with respect to acquisition of nationality at birth and naturalisation. In both cases it is now possible for people who are not members of the *volk* to access German citizenship on condition of cultural assimilation and long term residence.⁵ If on one hand the German nation is still an ethnic concept based on the idea of the *volk* as a natural community of blood and territory, on the other hand German citizenship is slightly more political, in so far as it now contemplates membership of ethnic outsiders, albeit conditional on cultural assimilation.

In France the *nation* is a political and cultural concept (but not an ethnic one) which brings together the *citoyens*. Although France still maintains one of the most liberal policies in Europe towards birthright citizenship and naturalisation of immigrants, access to French

⁴ Habermas traces the origins of the concepts of citizenship and nationality back to the Ancient Roman concepts of *civitas* (political community of the *cives*) and *natio* (the natural, tribal community of blood). See, Habermas (1994).

⁵ See, Sections 85 *et seq*, Ausländergesetz (1990).

citizenship and nationality is conditional upon a certain degree of cultural assimilation.⁶ The political openness of citizenship is balanced by the substantive cultural meaning of the 'French nation'.

In the Constitution of the United States the term 'people' was used to indicate the State people or 'body politic', while nation was used to describe the human substratum of the state community, according to the Anglo-Saxon tradition of nation.⁷ After the incorporation of the Western Territories and with the final territorial consolidation, the concept of 'American nation' - in spite of the natural pre-political origin of the word - was used to describe the 'body politic of the United States' (Delbrück 1994). The 'American nation' therefore, differently from the German (ethnic) and the French (cultural), is today an entirely political concept, which supports multi-ethnic and multicultural membership.

In summary the 'national legal' distinction between nationality and citizenship (external/internal sphere) is today a better generalisation than the one based on identity. In modern nation states the original pre-national distinction between nationality and citizenship as different modes of self-perception of the community (kinship based the first and association based the second) is blurred, so that both terms are often used to describe the same or similar concepts. The conflation of the terms citizenship and nationality is due to the fact that national identity and membership in the nation state are often a combination of ethnic, cultural and political elements.

The examples given above of the confusing use of the terms nationality and citizenship in Germany, France and the US demonstrate the disappearance of a clear-cut dichotomy between political and national community in the modern nation state. Nonetheless, the pre-political distinction between nationality and citizenship still has an important role to play with respect to European citizenship. In fact, it makes it possible to identify an independent strand of political membership (citizenship *strictu sensu*), which could hold the key to the construction

⁶ The application of *ius soli*, as the main criterion for access to French citizenship was recently tightened by a reform of nationality law, which abolished the automatic right to citizenship of children of immigrants born in France. This can be contrasted with the liberalisation of German nationality law. However, on the whole, it is still easier for a resident immigrant to access citizenship by means of cultural assimilation in France, than it is in Germany.

⁷ 'People' corresponds to the Latin word *populus*, - defined by Cicero as '*coetus multitudinis iuris consensu*' (a group of individuals united under the law) - which referred to a politically organised community, similar to the concept of *civitas*, which referred to the actual community of the citizens. See, Catalano (1974). The Anglo-Saxon concept of 'nation' (human substratum), on the other hand can be traced back to the Roman concept of *natio*, indicating human groups, such as tribes, not organised in political associations, but in communities of descent, language, custom and traditions. See, Habermas (1994).

of a non-exclusive, European post-national citizenship.

The link between citizenship and nationality is a feature of the nation state system, which in the past two hundred years has represented the dominant form of political organisation. However, despite such a strong link, it would be a mistake to assume that citizenship never had an independent dimension, or that it could not serve a useful purpose in the definition of a post-national type of membership. The concept of citizenship differently from that of nationality, pre-dates the nation state, in so far as it refers to membership of a political community. Achievement of equality was maintained as the main goal of citizenship in the nation state and remains a fundamental element in the definition of a supranational framework of citizenship.

Equality is the common thread which unites future constructions of supranational citizenship with the current national membership and with pre-national experiences of community membership. European citizenship, nevertheless would require a change with respect to nation state citizenship. Europe, even the current fifteen Member States of the EU only, is a far too complex mix of national cultures, ethnicities and linguistic groups to merge in any form of sovereign national state entity, with a common nationality/citizenship, on the example of its founding Member States.

The move from a national to a post-national and multicultural conception of citizenship in Europe nevertheless does not imply a fracture with the experience of citizenship in the nation state, just as the rise of the national membership did not mean a complete departure from previous experiences of citizenship. A post-national society would determine fundamental changes to the concepts of sovereignty and democracy in the nation state, but it should not affect the way citizen see themselves as free and equal individuals in the nation state society.

Furthermore, any construction of supranational citizenship can be considered successful only as far as it represents a complete and reciprocal extension of the principles of liberty and equality to the members of the other national societies. European citizenship should not reproduce national citizenship at the European level, but instead it should represent a first important step towards a global civil society and world citizenship.⁸

⁸ For an analysis of the concepts of world citizenship and global civil society see, Dahrendorf (1994) and Falk (1994).

1.1 Pre - national citizenship

Citizenship in Ancient Rome constitutes an interesting example of pre-national community membership. Roman republican citizenship, after the emancipation of the plebes, was founded on a principle of equality among all free citizens. Two authors, Constant and Condorcet, rejected Roman citizenship as a model for liberty and equality, on the ground that the Romans did not respect human rights and individual freedoms (Constant 1988).⁹ The argument of the violation of human rights in Rome was mainly based on the practice of slavery during the Republic and on the slavery foundations of the economic form of production of the Empire. Slavery, however, realised formal exclusion from citizenship, rather than a violation of the fundamental rights of citizens in modern terms. Roman citizens were free and equal, although the status of citizenship was denied to large sections of the population. Not only slaves, but also women were excluded from citizenship and therefore from liberty and equality.

Inequality determined by exclusion from citizenship, however, remained a feature of national citizenship. Although slavery virtually disappeared in modern nation states, it still represented the most radical type of exclusion from citizenship in many national societies until the eighteenth century and it was not until the 1920s that women were granted full political rights in many European countries.

The kind of formal exclusion from citizenship, which in Roman society operated mainly towards women and slaves,¹⁰ gradually disappeared in the nation state (civil rights conquest, women emancipation, welfare state, etc.). Formal exclusion from citizenship in national societies has shifted to the external sphere, so that, despite a general recognition of human rights to all individuals, regardless of nationality, each national community excludes from citizenship those individuals, who belong to other national communities.¹¹

In some European countries permanently resident foreigners are often denied access to full political rights of citizenship only on ethnic or cultural grounds, even if they are third

⁹ Regarding the position of Condorcet see, Catalano (1974).

¹⁰ In 212 AD the Emperor Caracalla extended Roman citizenship to all free people living within the territory of the Empire with the *Constitutio Antoniana*, thus including all 'foreigners', but still leaving out women and slaves.

¹¹ External formal exclusion is not the only pattern of inequality in the field of citizenship. Material exclusion still operates internally against some members of the community (ethnic minorities, homosexuals, women, disabled persons, etc.), despite their formal status of citizens. Formal exclusion is concerned with formal equality of status, while material exclusion is concerned with material equality and equal opportunities.

generation children of immigrants.¹² A new term, 'denizen', was devised by Hammar (1990) to describe the status of those persons, who live permanently in one country of which they are not nationals, but are excluded from full political rights, because of their national origin. Denizens are normally granted social rights and some basic political rights, like the right of association or the right to vote at local elections. In the case of aliens and especially illegal aliens, exclusion from the rights of citizenship may go so far that in many circumstances it is possible to refer to 'new slaves', especially if one considers some basic social rights (such as health care and work insurance)¹³ as fundamental rights of the individual. This type of national exclusion also affects citizenship of the European Union, as the status of national of a Member State is prerequisite for possession of Union citizenship.

Constant's and Condorcet's argument against Roman citizenship was challenged by Rousseau, who argued that human rights were respected in Rome more than it was generally thought. He gave the example of the *Lex Porcia*, which abolished the death penalty in Rome and transformed it into exile.¹⁴ However, even before the *Lex Porcia* (second century BC), the death penalty was hardly ever inflicted in Rome. The accused was kept in custody and he could count on pardon by the people or by any tribune, before the sentence could be executed. After the *Lex Porcia* the accused could remain at liberty until the people had actually decided against him and was given the chance to go into exile and avoid capital punishment (Jolowicz and Nicholas 1972). The practice of the death penalty today is the most blatant violation of fundamental human rights in nation states with a long tradition of respect for individual rights, such as the United States.

¹² It used to be the case in Germany, where nationality and naturalisation laws were based mainly on *ius sanguinis*, making access to German citizenship for immigrants of non-German origin extremely difficult, even after generations of residence. This has been partly changed by a reform of nationality and naturalisation laws, which facilitates access to German citizenship for non-ethnic immigrants on condition of cultural assimilation and long term residence. See, Sections 85 *et seq*, *Ausländergesetz* (1990). Other Member States have generally more liberal nationality and naturalisation laws, which allow access to national citizenship by means of *ius soli*. In most cases, however, access to political rights is conditional on the acquisition of the formal status of national citizens. There are some important exceptions. For instance the United Kingdom and the Republic of Ireland grant to each other resident citizens full political rights, and all Commonwealth citizens enjoy political rights in the United Kingdom on the basis of residence. In both cases access to political rights for non-nationals is justified by political ties which have survived the dissolution of the British Empire.

¹³ The United States provide among the highest standards of protection for aliens and illegal aliens. However, the recent Proposition 187 from the state of California makes a radical change to this tradition, by barring illegal aliens from receiving welfare, education and health benefits except for emergency treatment. Another proposal requires an amendment of the 'birthright citizenship clause' of the Constitution, as to deprive children of illegal aliens, born on American soil, of US citizenship. See, Chavez (1995), *The Birthright Citizenship Amendment: a Threat to Equality*, 107 *Harvard Law Review* 1026 (1994) and Schuck and Smith (1985).

¹⁴ See, Catalano (1974).

This argument is neither intended to justify slavery as exclusion from citizenship in Rome, nor to support exile as an alternative to the death penalty, but rather it is meant to stress that, in the field of citizenship it is misleading to read pre-national exclusion from citizenship (gender discrimination and slavery in particular) in the light of national standards of citizenship (internal formal equality and human rights protection), when in modern nation states exclusion still operates towards non-nationals and human rights can be balanced against public policy considerations (as in the case of the death penalty).

Equality and liberty are essential elements of national as well as pre-national citizenship. However, in Ancient Rome, like in modern nation states societies, these principles have been undermined and limited in their application - albeit to a different extent - by various types of exclusion.

1.2 Citizenship in the nation - state

The French Revolution has represented the greatest opportunity in modern history to achieve a status of equal citizenship deprived of exclusionary features. The revolutionary Constitution of 1793 conferred citizenship upon all foreigners, who were resident and who had lived in France for at least one year and performed any social or economic function.¹⁵ The events of the Revolution, which followed 1793, are crucial to an understanding of the relationship between citizenship, equality and exclusion in the nation state. The external threat to the new born French Republic, brought by the other European nation states, determined the rise of a French national identity based on kinship (culture, language and traditions). The revolutionary society based on inclusion and equality of citizenship was rescued by the national sentiment, which provided the cement to hold together the French republican polity and defeat the counter-revolutionary attacks coming from outside.¹⁶ The events of the Revolution determined the 'marriage' of citizenship and nationality in the French nation state. If on the one hand citizenship remained potentially inclusive and based on political participation and

¹⁵ Article 4 of the 1793 Constitution which is attached to the Declaration of the Rights of the Man and of the Citizen, states that is a French citizen 'Every foreigner fully twenty-one years of age, who, domiciled in France for a year, lives there by his labour, or acquires property, or marries a French woman, or adopts a child, or maintains an old man; finally every foreigner who is considered by the legislative body to have deserved well of humanity.'

¹⁶ For an account of citizenship and nationality during the French Revolution see, Gamberale (1995), Habermas (1994) and Tassin (1994).

self-determination, on the other hand nationality relied on kinship and led to the exclusion from the polity of non-French outsiders.

In the nation state, equality of citizenship is mainly a goal reserved to nationals. An interesting description of citizenship in the nation state was made by Marshall (1992) in the well known essay *Citizenship and Social Class*. Marshall sees citizenship as the progressive achievement of freedom and equality in modern society (nation state). The conquest of civil rights in the nineteenth century was followed by political rights at the beginning of the twentieth century. The last step towards equality was represented by the development of social rights and of the welfare state in the second half of the twentieth century, which should have ended the class conflict and integrated the working classes in the larger civil society.

Despite the striving for equality within the nation, exclusion and inequality still characterise national citizenship with respect to non-national outsiders. Marshall's account of citizenship is unhelpful when dealing with the issue of citizenship in a supranational legal order. The national social contract underlying Marshall's citizenship assumes the existence of a well-established national identity, based on relations of cultural kinship. The result is a model of citizenship and identity derived from the English experience, which not only is inapplicable in a supranational context, but it is also of little interest with regard to other national experiences, due to its ethnocentric approach.

2. European citizenship

It is important to define the legal and political concept of post-national 'European citizenship', and confront it with some national parameters of citizenship, such as equality, sovereignty and democracy. The term 'European citizenship' is used as a concept *de iure condendo*, indicating lines of development of citizenship, consistent with the supranational vocation of the European Union. In contrast, Chapter V (Part II) deals with 'citizenship of the European Union', a concept *de iure condito*, which refers to the current status of citizenship under EU law. European citizenship is an ideal type of supranational citizenship, while Union citizenship is the current framework of rights and obligations, which citizens enjoy at European level.

It has been argued above that for reasons of cultural heterogeneity, Europe is unlikely to evolve in a large form of national state entity on the example of its Member States. A

common European culture and national identity, or even a common language are not imaginable neither in the short nor in the medium term, given the variety of cultural, national and linguistic groups which currently form the peoples of Europe.¹⁷ Besides, cultural assimilation normally takes place by means of dominance of one national group over the others. Human rights considerations would certainly bring us to reject the cultural assimilation of weaker nations by dominant ones, however, none of the European national groups has ever been in the position of imposing its culture, language or traditions on the others.

It follows from the inapplicability of the national model that the concepts of citizenship, sovereignty and democracy, which have characterised the culturally homogeneous European nation states, need to be reformulated if they are to apply in a supranational European context. Although the conditions of democracy in the EU are not the same as in nation states - and therefore necessitate a reassessment - citizenship should nevertheless maintain the fundamental goals it had during and before the nation state, namely liberty and equality.

2.1 Democracy, subsidiarity and citizenship

Democracy in European nation states was developed on the basis of relatively homogeneous ethnic and cultural groups.¹⁸ The principles of democratic participation and self-determination, which regulated democracy in the Ancient Greek and Roman city-states, were adapted to the larger nation state framework through the means of political representation and division of powers. The passage from the Ancient form of democracy to the modern national democracy was analysed by Montesquieu (1749), Constant (1988) and Tocqueville (1839). The principle of political representation, which is the cornerstone of modern parliamentary democracy, serves the purpose of allowing democratic participation and self-determination in a large community. According to John Stuart Mill (1861), parliamentary representation of the 'General Will' is the ideal solution to the problem of democracy in the nation state.

But is simple parliamentary democracy the ideal type of government in a post-national society as well? This might not be the case for two fundamental reasons. First, it was noted

¹⁷ Smith (1992a) argues to the contrary that a stable European citizenship and political community should be supported by a common European cultural identity.

¹⁸ This generalisation does not apply to some important examples of European and non-European multicultural and multination states such as the north american democracies (United States and Canada), Belgium, Switzerland and the former socialist states: USSR and Yugoslavia. For a discussion on multicultural and multinational citizenship see, Kymlicka (1995).

above that democracy in the nation state relied on a relatively homogeneous cultural background. The European Union, which is the supranational political institution at issue in this Thesis, lacks this type of homogeneity. Second, parliamentary democracy was tailored for political entities of the nation state size. Europe is a far too wide cultural and geographical arena to accept a centralised representative government, especially in the light of the fact that, differently from the federal process in the United States, the original units in Europe are well established national democratic governments. A transfer of sovereignty from the nation state to a central European federal government runs the risk of being considered a watering down of the current system of national democratic participation. This applies even if sovereign powers are transferred to the only democratically elected institution, the European Parliament, rather than to the Council of the Union, which is composed of representatives of national governments.¹⁹

The argument against centralisation is based on the fact that representation loses much of its meaning when the number of citizens a member of Parliament represents is so high that almost no direct contact is possible between representative and represented. In presence of democratic nation states, centralisation of power in the direction of a central European government (even if democratically elected and accountable) has a non-democratic flavour. What is then the solution to the problem of democracy in Europe, and especially what is the role of citizenship? It has been suggested that the principles subsidiarity and regionality could work against the principle of national state sovereignty in the construction of a democratic political Europe (Tiilikainen 1995).

The principle of subsidiarity was inserted in the EC Treaty by the Treaty on European Union. In areas which do not fall within Community exclusive competence, it requires the Community:

‘to take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.’

(Article 3b, EC Treaty)

¹⁹ This is commonly known as the ‘democratic deficit’ of the European Union. Almost all powers and competences transferred from the Member States are exercised by non-universally elected and therefore less democratic institutions, such as the Council of Ministers and the European Commission. The European Parliament, the only universally elected institution, has only a negative veto power on some legislation, (namely community measures passed under Article 189b EC ‘co-decision procedure’) and a largely consultative role.

So far subsidiarity has been interpreted by Member States as requiring decentralisation of powers back from the Union in the direction of the Member States only. However, according to a broader interpretation, subsidiarity could represent the guiding principle of the division of political power in a federal Europe (Emiliou 1994). The idea that 'decisions are taken as closely as possible to the citizen,' expressed in Article A TEU, is another formulation of subsidiarity. This principle of decentralisation not only applies to relations between the EU and nation states, but involves also regions, local authorities and other kinds of sub-national entities. Subsidiarity is useful to divide powers along vertical lines in a large federal community. It strengthens the democratic political process at the local level by favouring participation and self-determination, and at the same time it confers legitimacy to those decisions, which by reason of scale and efficiency should be taken at the central level of government.

The principle of subsidiarity assumes that participation and self-determination can take place in their most complete form only at the local level. Local government is necessarily more democratic than national or supranational government, as it can involve the citizens more directly in the political decision making process. Democracy in a federal community is therefore enhanced if more power is exercised at the local level, where citizens' participation is highest. The principle of political representation intervenes at the higher levels of government to legitimise actions, which, in the interest of the collectivity, are taken at the central level. In this context, subsidiarity can make a more important contribution to the creation of a post-national democracy in Europe than an increase in the powers of the European Parliament along the lines of national democracies.

Democracy in the nation state is founded on the centrality and sovereignty of Parliament. European supranational democracy on the other hand would count on various centres of political power, including the EU, other related supranational organisations (WEU, NATO, the Council of Europe, etc.), nation states, regions and other sub-national local authorities. This fragmentation of sovereignty and political power should be paralleled by a similar pluralism on the side of identity and citizenship. If in the nation state common national identity and citizenship were linked to loyalty to a single sovereign state entity, supranational citizenship might be multiple in character, in so far as it might allow the members of the community to have different allegiances to an 'increasingly complex configuration of common supranational institutions, states, national and transnational voluntary associations,

regions and alliances of regions' (Meehan 1993b:185).

Multiple citizenship is not only a device to divide political identity 'vertically', by encouraging allegiances at local and national level, as well as at European level. It also operates 'horizontally', by breaking the monopoly of the political element in the sphere of identity and allowing for the pluralistic expression of other forms of identity (cultural, linguistic, religious, ect.).²⁰ This is of great importance in the European context, where common citizenship involves issues of centralisation of power as well as issues of cultural and political pluralism. European cultural pluralism is a necessity dictated by the existence of different national identities in Europe and by the new tide of non-European immigrants, coming from different cultural and religious backgrounds.

2.2 European citizenship and equality

The achievement of equality among the members of the collectivity is the principle that more than anything else should link European post-national citizenship to previous experiences of citizenship. In the case of EU citizenship this challenge is even more ambitious than in the ancient city-states or in the modern nation states, because equality for all individuals requires the overcoming of the national model and the abandonment of the type of exclusion which characterised that model. If one rejects the idea that Europe might become an homogeneous cultural and national state, the exclusionary principles of ethnicity, culture and traditions, used to define the polity in the nation state, should not be adopted to define the supranational political community and exclude non-European outsiders.

Equality in a common political Europe should apply to all citizens, regardless of nationality. The crucial point, however, remains the definition of 'European citizen'. Contrary to the current EU legislation, which confers 'Union citizenship' only upon the nationals of the Member States (see, Article 8 EC), a 'European citizenship' consistent with a multicultural and multinational political framework should be conferred on the basis of residence and performance of a socio-economic function, following the model of the French revolutionary Constitution of 1793. This principle would include into European citizenship millions of third country nationals, who, despite years of residence and work in Europe, are currently excluded

²⁰ For what concerns the monopoly of the political element in the sphere of identity and the issue of pluralism see, Walzer (1992).

from the national citizenship of the country they live in and as a consequence from EU citizenship. It would also leave access to European citizenship open for all third country immigrants, who could come with the expectation of performing a 'socio-economic function', including work and family reunification.

The elimination of exclusion from the concept of European citizenship would constitute a fundamental step towards a global civil society and citizenship. In fact, the disappearance of the 'national element' from the definition of the polity would make exclusion of 'national outsiders' from European citizenship morally unjustified in the context of a European supranational society just as the exclusion of women, slaves and working classes, which took place in previous national and pre-national societies.

It has been argued that the idea of a 'fortress Europe' closed to immigration would make of European citizenship the modern equivalent of Roman citizenship, feudal privilege or national membership, that is to say, 'an inherited status which greatly enhances one's life chances' (Carens 1987:252) and which excludes large categories of individuals from the enjoyment of liberty and equality within the polity. 'Fortress Europe', however, can be criticised not only for being morally unjust, but also for the fact that it lacks the cohesive element to determine exclusion of outsiders. There is not a common European national and cultural identity, which can support European citizenship and keep out all those who do not share the same identity. In this sense Europeans are already all outsiders to each other, being part of different national, cultural, linguistic and religious traditions. In summary, if on one hand European supranational citizenship would be compatible with the current European cultural and political background, on the other hand nationality and the principle of exclusion that necessarily follows, could not sustain and define the European polity by excluding other individuals on the basis of ethnicity, culture, language and traditions.

3. Outline

This Thesis has been divided in two Parts. Part One on 'Citizenship, democracy and identity', and Part Two on the 'European Union'. Part One begins with a Chapter (I) which should provide useful guidance to the rest of the Thesis, by outlining a 'typology' for citizenship. Citizenship can be broken down to two fundamental aspects: eligibility and entitlements. The first regulates access to the community, while the second tells us about the implications (in

terms of rights and obligations) of membership. The distinction between eligibility and entitlements is crucial to the concept of citizenship and crosses the whole Thesis, so it seemed appropriate to outline it in a preliminary Chapter on 'typology', before entering in the merits of citizenship.

Chapter II looks at citizenship from the point of view of entitlements. It deals with two broad models of citizenship: democratic and liberal, which adopt different sets of entitlements. Democratic citizenship (rule by the people) emphasises political rights and participation, while liberal citizenship (rule by the laws) emphasises individual freedom and constraints on the exercise of public power.

Chapter III tackles the issue of eligibility by looking at the experience of citizenship and nationality in some Member States of the European Union and in the United States. It is considered how the different degrees of exclusiveness of national citizenships depend on the foundations of the national identity of the country in question. For example an 'ethnic based' type of national identity would influence citizenship by limiting the eligibility of outsiders to those who can claim links of ancestry with the current population. National identities based on strong cultural elements are more accessible to outsiders than ethnic communities, but they often require that the 'prospective new entrants' assimilate to the national culture and traditions. On the opposite end of the spectrum, political identities, not linked to strong ethnic or cultural elements, would sustain the most open types of citizenship, where entry does not depend on blood links or cultural assimilation, but tends to be linked to neutral conditions such as birth on the national territory or minimum periods of residence.

Chapter II and III emphasise the crucial role of collective identity in the determination of eligibility and entitlements of citizenship in the nation state. For this reason before the analysis of European citizenship in Part Two, Chapter IV deals with the issue of 'European identity'. In doing so it attempts to define an entirely political model of collective identity, which could suit a post-national and multicultural European citizenship. It was decided to leave this Chapter in Part One, because, although it is aimed at providing an 'identity base' to European citizenship, it provides nevertheless a useful model of political collective identity, which can apply to other post-national and multicultural types of citizenship, beyond the 'world regional' context of the European Union. The Chapter on identity concludes the general part on 'Citizenship, democracy and identity' and anticipates the debate on the European Union.

Part Two begins by looking at entitlements of citizenship in the European Union. Chapter V deals with the normative framework of citizenship in the European Union and in particular with the provisions of Articles 8 to 8e of the EC Treaty. Union citizenship appears as a reformulation of existing Community individual rights, and a derivative status of national citizenship. It has nevertheless an important symbolic value (in so far as those rights are re-defined as 'rights of citizenship') and an in-built mechanism for expansion (Article 8e), were the Member States to agree on further integration, involving the field of citizenship.

Chapter VI continues the discussion on the 'legal aspect' of European citizenship, by focusing on some possible developments of Union citizenship, within the framework of the existing European constitutional order. The 'narrow' and 'derived' status of Union citizenship could move into new fields, including more political and social rights as well as fundamental human rights. Regarding human rights special attention is given to the hypothesis of accession of the European Union to the European Convention on Human Rights and Fundamental Freedoms (ECHR). It is also considered how Union citizenship could become independent from national membership if the Union were to extend its competence in the field of 'nationality'. The feasibility and the desirability of this option is tested against several factors, including the political will of the Member States, the legal means available under Community law and the idea of European citizenship as a supranational form of membership (therefore 'beyond' the nation state).

To expect European citizenship to be developed by the current European institutions (and in particular by the expansive interpretation of the European Court of Justice) might be unrealistic as well as non-democratic, however, in the past a great deal of European integration (and specifically individual rights) was achieved by the 'activist' role of some institutions, acting with the tacit consent of the Member States. The 'legal approach' to the expansion of European citizenship might be criticised for its lack of democracy and transparency, but it is nevertheless a feature of European integration, and a means by which European citizenship could establish itself.

The issue of eligibility resurfaces in Chapter VII, which is devoted to the analysis of the emerging European immigration policy. Two major criticisms are advanced against the current European approach to immigration policy: (1) its excessive closeness ('fortress Europe'), which contrasts with the same idea of a supranational and multicultural status of citizenship; and (2) the democratic deficit, resulting from the fact that critical decisions

impinging on the fundamental rights of individuals (albeit non-EU citizens) are taken by intergovernmental, non accountable bodies.

Finally Chapter VIII brings together the general principles on citizenship, democracy and identity of Part One with the European Union legal framework of Part Two. The aim of Chapter VIII is to go beyond the possible legal developments in the European Union, considered in Chapters VI and VII, and propose a model of European constitutional citizenship, relying on the ideas and principles of post-national citizenship outlined in Part One. The solution proposed for the realisation of a multicultural and multinational status of European citizenship is based on two key ideas:

(1) constitutionalism, which reconciles 'rule by the people' with 'rule by the laws' by separating ordinary politics from a higher level of constitutional politics. The latter are reserved for those matters on which the agreement of all members of the community is necessary, and which contribute to the formation of a common political identity, compatible with cultural and religious diversity. In times of constitutional politics 'rule by the people' takes priority over 'rule by the laws', because of the democratic legitimacy of constitutional majorities based on an higher level of political participation (including larger parliamentary majorities and increased direct participation by the citizens through instruments such as referenda). On the other hand in times of ordinary politics 'rule by the laws' (and in particular those rules agreed in times of constitutional politics) takes priority over 'rule by the people', due to the lower political participation and in order to protect minorities from the action of ordinary majorities;

(2) local democracy, which allows for more direct citizens' participation to political life and for the chance to influence those decisions, which most directly affect their daily lives. A European constitutional citizenship should enhance local democracy in accordance with the principle of subsidiarity of Article 3b EC. This would require that political rights of participation and self-determination be maintained at the national level, but also that a certain degree of political autonomy be transferred to sub-national entities, including regions and other local authorities.

PART ONE

CITIZENSHIP, DEMOCRACY AND IDENTITY

CHAPTER I

TWO SIDES OF CITIZENSHIP: ENTITLEMENTS AND ELIGIBILITY

A socio-legal analysis of the concept of citizenship as membership of a given community (nation state, sub-national and supranational units, as well as pre-national societies) should take into account two fundamental aspects: entitlements and eligibility.

Entitlements are concerned with the substance of the status of citizenship, namely the rights and duties of the citizen. Following Marshall's scheme (1992) the core of citizenship consists of civil, political and social rights. The status of citizenship in a particular community is affected by the number and by the balance among those rights, but also by the emphasis, which is placed on civil, political and social rights. In Marshall's nation state model, entitlements of citizenship evolved progressively from a basic core of civil rights to more substantial political and social rights. Those rights were also extended to sections of the population, who were previously excluded (non-property owners, women and working classes).

It is possible to define different models of citizenship, according to the emphasis which is placed on the various types of entitlements. The two leading models are liberal citizenship and democratic citizenship. For the sake of simplicity here the analysis is limited to these two broad categories, leaving the more detailed discussion for later Chapters.

Liberal citizenship stresses the importance of civil rights (negative liberties) over political and social rights. Civil rights protect the citizen in his/her private sphere against the intrusions and abuses of the public sphere. They are often referred to as negative liberties due to the fact that they do not require action by the citizen, but only the retreat of the public sphere from the

private domain of the individual. In the liberal model, civil rights take precedence with respect to political and social rights. Political participation and redistribution (implied in most welfare and social rights schemes) are minor values with respect to individual freedom in its broader meaning. Both political participation and welfare redistribution are seen with great suspicion by liberal thinkers, in so far as they sacrifice spheres of individual liberty in name of a 'common good'. The cornerstone of liberal theory is the 'priority of the right over the common good'.

Democratic citizenship on the other hand postulates the existence of a common good among the members of the community, and requires a balancing operation between the pursuit of the common good and the unlimited freedom of the individual in the private sphere (negative liberty). Civil rights, political rights and social rights are on the same level, as the seconds (political and social) are often necessary to ensure the effectiveness of the first (civil). Democratic citizenship emphasises the importance of positive liberties as the means of securing an active role for the citizen in the community. The main concern of democratic citizenship is not the protection of the private sphere from the intrusions of the public sphere (negative liberties), but rather the empowerment of the citizen in the public sphere by means of political and social rights (participation and welfare redistribution), which also perform the essential role of securing the vital space of civil rights. It is evident, however, that if on the one hand positive liberties can be instrumental in achieving negative liberties, on the other hand democratic citizenship rejects the liberal 'priority of the right over the common good', and allows for those limitations of individual freedom, which can be necessary to the pursuit of the common goals of political participation and welfare redistribution (common good).

These two models of liberal and democratic citizenship represent broad generalisations of the interplay among entitlements, which can lead to the definition of different types of citizenship. It is considered in more details in Chapter II how the tension between negative and positive liberties has resulted in several types of citizenship, including:

(1) the Ancient Greek and Roman city-state citizenship, where the public and private life of the citizen coincided, leaving little space for the modern concept of negative liberties;

(2) the Nozickean individualistic citizenship, which brings the liberal priority of the right over the common good to its extreme consequences reserving only a minimal role for the state;

(3) the Rawlsian deontological liberalism, in which a limited role for social justice and welfare redistribution is accepted, compatibly with the liberal priority of the right over the common good;

4) communitarian citizenship, which rejects the liberal priority of the right over the common good, and advocates a more substantive and participatory form of citizenship, rooted in a community of history and culture (constitutive community);

5) republican citizenship, where an autonomous role for politics as communication and deliberation, leads the citizens to the definition of a common political good and a collective political identity, more substantive than Rawls's 'Theory of Justice', but less oppressive than the communitarian 'constitutive community'.

Eligibility concerns the criteria which determine access to citizenship. Access to the substance of the status of citizenship (entitlements) depends on the existence of certain 'elements in common' which link the individual to a particular community. Part of this study is devoted to the analysis of those 'shared elements', which determine access of outsiders to the community, and which hold the community together by contributing (together with entitlements) to the formation of the collective identity of its members.

Like for entitlements, in this Chapter the analysis of the criteria of eligibility for citizenship is simplified. The more complex job of connecting these criteria with specific models of citizenship is left to Chapter III. Broadly speaking, the eligibility criteria to access citizenship of a given community are of three different types: ethnic, cultural and political. These criteria contain different discriminating elements, which are used to determine access of outsiders to the community (see, Table 1).

TABLE 1

Criterion	Discriminating element
Ethnic	Blood - Ancestry
Cultural	Place of birth - History - Traditions - Language - Religion
Political	Place of birth - Residence - Civic engagement

Ethnic criteria are the most exclusive, as they prevent all people, who do not share recent or remote ancestors with the existing members of the community, to access citizenship. Ancestry, as the discriminating element for citizenship, is most common in small isolated communities (tribes, clans, early city-states, etc.), however, it has passed to some nation states, determining the exclusion of a large number of non-ethnic residents.

Culture in its wider meaning includes birth in the common territory (national territory in the nation state), knowledge of the common language, history, traditions and often common religious faith. Culture is less exclusive than ancestry, as it is accessible to outsiders, who want to become citizens. The condition of cultural assimilation (including the learning of language and history, as well as the acceptance of traditions and eventually even the joining of a religious faith) precludes access to citizenship to all those outsiders, who would be ready to join the political community, but who are not ready to embrace all aspects of the common culture.

Political criteria are clearly the most accessible to outsiders willing to become citizens of a community. Birthright citizenship allows access to the community for children of immigrants, without requiring cultural assimilation. Similarly immigrants born in foreign soil can be allowed access to citizenship of another community upon condition of residence and willingness to join the political community, without having to assimilate to the culture of the host country. Political criteria are often combined with 'minimum cultural requirements', such as basic knowledge of the language and civic engagement, which are intended to favour the political integration of the immigrant, rather than his/her full cultural assimilation.

Issues related to entitlements and eligibility are taken up in various Chapters of this Thesis, in the analysis of the different models of citizenship and for the purpose of defining an ideal type of European post-national citizenship. In this Chapter, citizenship has been divided between entitlements and eligibility to make the later in-depth analysis of citizenship and European citizenship clearer. It must be said, however, that beyond the analytical clarity of such division, there are important links and overlaps between entitlements and eligibility.

1. Identity, eligibility and entitlements

The major field of connection and overlap is related to the issues of identity and belonging. Both entitlements and eligibility are relevant to the collective identity of the citizens. The

criteria to access citizenship (eligibility) perform a more evident role in the field of identity because the collective identity of the citizens is the cement that holds the community together and therefore a crucial factor in deciding who can become a member and who cannot. National identity (i.e. the form of collective identification in the modern nation state community) was formed in different contexts by ethnic, cultural and political elements, or by a combination of those elements, resulting in a more or less exclusive status of national citizenship with respect to outsiders.

The relationship between entitlements and identity is slightly less direct, but no less important. Liberal citizenship, by establishing the 'priority of the right over the common good', does not sustain substantive types of collective identity based on common ethnicity or common culture. Liberal pluralism imposes the respect of ethnic and cultural identities, as expression of different groups and individuals within the larger community, and rejects a unifying collective identity based on substantive conceptions of the common good. From the liberal standpoint, an ethnic or cultural collective identity would compromise individual rights to cultural, religious and ethnic self-determination within the larger political community.

Democratic citizenship on the other hand is better suited to sustain substantive types of collective identity and belonging. In the Greek city-state and in the early Republican Rome citizen's identity was based on common ancestry, religion, culture and active participation to the public life of the community. Both in Rome and in Greece the exclusivity of citizen's identity (and as a consequence of access to the polity) was relaxed with the opening of the city-states to foreign commerce, in particular with respect to the religious and the ancestral elements.

Less exclusive models of democratic citizenship (that is to say free of the 'substantive' ethnic, religious and cultural elements) support a form of collective identity based on the participation of the citizen in the public life of the community, regardless of their ethnic or cultural roots. This type of citizenship, which in the rest of the Thesis is referred to as republican, is closer to the liberal model, in so far as it accepts the basic premise of pluralism (respect of individual and group substantive identities), but at the same time departs from the strict principle of the 'priority of the right over the common good', by elevating citizen's participation to 'common good' in itself (and therefore making of it a support for identity and belonging).

Modern communitarian theories have gone even further than republicanism in defining a

substantive concept of common good as the foundation for collective identity. Communitarian citizenship reverses the liberal principle of the 'priority of the right over the common good', rejecting the idea that citizens are pre-political individuals endowed with rights, and postulating that they are shaped by the historical communities in which they live. Communitarian citizenship not only values participation as an instrument for political identity (like republicanism), but it also emphasises the importance of common history, culture and language as the constitutive elements of the citizens' collective identity.

The field of identity brings together entitlements and eligibility as crucial aspects of citizenship. Identity could be considered the 'soul' of citizenship, while entitlements and eligibility are the 'body'. It is possible to look at entitlements and eligibility separately, without making connections between the two fields or having to relate them to a single type of identity. Thus for example entitlements can be discussed in the context of an historical account of liberal and democratic citizenship (Chapter II), without at the same time having to deal with the ethnic, cultural or political character of such types of citizenship and their consequent relationship with outsiders. Similarly it is possible to tackle the criteria of access to national citizenship (ethnic, cultural or political - Chapter III), without referring to the nature of entitlements that more or less exclusive models of national citizenship reserve for the members of the community.

However, in both cases it is not possible to avoid looking at the relationship between these two aspects of citizenship and collective identity and belonging. In fact, both aspects of citizenship are considered in Chapter IV, which deals with the concept of identity itself. The whole Thesis follows this line of analysis: entitlements and eligibility are discussed in depth in separate Chapters (II and III respectively), but the two issues are discussed together when dealing with collective identity.

2. Solidarity - exclusion and individualism - inclusion

Independently from the relationship of collective identity, it is possible in line of principle to establish a direct relationship between entitlements and eligibility. This direct relationship consists in linking a particular set of entitlements with some specific criteria for admission, without having to discuss the 'mediating role' of the relevant collective identity and sense of belonging. This is a rather weak link, which is liable to be contradicted by some concrete

examples of citizenship, and it is for this reason that in the rest of the Thesis it was decided in principle to look at entitlements and eligibility separately. In this Section, devoted to typology, it is interesting to make this connection, at least at the theoretical level.

Liberalism and ethnonationalism could be taken as two extreme examples of citizenship, without being concerned about whether they refer to the aspect of entitlements or eligibility. In the liberal example, a relatively loose and uncaring political community (low entitlements) corresponds to a very high degree of internal pluralism and external openness to outsiders (high inclusion). In the ethnic model, a polity of quite specific content and orthodoxy and with an high degree of internal solidarity (high entitlements) is associated to little internal tolerance of cultural and ethnic diversity and external closure to outsiders (low inclusion). In the first case the openness of society can be re-conducted to an excess of individualism and to the 'hollowness and hardheartedness of extreme liberalism' (Williams 1995), which by emptying society of any substantive content (thus lowering the level of entitlements, especially in the social field) makes membership for outsiders more accessible. In the second case it is an excess of internal solidarity and the correspondent high level of entitlements, which contributes to the exclusion of outsiders. These are two extreme examples. Some authors have identified a middle ground in civic republicanism, where internal political solidarity and a politically agreed and justified level of entitlements do not result in the exclusion of all outsiders, due to the absence of internal cultural and ethnic solidarity. Republicanism therefore aims at solving the problems of both extremes, by increasing internal solidarity and participation and by guaranteeing that such solidarity does not result in the denial of internal pluralism and of eligibility of membership for outsiders (see Table 2).

The task of republicans may vary according to the type of community one is looking at. It has been argued that the United States, where the effects of liberalism and individualism have been strongest, need more discussion about solidarity and entitlements, while Germany, where the cultural and ethnic character of the community has led to the exclusion of an high number of immigrants from citizenship (in the past this was one of the factors which contributed to the elimination of internal pluralism), needs perhaps less solidarity and more focus on eligibility (Williams 1995).

TABLE 2

	Entitlements	Eligibility	Internal Pluralism
Ethnic community	High internal solidarity (ethnic, cultural, religious, political and economic)	Low inclusion of outsiders	Low
Liberal community	Low internal solidarity - high individualism	High inclusion of outsiders	High
Republican community	Political and economic solidarity	High inclusion of outsiders	High, if the political element is not dominant

The connection described above between entitlements and eligibility can only be regarded as a broad generalisation, supported by some concrete examples of citizenship, but contradicted by others. National citizenship for example has often seen the combination of liberal principles (relatively low internal entitlements and solidarity) and various degrees of external closure to cultural and sometime ethnic outsiders. In contrast, a good example of the direct link entitlements-eligibility is provided by the evolution of citizenship in Ancient Greece and Rome.

In the early times of the Greek city-states and Republican Rome, citizenship combined a high degree of internal solidarity (based on ancestry, religion and culture) and political participation, with the rigid exclusion of all foreigners from the status of citizen. Citizenship required a close union with the ancestral soil and worship in the ancestral religion. The exclusivity of those bonds denied the alien and the stranger any rights of accession and participation. As citizenship became more accessible to outsiders following the commercial growth of the Greek city-states and the transition from Republican Rome to the Empire, the strong internal solidarity and the high level of participation gave way to a looser and less intense internal status of citizenship. The expansion of citizenship and the growth of eligibility corresponded to the watering down of entitlements, especially the rights and duties of civic involvement in public life, which were characteristic of Ancient Greek and Roman republican

citizenship. In Rome the imperial model of 'universal citizenship', which followed republican citizenship, was based on the stoic conception of a large society founded on the common bond of humanity, and no longer on political participation, which disappeared among the masses with the expansion of the Empire and of Roman citizenship (Gorman 1992).

By the time Emperor Caracalla formalised the creation of 'universal citizenship', extending Roman citizenship to all free peoples living in the Empire (the Empire by then was supposed to extend to the whole of the known world), the status of Roman citizen had very little in common, in terms of entitlements, with the very substantive status of citizenship in Republican Rome or in the original city-state. The principal effect of Caracalla's *edictum* was to extend the formal status of Roman citizenship in exchange for the citizen's duties of military service and tax contribution. The formal extension of Roman citizenship, however, carried important values of inclusion and acceptance of diversity within the political community. The status of Roman citizens did not bestow a substantial set of rights on the former foreign peoples from the provinces, but at least created political equality with the citizens living in Rome or in Italy. Many of the late Roman Emperors originated from the provinces (Hadrian for instance came from Spain) and the same Caracalla, who formally extended Roman citizenship, was a North African. In a modern nation state, where external closure is combined with internal pluralism, he would have been considered a member of an 'ethnic minority' in the best case, or an 'illegal alien' in the worst. Given all the differences between the political systems, it will certainly take a long time before any member of the above categories becomes Prime Minister in the United Kingdom or President in the United States.

3. Universality and particularity

It appears that in modern times, like in the Ancient world, the movement from a 'particular' and exclusive form of citizenship to a 'universal' and inclusive one, has signified a loss in terms of solidarity and entitlements. The post World War Two efforts at creating a system of universal human rights and the same idea of European citizenship represent clear movements in the direction of universalization and globalization of nation state citizenship, a process that, like in the ancient world, is parallel to the globalization of the economy. It remains to be determined, however, if such movements towards world or world-regional (European)

citizenship, can be matched by the maintenance of a system of entitlements at least comparable to the national political and welfare systems.

There are several solutions to the tension between particularity and universality. This Thesis looks at some of them, in an attempt to define a model of European post-national citizenship, representing a move towards a more universal and inclusive status, but at the same time not endangering the level of entitlements enjoyed by the citizens of the Member States.

Given the balance described above between entitlements and eligibility, it is legitimate to ask whether one should attach more value to particularism (high entitlements, but exclusion) or universalism (low entitlements, but inclusion). Today, like in Greece and in Rome, citizenship is characterised by a tension between the values of exclusivity and openness, between particularity and universality. It has been argued that there is value in both exclusivity and openness, in preservation of distinctive particularity and in recognition of universal commonalities (Gorman 1992).

In the field of identity, particularism and exclusivity are fundamental values in a pluralistic society. Individuals and groups should be allowed to maintain their particular and exclusive identities (cultural, ethnic, religious, national and local) within the context of a larger political community, where political identity and citizenship have become more universal and inclusive.

TABLE 3

	Horizontal		Vertical	
	<i>Particular:</i>	<i>Universal:</i>	<i>Particular:</i>	<i>Universal:</i>
Identity	Cultural, religious, ethnic	Political	National, regional, municipal	European, global

At the horizontal level the universalization of the 'political field' is compatible with the preservation of cultural, ethnic and religious identities, as areas characterised by particularity and exclusion. Similarly at the vertical level, the creation of a larger and higher political community (European or global) and the correspondent new citizens' identity and belonging

should be compatible with the political allegiances citizens may wish to maintain to national and local institutions (see, Table 3). In terms of identity, this is the foundation of the principle of subsidiarity, which determines the vertical division of powers between units in a federal system.

At the vertical level the tension between universality and particularity affects both eligibility and entitlements. If on one hand eligibility to join the political community should tend to universality and inclusion, on the other hand it is questionable that all entitlements linked to the status of national citizenship (or to other sub-national statuses) should be universalised. In the current debate on European citizenship, universalism and openness are enhanced by the creation of a larger political community among the peoples of Europe, however, they could be compromised if European citizenship were to reproduce the cultural and political exclusivity of the nation state at European level, with respect to non-European outsiders. The expansion of the political community (European and global) should determine an opening of eligibility and the universalization of those entitlements of national citizenship, which can maintain their effectiveness, in spite of the growth in size of the community.

The forefront of those entitlements is represented by human and civil rights, which have already been partly globalized by a series of international human rights Conventions and institutions. Universalization and inclusion should also involve some aspects of political and social rights. Political rights of representation (passive and active electoral rights), common supranational institutions and rights to travel, should mirror the extension of the political community and aim at universality; in contrast, other political rights of direct participation and involvement in public life would necessarily remain 'local' and 'particular', together with the relevant institutions, political powers and competences (*infra*). Social and economic rights might follow a similar path, in so far as only some aspects should be associated to a new more universal (European or global) dimension of the political community. In particular the right of establishment, the right to provide and receive services, the right to employment associated to freedom of movement and all social rights falling short of substantial welfare distribution should be 'universalized' (see, Table 4).

Redistribution, like direct democracy, risks being watered down and nullified with the expansion of the political community. To avoid this happening 'welfare rights' should remain (or become) entitlements attached to national and sub-national communities. The 'particularity' of welfare rights does not exclude the necessity of redistribution at the global

level, not among the citizens of a local neighbourhood or of a nation state, but among different nation states and different regions of the world. It only excludes that this type of redistribution could take place by means of welfare rights as universal entitlements, given the distance between the economic effort made by the citizens (taxation) and its practical realisation.

TABLE 4

	Particular National and local citizenship	Universal European and global citizenship
Eligibility	Based on residence	Residence, humanhood
Entitlements	Direct democracy, welfare rights	Civil and human rights, political rights and institutions, social and economic rights

The solution, which has been adopted in the European Union for social rights, especially for those at the place of work, is harmonisation of national standards, rather than the creation of a European welfare system. This approach is reflected in the EC Treaty and in the Agreement on Social Policy (now incorporated in the EC Treaty), which aims at creating uniform standards of social rights throughout the Community. The result is the universal character of entitlements (determined by the common standards) but their particular (national or local) enforcement and realisation. A similar model, albeit confined to a more limited field, has been proposed at global level with respect to international labour standards. Some countries argue that, in order to match individual entitlements with the ongoing globalization of the world trade and economy, states pursuing further liberalisation in the World Trade Organisation should be ready to respect minimum agreed standards of social rights, especially with respect to employment.

The values of exclusivity and particularity on the other hand should not be used to exclude outsiders from the political community (which should aim at universality and inclusion) but to look after those entitlements, which could not be guaranteed with the expansion and universalization of citizenship. Thus, for example, political rights of direct participation and

welfare rights would remain attached to 'particular statuses', including not only national citizenship, but also sub-national forms of membership (regional, local and municipal), where they can be best guaranteed.

The 'particularity' and exclusivity of some types of entitlements should be focused on the idea of locality and direct involvement, rather than on bonds of kinship such as ethnicity and culture. In this respect entitlements would remain (or become) local and 'particular', but eligibility would be based on criteria of residence (universal). Local democracy can represent the reproduction of the ancient city-state in modern times, in so far as an high degree of internal solidarity and entitlements is justified by the fact that by serving the community (taking part in public life and paying welfare contributions) citizens would be serving themselves, rather than a distant and abstract 'state'.

CHAPTER II

DEMOCRATIC AND LIBERAL CITIZENSHIP

1. Two ideas of liberty

In a speech of 1819 Benjamin Constant (1988) distinguishes between two kinds of liberty: liberty of the ancients and liberty of the moderns. Liberty of the ancients was the liberty enjoyed in Ancient Greece and Rome and consists mainly in participation in the government of the community, while liberty of the moderns consists in freedom of the individual from the oppression of government.

According to Constant (1988:311) liberty of the ancients consists in 'exercising collectively, but directly, several parts of the complete sovereignty', but, the consequence of this political involvement was that the citizens 'accepted the complete subjection of the individual to the authority of the community ... thus among the ancients the individual, almost always sovereign in public affairs, was a slave in all his private relations.'

Liberty of the moderns is presented by Constant as a reaction to the oppression of the individual by the state, which resulted from the application of liberty of the ancients in Greece, Rome and during the Jacobin period of the French Revolution. The modern concept of liberty focuses on the guarantees of the individual against the abuses of the state. It is based on the rule of law and on the civil rights of the individual: freedom of speech and opinion, right of association and right to a fair trial. 'Modern citizens' value enjoyment of independence and security in the private sphere more than participation in public life, and regard the guarantee by the state of those rights as the essence of liberty.

Constant believes that liberty of the ancients can no longer be enjoyed in the reality of the modern state, because it would always result in the oppression of the individual and in the sacrifice of civil rights. One of the reasons he adduces for the end of any 'active and constant

participation in collective powers' by the moderns is related to the size of modern states. The size of a country makes direct participation almost impossible and especially determines a corresponding decrease of the political importance allotted to each individual, who can no longer perceive the influence he exercises on the management of the *res publica*. Ancient communities, such as the early Republican Rome and the Greek city-states, were close knit groups with an high degree of internal solidarity, based on ethnic and cultural links, worship in an ancestral religion and attachment to an ancestral territory. In these communities direct political participation was feasible and would result in direct and tangible benefits for the citizens. It could be argued that it was easy for Roman 'patricians' or Athenians citizens to serve the 'state', as by doing so they were truly serving themselves.

'Commerce' played a key role in the emancipation of the individual from the oppression of the state in ancient communities, by putting individuals in the condition of appreciating the value of political and economic independence. It opened the small inward looking ancient city-states to foreign peoples, bringing to an end their cultural and religious exclusiveness as well as their political systems, based on civic engagement. Constant (1988:325) notes how commerce 'has brought nations closer, it has given them customs and habits which are almost identical; the heads of states might be enemies: the people are compatriots.' Today a similar pattern characterises the passage from national to post-national forms of citizenship, where economic globalization and liberalisation of international trade undermines the nation state political and economic structure and the status of national citizenship.

It has been argued that citizenship in Greece before the Peloponnesian wars and in Rome before the Punic wars was characterised by exclusivity and connection with religion (Gorman 1992). Commerce and economic change, together with military success and expansion of the city-states into federations and empires, determined the end of the ancient political system, based on continuous civic engagement and held together by an high degree of kinship among the members of the community (culture, ethnicity and religion). Citizenship lost much of its meaning in terms of political rights of direct participation, but it became more accessible to foreigners with diverse cultural, ethnic and religious backgrounds.

If Constant's argument about internal oppression (lack of negative liberties and forced participation) and external exclusiveness of 'active citizenship' is more or less true with respect to the original city-state, it does not apply to the concept of 'imperial citizenship', which developed in Greece and Rome after the expansion of the city-states. Imperial

citizenship combined a more watered down internal status (less civic duties, but also less substantive rights) with openness towards cultural and ethnic outsiders willing to join the community. As the Roman empire grew out of military conquest, new peoples were gradually included into Roman citizenship, without this signifying that they were going to be endowed with the same rights and privileges of ancient 'Roman patricians', but also without any extra duties beyond the obligations to pay taxes and to perform military service.

Constant, however, rejects liberty of the ancients on an ideological basis, because of its potential effects on the sphere of individual rights, regardless of the size of the community. As his liberal successors, he regards active citizenship as a potential threat to individual liberty, rather than as the means to achieve it, so that the second should always have priority with respect to the first. The analysis of the relationship between liberty of the moderns and liberty of the ancients made by Constant is at the origin of the modern liberal principle of the 'priority of the right over the common good', where active citizenship (i.e. the 'vehicle' of the common good) should never impinge on the sphere of individual rights and freedoms.

Even if liberty of the modern has priority with respect to liberty of the ancients, Constant (1988:311) does not rule out all political rights, and at the end of his catalogue of individual rights he concedes: 'finally it is everyone's right to exercise some influence on the administration of government, either by electing all or particular officials, or through representations, petitions, demands, to which the authorities are more or less compelled to pay heed.' Such a residual approach to political rights would later result in the liberal notion of political rights of citizenship. Constant stresses the minor role of political rights ('some influence', 'more or less compelled to pay heed'), although he maintains the necessity of keeping control on the political class by the citizens.

2. Individuals and collectivity

The words chosen by Constant (ancient and modern) to distinguish between positive liberty (active citizenship) and negative liberty (civil rights), are the sign of an evolutionary approach to the concept of citizenship.²¹ Liberty of the moderns is presented as an improvement from a more primitive form of political organisation (ancient), where the liberty of the individual was

²¹ See, Catalano (1974), who argued that Constant's evolutionary approach was influenced by the Illuministic theory of progress.

sacrificed on the altar of an oppressive state. The disadvantage of the evolutionary approach is that it fails to take into consideration the specificity of the ancient constitutional model and applies modern categories, such as state, the distinction public/private sphere, or freedom of the individual, to different historical contexts.

Constant's argument about the oppression of the private individual by the state (public) in ancient communities is undermined by the fact that the concept of 'abstract state', separated from private individuals, and the clear cut separation public/private did not exist in Greece or in Rome. If one accepts that these categories are the product of a particular historical experience and not universal models to apply to all possible experiences, it is then possible to look at liberty of the moderns and liberty of the ancients under a different light.

This Thesis does not deal with this issue in term of liberties, but focuses on the relationship between individual and collectivity, which is at the heart of the idea of citizenship. At the time Constant was writing the separation between state and citizens was a central feature of the concept of citizenship: the protection of the individual from the abuse of the state was the rationale for the development of the idea of 'civil rights'. The ancient concept of citizenship (from now the main reference is Ancient Rome) was based on a different relationship between individual and collectivity, where there was no oppression of the private sphere by the public one, because the two were merged together. The main guarantee of the rights of the individual for the ancients was the participation of the citizen in the public sphere.

Regarding the difference between ancient and modern communities it is possible to replace Constant's formula (liberty of the ancients - liberty of the moderns) with two definitions, which express more clearly the relationship individual-collectivity in two different historical periods: (1) Senatus Populusque Romanus; (2) king - subjects allegiance.

The first definition meaning 'The Senate and the People of Rome', is the extended version of the well known Roman abbreviation S.P.Q.R., which in the words of the moderns became the emblem of the 'Roman state'. However, S.P.Q.R. rules out the same existence of a Roman state. The community is presented as the Senate and the People of Rome (rather than the Emperor, the Crown, etc.) and is the expression of a concrete conception of the collectivity, where the individuals (People) and the government (Senate) are not opposed to each other, but are together (Catalano 1974). Sovereignty is not conferred on the Senate or on the abstract state, but on each individual citizen and as a consequence on the community as a whole.

The second definition implies a separation between the king (representing the state) endowed with sovereignty, and the subjects, who are excluded from the public sphere. The opposition king/subjects is at the origin of the modern opposition abstract state/citizens and of the separation between government and free individuals. In the analysis which follows these two different conceptions of the relationship between individual and collectivity are associated with two leading constitutional models (and concepts of citizenship), the Roman/democratic and the Anglo-Saxon/liberal.

3. Populus and cives in Rome

Roman republican citizenship was characterised by unity between individuals and collectivity and by the absence of a separation between private and public spheres. It has been argued that the definition 'Populus Romanus Quirites' (similarly to S.P.Q.R.) best explains the relationship between the citizens and the community in Rome, because it refers to the whole (Populus) and the individuals (Quirites) together (Catalano 1974). The sovereignty of the people is composed of the sovereignty of every single individual citizen.

Rudolph von Jhering (1852) in his *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* analyses the relationship between individuals and collectivity in ancient Rome. He distinguishes between 'contemporary state' and *Populus Romanus* and concludes that the 'state' in Rome was not above the citizens and did not exist independently from them. The state as such had no rights, but it was the citizens who were entitled to public and private rights. The main difference between public and private rights in Rome was that, while private rights were exclusive of the individual, public rights were collectively enjoyed by all citizens together or by individual citizens on behalf of the collectivity.²²

3.1 Actio Popularis and Common Law Writ

An interesting feature of Roman citizenship is the *actio popularis*, which could be brought by any individual wanting to enforce a public right on behalf of the community, as in Rome the subject of public rights was the individual citizen, not the abstract state.²³

²² Regarding individual and collective enjoyment of property rights see, Marx (1964), discussed below.

²³ See, von Jhering (1852).

The structure of the *actio popularis* (public rights enforced by an individual on behalf of an undivided community of law) can be compared to the origin of legal action in Common Law. The 'Writ' was a form of action 'granted' as a privilege by the King to the plaintiff against the defendant (in the Writ the defendant was ordered to perform a certain conduct in compliance with the plaintiff's complaint). The King represented the public sphere as opposed to the private sphere of the individual subjects. The competence of the Royal Court was determined by the defendant's infringement of the Writ (King's order), not by the offence against the plaintiff in itself (Ravà 1982). This complex mechanism was necessary to justify the competence of the Royal Court (in origin the *Curia Regis*) in exercising jurisdiction over private individuals, because of the separation between public and private sphere in the Anglo-Saxon constitutional tradition.

3.2 Sovereignty and property

An important aspect of Roman citizenship was the sovereignty of individual citizens and of the whole people as collectivity of individuals. Karl Marx (1964) in his *Pre-Capitalistic Economic Formations* connects the concept of individual sovereignty in Rome with the system of property ownership. According to Marx the sovereignty of individual citizens was the foundation of the 'ancient form of production'. Looking at the distinction between common land (*ager publicus*) and private land - which was divided among the citizens - Marx reaches the conclusion that every citizen in Rome was such, because he was sovereign upon a part of private land. Property was an aspect of the sovereignty of every individual citizen. Individual sovereignty was exercised through the possession of private land, while collective sovereignty could be exercised by every citizen using public land. The use of public land by citizens was similar to the exercise of the *actio popularis*, that is to say, it was the individual enforcement of a public right on behalf of the community.

The 'union' which, according to Marx, characterised the relationship between individuals and collectivity in Roman citizenship came to an end with the passage from the Republic to the Empire. The transformation of the economic form of production from local farming to widespread commerce and the expansion of the original city-state into an empire, determined the progressive abstraction of the state with respect to its citizens. The passage from the republic to the empire in Rome corresponded to three major changes in the conception of

citizenship, which can be summarised as follows:

(1) regarding the inclusion of cultural, ethnic and religious outsiders, imperial citizenship approximated the stoic ideal of universal citizenship based on the common element of humanhood;

(2) universality determined a decrease in the numbers of rights and obligations of citizenship, resulting in a less exclusive and at the same time less caring status of citizenship;

(3) imperial citizenship brought to an end the unity between individuals and collectivity (private/public), which had characterised the roman republican polity. The imperial state, impersonated by the emperor, was as abstracted by the mass of the citizens, as modern states and monarchs.

4. Citizenship in the French Revolution

It is interesting to look at the contrast between democratic and liberal citizenship in the French Revolution by confronting the provisions on citizenship contained in two different Constitutions: the Jacobin of 1793 and the Thermidorian of 1795.

The democratic model of citizenship, which emerged from the French Revolution was inspired by the political thought of Rousseau and by the ancient Roman constitutional tradition. Rousseau's idea of citizenship was derived from the Roman concept of *populus* as sum of individuals (the whole and its parts), and by the Roman idea of popular sovereignty. Rousseau (1762) contrasts the Roman democratic model with the English liberal model, where the people were free only during parliamentary elections. Immediately after the election the people were slave, as they could no longer express their General Will.

Rousseau's ideas and the democratic model of citizenship found concrete expression in the Jacobin Constitution of 1793. Article 34 of the Declaration of the Rights of the Men and of the Citizen (which introduces the Constitution), states that : *Il y a oppression contre le corps social, lorsqu' un seul de ses membres est opprimé. Il y a oppression contre chaque membre, lorsque le corps social est opprimé.*²⁴ Article 7 of the Constitution specifies that: *Le peuple souverain est l' universlité des citoyens français.* These definitions reveal a relationship individuals-collectivity where there is not separation between the citizens and the state.

²⁴ 'There is oppression against society, when only one of its members is oppressed. There is oppression against each member, when society is oppressed.'

The 1793 'democratic' Constitution contains also some highly inclusive provisions on citizenship. According to Article 4, all men/women, born and resident in France, aged more than 21 and all foreigners, who have been resident in France for more than one year and perform a 'socio-economic function', are French citizens. This contrasts with the exclusionary character of modern nation states' provisions on citizenship/nationality.

The end of the Jacobin power and the Thermidorian reaction shifted the balance of the French Revolution from the democratic model of citizenship to the liberal model. The 1795 Thermidorian Constitution reflects a liberal approach: political representation and division of powers are the key constitutional principles. The Thermidorian Constitution of 1795 contains provision on citizenship, which are closer to those contained in most contemporary liberal constitutions. Those provisions represent a major departure from the inclusive principles of 1793 and from the democratic model. Title II called '*État politique des citoyens*' establishes that:

'all men and women aged more than 21, who were born and are resident in France, have been registered in a public register of a municipality, have been resident in France for more than one year after such registration and have paid a direct contribution are French citizens.'

The exclusionary character of this provision is evident in the absence of any automatic right of naturalisation for foreigners, who are not born in France, and by the requirement of having to pay a contribution as a condition for citizenship, which links citizenship to property ownership. The 'democratic' phase of the French Revolution (including the open nature of citizenship) ended with the transformation of the 1793 Republic in the 'Jacobin Terror', and then with the advent of the 'liberal' Thermidorian Revolution. Some important democratic principles, however, survived in the French nation state, which was born of the Revolution and was the outcome of the influence of democratic principles upon the dominant liberal constitutional model. Among those principles is the fairly inclusive character of French national citizenship (see, Chapter III).

5. The contemporary debate on citizenship

In France the contrast between liberals and democrats resulted in two different constitutions (the Jacobin of 1793 and the Thermidorian of 1795), expressing radical liberal and democratic

views. The events of the Revolution have influenced modern political thought in Europe in so far as most liberals find their historical references in Constant's thought, the Principles of 1789 and the Thermidorian Constitution, while most democrats refers back to the Roman tradition, Rousseau, and the Jacobin Constitution.

The American history of the dualism between liberalism and democracy is different from the European one in so far as the Constitution of the United States attempted to reconcile the need for self-rule (democracy) with the need to protect individuals from the abuses of government, in a coherent institutional framework. For this reason, in the United States both liberals and democrats ('republicans' in the American tradition) can claim the legitimacy of their argument from the Constitution.

In the following Sections three major stands in the contemporary debate on citizenship are taken up: liberalism, communitarianism and republicanism. Liberalism is broken down to radical liberalism and Rawls's 'deontological liberalism', which attenuates some of the most extreme aspects of liberal theory. Communitarianism on the other hand represents already a radical position within the 'democratic field', especially if compared to the less intense republicanism. A distinction is therefore drawn between 'philosophical communitarianism', which produces the most coherent and radical results, and 'political communitarianism', which attenuates some of the most extreme aspects, for the purpose of making communitarianism more presentable to the public at large. Political communitarianism has its loudest and better known voice in Etzioni. Last but not least the analysis focuses on republicanism, which represents a compromise between liberal principles and democracy as 'popular self-government', particularly in the American political tradition.

5.1 Modern liberals

The old debate between 'liberty of the moderns' and 'liberty of the ancients' can be translated in a wider philosophical debate between pluralism and democracy. Pluralism in this context is not used in the broad meaning of respect of different cultures, religions and ideas within the same political community,²⁵ but in the narrow meaning of 'distrust of politics'. As such it

²⁵ 'Pluralism' as celebration and acceptance of diversity within society and 'democracy' as the opposite of authoritarian rule are concepts embraced by both 'pluralists' and 'democrats' (or republicans). The objects of contention, on the other hand are pluralism as 'distrust of politics' and democracy as 'self-rule', which express two different approaches to citizenship and constitutional politics.

indicates a vision of the community and of citizenship, where the existing distribution of wealth and background of entitlements represents the pre-political backdrop for the pluralist struggle among self-interested individuals (Sunstein 1988).

According to pluralists, there is no role for politics and deliberation as the means to change the existing set of entitlements and wealth distribution, because political intervention would affect individuals' natural rights and freedoms. Pluralist politics is a struggle between self-interested individuals and groups, against a naturally given background of entitlements and wealth distribution. Politics does not have an 'autonomous dimension', which would allow it to modify individuals' preferences: it is only the means for the maximisation of individuals' preferences. The role of the citizen in pluralist politics is in all similar to that of the consumer in the market place.²⁶

It is considered in Chapter VIII that pluralist politics can be associated to a specific constitutional model (monist-levellist), where the margins for 'democratic self-rule' - and therefore alteration of the natural set of entitlements - are greatly reduced.

Democratic self-rule in the form of political deliberation inevitably interferes with individuals' raw pursuit of self-interest. It has been argued that the pluralist fear that any such intervention on the existing set of resources and entitlements might degenerate in tyranny, is the consequence of a 'deep mistrust of people's capacity to communicate *persuasively* to one another their diverse normative experiences: of needs and rights, value and interests, and, more broadly, interpretations of the world' (Michelman 1988:1507).

Pluralism ignores that pre-political entitlements and wealth distribution are the result of disparities of power and inequality of opportunities and information among the pre-political individuals. Formal equality of citizenship is built on a set of existing entitlements and distribution of resources, which *de facto* realise a state of inequality among the citizens. Women, gay people, disabled people, ethnic and national minorities, all start from a disadvantaged position with respect to fellow citizens, who do not belong to these groups. From a non-pluralist point of view, politics should be about bridging these gaps (social, political and economic), rather than allowing the struggle between self-interested individuals to take place in an uneven playing field.

Democracy as 'self-rule' can therefore be opposed to pluralism as 'distrust of politics', in

²⁶ For a discussion of the concept of 'market citizenship', *infra*, p. 61.

so far as the first requires an 'autonomous role' for politics, beyond that of 'neutral medium' for the struggle among self-interested individuals, identified by pluralists. The degree of autonomy which should be given to politics is crucial and determines the difference between a liberal-republican model of citizenship (Rawls, Walzer, Habermas) a communitarian model (Sandel, Taylor, MacIntyre, Etzioni) and an authoritarian one, which would justify the worst fears liberals always had of 'democratic self-rule', from Constant to Nozick.

All democrats agree that the existing set of entitlements and wealth distribution should be a matter for political disposition. Contrary to pluralists, democrats trust people's capacity of communicating and persuading each other into changing the existing set of preferences, without degenerating into authoritarian government. Politics as 'deliberation' is based on the premise that discussion and debate should introduce alternative perspectives and additional information, so to allow individuals to scrutinise and review the existing set of preferences (Michelman 1988).

Democratic politics permit the alteration of the existing set of preferences (including a certain degree of redistribution), because the pre-political backdrop in which such preferences exist is characterised by material inequality among the citizens, namely differences in power, resources and information. Allowing the raw pursuit of self-interest, without any political intervention, would favour the consolidation of the power and wealth of those individuals and groups, who already hold a 'dominant position' within the community.

The analysis of modern liberal citizenship is divided between radical liberals, who take a strictly 'pluralist' point of view, and Rawls's deontological liberalism, which, albeit founded on classic liberal principles, is closer to the republican idea of 'politics as deliberation'.

5.1.1 Radical liberalism

The most radical liberal thinkers give a narrow interpretation to Constant's distinction between 'liberty of the moderns' and 'liberty of the ancients'.

Isaiah Berlin (1969) in an essay entitled *Two Concepts of Liberty*, makes an analysis similar to that of Constant and, in distinguishing between 'negative liberties' and 'positive liberties', comes to the conclusion that positive liberties are 'anti-modern' and always potentially totalitarian. He follows the same path as Constant in criticising the 'liberty of the ancients' (oppression of the public sphere over the private sphere) and affirms that the desire

of the individual to be his own master could lead to an idea of popular sovereignty, which would easily destroy individual liberty. It has been considered above that this radical opposition between liberty of the modern and liberty of the ancients, is evolutionary in so far as it overlooks differences between the nation state and previous political experiences with respect to key concepts such as individual/collectivity and public realm/private realm.

In illustrating the fundamental role of negative liberties in modern society, Berlin relies on the liberal principle of the 'priority of the right over the common good', which says that in no case positive liberties²⁷ can override negative liberties.²⁸ Berlin's contribution to liberal theory is particularly radical as he affirms that whenever a contrast arises in modern society, positive liberties should always give way to negative liberties. He also believes that the two ideas of liberty are not compatible with one another and regards them as irreconcilable attitudes to the ends of life: the first (positive) would want authority placed in his own hands, while the second would want to curb it as such (Berlin 1969).

The most eminent philosophic and economic formulation of 'radical liberalism' is Robert Nozick's 'minimal state'. Nozick (1974) brings the 'priority of the right over the common good' to its extreme consequences, by expanding the private sphere (negative liberties) and leaving space in the public sphere only for a minimal state, with no authority for redistribution of resources or any other political decision affecting and limiting individuals' freedom. The same existence of a 'minimal state', however, implies that a 'minimum' of individual freedom has to be sacrificed for an orderly society to exist, especially in sectors such as justice, defence and foreign affairs.

Any state beyond the 'minimal state' is according to Nozick 'morally illegitimate', because it violates the natural right of the individual to pursue his own self-interest, and limits his rights and freedoms more than it is necessary for such rights and freedoms to continue to exist in the first place. Nozick's citizenship consists of a bundle of 'natural rights' (negative freedoms) with no corresponding natural duties, and of an extremely limited set of 'positive rights' and duties deriving from membership in the community (minimal state).

²⁷ Mainly political and social rights aimed at achieving a common good for society, beyond the interests of single individuals.

²⁸ Intended as the freedom of individuals to pursue their own self-interests.

5.1.2 Rawls's 'Theory of Justice'

In accordance with the American constitutional tradition, which attempts to strike a balance between liberalism and democracy, some liberal thinkers have opted for less radical models of liberal citizenship, which take into account the need for democratic self-rule (including a minimum of redistribution) as well as the liberal idea of liberty as 'negative freedom'. One of the most successful formulations of this strand of modern liberal theory is Rawls's 'Theory of Justice' (1971), which attempts to reconcile a minimum of welfare redistribution with the fundamental principles of pluralist politics.

Rawls starts from a 'fundamental intuitive idea', which is implicit in our political culture: the idea of 'society as a fair system of co-operation among citizens conceived of as free and equal persons.' The fundamental intuitive idea is pre-political and therefore it is universally applicable to all sorts of communities, regardless of their different culture, religion, and political organisation. It represents, according to Rawls, a neutral standpoint from which it is possible to identify a set of neutral principles of justice governing society.

The task of identifying the principles of justice belongs to the individual in the 'original position', namely a pre-political subject conceived as free and equal moral person capable of rational and reasonable action. The individual in the original position is pre-political, as he is not defined by the community he will belong to and of which he has no knowledge (veil of ignorance), but by the mere 'capacity to choose'. He is independent from his own ends and moral allegiances in the community, so that can be considered an 'unencumbered self', as opposed to the communitarian 'encumbered self', who is defined in the whole of his identity, by his membership in an historical community (Sandel 1984).

Rawls provides an alternative to the utilitarian approach to liberal theories, which justify the pluralist pursuit of individuals' self-interest on the basis of a calculus, demonstrating that the aggregate of individuals' preferences leads to overall gains for society. He departs from the utilitarian model in so far as he bases individuals' choices not simply on the rational maximisation of self-interest and well being (which might also justify the choice of a totalitarian regime), but also on their reasonableness as moral persons. In this sense Rawls's liberalism can be defined as 'deontological'.

The individual in the original position chooses neutral and procedural principles of justice, as he does not know his future position within society ('veil of ignorance'). In choosing the principles of justice the pre-political individual does not pursue any common good (of which

he cannot be aware), and is guided not only by his mere self-interest (like in liberal utilitarian models), but also by his reasonableness as moral person, which is a feature of his pre-political nature. The 'veil of ignorance' allows the individuals to choose the principles of justice, without being affected by those 'contingencies which put men at odds,' and which would prevent them from choosing neutral principles with which all members of the community can identify.

The community governed by the neutral principles of justice chosen by the individual in the original position is a 'procedural republic' which remains neutral among individual's ideas of the 'good'. The procedural republic simply 'provides a framework within which its citizens can pursue their own values and ends, consistent with a similar liberty for others' (Sandel 1984:82). It allows individuals to preserve intact their freedom of choice, while a 'constitutive community', engaging all of the identity of the individual, would require allegiance to some specific common good and ends, thus limiting the freedom of individuals to choose otherwise. Rawls's two principle of justice have been summarised by Pakaluk (1994) as follows:

- 1) Principle of equal basic liberties;
(negative liberties)

- 2) (a) Principle of formal equality;
(equality of opportunities)

- (b) Difference principle
(social and economic inequalities only in so far as
they are for the benefit of the least well off).

The first principle refers to the liberal 'negative liberties', or individuals' pre-political entitlements such as: freedom of expression, thought and association, right to a fair trial and right to travel. Clause (a) of the second principle requires the 'formal equality' of individuals to be achieved by means of the principle of parity of opportunities. The difference principle, which has been regarded as providing rationale for the welfare state in a liberal society (Hollis 1992), permits departures from the principle of formal equality (2)(a) - but not from the

principle of equal basic liberties (1) - only if such departures are to the benefit of the least advantaged in the community. It is important to stress, however, that the first principle always takes priority with respect to the second and that clause (a) of the second normally takes priority with respect to clause (b), unless an exception is necessary, in order to benefit the 'least advantaged'. This system of priorities is meant to guarantee the basic liberal principle of the 'priority of the right over the common good'. The difference principle can be used to compensate the least advantaged (in a system of welfare state for instance), but it cannot be used to pursue a common good, fettering the basic liberties of the individual. It is considered in the following Sections how some communitarian authors regard the difference principle as an inconsistency in Rawls's neutral polity, and as a kind of bridge towards the idea of common good.

Rawls's idea of 'justice as fairness' is embodied in a concept of citizenship which is politically neutral, and allows individuals to pursue their own ends; civil rights as pre-political negative liberties are the main feature of this kind of citizenship. The difference principle does not allow any form of active citizenship to interfere with the private sphere of the individual. It simply acts as a compensation for major disparities in the existing (pre-political) distribution of powers and resources.

It has been considered above that Nozick starts from the same liberal premise of Rawls (the idea of an autonomous pre-political individual, free to choose his own good in a neutral polity), but avoids any contradiction by renouncing any mechanism such as the difference principle, which implies a minimum of redistribution and therefore interferes with individuals' natural entitlements. The 'minimal state' does not admit exceptions to the principle of equal basic liberties (1), nor to the principle of equal opportunities (2)(a) (Mouffe 1993b).

Rawls's neutral community is the result of an 'exercise of avoidance', where the principles of justice underlying the constitution are agreed without appealing to controversial moral or religious doctrines, but only to fundamental ideas on which we could all reasonably agree (Baynes 1992:53). The 'method of avoidance' (which operates through the veil of ignorance) is the guarantee of pluralism in a liberal society, where different groups and identities can coexist, without having to submit to ideas and practices they do not share. On the other hand it prevents individuals and groups from communicating and debating on controversial issues, beyond the principles of justice sustaining the neutral polity. On certain controversial issues

(or 'contingencies which put men at odds') communication and deliberation could help to find a common ground without necessarily entailing oppression of moral, cultural and religious identities.

Rawls's 'unencumbered self', member of the liberal neutral polity, is not supposed to describe the individual in the whole of his identity. In fact, if this was the case, it would be easy to see how the unencumbered self could hardly fit in a reality, where individuals are 'encumbered' with all sorts of attachments and identities. To this type of criticism, coming from communitarian authors, Rawls (1992) has answered in later writings, arguing that the unencumbered self does not provide a framework for the whole identity of an individual (which is much 'thicker' than the 'free and equal moral person') but only for its 'public aspect'. Rawls draws a line between our public identity as citizens and our private (or moral) identity as individual agents.

Only our public identities as citizens are unencumbered and therefore unaffected by specific conceptions of the good, which on the other hand contribute to the formation of the rest of our identity as full moral agents (encumbered). The purpose of this distinction is to demonstrate, from a liberal standpoint, that, even among individuals with different identities and allegiances, it is still possible to find a common political ground, neutral towards the different conceptions of the good. The attempt to find such a common neutral ground distinguishes Rawls's Theory of Justice from other more radical liberal theories (utilitarian in particular), which stop at the definition of the community as a struggle among self-interested individuals.

However, Rawls's theory, differently from other liberal theories, has been criticised for sustaining a specific conception of the common good, albeit 'thinner' than the common good underlying the communitarian constitutive community. The 'fundamental intuitive idea' of 'society as a fair system of co-operation among free and equal persons' (or 'well ordered society') is not neutral with respect to all specific conceptions of the common good, but it is in itself a 'constitutive community', rooted in a specific historical and cultural tradition. The idea of a 'well ordered society' is based on a set of cultural traditions and practices in which the values of individual choice, autonomous deliberation and pluralism of life possibilities are given high priority (Stern 1992). These values belong to the western philosophical and political tradition and might not be neutral with respect to non-western conceptions of the individual and of the community.

The fundamental intuitive idea is, by Rawls's own admission, 'rooted in our political culture', and is far from constituting a neutral ground among different conceptions of the good. On the contrary it is in itself a specific conception of the good, in so far as it identifies the common good of political association with values that are derived from the western political culture and traditions.

The idea of society as a fair system of co-operation among free and equal individuals is not neutral with respect to conceptions of the good which admit violation of individual rights (authoritarian regimes), which are based on religious or aristocratic values (theocracies and oligarchies) or on the assumption of natural hierarchies (slavery). The common good of political association, implied in the idea of a well ordered society, is neutral with respect to many 'compatible' conceptions of the good, however, it is based on values, which belong to the western philosophical and political culture and which might not be compatible with non-western conceptions of the good.

From a 'radical liberal' standpoint Rawls's theory of justice can be criticised for providing definitions of the individual and of the community, which are too substantive, and therefore not really neutral between alternative conceptions of the good. On the other hand, from a communitarian standpoint, which advocates the necessity of identifying a common good among all the members of the community, Rawls's well ordered society is too vague a concept to represent a 'constitutive community' and the unencumbered self is too 'thin' to sustain a common identity among the members of the community.

5.2 Communitarians

If Rawls's theory of justice draws its origins from Kant's formal criterion of moral and political judgement, 'the categorical imperative', modern communitarian theories find their historical references in Aristotle's definition of the man as 'political animal' and in Hegel's philosophical attempt to define a more substantive theory of the community, rooted in social relationships, shared practices and traditions. Hegel in particular challenged the liberal principle of the 'priority of the right over the common good' and questioned the abstraction of moral and political principles from historical and social conditions. His efforts have been described as an attempt to 'find a middle ground between the excesses of political theory based solely on the idea of rational autonomy and one based exclusively on the idea of

historically sedimented community' (Stern 1992:262). Hegel's critique of Kant's political theory is used in this context to introduce modern communitarian alternatives to Rawls's 'deontological liberalism'. However, if Hegel's approach represents an attempt to find a 'middle ground', mainstream communitarianism edges towards a more radical definition of the individual, rooted in a culturally and historically sedimented society.

Communitarian citizenship is not based on neutral and abstract principles of justice, which are equidistant between different conceptions of the good. In contrast, it expresses a specific conception of the common good, which should bring together all the members of the community and form their collective identity as citizens. Such 'constitutive community' presents obvious risks for pluralism, in its broad meaning,²⁹ in so far as the substantive common good might contrast with diverse conceptions of the good held by individuals or groups of individuals within the polity.

If one accepts Rawls's distinction between 'public identity' as citizens and 'moral identity' as private individuals, where both contribute to the formation of the 'full identity' of the individual, then the communitarian community not only demands allegiance from the public minded citizen, but also from the private individual. This results in a comprehensive conception of the self (encumbered self) and of the common good, which is supposed to increase the internal solidarity among the citizens, but which inevitably reduces the individual freedom to pursue alternative conceptions of the good within the same community.

Such reduction of individual freedom and internal pluralism is seen by most communitarians as the necessary price to pay in order to have a stable 'constitutive community', with an high degree of internal solidarity among the citizens. The 'constitutive community' and the 'encumbered self' are supposed to provide an answer to the 'lack of society' and 'lack of entitlements', which result from liberal-individualist models of citizenship.

5.2.1 The politics of the common good

The communitarian premise is that a definition of the individual out of the context of the community is not possible. The individual is defined by his participation in a 'historical community'. The community has a constitutive role in shaping the identity of its members and

²⁹ *Supra*, note 25.

it is not a mere neutral framework for the co-operation between free and equal persons (Sandel 1984). An important term of reference for communitarian theories is Aristotle's definition of the individual as 'political animal', and his unified vision of politics and morality. In contrast, liberal authors, separate politics, which they regards as 'public sphere' from morality, regarded as 'private sphere' (dominion of the individual).

Sandel's work has been criticised for providing a very accurate and convincing communitarian critique of Rawls's Theory of Justice, but for failing to define in a convincing manner the politically 'encumbered self' (Hall 1994). According to Sandel (1982:178) the weak point in Rawls's Theory of Justice is the difference principle: 'We cannot be persons for whom justice is primary and also be persons for whom the difference principle is a principle of justice.' He believes that the difference principle, by providing compensation for the least well-off (the rationale for the welfare state in liberal societies), introduces a sort of 'common good from the backdoor'. The idea of redistribution implied in the difference principle contrasts with the concept of neutral polity, as it requires a common 'moral bond between those who are going to redistribute social goods' (Mouffe 1993b:30).

Rawls's principles of justice nevertheless can be defended by arguing that the difference principle does not act at the 'constitutional level', but it is just a mechanism of compensation for the least-well off. The non-constitutional nature of the difference principle is demonstrated by the priority of the first principle over the second. In practical terms this means that Rawls's neutral polity does not exclude substantive entitlements such as social rights and welfare redistribution, but those entitlements are not superior principles, which can prevail over the basic (constitutional) negative liberties of the individual. The difference principle in itself does not affirm any specific conception of the common good, liable to affect individual's rights.

Sandel refers to Rawls's pre-political individual as to 'unencumbered self' and contrasts it with his 'encumbered self' or 'communitarian self'. The encumbered self is defined 'not by the mere capacity for choice but by his prior attachments, history, interactions and engagements of immensely varied sort' (Hall 1994:90). The definition of 'encumbered self', however, differs in communitarian authors. Sandel's definition emphasises the political aspect of individuals' participation in the public life of the community, as the vehicle, which contributes to the formation of citizens' identity. More substantive definitions of the 'encumbered self' and of the 'common good' include elements, such as common language,

culture and traditions, which are not 'strictly political'.³⁰

Sandel points at some elements which link individuals to communities, such as: common history, culture, and traditions. His 'constitutive community' goes beyond the mere common bond of political association in so far as:

'what marks a community is not merely a spirit of benevolence, or the prevalence of communitarian values, or even certain "shared final ends" alone, but a common vocabulary of discourse and a background of implicit practices and understandings' (Sandel 1982: 172-173).

All those elements according to Sandel contribute to the building of the 'political dimension' of the individual, which adds to his identity as encumbered self. Sandel's idea of community of language ('common vocabulary of discourse') has been given a broad interpretation as to mean not only common language but also common culture and traditions (Hall 1994).

Alasdair MacIntyre (1981) gives a more substantive definition of the 'constitutive community' and of the 'encumbered self' by relying directly on common culture, language and traditions as the cement holding the community together. He believes that liberals are mistaken in their search for a neutral ground outside all traditions where to build a system of objective morality. In fact, there is no neutral ground between individual moralities. The liberal separation between politics and morality, as well as the rational attempt to build an objective moral system independent from tradition are, according to MacIntyre, a consequence of the influence of the enlightenment on the liberal theory.

MacIntyre defines the polity as a 'constitutive community', where morality and politics are not separated and where common political good coincides with common moral good. His definition of the community is even more substantive than Sandel's one as it clearly exceeds the 'political boundaries' ('shared final ends' in Sandel's words) and includes non-political elements such as culture, language and traditions. All those elements of commonality create a sort of natural bond between the individual and the community so that, faced with the 'choice of tradition', the encumbered self:

'will often experience a shock of recognition: *this* is not only, such a person may say, what I now take to be true but in some measure what I have always taken to be true (MacIntyre 1981:394).

³⁰ Political identity based on 'association' can be opposed to national identity based on 'kinship', including common ancestry, culture, language and traditions. See, Chapter IV on 'European Identity'.

It has been noted how in this definition there is potentially more than common culture, language and traditions as elements of the common good; there is the idea of kinship with one another (Wagner 1994). Kinship can be defined as 'natural vicinity' between individuals, as opposed to 'artificial vicinity', namely the result of political association. Such natural vicinity is based on elements such as culture, language and traditions, which are beyond the deliberative capacity of the individuals and therefore can be considered pre-political, or natural. Kinship can extend as far as common ancestry, blood links representing a 'maximum of kinship' between individuals.

Communitarian theories attempt to provide a definition of the individual and of the community more substantive than the liberal unencumbered self and neutral polity, which result from the 'priority of the right over the common good'. Nonetheless, this effort often goes beyond the scope of giving a political dimension to the individual and the community, so that the communitarian 'constitutive community' results in an excessively solidaristic polity, based on links of kinship among individuals rather than political association. Such relationships of kinship are the basis of stronger links and solidarity among the members of the community, but at the same time they tend to suffocate the element of political association.

A common good based on kinship, rather than political association, justifies the liberal 'priority of the right over the common good' as the means to safeguard the basic liberties of the individual. The ethnic state (*volk*) and the religious state (theocracy) are extreme examples of 'constitutive communities', in which internal pluralism and external openness have been reduced to a minimum, due to the prevalence of elements of kinship (ancestry, culture and religion) over political association as the cement, holding together the community.

If the Rawlsian individual is pre-political, in so far as he is defined as an abstract 'free and equal person' separated from the historical community he belongs to, the communitarian encumbered self can result in something more substantive than the Aristotelian 'political animal', if the community is based on kinship among the members rather than political association. Moreover kinship as 'natural vicinity' extinguishes the political bond between the citizens, with the consequences of excluding from the community all those members or prospective members, who do not share those links of culture, language, traditions and ancestry, which bring together the rest of the community.

The alternative to the lack of internal solidarity and entitlements resulting from liberal models of citizenship should not necessarily be the communitarian 'constitutive community', liable to degenerate in pre-political communities based on cultural, religious or even ethnic solidarity. The answer to this dilemma lies in a definition of the common good, which subverts the liberal 'priority of the right', but which at the same time limits the substance of the common good to the political element, without extending to elements of kinship.

5.2.2 Political communitarianism

Communitarianism has recently emerged as a political alternative to the failure of the main ideologies, that is to say the welfare-state liberalism of the 60s and 70s and the free market conservatism of the 80s. From a communitarian standpoint both left-wing and right-wing ideologies were based on liberal principles, which overlooked the importance of the moral foundations of the community and led to the fragmentation of society.

The welfare-state in particular is accused by communitarians of having reinforced fragmentation and irresponsibility, effectively legitimising family breakdown and creating an underclass of passive clients. The 1980s conservative 'free marketers' reduced the scope of the welfare state, but accelerated the fragmentation of society, by putting emphasis on individual wealth and creating a religion of selfishness and irresponsibility (Anderson and Davey 1995).

Communitarian authors propose to remedy the liberal excesses of the past decades by basing the community on a restored 'moral and social order'. The most prominent among those authors, who have recently attempted to provide a more political version of communitarian theories is Amitai Etzioni. In his *The Spirit of the Community*, Etzioni (1993) proposes to reverse the social fragmentation of American society by appealing to individuals' moral responsibility and pointing at the two parent families as the basic unit of society. The re-building of the moral foundations of civil society should start from the institutions, which are in charge of the education of the individual: the family and the school.

The family is regarded by Etzioni as the 'moral anchoring' for each new generation. The moral education of the youngster should not be delegated to baby-sitters or professional child centres nor should it be left to one parent only, but it should take place in the context of a traditional two parent family. For this purpose single parents (mainly women) should be

discouraged from having children and more emphasis should be put on the institution of marriage, in order to prevent divorces. In particular Etzioni does not advocate tougher divorce laws, which he says would be anti-libertarian, but suggests the introduction of 'voluntary counselling' for couples who intend to marry. Furthermore, the state should provide generous maternity and paternity leaves to allow the parents to take time off their jobs and careers to look after their children.

The school is the second line of defence in the struggle against the moral and social fragmentation of American society. All educational institutions should provide moral education to pupils. A controversial issue, however, concerns the moral values that these institutions should teach and promote, without transforming education into religious indoctrination. According to Etzioni the values which should be taught in schools are:

'those values Americans share, for example, that the dignity of all persons ought to be respected, that tolerance is a virtue and discrimination is abhorrent, that peaceful resolution of conflict is superior to violence, that generally truth telling is morally superior to lying, that democratic government is morally superior to totalitarianism and authoritarianism, that one ought to give a day's work for a day's pay, that saving is better than squandering one's income and relying on others to attend to one's future needs.' (Etzioni 1993:257)

In the new communitarian moral and social order, individuals would not only have rights (like in liberal societies) but also duties and responsibilities towards the community. The first duties are towards the family. There are, however, also duties towards the polity, which include: (i) being informed about public affairs; (ii) voting and being politically engaged; (iii) performing voluntary work in the form of local and national service; (iv) paying one's taxes; and (v) serving on juries.

According to Etzioni communitarianism is a mid-stance between individualism and collectivism, in so far as it attempts to avoid the excesses of self-interested liberalism and bureaucratic socialism. It is also to be distinguished from the American religious right, which suggests a straightforward reversal of both conservative and left-wing liberal permissivism, and advocates punitive sanctions against criminals and single mothers and a return to Christian values in schools. Communitarianism does not rely on coercion, authoritarianism and dogmatic answers, but it counts on individuals to assume their responsibilities in the family as well as in society.

If communitarianism is certainly less extreme than the religious right movements, it is hard to conceal that its moral foundations are similar. The emphasis on the two parent family, as well as on the institution of marriage belongs to the Christian religious and cultural tradition. The communitarian formulation of voluntary work, community service and in general duties and responsibilities as the natural balance of rights of citizenship appear to be founded on Christian values and morals, rather than on a neutral comprehensive vision of society.

Communitarians have a point in seeking a solution to the disintegration of modern society. People do not feel obliged to engage in voluntary works, vote, be informed about public affairs, take time off their jobs to look after their children, or even pay taxes. However, putting emphasis on moral responsibility, as Etzioni does, as the solution to the problem of social fragmentation is equivalent to advocating a return to Christian values. It is easy to justify voluntary work on a Christian basis or to point at the unity of the two parent family as the cement which should hold together society.

Given the cultural and religious heterogeneity of modern western societies, can the appeal to Christian moral values provide a solution for everybody? If the two parent family is to provide the ideal environment for the moral upbringing of the children and single mothers should be discouraged, what role should be reserved for homosexual couples willing to adopt children or for Muslim families, where there may be more than two parents? Etzioni's rationale for preferring two parents to one is that there is sociological and psychological evidence that on the average two parents families are better able to discharge their child raising duties, if only because there are more hands and voices available for the task. The same evidence, however, does not seem to suggest that these voices and hands should come from a Christian heterosexual marriage, rather than from other unions of two or more persons. Raising children is not necessarily a matter of gender and number, unless one embraces a specific culture and religion.

The building of a new moral and social order on the basis of the two parent family corresponds to embracing a particular set of moral values, with the risk of excluding all those members of society who do not share the same values. All those citizens who are not Christian, and therefore do not feel they should do something gratuitously in order to receive a reward in a future life, might not want to engage in voluntary work because to do so is not necessarily a moral duty to them. It is simply not possible to attach moral duties and responsibilities to people who do not share the corresponding moral values.

Etzioni argues that those moral values, which are behind individuals' commitments and responsibilities in society are values that 'all Americans share', and therefore avoid the risk of religious indoctrination. Nevertheless, Etzioni's moral values create a potential for cultural indoctrination and carry a latent religious message. The communitarian answer to the disintegration of modern liberal society is based on values which belong to a specific cultural and religious tradition. As such it not only reverses the liberal priority of the right over the common good, but it also promotes a conception of the common good that is so specific that it endangers the right of individuals to diverse cultural and religious beliefs.

The idea of civic duties to balance rights of citizenship does not automatically correspond to an authoritarian and culturally uniform idea of the polity, if such duties are not justified with the adherence to a specific set of moral values. It is considered below how 'republican citizenship' provides an answer to the fragmentation of modern liberal societies, without at the same time compromising basic liberties with the imposition of a common moral and cultural good, which would endanger internal pluralism.

Etzioni's appeal to 'responsibility in the family and in the community', albeit softer than the Religious Right's platform of Christian moral values, maintains a dogmatic flavour, in absence of a coherent political design apt to justify rights and obligations of citizenship. It has been argued that if, as Etzioni does, it is denied that behind the last strand of communitarianism there is a substratum of Christian values (cultural if not religious) hidden behind definitions of the type 'those values that Americans share', then the communitarian appeal for the re-building of the moral foundations of civil society can be reduced to a general 'will everyone please be nice' (Economist 18/3/1995:20).

Finally it is worth mentioning that it has been suggested that communitarianism (or at least Etzioni's political version), by placing all the emphasis on the two parent family as the basic unity of society, would defeat its own purpose of creating a more solidaristic and active community. Pahl (1995) notes that lone parents (targeted by communitarians) are setting up support groups for each other and various kind of voluntary activities, which create valuable and essential solidarities. Singles, including single parents, are more likely to have the time, energy and inclination to engage in voluntary work for the community, and for other citizens who share the same condition. It is a mistake to consider the traditional two parent family as the only possible source of social cohesion and control, when parents are normally those who do not have the time and the motivation to engage in community activities beyond their work

and the time spent looking after their children.

Furthermore, too much emphasis on the family overlooks the importance of relationship of friendships for the unity and the working of the larger society. 'Friendship' as opposed to 'kinship' is an associational form of relationship, in so far as we 'choose' the person to whom we wish to remain close (Pahl 1995).

5.2.3 The New-Right 'active citizenship'

Communitarianism has often been presented as an alternative to left-wing as well as right-wing liberalism. The most recent strand of communitarianism (Etzioni) has attracted the attention of the Democratic Party in the United States and of the Labour Party in Britain, as a non-ideological solution to the problems of social exclusion and fragmentation, caused by more than a decade of liberal right-wing governments. It would, however, be wrong to classify communitarianism as a left-wing movement, because, as a reaction to liberalism in general, it is beyond the traditional distinction between political left and right. It has been considered above that Etzioni's communitarianism, which has been a source of inspiration for many left-wing politicians in America as well as in Europe, albeit less extreme, is analogous to the American religious right-wing movement. The analogy consists in the fact that both movements propose to re-build the social unity of the community on the basis of a set of moral values, which belong to a specific cultural and religious tradition, rather than on a politically agreed constitution, capable of accommodating different cultural and religious identities.

It is therefore easier to understand why at the end of the 1980s communitarianism and active citizenship have appealed also to right-wing political parties and governments, in a search for a solution to the social fragmentation caused by right-wing liberal policies, in the United States and in Britain.

5.2.3.1 American Right and communitarianism

The idea of 'active citizenship' with particular emphasis on the duties of the citizen was adopted at the end of the 1980s by conservatives both in the UK and in the US. The emphasis on duties and responsibility of citizenship was opposed to the liberalism of the left, which had partly abandoned its 'democratic' ambition in the field of citizenship, to focus on the

protection and the development of the rights of the individual. In particular, with regard to social rights some left-wing liberalism relied on John Rawls's difference principle, which allows social assistance for the least-well off, without invading the 'constitutional sphere' of the basic liberties of the individual (*supra*).

Roche (1992) distinguishes between two kinds of 'right' in American politics at the end of the 1980s: the radical right and the mainstream right. The radical right, whose main reference is Robert Nozick's 'liberal anarchism', rejects the same idea of duties of citizenship. Nozick (1974) brings the liberal principle of the 'priority of the right over the common good' to its extreme consequences, so that any definition of the public sphere beyond the 'minimal state' is considered morally illegitimate. He sees the basic liberties of the individual as natural rights with no corresponding natural duties. In contrast, the mainstream right (or neo-conservatives) have attempted to repair the social fragmentation, caused by right-wing liberal policies, by developing a concept of citizenship, which requires citizens to accept duties and responsibilities as a sign of 'patriotism'.

Patriotism links duties and responsibilities to a national idea, rather than to a political project of citizenship. In America the revival of active citizenship has taken place out of the main political framework (local authorities, regional authorities, federal states, political parties, trade unions and the nation state), as neo-conservatives suggested that the 'civil society', as opposed to the public sphere of government, was the ideal place where the duties of citizenship could be performed. They focused mainly on family duties, duty to work and law-abidingness and attempted to justify the new obligations of citizenship in moral terms by invoking the traditional family ethic and the work ethic (Roche 1992), thus removing the individual from the political context of society (where active citizenship would have more far reaching implications).

The idea of 'civic duties' in the context of 'civil society', as opposed to political duties of citizenship, is based on the liberal separation between public sphere of government and private sphere of the individual (*supra*). In a liberal framework, obligations of citizenship, differently from rights, cannot be 'public' in order to avoid individuals' oppression by the state. Liberal right-wing governments therefore have requested individuals to 'become active' on the basis of their moral values (private sphere), in order to repair the existing social fragmentation.

5.2.3.2 *British Conservative citizenship*

At the end of the 1980s the Conservative government in the United Kingdom launched a campaign for active citizenship, to be realised mainly at the local level. The Conservative ideal of active citizenship does not refer directly to duties and obligations, but it is founded on 'the English tradition of voluntary service' (Justices of the Peace, school governors and neighbourhood watch co-ordinators) (Hurd 1988:14). A Commission on citizenship, which was established under the patronage of the Speaker of the House of Commons, indicated a fourth dimension of citizenship to complete Marshall's three dimensional framework based on political, civil, and social rights. This fourth dimension 'would involve the ideal of public good and civic virtue which finds its expression in the largely voluntary contribution to society of citizens acting either as individuals or in association with one another.'³¹

The Conservative interest in active citizenship came as a surprising change of policy, after a decade of right-wing liberal policies on citizenship, summarised by Margaret Thatcher's famous statements 'there is no such thing as society, only individuals and their families' and 'collective social arrangements are legitimate only in so far they do not fetter individual will.'³² In fact, like in the US, the interest in active citizenship was determined by the fragmentation of civil society, which resulted from radical liberal policies.

Hollis (1992:20) notes that the Conservative party started to be concerned about citizenship, when it appeared that the individualist approach to social policy and citizenship of the 1980s had determined a 'dangerous malaise, taking the form of public apathy among the respectable and a rash of anti-social behaviour among the lower orders.' In the conservatives model of active citizenship the negative effects of liberalism and individualism on the structure of society are tackled by asking individuals to become active in the family and at the local level. There is not, in this approach to citizenship, like in Etzioni's communitarianism, a political rationale for individuals' obligations of citizenship in the family and at the local level. It is difficult to justify a project of active citizenship at the local level, when at the central level the government rejects social solidarity on the basis of the mere fact that 'society does not exist'. Why should then individuals become active citizens and do gratuitously what the state cannot or would not do?

³¹ 'Encouraging Citizenship: Report of the Commission on Citizenship', (1990) HMSO London.

³² See, Hollis (1992).

Conservatives, like some communitarians, rely on national ideology and on a set of Christian moral values belonging to the cultural background of western citizens, to do the job of political will and association in creating obligations of citizenship. Those pre-political values can take the place of a coherent political project, as the cement holding together the community, and therefore trigger that sense of responsibility and obligation towards society that is necessary to stop the current social and moral decay.

The lack of a political rationale in the British Conservative party model of active citizenship has been noted by Skillen (1992:57), who has described it as 'a minor decoration, limited in its spheres of action and restricted in practice to those with time and money to spare.' Norman (1992) has argued that the main purpose of the conservative idea of citizenship was 'to make people feel that they are citizens,' not to empower them with any political rights of 'active citizenship'. In this context, intermediate associations such as the family, the neighbourhood and the local community are supposed to perform a psychological role on the citizens, rather than involving them in the political decision making process.

The difference between the conservative (and communitarian) idea of active citizenship and 'democratic citizenship' is that the former founds individuals' duties and responsibility towards family and society on ideological and religious arguments, while the latter justifies them on the basis of a wider project of political citizenship, where duties of active citizenship are balanced by corresponding rights. An ideological or religious vision of the community, where families, local communities and volunteers have to substitute for the absence of the political community can be opposed to a political vision, where rights of decision and participation correspond to duties of active citizenship. Voluntary work and responsibility in the family can either be required as acts of faith (a religious creed or a national ideology) or they can be required by the individual's participation in a wider political project, where they are balanced by corresponding political rights.

Conservative and communitarian approaches to active citizenship undermine one of the basic assumptions of liberal theory: the separation between public sphere (politics) and private sphere (morality), because they base citizenship on moral-ideological grounds such as one's religious beliefs or one's allegiance to a national idea. In this context individual rights are not constrained by the commitment to a common political good, but by duties and responsibilities deriving from individuals' specific moral attachments (to a national culture or to a religious creed). The moral foundation of this type of active citizenship is summarised in

Hurd's definition of social obligations as 'something you morally ought to do, not something which you have to do'(1988:14), where the author clearly overlooks the fact that obligations of citizenship are not necessarily grounded in individuals' personal (and diverse) moralities, but they can be agreed in the context of political citizenship.

This version of active citizenship can be troublesome, whether it is successful in creating a strong internal solidarity among the citizens or not. In the first case the strong internal solidarity among those citizens who share common cultural and religious values could lead to the political exclusion and oppression of other citizens who do not share the same moral values (and therefore do not accept the same duties and responsibilities of citizenship), but who still wish to be part of the same political community. In the second case the appeal to duties and responsibilities in the family will be regarded as a 'will everyone please be nice' sort of slogan, and therefore mostly ignored.

5.2.3.3 *The UK 'Citizens' Charter': market citizenship*

Another feature of the recent concern of the Conservative party for citizenship was the drafting by the British Government of a 'Citizen's Charter' in which the emphasis, differently than in the project of active citizenship, is more on rights than on duties. The rights considered in the Charter, however, are not the usual rights of citizenship (civil, political, social), and treat the individual more as a consumer in the marketplace than as citizen. The Charter does not create new rights of citizenship, but it strengthens the position of the individual towards the state (right of information, right to complain and appeal). It is part of a strategy of 'empowerment' of the individual in the market place designed to put pressure on public services, so that weaker economic actors are replaced by stronger ones (Oliver and Heater 1994).

This strategy of empowerment encourages individuals to complain as consumers, rather than to take political action as citizens. In fact, the real purpose of the 'Citizen's Charter' is to increase market efficiency, not to create active citizenship. It has been argued that the Charter 'encourages individualism and discourages political activity' (Oliver and Heater 1994) and that it is the result of a radical liberal approach to citizenship based on the 'elevation of the free market economy, and the conception of society as a collection of individuals and their families engaged in market transactions in order to meet their individual needs' (Norman

1992:37).

The Citizen's Charter is a good example of 'market citizenship', founded on a radical interpretation of the liberal 'priority of the right over the common good', so that society exists only as a framework for the struggle between self-interested individuals. This struggle takes place in the 'market' where, by following our particular interests, we promote the general welfare. The 'market' as the place for economic transactions among self-interested individuals has been opposed to the 'forum' as the place for political deliberation, where individuals meet and co-ordinate their wills and interests, in order to pursue an agreed common good. In the market the individual is a proprietor who concludes economic transactions with other proprietors, while in the forum he is a citizen who participates in the consensus formation, which leads to the definition of a common good (Nauta 1992).

The market and the forum represent two further examples of the dualism between liberalism and democracy, liberty of the moderns and liberty of the ancients, negative liberties and positive liberties. In this context, however, the similarities rather than the differences between these two models of citizenship are emphasised. The aim is to underline the common differences with other models (ethnic, national, cultural, religious and communitarian) which are based on kinship among members of the community. Both forum and market citizenship are 'universal', in so far as they are open to all individuals who are willing to take part in economic exchange or political deliberation. This results in a high degree of inclusion, which can be contrasted with the particularism and the exclusiveness of those models of citizenship founded on kinship between the members of the community.

Citizens in the forum as well as proprietors in the market have rights and duties on a 'do ut des' contractual basis. One gives something up in order to receive something in return. In contrast, communitarians and neo-conservatives (*supra*) rely on pre-political elements of kinship (national ideology, culture and religion) to justify individuals' responsibilities towards family and community. The contractual basis of rights and duties of citizenship in the forum and in the market makes all individuals free and equal under the same status of citizenship, regardless of cultural, religious and national belonging. For this reason market citizenship is compatible with the increasingly multicultural nature of western civil societies. Already in Constant's opinion commerce had brought different cultures and nations together by giving them 'customs and habits which are almost identical; the heads of state might be enemies: the people are compatriots' (Constant 1988:325).

Commerce also plays a role with respect to collective identity and belonging, in so far as activity as economic actors brings us together with other individuals engaging in the same activity. One author has noted how 'in London you are a citizen every time you shop twice at the same local shop' (Kureishi 1995). It has been questioned, however, that economic activity (market) and political activity (forum) can contribute to the formation of individual and collective identities. Nauta (1992) argues that political and economic activity are necessary for the development of citizenship, but they are not sufficient to create a sense of belonging and to form identities. A political system which claims to form the identities of its citizens is inevitably totalitarian, and so is the idea that characters and personalities can be formed by selling and buying, as it is continuously suggested by commercial advertisement. According to Nauta identity and belonging concern the cultural sphere, not the political or the economic one. They are formed on the basis of pre-political relationships of kinship among individuals, such as culture, ethnicity, traditions, language and religion. As such they should be distinguished from political and economic activity, which attain the sphere of association and deliberation. Similarly Tassin (1994) notes how identity is exclusively pre-political as it answers the questions 'who am I?' and 'who are we?', while activity is political and answers the questions 'what do I do?' and 'what do we do?'.

This distinction between identity and activity advanced by Nauta and Tassin is based on an excessively rigid definition of individual and collective identity. The risk of totalitarian political and economic identity is overrated, as in both models of citizenship (forum and market) the political and the economic elements represent only single aspects of a citizen's identity and allegiances. Furthermore, associational identities (political and economic) are compatible with other identities and allegiances, which individuals entertain as members of groups other than the forum or the market within a large community. In contrast, national, religious and cultural identities (the only 'true' identities according to Nauta and Tassin) present higher risks for pluralism, if relied upon as the common bond in large and heterogeneous communities, because they demand exclusive allegiance by the citizens. Activity (political and economic) can contribute to the formation of a collective identity and belonging compatible with individuals' pre-political identities and allegiances, thus respecting their basic freedoms.

The forum and the market are generalisations for two crucial aspects of citizenship: the political and the economic one. They are useful categories in the definition of universal and

inclusive patterns of community membership, as opposed to particular and exclusive ones and in this respect they have been associated. There is, however, a fundamental difference between forum citizenship and market citizenship: the former combines universality and inclusiveness with entitlements and internal solidarity, while the latter, being an extreme form of liberalism, leaves the citizen-consumer at the mercy of the market forces. The price for universality and inclusiveness in market citizenship is a lack of entitlements and internal solidarity.

It is argued in the next Section that republican citizenship (based on the forum model) represents a balanced compromise between substantive-exclusive (ethnic, national, communitarian) forms of citizenship and hollow-inclusive ones (liberal).

5.3 Republicans

The republican model of citizenship can be described as an effort to reconcile liberal principles such as universalism, inclusion and pluralism with the democratic high level of citizenship's entitlements and self-government. Republican citizenship rejects the liberal 'priority of the right over the common good', which leads to an excessively thin and neutral definition of the individual and of the community (as 'uncaring') as well as the substantiveness of communitarian and neo-conservative models of active citizenship, where an excess of internal solidarity based on specific moral values leads to the exclusion of outsiders (those who do not share the moral values on which such solidarity is based).

Rawls's 'Theory of Justice' respects the liberal 'priority of the right over the common good' by means of the 'method of avoidance' (*supra*). All morally controversial issues (cultural, religious, etc.) are removed from the political agenda of the community, so that no specific common good can possibly emerge from discussion and threaten the basic liberties of those individuals who continue to disagree on those issues. Ackerman (1984) refers to this liberal device as to the principle 'conversational restraint'. Every time there is disagreement on a particular issue the discussion should end and the moral values that divide individuals should be removed from the 'conversational agenda' of the liberal community. Republicans accept most of the liberal fundamental principles such as the defence of individuals' basic liberties and the neutrality of the political community with respect to the pursuit by individuals and groups of alternative conceptions of the good (cultural and religious).

However, they reject the rigid application of the 'priority of the right over the common good'. The republican conception of neutrality recognises that the state as political community should not promote a specific conception of the good, because this would violate individuals' freedom to cultural and religious self-determination and therefore compromise internal pluralism. Differently from the liberal one, the republican idea of neutrality does not stretch as far as removing all 'morally controversial' issues from the political agenda of the community.

Baynes (1992) suggests that republican citizenship should substitute the 'method of avoidance' or 'conversational restraint' with a 'principle of accommodation', which favours rational debate and public discussion in order to overcome moral disagreement. By means of debate and deliberation individuals can understand their differences and reach a 'morally reasoned' solution to controversial issues. The fact that certain morally controversial issues should be 'discussed' rather than 'avoided' does not imply that it is always possible to overcome moral disagreement. Not every issue is subject to political resolution (in particular cultural and religious issues), some questions nonetheless can yield general agreement through deliberation. In this republicanism is different from communitarian and neo-conservative models of citizenship, which are based on specific pre-political and historically sedimented conceptions of the moral good.

Habermas (1992b) notes how the level of political socialisation, that is to say integration into the political community by means of dialogue and deliberation, must be separated from the level of protection of ethnicity, culture, religion and other identifying criteria of groups and people. Republicans, differently from communitarians, limit 'dialogic politics' to those controversial issues on which it is possible to reach a reasonable agreement, without interfering with those issues, which belong to the level of protection. Equally the protection of cultural and religious identities must find its limits, where it leads to the fragmentation of the political community of the citizens (Delbrück 1994).

According to Rawls (1971), if there is moral disagreement on certain issues, it could be expected that such disagreement will continue, regardless of discussion and deliberation, even among reasonable people. His position expresses little confidence in the ability of individuals to communicate with each other and to overcome moral controversies. In contrast, republicans believe that the dialogic process can help to overcome differences and produce political settlements, among 'morally diverse' individuals. It is clear, however, that such

process should not aim at overcoming all kind of diversity and produce cultural homogeneity.

Republicanism can be distinguished from communitarianism not only because it makes a limited and controlled use of 'dialogic politics' as the means of overcoming moral controversies, but also because, in the first place, it relies exclusively on a political process to solve such controversies. Communitarian models of active citizenship do not place limits to dialogic politics as the means to solve moral controversies and achieve a common good (not subordinated to individual liberty). However, they make a limited use of 'dialogic politics' in the first place, in so far as the common moral good among the citizens is pre-politically determined. Public discussion and deliberation are somewhat less important in historically and culturally sedimented communities, where 'moral controversies' are less likely to arise than in multination and multiethnic states. Communitarians accept John Stuart Mill's (1861) assumption that democracy works better in culturally homogeneous environments, where a pre-political common cultural identity supports a common political identity based on political discussion and deliberation. The result is a comprehensive concept of the common good relying on political as well as cultural and religious values.

The nation state is the largest community, which has ever combined political and cultural unity. This unity, however, has often been achieved by sacrificing the basic liberties (in particular the right to cultural and religious self-determination) of national minorities and immigrant groups. The unity between cultural and political community is absent in some modern multination states, whose population includes national minorities and immigrants of diverse cultural background (see, Chapter IV). Similarly the same unity would not be imaginable if the national political community were one day extended by means of common citizenship at world regional level (Europe) or even global level.

As a solution to the liberal (hollow, inclusive) - communitarian (substantive, exclusive) dilemma, republicans propose that social unity and common identity in larger communities be based on a less than comprehensive conception of the good made of common association and political deliberation in a democratic society. It has been noted that communitarians place demanding moral expectations on the citizens by requiring that they share a commitment to a single, overreaching public political good, and that they are willing to subordinate their own private interests to this common good (Stern 1992).

It has been considered above that communitarian citizenship: (a) does not define a level of protection of individual and group moral values (cultural, religious and ethnic), which are

beyond the reach of political deliberation and resolution; (b) makes little use of deliberation, because, given the existence of pre-political cultural unity among the citizens, most issues are not 'morally controversial' in the first place.

Simplifying the issue it could be argued that both republicans and communitarians reject the liberal 'priority of the right over the common good', but while the republican common good is merely political, the communitarian is both political and cultural. However, even with respect to the common political good (and therefore leaving out the cultural foundations of communitarian citizenship), communitarianism can be distinguished from republicanism. The former is based on a non-mediated conception of public life, where individuals identify with the political community as a whole. The relationship of political collective identity links the individuals to their community of belonging. The latter, in contrast, is based on a mediated conception of the public life, where individuals' allegiances and identities are divided between a common political community and a series of 'intermediate organisations'.

These intermediate organisations mediate between the individuals and the central government and provide other fora for political participation and deliberation (and therefore for the formation of collective identity), where mass democracy has watered down the political ties between individual citizens and the central institutions. Intermediate organisations are of two different types: vertical and horizontal. Vertical organisations are mainly political sub-national structures: regions, provinces, local authorities and neighbourhoods. In a federal system the vertical division of power (subsidiarity) and the involvement of the individual in the local political process ensure that political identity and attachment to political institutions are not lost with the growth of the political community at the federal level and the consequent reduced participation. Political life, however, is not the sole good life for individuals, at federal as well as at local level. Horizontal 'intermediate organisations' allow individuals to express their diverse pre-political identities (cultural, religious and ethnic for example), while remaining members of the same larger political community.

In substance, vertical and horizontal intermediate organisations provide a solution to the two main problems of 'large republics': size and heterogeneity. The growth in size and the centralisation of political power determine a reduction of citizens' direct participation and control of the representatives in parliament. This issue is addressed by a vertical division of power based on the principle of subsidiarity. The 'cultural heterogeneity' factor is addressed

by allowing the expression of diverse non-political identities and allegiances to 'horizontal intermediate organisations'.

Michelman (1988:1531) emphasises the importance of intermediate organisations as the place where republican dialogic politics take place. In particular he individuates a series of arenas of public life (some political and some not) other than the formal channels of electoral and legislative politics, where citizens can engage in self-revisionary and dialogic activity, such as:

'encounters and conflicts, interactions and debates that arise in and around town meetings and local government agencies; civic and voluntary organisations; social and recreational clubs; schools public and private; management, directorates and leadership groups of organisations of all kinds; workplaces and shop floors; public events and street life; and so on. Those are all arenas of potentially transformative dialogue.'

This list could be extended to include other horizontal organisations such as labour unions, religious associations, women's groups of various sort, civil rights organisations, volunteer and charitable groups (Sunstein 1988). There is not, however, an exhaustive list of intermediate organisations (at least at the horizontal level). They all attract individuals' allegiance and contribute to the formation of their identity as citizens in the republican community. The result is a 'multiple' type of citizenship and identity, where the relationship between individuals and central political community is mediated by intermediate organisations, which allow for real and direct participation and are more accessible for the citizens.

In the European Union, the concept of 'multiple citizenship' is in-built in the idea of subsidiarity (Article 3b EC) as well as in the additional nature of Union citizenship, which is meant to 'complement and not replace national citizenship' (Article 8 EC). It has been noted that Union citizenship could co-exist with national citizenship and nationality and could provide a parallel identity for individuals, bringing them closer to the European integration process (O'Keefe 1996). In this respect additionality, unlike dependency, is not a negative feature of Union citizenship, as it creates a new political bond between European citizens, without threatening existing allegiances to national and local political institutions. Dependency on the other hand undermines the political nature of Union citizenship insofar as it ties it to national citizenship and to its exclusiveness based on the idea of kinship (see,

Chapter V).

The role of non-political intermediate organisations in the European Union was considered in the recent Amsterdam Treaty, which concluded the 1996/7 intergovernmental conference, in three Declarations to the Final Act. A Declaration on status of churches and non-confessional organisations commits the Union to respect and not to prejudice the status under national law of churches, religious associations or communities and philosophical and non-confessional organisations in the Member States. A second Declaration on sport emphasises 'the social significance of sport, in particular its role in forging identity and bringing people together,' and it calls on the European institutions 'to listen to sport associations when important questions affecting sport are at issue,' with particular attention to amateur sport. A third Declaration deals with voluntary service activities and recognises the important contribution made by these activities to developing social solidarity. It commits the Community to 'encourage the European dimension of voluntary organisations with particular emphasis on the exchange of information and experiences as well as on the participation of the young and the elderly in voluntary work.'

Although republicans and liberals agree on the role of intermediate organisations as the means to protect diverse identities and ensure pluralism within society, republicans also claim a crucial role of control and co-ordination for the larger political community over those organisations. Intermediate organisations provide numerous fora for deliberation, but the more they are involved in the democratic deliberative process and in the formation of individuals' identities, the more there is a need to control their 'procedural legality' and adherence to constitutional principles. This is necessary in order to avoid that political and cultural pluralism might degenerate in what one of the drafters of the American Constitution, Madison, called the 'mischief of factions' (Baynes 1992).

Beyond the importance of 'intermediate organisations' it is necessary to define and recognise a role for the larger political community and for common citizenship. Tasks such as the elimination of discrimination, regulation of broadcasting and the protection of the environment should not be left entirely to private actors or local government, but should be entrusted to the central government in a position of co-ordination and control. In fact, intermediate organisations might not have the means to deal with such issues and might even become sources of oppression and discrimination, if given excessive powers and discretion (Sunstein 1988).

The central government should regulate the limits and the powers of intermediate organisations so that they conform to those constitutional principles which have been agreed by the political community at large. The role of common political citizenship is to reconcile in terms of identity and belonging allegiances to diverse intermediate organisations with the existence of a larger political community.

CHAPTER III

NATIONAL IDENTITIES AND NATIONALITY LAWS IN THE EUROPEAN UNION AND IN THE UNITED STATES

The terms nationality and citizenship of a state do not universally correspond to two different and clearly defined concepts. According to the legal and historical traditions of different nation states the two terms are used to define different concepts, different aspects of the same concept or even the same concept in an interchangeable fashion. The difference in the use of the terms nationality and citizenship reveals a more important difference in the substance of the concepts of national identity and belonging in Europe.

This Chapter analyses nationality laws in three different Member States of the European Union and in the United States. The analysis of the existing nationality laws is conducted by looking at the fundamental principles that have inspired the national legislators and especially at the historical background and development of these principles.

The research focusing on the foundations of national identity, serves the purpose of identifying those elements in the national traditions which could positively contribute to the construction of a common European citizenship. Although such European citizenship should be developed in a post-national context, attention to the history of national identity is justified by the fact that in the past two centuries the nation state has represented the main place of expression of citizenship.

The current debate on citizenship in the European Union tends to follow an approach 'from above', which tries to define post-national concepts of European citizenship on the basis of the existing institutional structure of the Union, while little attention is given to concepts of political identity and belonging in the Member States. The approach chosen in this Chapter is instead an approach 'from below', which takes the experiences of citizenship in the nation

state as the starting point in the search for a post-national European citizenship. This approach 'from below' has the merit of being based on concrete experiences of citizenship, albeit national, while a classical approach 'from above' would run the risk of creating an abstract construction less likely to play an active role in the process of European political integration. The approach 'from below' does not lead to a definition of European citizenship based on an existing model of national identity, but rather to suggest that elements present in national traditions, which in many cases have been derived from pre-national experiences, could constitute the foundations of a European post-national citizenship.

The analysis of national identities and nationality laws focuses on the issue of eligibility for citizenship. Entitlements are less affected by the national divisions and for this reason they have been dealt with horizontally in the previous Chapter. Identity is crucial in this Chapter dealing with eligibility (for national as well as European citizenship) as it was in the previous one dealing with entitlements. The analysis of eligibility is conducted by looking at nationality laws and at patterns of national identities, but the definition of an independent European identity is considered more specifically in Chapter IV.

1. Citizenship and nationality

Before turning to the analysis of the substance of citizenship and nationality, it might be useful to draw a general distinction between the two terms, always bearing in mind that the distinction which is made is only a synthesis of different national traditions rather than a universally valid definition.

The modern nation state has two dimensions. The first is internal and concerns the relationships between the state and its citizens. The term citizenship is generally used to define this first aspect of the concept of membership of a state to which are associated (internal) rights and obligations of the citizen. Nationality on the other hand refers to the external aspect of state membership. Each nation state being part of an international system, it is necessary to define the legal position of its members with respect to other nation states and their members. If citizenship corresponds to a status of domestic law, nationality is concerned with international law.

The International Court of Justice has confirmed this hypothesis in the well-known

*Nottebohm*³³ case, where an issue of diplomatic protection was regarded as a question of nationality. Diplomatic protection is a right belonging to the external sphere which flows from the status of national. The International Court also stated that nominal nationality is not enough to claim diplomatic protection, but there must be some 'genuine link' or 'true bond of attachment' between the nation and the claimed national.

The distinction between internal and external aspects of state membership reflects the situation in most countries and in international law; however, it can only be regarded as a generalisation because nationality laws of some states, and recently also European Community law, often present different approaches.

1.1 Cittadinanza italiana e cittadini

The Italian Constitution of 1948 abolished every reference to nationality. There is nothing like Italian nationality or Italian nationals, but only Italian citizenship (*cittadinanza*) and Italian citizens.³⁴ The only term related to state membership is that of citizenship. The principal reason for this change of terms after the Second World War was that the Italian constitutional legislator saw in the term nationality a more ethnic and naturalistic definition of state membership, rather than merely its external aspect. It was decided to abolish it in favour of citizenship, which was linked to the voluntary, non-ethnic community of law. Clearly the dramatic experience of racism during the war in Italy and in the rest of Europe contributed to this choice.

The 'Italian case' introduces a second type of distinction between the terms citizenship and nationality, which is pre-national and does not fit in the legal ideal type of internal/external membership of the nation state. According to this second model nationality refers to the ancestral community, based on links of descent, language, customs and traditions (pre-political), while citizenship refers to the political community based exclusively on the voluntary adhesion of its members.³⁵

Such distinction originates from the Roman legal system, where *cives* was the term used to

³³ *Liechtenstein v. Guatemala*, commonly known as the *Nottebohm* case, Second phase, 6 April 1955, [1955] ICJ Rep. 15 at 23.

³⁴ See, Articles 3, 4, 16, 17, 18, 26, 38, 48, 49, 50, 51, 52, 54, *Costituzione della Repubblica Italiana*, Gazzetta Ufficiale no. 298, 27/5/1947. Also, Legge 5 febbraio 1992, *Nuove norme sulla cittadinanza*.

³⁵ For the distinction between pre-political nationality and political citizenship see, Tassin (1994).

define the political status of the Roman citizen, while *natio* referred to people and tribes who were not organised in political associations, but in communities of descent, language, customs and traditions (Habermas 1992a). In this perspective nationality and citizenship are not two different aspects of the same concept (state membership), but two different and opposite conceptions of collective identity, pre-political the first, political the second.

1.2 Nationalité française et citoyens

The French Revolution interrupted the terminological clear-cut distinction between pre-political nationality and political citizenship, by introducing the notion of *nation politique*. The concept of political nation was the result of a combination between republicanism and nationalism. Republican principles were the foundation of the political community created by the Revolution, while nationalism played an important role in holding the political community together, especially when faced with the external threat coming from other nation states. The French nation and its institutions (especially the public administration, the army and the school) were the fundamental means for the implementation of the republican project of political citizenship (*infra*).

Today in France, the term *citoyenneté* is often used in the same context as *nationalité*, and the *nation* has no ethnic characteristics, but refers to the national political community. French authors refer to *citoyens* when dealing with the concept of *nationalité*, giving little attention to the distinction made above between the internal and the external spheres of state membership.

1.3 Citizenship of the Union and nationals of the Member States

The provisions on 'Citizenship of the Union' inserted in the EC Treaty by the Treaty on European Union, despite loud statements to the contrary, follow an approach which does not distinguish between the terms nationality and citizenship as external and internal aspects of state membership and especially between the rights connected to them.

Article 8c EC confers the right to diplomatic protection on EU citizens, which, albeit subsidiary to that conferred under national laws on the nationals of the Member States, is still a right connected to the external sphere of membership (nationality) rather than to the internal one (citizenship). Its inclusion in the catalogue of citizenship rights is a sign of the fact that

the European legislator did not follow a strict distinction citizenship-nationality when drafting the Treaty (see, Chapter V).

This approach was counterbalanced by the definition of Article 8 EC and by the Declaration on Nationality of a Member State attached to the Treaty on European Union, which go in the opposite direction and try to draw a distinction between nationality and citizenship. Article 8 states that 'every person holding the nationality of a Member State shall be a citizen of the Union', thus implying the distinction. The Declaration on Nationality attached to the Treaty specifies that 'wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.'³⁶ The Italian version of the Declaration is even more misleading as it reads 'reference to citizens of the Member States'.³⁷ There is also a Danish Declaration on citizenship, drafted following the negative result of the first Danish referendum, which reaffirms the difference between Danish citizenship and European citizenship.³⁸

This effort by the Member States to reserve for themselves the domain of nationality law does not clarify the matter. The right to diplomatic protection of Article 8c EC is a clear spill-over in the field of external membership and blurs the distinction between nationality and citizenship at EC level.

From now on in this Chapter reference is made to either nationality or citizenship, when dealing with the experiences of different states, but the analysis concerns national identity and state membership in general and not only the external or the internal sphere.

2. *Ius soli* and *ius sanguinis*

The basic principles for the acquisition of nationality are *ius soli* and *ius sanguinis*. *Ius soli* allows acquisition of nationality for children born within the territory of the state also of

³⁶ 'Declaration on Nationality of a Member State,' Final Act of the Conference, 7 February 1992, Declaration No. 2, Treaty on European Union, OJ 1993 C 224. See also, Section A of the Declaration of the Head of State or Government meeting within the European Council of Edinburgh, Bull EC 12/1992, pp. 25-26.

³⁷ 'Riferimento a cittadini degli Stati Membri.' In fact, reference to Italian nationals was not possible because there is not such thing as nationality in Italian law, but only citizenship.

³⁸ 'Unilateral Declarations of Denmark, to be associated to the Danish Act of ratification of the Treaty on European Union of which the 11 other Member States will take cognisance.' Bulletin of the European Commission 12/1992, pp. 25-26.

foreign parents on the basis of the territorial link. *Ius sanguinis* confers nationality upon children born of parents, at least one of whom is himself a national. Most States adopt both principles, but some of them do not recognise *ius soli* and some others only allow a very restrictive application of it. Restrictions of *ius sanguinis* are very rare and are usually applied to nationals who have been resident abroad for more than one generation (as in the case of the United States, *infra*).

Regarding the acquisition of nationality through naturalization, the same principles may apply, but *ius soli* is better defined as *ius domicilii*, as the territorial criterion is no longer the place of birth, but that of residence. In some states nationality can also be acquired by marrying a national, but this has often been subject to gender discrimination. In Italy nationality law established that a woman would compulsorily acquire the nationality of her husband, while a man would only be entitled to the nationality of his wife on conditions of residence.³⁹

The role of *ius soli* is of fundamental importance for the issue of integration. *Ius soli* favours integration of settled immigrants, especially when it is applied to first generation children born of foreign parents in the country of residence. In the case of the United States *ius soli* has been a fundamental principle in the creation of the nation. A very broad application of *ius soli* for the acquisition of US citizenship has corresponded to a very restrictive application of *ius sanguinis* to children of US nationals born abroad.⁴⁰ This phenomenon underlines the importance of the territorial link for the formation of a multi-ethnic and multicultural nation.

A federal process of the American kind cannot take place if the guiding principle for the acquisition of nationality is *ius sanguinis*. It has been argued that integration through free movement is possible only if residence is the basic principle for acquisition of full political rights (Koslowski 1994). One of the major obstacles to a similar type of federal process in Europe is the diversity among national identities and nationality laws, in particular with respect to the different application of *ius soli* and *ius sanguinis*.

³⁹ The Italian law on nationality (*cittadinanza*) was changed in 1983, because of its discriminatory effects. In the *Airola* case (*Jeanne Airola v. Commission*, Case 21/74 [1975] ECR 235) the ECJ did not hold the Italian nationality law directly incompatible with the Treaty provision on equal pay (Art. 119 EC), but condemned its discriminatory effects on the application of Community staff regulations.

⁴⁰ The United States law on citizenship allows access to US citizenship for children born abroad of American citizens only if certain conditions concerning the parents' former residence in the United States are satisfied.

3. The dispute over Alsace-Lorraine

To understand the two principal ideas of nation, the French and the German, it is interesting to look at the historical dispute over the possession of the border region of Alsace-Lorraine between France and Germany.

By 1870 Alsace-Lorraine, a French region next to the German border, had been part of France since the 17th century despite the fact that culture and language of its inhabitants were German. After the conflict which led to the defeat of Napoleon III at Sedan by the Prussian army in 1870, one of the conditions of the peace was the annexation of Alsace-Lorraine to Germany.

Theodore Mommsen, a German historian, affirmed the 'germanicity' of Alsace referring to the 'natural characteristics' of the local community. The Alsacians belonged to the German *volk* by reason of common language, common culture and common descent. This cultural-ethnic conception of the nation contrasted with the French model, which, in the case of the Alsacian controversy was defended by Fustel de Coulanges and Renan. Fustel de Coulanges argued against Mommsen that 'it is not race nor language which determines nationality' and that a 'people is governed by the institutions of a state whose membership it freely accepts.'⁴¹ Relying on the fact that the large majority of the Alsacian people, despite their ethnic origins, favoured the union with France, Renan (1882) argued that the will of the nations was the only legitimate criterion to determine their destiny. The German historian Treitsckhe instead defended the German annexation of Alsace and rejected the argument based on consent: 'The German country that we demand is ours by nature and by history. We Germans ... know what is appropriate for the Alsacians better than these unfortunate themselves. We want to give them their proper being even against their will.'⁴²

In 1918 at the end of the first world war, as a consequence of the defeat of the German Empire, Alsace-Lorraine went back to France. When France was invaded during the second world war, Germany favoured the creation of a collaborationist government in Vichy, but Alsace, being ethnically part of the German *volk*, received a special treatment: it was incorporated to the German nation. The second world war and the division of Germany brought the controversy to an end, Alsace went back to France, despite its presumed ethnic

⁴¹ Fustel de Coulanges, 'Letter to Mommsen', October 27, 1890.

⁴² See, Brubaker (1990).

connotations.

The dispute over Alsace is of particular interest because it crosses the development of two different ideas of nation. The German ethnic model and the French republican model. Although the French and German models of national identity can be considered the two leading general categories, experiences in other countries have sometimes followed different paths. The following Sections consider in more details national identity and nationality laws in Germany, France, Britain and in the United States.

4. Germany

It has been considered above how the German concept of nation is based on cultural and ethnic principles. The German *volk* is a community of 'blood and territory' and can hardly be compared to the French concept of *nation* or to the Latin concept of *populus*, which are political communities. Before moving to the analysis of the German model and of its implications in German nationality law, it is important to look at the historical development of German national identity.

4.1 Origins of the German national identity

Karl Marx (1964) in his *Pre-Capitalistic Economic Formations* distinguishes pre-capitalistic forms of production and social structures in four basic models: (1) the Ancient (Greek and Roman); (2) the German; (3) the Asiatic; (4) the Slavonic. At this stage the analysis focuses on the German social structure.

Marx notes how the ancient Germanic community was not concentrated in the city, like the Greek and Roman community. German families lived in forests separated by long distances and the community existed only by virtue of 'every act of reunion of its members', the city as a centre of political organisation and unity did not exist. The unity of the German *volk* was embodied in descent, language, common past and history. The political unit was the single household not the city or the state, the German *volk* itself was not a political community but a common cultural and ethnic organism which brought together all the single households and tribes.

According to Marx the German community had no existence as a state or political separate

entity, like the Roman or the Greek one, and this is due to the fact that it had no existence as a city. For the German community to exist, the individual landowners had to hold an assembly, but before and after the assembly had taken place there was not political unity of the community, but only ethnic identity. In Rome instead the political community existed independently from the gathering of the landowners, it was the city itself. Marx's conclusion is that, while the Ancient community existed as 'union' of citizens, the German community existed only as 'reunion' of landowners. Each single household being the basic political unit of the German social structure, the links between families and tribes and between tribes and the *volk* were not political but purely cultural (common language, history and traditions) and ethnic (common descent).

4.2 National identity and the formation of the modern German state

It has been argued that Germany, unlike France or Britain, never had fixed borders in its recent and less recent history. Identification of the German nation in political and territorial terms has often not been possible because the political map has always been changing. Following this line of reasoning, the emergence of an ethnic community (the *volk*) has been more a historical necessity than an original difference in the conception of national identity (Le Gloannec 1993).

This argument presents the inconvenience of leading to a circular definition of German national identity, where the relatively late unification of the German nation state and its territorial instability could be considered the consequence as well as the cause of the ethnic substratum of the *volk*. Moreover, if territorial instability was the only cause of the German ethnic national identity, it could not be possible to explain how other nation states, whose territorial unity has been achieved late, like Italy, do not have an ethnic conception of national identity.

Another hypothesis going in a similar direction links the ethnic conception of the *volk* to the relatively short life of the German state. When the Nationality Act of 1913, which restricts access to German nationality to ethnic Germans, was passed, Germany was a young nation state which needed to protect its newly created national identity. To support this hypothesis it has been argued that some of the newly independent African States have adopted similar restrictive nationality laws based on *ius sanguinis* and ethnic belonging (Lagarde 1993). This

argument is liable to the same criticism made to the previous one. The relative newness of the German State is certainly linked to the German conception of national identity, but it is unlikely to stand as one of its main originating causes. It should also be noted that the concept of *volk*, as derived from the medieval form of organisation of the German society, had existed for a long time before the creation of the German nation state.

In the Middle Age Germany was part of a supranational Empire, which, differently from the Monarchies in France and in England, lacked any real state sovereignty. The sovereign power rested with sub-national ethnic communities (Brubaker 1992). At the time of the formation of the Modern German state the German nation already existed in the form of the ethnic *volk*, and it was the *volk* which constituted the foundation of the new state and national identity.

In more recent times an important contribution to the construction of the German idea of nation has come from the influence of Romanticism. The German ethno-cultural nation was contrasted by the German Romantics with the result of the French Revolution and the century of the *Lumieres*, that is to say, the rationalist, voluntarist and political idea of nation. Schlegel, Burke and De Maistre argued for a community of blood and common descent, and considered the 'political nation' as endemically unstable. They affirmed the superiority of nature and history over will and abstraction, which had been sustained by the French revolutionary project.⁴³ The political project and the ideas underlying the Restoration of the Vienna Congress played a determinant role in the German national process, just as the French revolution contributed to the development of the republican model.

Although in the formation process of modern Germany it was the *volk* (ethnic nation) which shaped the nation state, an attempt to impose a political and non-ethnic model of social organisation was made by the Prussian Reformers. The Prussian tradition of state building, differently from the German was a supranational one and, like the French, conceived the nation as a creation of the state, expressed in terms of political community. The contrast between the German Romantics, who sustained the ethno-cultural nature of the German nation, and the Prussian reformers, who attempted to build a political nation on the model of the French one, characterised the German national process (Brubaker 1992). However, the attempt to create a political state structure in Germany failed, because the Prussian state was

⁴³ See, Schnapper (1991).

imposed from above on a pre-existing strong national community, and realised a fracture between the abstract bureaucratic state and the individuals members of the ethnic community.

The ethnic model of national identity has influenced the drafting of the German nationality law of 1913 and especially Article 116 of the post Second World War German Constitution, which deals with nationality. The analysis now focuses on the current German law on nationality and on its effects on immigration.

4.3 German nationality law and immigration policies

The nationality law of 1913 was almost entirely based on *ius sanguinis*. German nationality could be acquired at birth only from blood links. *Ius soli*, that is to say the possibility of acquiring nationality for children born in Germany of non-national parents (territorial link), was not contemplated, not even for third or fourth generation children. The provisions on naturalization normally required proof of German descent to access German nationality, however, at least in this case, the strict application of *ius sanguinis* was recently relaxed. A simplified procedure was introduced in 1990 to allow access to German nationality through naturalization for second generation immigrants on condition of cultural assimilation.⁴⁴

Article 116 of the Basic Law of the Federal Republic of Germany defines as 'Germans' either persons who de jure hold German citizenship, a spouse or a descendant of persons who were settled in the German Reich before 1937, as well as refugees or deportees with German ethnicity. This last provision was drafted to allow immediate access to German nationality for ethnic Germans living in Eastern Europe and in the USSR after World War Two. It should be noted that according to this provision the Federal Republic considered German citizens all the citizens of the former GDR before re-unification. An author has argued that this aspect of Article 116 was in violation of customary international law.⁴⁵

The rapid access to citizenship guaranteed to ethnic Germans by the Constitution contrasts with nationality and naturalization policies applied to non-German immigrants. As a consequence of the ethnic conception of the *volk*, guestworkers have always been regarded as foreigners and their integration as German citizens has never been seriously considered. The reform of naturalization law of 1990 cannot be considered a proper shift in the direction of

⁴⁴ Sections 85 *et seq*, Ausländergesetz, 1990.

⁴⁵ Czaplinski, as reported in Mangoldt (1986).

integration of foreign residents, because it imposes strict conditions of cultural assimilation to access citizenship.

Guestworkers, who have become permanent residents, have been granted full civil and social rights, but they have been rigorously excluded from political rights. The status available to them is that of 'denizenship' (full civil and social rights). The gap between denizenship and citizenship is represented by strictly political rights (voting rights, access to the public service, right to passport, etc.). Denizens are deprived of political representation, and, not holding a passport of the country of residence, are not protected from deportation under international law.⁴⁶ In the case of Germany the denial of full political rights to guestworkers has not been a consequence of immigration policy (like in the case of denial of right of abode in the United Kingdom to 'non-patrial' British subjects), but rather a consequence of the ethnic definition of the community.

In 1989 the SPD *Länder* of Hamburg, Bremen and Schleswig Holstein granted voting rights at local elections to guestworkers, who had been resident for more than five years. The CDU *Land* of Baden Württemberg and the CSU Bayern appealed to the Federal Constitutional Court arguing that the *volk* was made of citizens and that guestworkers, not being citizens, were not part of the *volk*. The Constitutional Court ruled that, since all state power derived from the *volk* and since the Constitution did not include foreigners in the *volk*, the *Länder's* laws on voting rights were unconstitutional (Faist 1994a).

However, although the Court declared unconstitutional the right to vote at local elections for non-German nationals, it conceded that the issue raised by the *Länder* which had granted the right to vote to guestworkers had its merit:

'behind this interpretation obviously stands the notion that it corresponds to the democratic idea, especially as it contains the idea of liberty, that there is a congruence between the possessors of democratic political rights and those subject to a specific state power. This is the proper starting point.'⁴⁷

⁴⁶ 'EC denizens' (Union citizens resident in a Member State of which they are not nationals) enjoy a much wider protection from deportation under EC law. A Member State, who wants to rely on the public policy exception to the free movement of workers of Article 48(3) to deny the right of residence to an EC national, must show a 'genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.' Case 30/77, *R v Boucherau*, [1977] ECR, 1999.

⁴⁷ EuGRZ, 1990, 443.

The *obiter dictum* of the Federal Constitutional Court could be the starting point for a constitutional reform aiming at a more consensual definition of citizenship and allowing for the granting of full political rights, at least to long term permanent residents. This is even more urgent after the implementation of Article 8b(1) EC introduced by the Treaty on European Union, which has required an amendment of Article 28.4 of the German Constitution to allow EC nationals to take part in local elections in Germany.

The reform of Article 28.4 might have important consequences on the whole conception of German national identity, because it severs the link between ethnic community and enjoyment of political rights. Union citizens are not part of the *volk*, but their ethnic diversity does not prevent them from taking part in the local political process in Germany.

4.4 Reform of nationality law and new German political identity

A reform of nationality and naturalization law allowing access to full political rights for guestworkers is now urgent in Germany. After a series of racist attacks on foreign guestworkers in 1993, the Kohl government called for a new nationality law to replace the 1913 Act, which is based on *ius sanguinis*. No further action was taken. The CDU-CSU-FDP government elected in October 1994 put the question of naturalization on the agenda again together with the reform of nationality law, which should introduce *ius soli* at least for second generation children.⁴⁸

A reform of German nationality law going in this direction would represent a major departure from the ethnic conception of the *volk*. Once the ethnic-organic conception of the *volk* is given up, it would be necessary to find a new basis for German national identity. The *obiter dictum* of the Federal Constitutional Court refers to a link between subjection to state power and possession of political rights, but it is still too vague to constitute the foundation of a more consensual definition of citizenship.

Habermas (1992a) rejects the idea that the *volk* is the only possible basis for German

⁴⁸ The reform of German nationality law is perceived as a political issue which involves also the other Member States of the European Union. If Germany, as it has been proposed, were to allow access to nationality to second generation children of immigrants and to immigrants who have resided in Germany for at least twenty years, this would automatically create as many as four million new EU citizens with right of free movement and residence within the Union. Some Member States seem to be concerned about the possibility of receiving part of Germany's non-European immigrant population, by means of their accession to German nationality or by means of extension of free movement and residence to third country nationals resident in the EC.

national identity and advocates a new national political identity inspired by recent German history (the history of the Federal Republic) and based on 'constitutional patriotism'. Constitutional patriotism is the expression of a new social contract whose essence is an agreement on the kind of government and on the common rules. In Habermas's model the German ethnic identity should be replaced by a political identity derived from the shared political culture expressed in the Constitution, which was agreed by the people. All other identities (ethnic, religious, cultural, linguistic, etc.) should no longer be constrained in a common national identity, but they would be allowed to co-exist within the same political community.⁴⁹ This new German national political identity finds its roots in the post World War Two experience of the Federal Republic. The history of the Federal Republic suggests that a shift from ethnicity to consensus has taken place in the German constitutional model. If on one hand the FRG and now the re-unified Germany have maintained nationality and naturalization laws still inspired by the ethnic conception of the *volk*, on the other hand the constitutional structure of the Federal Republic has been based on a social contract rather than on cultural and ethnic links.

Constitutional patriotism could also represent a suitable model for European political identity and belonging. The European political culture at the basis of this construction would find its origins in the common resistance against nazi-fascism and in almost forty years of 'constitutional history' of the European Community (see, Chapter V).

It has been argued that one of the founding elements of the German social contract is a sort of 'stability pact', generated by the German loathing of instability, consequence of the traumatic experiences which have remained deeply fixed in the collective German conscience, like the hyper-inflation of the Weimar Republic, or the catastrophe of the Second World War (Mertes 1994). An important expression of the stability pact underlying the post World War Two German contractual society is represented by the phenomenon of co-determination in industry, which results in a social partnership between employers and workers. The striving of German society for consensus is a consequence of the traumatic experiences of the past, and might be interpreted as a movement from a cultural-ethnic society to a contractual one.

However, to complete the transition from an ethnic type of national identity to a political one it would be necessary to introduce a reform of nationality law, which included *ius soli* and

⁴⁹ Regarding the application of the model of constitutional patriotism to a common European political identity see, Chapter IV.

ius domicilii (residence) as criteria for acceding to German nationality at birth and by naturalisation.

5. France

In the German model of national identity it is the *volk* (organic entity) which makes the nation, in the French model instead *c' est l' etat qui fait la nation*.⁵⁰ The difference between the German *volk* and the French state entity is the key to understanding the two models of national identity.

5.1 Origins of the French idea of nation

Following Marx's (1964) analysis in the *Pre-Capitalistic Economic Formations*, the French idea of polity could be traced back to the pre-capitalistic 'Ancient' form of production. The Ancient form of production and social organisation found its expression in the ancient Greek and Roman societies. In these societies life was organised around the city where the members of the community would meet every day (contrary to the German families living in forests and gathering only occasionally). The city represented the 'union' of the different families and existed as a political community gathering all individual citizens. In German society on the other hand, lacking the social structure of the city, the different families were part of the same *volk* by reason of cultural and ethnic ties.

The autonomous, albeit not abstract, existence of the city as a collectivity of individuals is at the origin of the idea of the state as political entity. In the Ancient form of society the community existed as an independent political organism which was the creation of the political will of the citizens.

The transition from the Ancient community, 'concrete collectivity of individuals', to the modern 'abstract state', where the state is opposed to the individual citizens as a separate entity, is the result of the contamination between the two models (Roman and German).⁵¹ This contamination resulted in the opposition between the Prussian bureaucratic state and the German organic *volk* (where the *volk* prevailed) and in the Anglo-Saxon liberal relationship

⁵⁰ 'It is the state, which makes the nation.'

⁵¹ For the distinction between Roman, German and Anglo-Saxon constitutional models see, Lobrano (1990).

between sovereign (king/state) and subjects, where sovereignty was a prerogative of the king and the subjects were not individual citizens, endowed with part of that sovereignty. The liberal model is originally ethnic free, but determines a fracture between state and citizens, which deprives citizens of their original sovereignty and makes them simple autonomous individuals.⁵²

The failure to develop a political conception of the community and the emergence of the ethnic nation in Germany were determined by the attempt to impose a political but abstract state structure from above. In France instead, success in adopting a political model of nation was a direct consequence of the a revolutionary process from below and of a pre-existing strong institutional framework. The French monarchy, unlike the Empire in Germany, already provided a strong state structure before the advent of the Revolution. In particular the Capetian monarchy succeeded in establishing a relatively effective and centralised kingdom. The state political structure was imposed from above and the French national identity coincided with the identity of the dominant class, namely the aristocracy.

According to Smith (1992b) the French pre-revolutionary national identity was derived from a *lateral ethnîe*, represented by the dominant aristocratic class. The *lateral ethnîe* succeeded in imposing its own culture, traditions and language upon the nation through bureaucratic incorporation. In Germany, on the other hand, the model of national identity was not imposed by a dominant *lateral ethnîe* (like the monarchy in France, England and Spain), but was derived by the development of a *vertical or demotic ethnîe*, the *volk*, characterised by interclass structure and popular basis.

The advent of the Revolution in France determined the end of the dominance by the *lateral ethnîe*, but the political state structure created under the monarchy was preserved. The Revolution, and in particular the Jacobin phase, had the merit of conferring popular legitimacy on the state, thus ending the fracture between individual subjects and abstract state.⁵³ The transformation of the subjects into citizens determined the success of a model of political identity completely deprived of any ethnic characterisation. The 'Jacobin Republic'

⁵² It has been argued that in the Anglo-Saxon constitutional model the emancipation of the individual from subjecthood has not determined the emergence of a status of citizenship, but rather one of individual autonomy, where the private sphere of the individual is separated from the public sphere of government. See, Oliver and Heater (1994).

⁵³ The French Revolution re-established the unity between citizens and state (individuals and collectivity) typical of the 'Ancient' community. This unity however was not going to last long. The liberal soul of the Revolution (Thermidorian) re-proposed the fracture state-citizens.

proclaimed in 1792 was based on the general will of the people (*volonté generale*) which resulted in a common political project.⁵⁴ The criteria to participate in the common political and national project were based on the consent of the individual and were independent of any ethnic or cultural requirement. In the definition of Sieyès the republican nation was: '*un corps d'associés vivant sous une loi commune et représenté par la même législature.*'⁵⁵ The debt of the French revolutionaries to Rousseau is evident, but it would be a mistake to believe that the republican model is exclusively a creation of the French Revolution. It has already been noted as in Marx's analysis the French model of social structure and production was derived from the Ancient form of production. Sieyès' famous definition reported above bears a striking similarity to Cicero's definition of *Populus*: '*Cetus Multitudinis Iuris Consensus*'.⁵⁶ In the definition of Saint Just, a Jacobin protagonist of the Revolution, 'all revolutionaries have to be Romans.' Given this link between Ancient social structure of society and French Revolution, it is possible, in a broader meaning, to refer to a Latin republican model of political identity rather than merely to a French one.

In the context of the French Revolution, however, the republican model of the Jacobins was contrasted by the liberal model supported by the Thermidorians. The liberal model finds its clearer expression in the distinction made by Constant (1988) between Liberty of the Ancients and Liberty of the Moderns (see, Chapter II). In Constant's vision Liberty of the Ancients means participation in political life (government) while Liberty of the Moderns means freedom of the individual from the constraints of the state. Liberty of the moderns is the foundation of the liberal constitutional model.

In the liberal model, as expressed by the Thermidorian Constitution of 1795, ethnic principles are absent, but the fracture opposing the abstract state to the individual citizens, which had characterised the pre-revolutionary dominance of the state by a *lateral ethnîe*, reappears. The liberal model, differently from the democratic-republican one, is a clear departure from the Ancient type of community described by Marx, which is not only a political non-ethnic community, but also a concrete collectivity of individuals (the whole and its parts).

⁵⁴ The 'Declaration of the Rights of the Man and of the Citizens' and the Constitution of 1793.

⁵⁵ 'A social body living under a common law and represented by one legislature.'

⁵⁶ 'A group of persons brought together under the law.'

5.2 The republican model in the French national project

The 'republican model'⁵⁷ is the result of the fusion of two souls of the French revolution: the democratic soul (Jacobin) and the liberal soul (Thermidorian). The French republican model associates the ethnic-free and voluntary characters of the democratic model with the separation state-individual citizens, typical of liberalism.

A first phase of the French Revolution culminating in the Jacobin Constitution of 1793, was characterised by a non-national conception of the polity. In Article 4 of the Constitution the term *citoyenneté* referred to the political community and included all French citizens and all foreigners who had been resident in France for the past year and were discharging a socio-economic function.⁵⁸ The acquisition of French national identity was consequential to the acquisition of citizenship. The dominance of the concept of citizenship over any cultural or natural national identity was expressed by Tallien's remark: 'The only foreigners in France are the bad citizens' (Brubaker 1990). The French revolutionary and pre-national form of political identity and belonging, rooted in the Roman and Greek conceptions of the community, have been chosen at the end of this Chapter as the main reference for a model of European post-national citizenship and political identity.

However, in the context of the Revolution, the emergence of an external threat against the new born Republic contributed to the creation and to the strengthening of a republican 'national' identity, which maintained the political nature of the *citoyenneté*, but restricted the republican project to the French borders. The relationship between citizenship and national identity was then inverted, so making the acquisition of citizenship consequential to the acceptance of French national identity. Nationalism was used to promote and defend the republican project of citizenship, but also represented a major limit to the universalistic and inclusionary character of the political community based on citizenship. The particularistic

⁵⁷ The 'French republican' model of citizenship need not coincide with the contemporary republican model, discussed in Chapter II (with respect to entitlements) and in Chapter IV (with respect to identity), although there are significant similarities and although the French model has been adopted as the historical reference for the idea of political community. Contemporary republicanism also relies on important principles belonging to the liberal tradition. On the other hand the 'new republican' model outlined at the end of this Chapter with respect to eligibility for citizenship is complementary to the discussion on republicanism made in other Chapters with respect to entitlements and identity.

⁵⁸ Article 4 of the Constitution of 1793, attached to the Declaration of the Rights of the Man and of the Citizen, states that is a French citizen 'every foreigner fully twenty-one years of age, who, domiciled in France for a year, lives there by his labour, or acquires property, or marries a French woman, or adopts a child, or maintains an old man; finally every foreigner who is considered by the legislative body to have deserved well of humanity.'

features of the idea of national identity (based on a common culture, traditions, customs, language and territory) limited the working of the republican model to one national group only.

In a second phase of the French Revolution, the Thermidorian Constitution of 1795 established a link between the concepts of citizenship and nationality, limiting the rights of citizenship to French nationals, and making more it difficult for foreigners to acquire French nationality/citizenship. This close link between citizenship and nationality is still a feature of modern French nationality law; access to French nationality is relatively easy, but most citizenship rights are reserved for nationals. In Germany on the other hand a very restrictive access to nationality is counterbalanced by access to most social and economic rights of citizenship for permanent residents, who are excluded only from the core of strictly political rights.

In keeping with principle, access to French nationality is not based on cultural or ethnic criteria, but on the free will of the individuals who want to be part of the French nation. Participation in the national project nevertheless implies the acceptance of a common national and cultural identity, insofar as cultural homogeneity is not a prerequisite to access French nationality, but it is a goal of the national community. All those who are interested in becoming French are potentially welcome to enter the political community. Through the principle of assimilation the French state has succeeded in transforming millions of foreigners into citizens.

One of the issues facing French national identity today is the potential contrast between the principle of assimilation and possible diversities (in terms of culture, language and religion) which might exist within society. The purpose of a modern republican society should be integration rather than assimilation. It has been argued that assimilation (as predicated by the political right in Germany and France) is to demand that the others be like us (that is to say, they overcome their diversity or return to their countries of origin), while integration is to demand that the others be treated like us, independently from their diversity (Desir 1992). The principle of integration realises a compromise between the two extremes of assimilation and multicultural insertion.

The multicultural model, adopted in Britain, allows for the existence of different ethnic, cultural, religious and linguistic communities within the same state, but presents the disadvantage that it fails to provide a reason for the 'living together' of the different

communities (Taguieff and Weil 1990). The integration model on the other hand maintains the political feature of assimilation, a community bound together by a common political project, but at the same time respects the principle of cultural diversity, which is at the basis of multicultural insertion. Integration is proposed at the end of this Chapter as the aggregating principle in a model of European post-national citizenship.

5.3 French nationality law and immigration policies

The republican model is reflected in the French laws on nationality and naturalization. The French Nationality Code of 1973 provides automatic citizenship for second generation children born in France of foreign parents. First generation children born in France become citizens automatically at the age of 18 if they have resided in France for the previous five years. Children born of French parents are French citizens because of *ius sanguinis*. Naturalization is relatively easy and it is based on residence rather than ancestry.⁵⁹

The French approach to nationality law follows the principles of the republican model through a wide application of *ius soli* together with *ius sanguinis*. However, the inclusionary character of French nationality law, and in particular the provisions conferring citizenship upon first generation children of immigrants must be put in the context of the principle of assimilation. The legal transformation of first generation children (second generation immigrants) into French national presupposes a very high confidence in the assimilatory role of the republican institutions (school, army and public administration) in transforming immigrants and their children into Frenchmen.

Today the link between citizenship and nationality in France presents a problem for those immigrants who want to be integrated into society as citizens, but do not intend to give up their own specific identity (cultural, national or ethnic) to become culturally French. The 'nationalization' of citizenship allows more foreigners to become French nationals than in other countries, but at the same time puts resident immigrants who are not nationals in a condition of total exclusion from citizenship (Silverman 1991).

Another consequence of the nationalisation of citizenship in France is that the debate on immigration has focused directly on the issue of access to nationality, rather than on the right

⁵⁹ For a thorough discussion of nationality and naturalisation policies in France and in the US see, Guendelsberger (1992).

of abode or the status of denizenship of foreign guestworkers. In France, non-Community immigrants who do not naturalize cannot benefit from a status of denizenship (all rights of citizenship, except strictly political rights) or from a British type of right of abode, which would allow them to settle at least as 'permanent residents'. Instead they are in a condition of great uncertainty and insecurity about their status. Naturalization and birthright citizenship have always been regarded as the natural means of integration for foreign settlers in France.

After a decade characterised by a strong debate among French political forces on the issues of immigration and access to nationality, in 1993 the Gaullist government of Mr. Balladur adopted a reform of French nationality law restricting birthright citizenship and naturalization. The most important feature of the new Act is the elimination of the automatic right to citizenship for first generation children of immigrants. Now first generation children have to apply and the government retains discretion on whether or not to grant them access to citizenship. In case of criminal convictions or suspected terrorist activities, citizenship can be denied.

An argument that the French Commission on nationality has put forward to justify the abolition of the automatic right to citizenship of first generation children, is based on the tradition of 'consent' of the republican model. First generation children are deprived of their right to consent to be part of the republican project, if they are automatically made citizens. This argument has been subject to strong criticism among republicans because it overlooks the fact that consent could always be exercised by declining the right to French nationality rather than having to opt for it.⁶⁰

The end of the automatic right to citizenship widens the gap between citizens and non-citizens, because it puts first generation children in a condition of uncertainty as to whether or not they will be granted citizenship. The introduction of administrative discretion is a major obstacle to the integration of immigrants into French society, while insecurity and uncertainty (inherent in a system which requires first generation children to wait until the age of majority to become citizens, and leaves the final decision on the matter to the discretion of the administrative authorities) are likely to have a negative impact on their sense of belonging to France. It has been argued that, if first generation children were recognised as French citizens from birth (as it happens in the case of second generation children), racist feelings would

⁶⁰ For an analysis of the 'theory of consent' *infra*, p. 102.

become less acceptable within society because it would be more difficult to express racist attitudes towards citizens rather than towards aliens (Guendelsberger 1992).

The new French nationality law with its restriction of *ius soli* represents a major departure from the integrationist principles of the republican model. However, as the French national community maintains its strictly political character, the restriction of *ius soli* and the consequent limitation on access to nationality should be regarded as the result of a policy aimed at preventing further immigration, rather than a shift towards an ethnic definition of the national community. The paradox of this last decade is that countries with a potentially open national community like France, the UK and the US have limited access to nationality through restrictive immigration policies, while Germany, a closed ethnic national community, has remained substantially a country of immigration.

In the case of France, the UK and the US, where the community is defined in political terms and is ethnic free, the issue of immigration is playing an increasingly important role in shaping the basic principles of national identity. These countries, differently from Germany, are potentially open political communities, but the necessity to limit immigration has led to a restriction of the application of the principle of *ius soli* as one of the criteria for acquisition of nationality. This necessity reveals a new conception of the community, which justifies the exclusion of foreigners not on the basis of an ethnic national identity, but for the preservation of scarce welfare resources.

It has been argued that the tension between the universalism and inclusion of citizenship and the particularism and exclusion of nationality is today increasingly less based on an ethnic, religious or cultural definition of the community, but rather on the 'chauvinism of prosperity of one collectivity against foreign intruders' (Habermas 1992a:13).

6. Britain

The United Kingdom brings together four different national groups: English, Irish, Scottish and Welsh. This Section does not deal with each of those four groups, but it concentrates on the study of the English and then British national identities. Within the context of the United Kingdom today and of the British Empire before, the English have emerged as the dominant national group. The English predominance has led to the definition of a British national identity based on the English model.

In general terms it is rather difficult to relate British national identity to any of the two main models mentioned above (the republican and the *volk*), nevertheless there are many similarities to the republican model, especially regarding the concept of self-determining political community.

6.1 The Common Law theory of Natural Allegiance

In the early English medieval law there was not a well developed concept of nationality or national identity. A variety of different statuses of the person were structured in a hierarchical manner. The status of subject of the King consisted in the possession of certain privileges and duties rather than rights and obligations of citizenship. Naturalization and access to nationality consisted in the removal of certain disabilities and in the conferral or the extension of certain privileges (Oliver and Heater 1994).

In 1608 in *Calvin's* case Sir Edward Coke formulated for the first time in legal terms the Common Law theory of 'Natural Allegiance'. The main legal issue concerned whether Robert Calvin who was born in Scotland after the accession in 1606 could inherit land in England. If he had been considered an alien he could have not inherited land in England under English law. Coke found that the accession of Scotland had created a 'political union' with England and that therefore all persons born within the territory of the kingdom were subjects and owed allegiance to the King, all pre-existing national allegiances having been overridden.

According to Coke's theory there is a natural, personal and perpetual allegiance between the sovereign and the subjects. This relationship (*ligeantia naturalis*) is derived from natural principles of hierarchy and subordination of the father-son type. The acquisition of nationality is based on territorial criteria. All persons born within the King's territory are subjects of the King, except children of foreign ambassadors and enemies. Also children born of foreigners who reside only temporarily in the Kingdom are subjects, because their parents owe temporary allegiance to the King as 'friendly aliens'.⁶¹

⁶¹ This principle was reaffirmed by the US Supreme Court in the *Wong Kim Ark* case (169 US 649,703 1898), where a child born of foreign parents, who was also entitled to the parents' nationality because of *ius sanguinis*, was held to be an American citizen by birth, because he was born of 'friendly aliens' within the US jurisdiction. Had the child been born of foreign parents whose country of origin was at war with the US, he would have not been entitled to citizenship, according to the Common Law theory of Natural Allegiance. However, under American law the issue would be more controversial because the citizenship clause of the 14th Amendment confers citizenship upon all persons born in the US and 'subject to the jurisdiction thereof,' a clause

The substance of the relationship of allegiance consists in protection from the King to the subject in exchange for fidelity and an undertaking to commit no treason. Protection from the King concerns the external sphere, foreign enemies, but also the internal one, protection from abuses of the sovereign.

6.2 *Ius soli*, ascription and consent

The ascriptive character of Common law nationality and its principles of natural hierarchy and eternal allegiance could create the impression that this model of political identity is closer to the German idea of *volk* than to the Latin self-determining community. Such an impression would be quite misplaced. The Common Law tradition maintains the characteristics of a potentially open political society also because the mode of acquisition of nationality is based on *ius soli*. The natural relationship between the sovereign and the subjects does not assume ethnic connotations and accession to membership of society is not based on ethnic principles. On the other hand the German *volk* is a natural community with ethnic characteristics (closed society) where the right of accession is squarely based on *ius sanguinis*.

The argument against ascription in favour of a purely consensual approach, which was raised in the American debate on citizenship with the purpose of depriving children of illegal aliens of US citizenship, overestimates the ascriptive character of *ius soli*.⁶² *Ius soli* is ascriptive only in so far as it is used to determine nationality at birth, otherwise it leaves every individual citizen free to give up his original nationality in favour of another one at a later stage. Any other principle of determination of nationality at birth would be equally ascriptive for the same fact that it is used to bestow nationality upon an individual who is not capable to consent. *Ius soli* has also the advantage of determining the original nationality of the individual in a very neutral and non-discriminatory fashion by referring to the place of birth. *Ius sanguinis* is much more ascriptive than *ius soli*, because it maintains a natural and immutable relationship between the individual and the country of origin. It is also less neutral, because it determines birthright citizenship by discriminating according to descent.

The principle of ascription which is implied in *ius soli* does not contrast with the

which has been interpreted as conferring citizenship also to children of illegal aliens (*Plyler v. Doe*, 457 U.S. 202, 245 1982).

⁶² See, Schuck and Smith (1985).

consensual character of the polity, it is rather an administrative necessity to determine the nationality at birth of an individual, who otherwise, being incapable of expressing consent, would be in a position of exclusion and uncertainty until he reaches the age of majority. The choice of *ius soli* to determine birthright citizenship is the less discriminatory and also the less ascriptive possible, because it does not pre-empt future choices of the individual. For these reasons *ius soli* is the criterion of admission to the polity, which would best suit an ideal neo-republican and post-national model of European-citizenship.

6.3 John Locke's contractual society

An alternative to the theory of Natural Allegiance in the Anglo-Saxon tradition was formulated by John Locke (1693). In an essay, where he advocates a more liberal policy of naturalization, Locke criticises the Common Law theory of Natural Allegiance. He believes that a child at birth does not owe allegiance to any country or government. The child is subject to the authority of the father, but not to that of the sovereign on the same basis, because there is no natural obligation towards the sovereign. Allegiance to the sovereign must be the result of individual choice rather than natural ascription. A child who becomes adult has the chance to consent to be a subject of the King and therefore a member of society. According to the same principle a foreigner should be allowed to make a similar choice.

Locke expresses a purely voluntary and contractual view of political identity which is very close to the republican model. His idea that all political obligations should be undertaken on a voluntary basis was not successful in Britain where the theory of Natural Allegiance remained dominant. It was instead pursued in America where a new concept of contractual citizenship was developed, after the independence (*infra*). It was noted above that the argument against ascription based on Locke's contractarian model could be misplaced as it fails to understand that *ius soli* and ascription operate in a non-discriminatory fashion only to determine nationality at birth, leaving the individual free to choose a different nationality and allegiance at a later stage.

It should also be said that Locke's ideas in favour of a liberal policy of naturalization were influenced and supported by his economic theories and by an analysis of the British labour market of his time. He believed that the workforce was the real strength of a nation and that a large population was the necessary precondition for national prosperity. This might have been

valid under the conditions of production and trade of that time, but today many authors would argue that, in an era where the forms of production have been radically changed by the advent of technology, the economic situation considered by Locke has been reversed (Reznick 1987). This radical change in the forms of production and consequently in the structure of the labour market has resulted in a restrictive policy of naturalization and in limitations to immigration. As seen above this phenomenon has taken place not only in Britain but also in France, in the US, and recently, to a certain extent, in Germany.

6.4 From natural allegiance to imperial citizenship

The potential openness of the British idea of political identity, which preceded the introduction of immigration controls, was the basis of what has been called the 'imperial model' of citizenship (Baldwin-Edwards 1994). The imperial model of political identity and citizenship facilitated the integration of different peoples in a multi-ethnic empire, but at the same time affirmed the dominance of one national group (the English one) over the others. The foundation of the imperial model of citizenship is the theory of Natural Allegiance. All persons born within the territory of the King owe allegiance to the crown, and this means that the entire population of the British Empire were British subjects. This model is reflected in the British Nationality Act of 1948, which, unlike that of 1981, is not an Immigration Act in substance (*infra*).

Following the breaking up of the Empire, the 1948 Act attempted to maintain the imperial model of citizenship by applying the theory of Natural Allegiance and *ius soli*. Due to the independent status of some former colonies a few changes were necessary concerning citizenship. It was established that primary nationality of a person was that of his country of origin, if this was an independent dominion (Canada, Australia, India) and that as a consequence of his primary nationality that person would be a British subject or a Commonwealth citizen. The most striking feature of the Act is that possession of another primary nationality would not diminish the status of British subject and all the rights connected to it (especially the right of abode to the UK and the right to vote in the UK for residents). Another important point concerned the definition of Commonwealth citizen which conferred exactly the same status of British subject, but was introduced in consideration of those colonies which had become republics (Nicol 1993). In such cases, subjecthood to the

monarchy had disappeared, but a sort of allegiance to the United Kingdom remained in the status of Commonwealth citizen.

The imperial model of citizenship could be placed in between the republican one and the *volk* one. On the one hand it maintains access to the political community free from ethnic connotations and based on *ius soli*, on the other hand it tends to build a multi-ethnic society where different cultural, ethnic and religious identities co-exist but do not share a common political project similar to that pursued by republicans.

Although the British imperial model of citizenship came to an end after the dissolution of the British Empire and with the beginning of the restrictive immigration policies, an author has argued that the British policy towards ethnic minorities at home has been inspired by the same principles (Schnapper 1994). The so called 'home rule', part of the British colonial tradition, imposed respect for the structure of the local society through the consolidation of the power of traditional leaders. In the United Kingdom a similar policy was followed towards immigrants with different cultural and ethnic background, when, instead of attempting to achieve equality through citizenship, the British authorities followed a policy of protection of ethnic minorities. This was done through the Race Relations Act which aimed at combating racism and achieving equality of opportunities for migrant populations. The same concept of a 'Race Relations Act', however, runs contrary to the French republican model, which, although it does not strive for cultural uniformity (which is typical of the assimilationist model), certainly aims at bringing diversities together in a common political project (integrationist model), rather than merely guaranteeing parity of opportunities.

The concept of minority, which is at the basis of British multicultural society, is completely alien to French political identity. The French have always considered the British policy of recognising minority rights as divisive and more likely to establish wedges between communities than treating people as equal citizens (Lloyds 1991). The French logic of integration is based on equality of citizenship and not on minority protection and equality of opportunities. The equality of each individual citizen before the law excludes any institutional recognition of minorities. Every citizen has a right to maintain his cultural, religious and national diversity, but at the same time he enjoys a 'right to indifference' in the political arena.

The British model of multicultural insertion has the advantage of achieving the practical objectives of parity of opportunity and of calming down most xenophobic passions, however

its main drawback is that it does not contribute to the building of a common political identity and citizenship. In contrast, the French model of assimilation, although it has failed to eliminate xenophobia, has transformed millions of foreigners into French. The disadvantage of assimilation is that its striving for cultural and national uniformity clashes with the needs of immigrants coming from an increasingly different (non-European) cultural and religious background. Integration provides a better solution, by respecting cultural and religious diversities and providing for political unity.

6.5 British nationality

As in the case of France, the original open character of the British national community contrasts with the restrictive immigration policies adopted in recent times. Immigration Acts in the 1960s and finally the British Nationality Act of 1981 were passed to deal with the problem of immigration from the Third World, rather than to strengthen the ethnic character of national identity. This, like in France, might lead to a redefinition of the principles underlying national identity on the basis of the 'necessity' of excluding foreigners from the enjoyment of scarce national resources.

A report from the Select Committee on Race Relations and Immigration of 1978 stresses how the limitation of the right of abode to 'UK patrials' is 'based on the assumption that immigration is directly related to the creation of socio-economic problems and that the solution is to be found in the reduction of the number of persons entering the United Kingdom' (Juss 1993). The dissolution of the British Empire and the increase in immigration from the Third World triggered the reforms of British immigration and nationality law which led the United Kingdom to redefine itself as a nation state and to develop a concept of national citizenship.

6.5.1 Immigration and nationality Acts

The first kind of immigration controls for persons coming from Commonwealth countries were introduced by the Commonwealth Immigration Act 1962. These measures targeted the new Commonwealth (Third World countries), leaving the door open for immigrants from the old Commonwealth (the former Dominions), whose population was mostly of European origin. The citizens of the UK and colonies being at that time all British subjects (all owing

allegiance to the same sovereign), the distinction for immigration purposes was made on the basis of the 'place of release of the passport' (Neven 1993). Only persons holding a British passport released in the UK or by a British High Commissioner overseas and those who did not, but were born in the UK or had a parent who was born there, were entitled to the right of entry and residence in the UK.

In 1968 a second Commonwealth Immigration Act was passed to prevent the massive immigration to the UK of the Asian people who had been expelled from Kenya and Uganda and had a British passport released by the British High Commissioner in those countries. The new Act added the requirement of 'belonging' for the granting of the right of abode, besides that of the place of release of passport. The criterion of belonging was determined by relying on *ius sanguinis*: the entrant had to have a parent or a grandparent born, adopted or naturalized in the UK. The practical result of the Immigration Act 1968 consisted in denying the right of abode to the African Asians, who held a British passport, but did not have ancestral links with the UK, while at the same time allowing the return to the UK of white British settlers from the same countries and who held the same passport.

The move towards *ius sanguinis* was in this situation justified by the willingness to close the floodgates of immigration of non-white British Subjects. The result was that the UK made a large number of people materially stateless by means of an Act of Parliament (many of them, having being expelled from their country of residence, had no right of abode to any other country), while formally they maintained British nationality. Following these events Britain was found in violation of Article 3 of the European Convention on Human Rights, by the Court of Human Rights in Strasbourg. Article 3 grants protection against inhuman and degrading treatment, expulsion and refusal of entry.⁶³ A special 'voucher scheme' was created to reduce the hardship created by the Act for East African Asians, allowing for an annual quota of heads of households who could enter and reside in the UK (Juss 1993).

The British Nationality Act 1981, which is again in substance an Immigration Act, reduces considerably the fields of application of *ius soli*, making it more difficult for first generation children of non-citizens born in the UK to acquire citizenship. Although the principle of *ius soli* is maintained, naturalization is made more difficult, because it is left to the discretion of the administration to grant or to refuse it. The Act also introduces a legal differentiation

⁶³ *East African Asian case*, (1981) 3 EHRR 76.

among citizens who are still all British subjects. There are five categories of citizens: (1) British citizens; (2) British Dependant Territories citizens; (3) British overseas citizens; (4) British subjects; (5) British protected persons.⁶⁴ Right of entry and residence in the UK is granted only to British citizens and to those Dependant Territories citizens who have acquired citizenship through connection with Gibraltar, but not to those from Hong Kong.⁶⁵

Another question left open by the Nationality Act of 1981 is that in certain cases it creates a two-speed nationality. Some British nationals who are not British citizens may have the right of residence in the UK as well as full political rights, but they are denied the right of free movement in Europe and the right to re-unite with their families, because they are not UK nationals for the purpose of EC law and therefore EU citizens (it is for a Member State to define who are its nationals for the purpose of EC law, and the UK considers only British citizens for this purpose). On the other hand British citizens and other EU citizens might not have the right to vote at political elections in the country of residence, which is not also their country of nationality, but they can bring their families with them and enjoy the right to free movement within the EU.

Moreover, for British citizens resident in the UK it is more difficult to reunite with their non-EU family members than for other British citizens residing in another EU Member State, or for EU citizens residing in the UK. The last two can benefit under EC law of a right to reunite their families,⁶⁶ which does not apply to the former (British national residing in the UK), because of the principle of reverse discrimination. The European Court of Justice has clearly stated that it would not intervene to prevent Member States from discriminating against their own nationals.⁶⁷ A British citizen resident in the UK who wishes to bring his wife or her husband who are not EU citizens in the UK, is subject to administrative discretion. The non-EU spouse will have to demonstrate before the immigration authorities that his or her 'primary purpose' in marrying the British citizen was not to obtain entry. The Labour government elected in May 1997 announced the abolition of the 'primary purpose' rule, among a series of important amendments to the controversial Asylum and Immigration Act,

⁶⁴ For a general overview of British legislation on nationality and immigration see, Oliver and Heater (1994).

⁶⁵ The Hong Kong Nationality Act 1990, confers the right of abode in the UK to a very small minority of qualified people from Hong Kong. The purpose of the Act was to convince highly skilled and qualified workers not to leave Hong Kong before 1997, because of their importance for the economy of the dependant Territory, by putting them in a condition of certainty regarding their future.

⁶⁶ Article 10, EEC Regulation 1612/68.

⁶⁷ Cases 35, 36/1982, *Morson and Jhanjan*, [1982] ECR 3723.

which was passed by the previous Conservative government (see, Chapter VII, p. 285).

6.5.2 Right of abode and national identity

The right of abode is the basic principle behind the British Nationality Act 1981 and is reserved for British citizens. Another fundamental right of citizenship, the right to vote at local and national elections, has been conferred by the Act upon all British subjects and Commonwealth citizens who are residents, so that in theory a British subject who is temporarily resident in the UK and does not have a permanent right of abode, enjoys nevertheless the political right of franchise.⁶⁸ The primary right of citizenship under British law is therefore the right of abode; the right to vote (at local and general elections) for all British subjects depends exclusively on residence.⁶⁹

The link between residence and right to vote is reflected also in the position of British citizens resident abroad, who until 1985 did not enjoy the right to vote in the UK. Subsequently they were allowed to retain the right to vote at national elections for five years and in 1989 this period was extended to twenty years (Nicol 1993). This approach, even with the twenty year extension, demonstrates how there must be a link of residence for the enjoyment of the right to vote in the UK. Other countries (France, Germany and Italy) confer the right to vote at national elections also upon their own nationals who are resident abroad and have never resided in their country of nationality. This is a direct consequence of the primary importance of franchise for citizenship and national identity in these countries.⁷⁰

The growing importance of the right of abode in relation to citizenship must be put in the context of the rationale for limiting immigration which has been mentioned above. If the

⁶⁸ See also, Section 1 of Representation of the People Act 1983, which confers the right to vote at Parliamentary elections to all Commonwealth citizens and citizens of the Republic of Ireland on condition of residence.

⁶⁹ For this reason the introduction of the right to vote and stand as a candidate at local elections in the country of residence for Union citizens has not created major constitutional problems in the United Kingdom, as distinct from France and Germany, where constitutional reforms were required to implement Article 8b EC. Also a hypothetical right to vote at national elections on the basis of residence for Union citizens would not represent a serious constitutional issue in the United Kingdom, while on the other hand it would affect the very core of national sovereignty in France and Germany, where the right to vote at national elections remains the primary right of citizenship and the foundation of political identity.

⁷⁰ France allows its own nationals resident abroad to come back to France and vote for national and presidential elections or to vote by proxy. Italy allows citizens to come back and vote at national and local elections in the last place of residence. Draft legislation allowing Italian residents abroad to vote for Italian national elections in the country of residence, has been submitted to Parliament on several occasions, so far without success.

purpose of keeping immigrants out is 'welfare chauvinism' (to reserve scarce resources for those who are already members of the community) rather than an ethnic or cultural conception of national identity, then the right of abode will prevail over the right to vote as the basic principle of citizenship. In this perspective the right to vote loses its meaning of exclusive prerogative of the citizens who are part of the political community, and, as exclusivity now refers to the enjoyment of welfare resources, the dividing line between citizens and non-citizens is represented by the right of abode.

7. The United States

7.1 The citizenship clause of the 14th Amendment and the origins of the American contractual society

The foundation of US nationality law is the citizenship clause of the 14th Amendment to the Constitution. The constitutional nature of the clause puts it beyond the reach of the ordinary political process so that no later Congress is able to modify it without following the special procedure which is required to modify the Constitution.

This constitutional situation has created problems when the US authorities have tried to introduce controls on immigration, despite the open nature of the political community and the liberal laws on nationality and naturalization. Contrary to the policy followed in France and the UK, the US authorities were not able to reshape nationality law in a restrictive fashion to close the floodgates of immigration. A restriction of *ius soli* in favour of *ius sanguinis* is not possible in the US due to the constitutional nature of the citizenship clause. The alternative pursued in the US to prevent immigration was a policy of strict border controls. As the Constitution did not allow to deny citizenship and to prevent the integration of children born from non-citizens in the US, the solution found consisted in preventing non-citizens from entering the US territory and eventually settling.

The citizenship clause of the 14th Amendment establishes that 'All persons born or naturalized in the US, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.'⁷¹ Birthright citizenship is guaranteed to first generation

⁷¹ For a general overview of the US Constitution on citizenship see, Guendelsberger (1992) and Schuck and Smith (1985).

children through a very liberal application of *ius soli*. The 'territorial' nature of US citizenship is also reflected in the limitations to the acquisition of citizenship through *ius sanguinis*. Children born to American citizens abroad become US citizens only if certain conditions related to the parents' former residence in the US are satisfied.⁷²

The formulation of the citizenship clause has been influenced by the Common Law theory of Natural Allegiance, according to which all persons born within the King's territory are subjects of the King except those born of foreign ambassadors and enemies. This influence is reflected in the territorial nature of the clause, but for the rest the concept of citizenship in the US has little in common with the theory of Natural Allegiance. The American approach to citizenship is a contractual one and finds its roots in Locke's idea of political identity, where individual citizenship and equality are the foundations of the contractual society.

7.2 Principle of consent and immigration policy

In the attempt to put a limit on immigration flows a restrictive interpretation of the citizenship clause has been suggested on different occasions. The major controversy concerns the interpretation of the words 'subject to the jurisdiction thereof'. Those who want to restrict access to citizenship argue that words 'subject to the jurisdiction' exclude children born to illegal immigrants from citizenship. The argument in favour of this interpretation is based on the consensual character of American citizenship.

Schuck and Smith (1985) have argued that children of illegal aliens should not acquire birthright citizenship because, if society has denied membership to the parents, it can hardly be said to have consented to that of their children, who were born when their parents were in US territory in violation of US law. According to these authors the ascriptive character of birthright citizenship in the citizenship clause is balanced by the 'jurisdiction requirement', which, if narrowly interpreted, would exclude from jurisdiction (and therefore from citizenship) all those who are on American soil without the consent of society, namely illegal aliens.

Such a use of the consent principle has already been criticised with respect to the new French law on nationality (*supra*). In the case of the US the advocates of a less liberal

⁷² Such an application of *ius soli* is more radical than in the case of the UK, which allows its own citizens to maintain the right to vote at national elections for twenty years after their last residence in the country.

interpretation of the citizenship clause focus on the consent of the rest of society to the new entrant, rather than on the consent of the new entrant to be part of society. The principle of consent is a distinctive element of a contractual society, where the citizens' identity is based on political association rather than on ethnicity or culture. The will of the individual and not the law of nature shapes the political community. However, to found the political community on a 'theory of consent', which should regulate admission and expulsion could produce a result which contrasts with the universal character of political citizenship.

Citizenship and political identity, unlike nationality and national identity, are not exclusive to a particular category of individuals, but are potentially open to all persons who want to be part of the community. Their consent will determine their membership of the community and their future actions in the community. Consent from the community on the other hand, if used to determine admission and expulsion, is likely to act in a discriminatory fashion. Collective consent could either irrationally discriminate between those individuals who are wanted and those who are not case by case, or more likely it would adopt a principle according to which to discriminate on entry. Such a principle could be ethnic, cultural or linguistic or it could be based on a quota of immigrants the community is willing to accept to share its scarce welfare resources (welfare chauvinism as foundation of collective identity).

Schuck and Smith (1985) identify the issue involved in the dispute over birthright citizenship for children of illegal aliens. Referring to a more consensual interpretation of the citizenship clause they argue that: 'the growth of illegal immigration and the dramatic rise of the welfare state have transformed the advantage of birthright citizenship into a disadvantage.' This, rather than an unlikely theory of consent, seems to be the real reason for reducing the application of *ius soli* as the criterion for acquisition of US citizenship.

The main advantage of *ius soli* is that it determines citizenship at birth in a non-discriminatory fashion. Its ascriptive character is an administrative necessity to determine initial citizenship, but the citizen remains free to walk out of citizenship at a later stage. Schuck and Smith (1985) argue that a community's right to expulsion with respect to members, symmetric to the right to refuse admission, is not desirable because it would infringe fundamental human rights. It might be argued, however, that discrimination based on consent to admission can also infringe the fundamental human rights of the children excluded from citizenship.

A 'theory of consent', unlike the principle of consent, can produce contradictory results.

Ascription and *ius soli*, with respect to admission and continued membership of society (eligibility), are necessary elements of citizenship and political identity, as they are the only principles which operate in a non-discriminatory fashion.

7.3 Interpretation of the citizenship clause and constitutional reform

The Supreme Court has never ruled directly on the matter of whether or not a child born to illegal immigrants in the US should be entitled to birthright citizenship. However, the development of the caselaw before and after the Amendment points in the direction of a broad interpretation of the jurisdiction requirement as to include children of illegal aliens into US citizenship.

The most important case concerning citizenship before the Amendment is *Dred Scott v. Sanford*.⁷³ In *Dred Scott* the Supreme Court held that no American of African descent, whether freeman or slave, could be a US citizen by birth because the Constitution was a contract between those Americans who were citizens of the States when the Constitution was drafted. At that time free black people were not citizens and slaves were not even considered persons, so they were not part of the original 'contract'. The rationale for the decision was clearly the principle of consent. The *Dred Scott* decision is a clear example of how the application of the 'theory of consent' can produce discriminatory results. The citizenship Amendment dealt with the consequences of the *Dred Scott* decision and overruled the precedent caselaw, allowing for a wide operation of *ius soli* and birthright citizenship.

In *Elk v. Wilkins*⁷⁴ the Supreme Court held that the citizenship clause did not confer birthright citizenship upon an Indian American who was born in a tribe, but subsequently left it and resided in 'white society'. The rationale for the decision was that, although he was born in US territory, he was not born 'under the jurisdiction' because he owed primary allegiance to his tribe.

In the *Wong Kim Ark*⁷⁵ case the Supreme Court was asked to determine if the words 'subject to the jurisdiction' excluded from citizenship those children who could acquire the nationality of another State through *ius sanguinis*. The Court ruled that the jurisdiction

⁷³ *Dred Scott v. Sanford*, 60 U.S. 393 (1857).

⁷⁴ *Elk v. Wilkins*, 112 U.S. 94 (1884).

⁷⁵ *United States v. Wong Kim Ark*, 169 U.S. 649,703 (1898).

language did not mean owing allegiance only to the United States. On the contrary, it was based on the Common Law theory of Natural Allegiance as expressed in *Calvin's* case, according to which all persons born within the territory of the King are born under his allegiance, except children born to foreign ambassador and enemies. The jurisdiction language of the 14th Amendment should then be read as to exclude only the children of diplomats born in the US. The *Wong Kim Ark* case, however, concerned the child of legal aliens, and left doubts about the interpretation of the citizenship clause with respect to children of illegal aliens.

In *Plyler v. Doe*⁷⁶ the Court held that an attempt by the State of Texas to exclude the children of illegal aliens (who are citizens according to the Constitution) from state schools violated fundamental conceptions of justice. In doing so the Court assumed that illegal aliens' children were entitled to the status citizenship and opted for a broad interpretation of the jurisdiction requirement. According to this interpretation all children born on American territory can be considered 'subject to the jurisdiction', independently from the status of their parents. It has been argued that the reasons offered by the Court to justify the decision in *Plyler v. Doe* are much less persuasive today than they were in 1982, due to economic and political changes in US immigration policy over the past decade. The majority of the Court based the decision on two fundamental points: (1) lack of evidence that illegal aliens impose a burden on the state's economy, as they under utilise public services, while contributing with their work to the local economy; (2) Congress's policy of 'winking at illegal immigration', by allowing those who had managed to enter to remain. The decision was a narrow one (five to four) and was taken by a far more liberal Supreme Court than the present one (Rosen 1995).

If in future cases the Court decides not to overrule *Plyler v. Doe* and to maintain the broad interpretation of the jurisdiction requirement, an Amendment to the Constitution would be the only means left for limiting *ius soli* and restricting access to US citizenship. An hypothetical Amendment might read as follows: 'All persons born in the United States ... of mothers who are citizens or legal residents of the United States ... are citizens of the United States.' It has been argued that an Amendment of this type would violate the principle of equality, which is one of the pillars of the US Constitution. Children should not be treated differently according to the behaviour of their parents (illegal entry) which is beyond their control, because such

⁷⁶ *Plyler v. Doe*, 457 U.S. 202,245 (1982).

differential treatment would breach the principle of equality. Besides, children of illegal aliens would be the victims of an action by the state (the Amendment) aiming at altering the behaviour of their parents, not their own.⁷⁷

If *ius soli* is adopted as the main criterion to determine birthright citizenship, it is discriminatory to distinguish between who is entitled to citizenship and who is not according to the status of the parents. Curbing illegal immigration or immigration in general need not affect the principle of equality. It might take place by reducing the application of *ius soli*, as equality is concerned with discrimination between children of illegal aliens and other children, not with the matter of *ius soli*. A shift from *ius soli* to *ius sanguinis* might have the same practical effect (to reduce the number of people entitled to US citizenship), but it would not produce a situation of formal discrimination. The latter case reflects what happened in the United Kingdom, when the Immigration Acts were passed in the 1960s.

It was mentioned above that restrictive immigration policies in the US have been enacted through border controls, because of the constitutional nature of the citizenship clause and its liberal interpretation by the Supreme Court. Guendelsberger (1992) argues that, in order to limit the effects of the citizenship clause, the US authorities have in some cases resorted to measures amounting to *de facto* deportation of children born to foreign parents in the US, especially if the latter are illegal immigrants. For instance if the child of illegal aliens acquires US citizenship according to the Constitution, his parents are still subject to deportation. In such case it is clear how also the child, who is a citizen, is subject to a *de facto* deportation. In France on the other hand, where the application of *ius soli* is more limited (birthright citizenship is limited to second generation children, while first generation children can apply for citizenship at the age of 18, if they so wish), foreign parents of French children are exempted from deportation.

8. National identity, political identity and European citizenship

The rise of the nation state has transformed the concepts of political identity and political belonging both at the internal and at the external levels. At the internal level it has determined

⁷⁷ See, 'The Birthright Citizenship Amendment: a Threat to Equality', Harvard Law Review, March 1994, vol. 107, no. 5, pp. 1026-1043.

the development of the concept of national citizenship, where the legal relationship (rights and obligations) is between the citizens and the state. At the external level the new factor has been the formation of an 'international system'. This international system of nation states extends the monopoly of political identity to the external level, making membership of the nation state (nationality) the compulsory status of the individual under international law.

In this perspective abolition of statelessness and dual nationality are essential to the proper functioning of the system. The *Nottebohm*⁷⁸ case provides a definition of nationality under international law, and goes in the direction of abolishing dual nationality with the theory of the 'genuine link'. The Hague Convention of 1930 and the Council of Europe Convention on Multiple Nationality of 1963 make further steps in the definition of nationality under international law and in the attempt of limiting phenomena like statelessness and dual nationality, which are inconsistent with the national-international system.⁷⁹

In recent years an increasing number of states have modified nationality laws as to allow dual nationality, and negotiations are taking place to modify the Council of Europe Convention on Multiple Nationality. The extension of the practice of dual nationality is not only a sign of the decline of the nation state system, but also an important means to start dismantling such system and to begin the construction of a post-national society. While dual nationality seems to be the most effective means to overcome the nation state at the external level, at the internal level the decline of national citizenship is characterised by the rise of new loyalties at different levels from the nation state. These new references for political loyalty and identity are subnational (local authorities and regions) and supranational (the European Union) (Roche 1992). A leading role in this process could be played by the newly born citizenship of the European Union.

* * *

A major obstacle in the construction of a European citizenship and political identity is the diversity among the national identities of the Member States of the Union. This Chapter has

⁷⁸ *Liechtenstein v. Guatemala*, commonly known as the *Nottebohm* case, Second phase, 6 April 1955, [1955] ICJ Rep. 15 at 23.

⁷⁹ Convention Concerning Certain Questions Relating to the Conflicts of Nationality Laws, Hague (1930); Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, Strasbourg (1963). See also, UN Convention on the Reduction of Statelessness (1961).

analysed the historical development of national identities in three of the major Member States and in the United States from the viewpoint of eligibility. A crucial question at the end of this analysis is whether or not any of the different models taken into consideration could provide useful principles for the construction of a new post-national European identity and citizenship.

Three alternatives are considered:

(1) A 'volk approach' through the creation of a European *ius sanguinis* and the strengthening of cultural and ethnic links among Europeans.

(2) A 'fortress Europe' approach, where selective criteria for admission, aimed at preserving limited welfare resources, are coupled with the strengthening of a European cultural and political identity.

(3) A 'new republican' approach, which exploits the potentially universalistic vocation of political citizenship and is based on a wide application of *ius soli* and *ius domicilii* (residence) as criteria for admission to the polity.

The first hypothesis is based on the premise of the existence of uniform European culture and ethnicity. Despite the existence of a common European culture and history in broad terms, it is not possible to speak of uniformity. Ethnically and culturally there is nothing like a 'European'. Culturally, but not ethnically, European can only be seen as an outer layer which includes many different cultures, where closeness and similarity, but not uniformity, are present. Under an ideological point of view the *volk* model is to be rejected because it represents the negation of political identity. The latter is the achievement of unity through consensus, while the first uses ethnicity and culture to achieve the same result.⁸⁰

The second hypothesis is based on the experience of immigration and nationality policies in Western Europe and in the United States in the last two decades. The rationale for excluding certain categories of persons from the polity has rarely been an ethnic or racial one, nor has it relied on a strong national cultural identity. 'Welfare chauvinism' rather than ethnicity is the pillar of this model. *Ius sanguinis* as the criterion to access nationality and the necessity of defending a common European cultural identity from a supposed 'muslim menace' have been used as the means to enforce and justify a quota limit to entry, rather than as the founding principles of a truly ethnic polity. This however does not signify that in the long run those elements will not play a more active role in the shaping of European political

⁸⁰ See, the discussion on cultural identity and citizenship in Chapter IV, p.151.

identity. Instead they might act as cement for the construction of a 'European *volk*', thus transforming the abstract construction of fortress Europe (where limits to immigration are based on welfare chauvinism) into a concrete new ethnic Europe. This passage from model two to model one, would be determined by the fact that 'welfare chauvinism' cannot represent in itself a stable rationale for political identity, but it is merely a passage towards an ethnically and culturally exclusive form of community.

The reappearance of racism and xenophobia, mainly aimed at non-Community immigrants, and the concern of some Member States about the reliability of other Member States' non-Community borders (consequence of the abolition of the internal frontiers) are all signs of the fact that there are forces moving from 'fortress Europe' towards 'ethnic Europe'. In particular it is extremely worrying that Member States and their nationals are normally ready to accept migration of other European nationals without restrictions, but reject migration of third country nationals coming from outside the Community or even from other Member States.⁸¹

Finally the new republican model is based on the principles of self-determining community and political citizenship. The purely political character of the polity excludes all kind of limits to admission, whether those limits are based on ethnic descent, common culture and language, welfare quotas or theories of consent. The new republican idea is inspired by the ancient form of self-determining community and by the pre-national French revolutionary idea of citizenship based on consent, which conferred citizenship upon all foreign residents on the sole conditions of a minimum period of residence and that they performed a socio-economic function. A republican approach in the field of eligibility is complementary to the republican approach to entitlements (Chapter II) and to multiple identity (Chapter IV). Admission to the republican polity (birthright citizenship and naturalization) should be based on the principles of *ius soli* and residence, which are the only criteria which consent to 'create' citizens in a non-discriminatory fashion. The principle of assimilation, which has been an important element of the French national republican model, should be replaced in the new republican model by the principle of integration, which requires a common political identity of the citizen, but at the same time allows individuals and groups to maintain their original cultural, religious and national identities.

⁸¹ *Supra*, note 48 about the 'concern' of other Member States that the liberalisation of German nationality law could create as many as four millions new Union citizens, mainly of non-European origin, with right of free movement and residence across the Union.

If model one (*volk* approach) is unlikely to play any initial role in the process of European political integration, due to the existing cultural and ethnic diversities within Europe, both model two and three represent viable alternatives. The risk of model two (fortress Europe) is that it could favour the transformation of an abstract model of identity based on 'welfare chauvinism' into a more concrete cultural and ethnic model of political identity (European *volk*).

This Thesis does not deal with the economic aspects of the definition of the polity and of the limits to immigration. It must be said, however, that among economists and political scientists there are arguments in favour of and against a fortress Europe as well as an open borders republican Europe.⁸² Here, it has only been sustained that from a legal and political point of view the concepts of citizenship and political identity, because of their universal and inclusive character, are probably the wrong categories to define an ethnic or fortress Europe. In contrast, they could support the development of a European polity based on an open political community.

The choice of model three as reference for European citizenship does not intend to create a link between a particular tradition of national identity and European citizenship. Although model three is closest to the French idea of nation, it was intentionally deprived of its national features. An important contribution to the new republican model could also come from the 'consensual evolution' of German national identity. Habermas's idea of 'constitutional patriotism', rooted in the history of the Federal Republic, provides an interesting framework for the development of a truly political identity both in Germany and in the European Community.

The idea of a voluntary self-determining community, a common political discourse and non-discriminatory criteria for admission are all elements which have preceded the nationalisation of the republican model in France and which could play a fundamental role in the construction of a post-national republican Europe.

⁸² For economic arguments in favour of a 'Fortress Europe' see, Tylecote (1994). For the case against 'Fortress Europe' see, Faist (1994b).

CHAPTER IV

EUROPEAN IDENTITY

The concepts of nationality and citizenship are inextricably linked to the issue of identity in a political community. The identity of the citizen in the nation state is based on elements of kinship among the members of the community as well as on common political membership. The broadly defined 'national identity' contains two different elements of identity, a strictly national one based on kinship, and a political one based on association. In this perspective it is possible to trace a distinction between the concepts of nationality and citizenship based on elements of identity. Nationality assumes the character of ascriptive membership, closed to non-national outsiders, as a result of the transcendental nature of the constitutive elements of national identity. Citizenship on the other hand is a strictly political concept, in so far as membership of the community and identity are the result of a political process of self-determination.⁸³

Nationality and national identity are based on elements of kinship shared by the members of the community. These elements of kinship range from ethnicity to culture, language and traditions and share in common a 'transcendental nature' (Closa 1995). National identity is transcendental in so far as its constitutive elements are not politically defined by the citizens, but are pre-political. Ethnicity, culture, language and traditions determine the boundaries of the community before and beyond the political will of the citizens. Citizenship and political identity on the other hand are the result of a political discourse and self-determination by the citizens, regardless of transcendental elements. In this sense citizenship is based on the idea of

⁸³ This distinction can be opposed to the classical 'legal distinction' between citizenship and nationality in the nation state, where the first refers to rights and obligations of internal membership vis-à-vis the state, while the second to rights and obligations in the external sphere, that is to say, vis-à-vis the nation state of membership and the other nation states (see, Chapter III, p. 71).

association, while nationality on the idea of kinship.⁸⁴

The nation state and national identity have represented the natural models for the development of a European citizenship and identity, because of the link between Union citizenship and Member States' nationality (Article 8 EC) and because the founding political units of the new European polity are nation states themselves.⁸⁵ However, it seems unlikely that a legal development of Union citizenship and nationality on the model of national membership would be paralleled by the development of a truly European national identity. The nation state legal and political structure, which stands as a model for European citizenship, finds its strength and legitimacy in the collective national identity of the citizens. The strong traditions of national identity in the Member States of the Union, and the highly varied cultural and ethnic characteristics of the peoples of Europe make it extremely difficult to imagine the rise of a common European national identity, at least in the foreseeable future.

The main purpose of this Chapter is to define a supranational concept of collective identity, which could eventually sustain European citizenship. Supranational identity and citizenship should represent a radical departure from national identity in its current form. However, the matter is not approached 'from above', ignoring the experience of identity in the nation state, but from 'below', like for the issues of eligibility in Chapter III, looking at the experience of identity in the nation state. Some political, 'non-transcendental' elements of identity are extracted from the national traditions and from the history of the Community in order to arrive to a definition of collective identity, which could apply in a supranational context. In particular the analysis focuses on the political history and pre-history of the European Union, the latter including the resistance movements, which determined the defeat of nazi-fascism in the second world war. The more recent history of the European Union (and Community) is read in the light of those practices of citizenship (especially free movement and political rights) which can contribute to the formation of a common political identity.

The Chapter starts with an analysis of different types of national identity, focusing on their pre-national origins. The theory of the 'ethnic origin of the nation' is opposed to the concept

⁸⁴ Habermas (1992a) traces this distinction back to Roman law, in which *civitas* referred to the proper political community of citizens, and *natio* to tribes who were not organised in political associations, but in communities of descent, language, custom and tradition.

⁸⁵ According to Article 8 of the EC Treaty 'every person holding the nationality of a Member State shall be a citizen of the Union.'

of *nation politique*, which postulates non-ethnic roots for a particular type of national identity. It then turns to consider alternative types of collective identity, based on integrative elements of society other than ethnicity, culture or traditions. For this purpose an argument is used that suggests that collective identity, as the foundation of integration, has not remained static since the pre-modern era, but has changed in the course of history. This argument helps to contrast the theory, which considers ethnicity and culture as immutable and inevitable elements of collective identity.

A 'kinship free' political identity is linked to the way citizens determine themselves as members of the community and to their participation in public life. Reference is made to the European Union and to the difficulties that the current degree of citizens' involvement in public life is causing to the emergence of a European political identity parallel to Union citizenship. The analysis also focuses on the relationship between two models of citizenship (democratic and liberal) and matters of political identity and participation.

Having defined a European political identity and citizenship based on 'association', two main problems still remain to be resolved. The first one concerns the issue of pluralism in a democratic polity. Common political identity should not clash with other identities and allegiances (national, cultural, religious, etc.), which citizens maintain to groups and institutions other than the European Union. The challenge for the European Union consists in supporting and co-ordinating these identities, while at the same time creating a common political bond among European citizens. A second problem concerns exclusion from and inclusion within the political community. Exclusion and inclusion are ultimately a matter of identity, in so far as they affect the same definition of the community. Political identity and citizenship are the 'enemy' of exclusion, because they are entirely based on the political element of association. If kinship allows for the exclusion of outsiders from the national community, the idea of political association leaves the community potentially open to all new entrants.

1. National, cultural and political identity

The political and legal framework of national citizenship is sustained by a common collective identity of the citizens. The substance of national identity varies according to traditions in different nation states. In spite of such variety, it is possible to identify a common element

present in all national traditions of collective identity. This element is the 'transcendental nature' of national identity and nationality, which can be opposed to the consensual nature of political identity and citizenship.

It was noted above that a distinction between the concepts of citizenship and nationality can be based on different underlying principles of identity. Nationality presupposes a principle of ascription (transcendent), which goes beyond the mere consent of the citizens, while citizenship is entirely based on the political concept of self-determination. The most common transcendental elements of nationality are ethnicity, culture, language, traditions and customs. The ethnic model of nation state relies upon all these elements to shape the national identity of its citizens. However, the majority of modern nation states have rejected ancestry, as foundation of collective identity and combine the transcendental elements of culture, language and traditions with the political element of consensual citizenship to determine the national identity of their citizens.

The International Court of Justice has confirmed the importance of the transcendental elements of nationality in the well-known *Nottebohm* case, where it has held that nationality under international law is determined by the existence of a 'genuine link' or 'true bond of attachment'.⁸⁶ Of course the 'genuine link' does not have to be ancestry, but could be another transcendental element, such as culture, language or traditions, which, coupled with the consensual membership of the individual in the national polity (citizenship), contributes to the formation of the more complete status of nationality. There are therefore two different concepts of nation: ethnic the first, cultural the second. The ethnic nation is based on a totally ascriptive principle, the link of ancestry. A relationship based on ancestry does not leave any margin for individual self-determination and political membership, as all members of the polity are pre-politically determined by a law of nature. This maximum of ascription can be contrasted with the cultural model of nation, in which the transcendental elements of culture, language and traditions do not necessarily exclude the political element of self-determination. However, admission of outsiders to the 'cultural nation' through political membership is conditional upon their acceptance of the transcendental (non-political) elements in a process of cultural assimilation.

The distinction between ethnic nation and cultural/political nation comes from an

⁸⁶ *Liechtenstein v. Guatemala*, commonly known as the *Nottebohm* case, Second phase, 6 April 1955, [1955] ICJ Rep. 15 at 23.

observation of the existing national realities, and is of fundamental importance for the purpose of identifying the transcendental and the political elements of national identity. Nevertheless, this distinction does not tell us anything about the origin of the two types of nation and of their founding elements (transcendental and political). An analysis of the origin of national identity would serve the purpose of focusing the attention on those elements of identity, which have been part of the national traditions and could contribute to the construction of a European post-national identity. In the following Sections it is discussed how some of those elements, which are part of modern national identities, derive from pre-national traditions of collective identity. In particular the concept of political citizenship is separated from that of transcendental nationality in the history of modern nation states.

The origin of national identity is a rather controversial issue. Hobsbawm (1972) has argued that the national community is an artificial creation of nineteenth and twentieth century leaders to win the affection of the masses. In this perspective cultural and ethnic identity are not rooted in a common historical past but are artificially constructed. Traditions are often invented, and the construction and re-creation of myths is part of the making of collective consciousness. On the contrary Smith (1992b) argues that there is substance behind the myths and traditions underlying national identity in the nation state. This substance is derived from the fact that nation states and national identities are not artificial creations, but have evolved from pre-modern ethnic communities.

The analysis in this Chapter starts from the assumption that national identities are not completely artificial creations, but at the same time it proposes a model alternative to that of the ethnic origin of the nation. In the following Sections two alternative models are discussed: Smith's ethnic origin of the nation, and a theory founded on the idea of political nation. It is important to stress that at this point the discussion does not affect the existence or less of an ethnic model of nation, (this has been accepted in the preliminary distinction between ethnic and cultural nation) but rather the 'origin' of the various models of national identity.

1.1 The ethnic origin of the nation

Smith (1992b) defines the nation as 'named human population sharing a historical territory, common memories and myths of origin, a mass standardised culture, a common economy and territorial mobility, and common legal rights and duties for all members of the collectivity.'

Of fundamental importance for the definition of national identity is the concept of a common cultural collective identity, which consists of: (1) a sense of shared continuity among generations; (2) shared memories of earlier periods; (3) collective belief in a common destiny.

According to Smith all national identities, including those which today are characterised as political and cultural, have an ethnic origin. They have all derived from pre-modern ethnic communities. This 'ethnic past' constitutes the foundation of those shared myths and memories, which sustain modern cultural and national identities. Nation states often feel the need to resort to their ethnic past to sustain the national community, and they can do that by appealing to national identity, which because of its ethnic origin, has the advantage of being vivid, accessible, well established, long polarised and widely believed (Smith 1992b).

The distinction between ethnic nation and cultural/political nation is turned by Smith into a distinction between eastern nationalism and western nationalism. The eastern model of nation focuses on links of ethnic descent and cultural ties and is characterised by the popular folk element and 'vernacular mobilisation'. The western model on the other hand emphasises the centrality of a national territory, common laws and institutions, the legal and political equality of the individuals and the building of a civic culture of the citizens. Smith's distinction appears like a mere geographical individuation of the ethnic (eastern) and cultural/political (western) models of nation. However, the most relevant feature of this analysis is that, despite the different features of the two models, Smith affirms their common ethnic origin.

Western national identity finds its roots in the myths and memories of *lateral ethnies* (ethnic groups), which represented the dominant aristocratic class. In particular the monarchies in France, Spain and England emerged as the representative of the dominant ethnic groups, and imposed their cultural and ethnic identity on the whole population. In this process of ethnic incorporation the dominant *lateral ethnie* provided the nation state with a set of political and economic institutions, and laid the foundation for a territorial and political concept of national identity. Eastern national identity on the other hand originated from horizontal or *demotic ethnies*, characterised by an interclass structure, which emerged in the context of multinational empires against the supra-imposed political structure.

The main weakness of Smith's analysis is that it overlooks the importance of the political element in the western model of nation. He seems to suggest that the political features of national identity in some nation states (France) are the involuntary result of an historical process, in which the bureaucratic incorporation of the pre-national community by a dominant

lateral ethnies, helped to create a territorial and political concept of nation. In contrast, the failure of dominant *lateral ethnies* to realise a similar process in the context of multinational empires in the East, determined the rise of *demotic ethnies*, founded on ancestral and cultural ties, but with no territorial or political conception of the community. In substance this signifies that the concepts of political identity and citizenship are the result of the dominance of a (*lateral*) ethnic group over other ethnicities in a particular territory, while in those places where no ethnicity emerged as dominant, the 'democratic' evolution of different ethnicities produced a series of collective identities based mainly on ethnic and cultural ties.

Despite the appeal of this totally ethnic approach to the issue of national identity, it is hardly convincing that the tradition of self-determination and political citizenship, which is part of the western model of nation, is an accident of history in the evolution of an ethnic type of community. In this sense Smith's analysis not only undervalues the importance of the political element in the western tradition of nation, but it also diminishes the significance of the relationship between the ethno-cultural element and the political element (nationality and citizenship) in the western tradition.

1.2 Nation politique

The conceptual distinction between eastern and western models of national identity can be further reduced to a distinction between German and French models of nation.⁸⁷ Although the German and the French nation are not the only examples of national identity in Europe, they certainly can be regarded as two leading categories, at least for the purpose of the analysis in this particular context. It was considered in Chapter III (pp. 77 and 84) that Marx (1964) in the *Pre-capitalistic Economic Formations* traces the distinction between German and French models of national identity back to the medieval German and Ancient (Roman and Greek) forms of production and social organisation.

The Ancient form of production and social organisation was based on the structure of the city, where the individual landowners would meet every day, thus entering in a political relationship with each other. This political relationship of self-determination and recognition was the foundation of the collective identity of the citizens. The city itself existed as political

⁸⁷ For an analysis of national identity in Germany, France and England see, Chapter II. Also, Brubaker (1992) and Gamberale (1995).

entity and represented the political union of the community. In the German form of production and social organisation on the other hand, the individual landowners lived in forests, separated by long distances. The absence of the social structure of the city prevented the development of a political relationship among the citizens. When the landowners occasionally met, they did not exist as a 'political union' of citizens, but merely as a 'reunion' of individual heads of household. Lacking the political element of unity, which was the foundation of collective identity in the Ancient Roman community, the collective identity of the German families and tribes was founded on links of ancestry and common culture.

On the basis of Marx's analysis of the German and Ancient pre-capitalistic forms of social organisation it is possible to identify separate origins for the ethnic and for the political models of nation. It is considered below that the importance of this original distinction between ethnic and non-ethnic models of collective identity lies in the fact that it allows one to define an independent concept of pre-national political citizenship and identity. For the moment it is important to note that the purely political features of collective identity in the Ancient community have been 'nationalised' in the modern French national political identity.

The French Revolution operated a synthesis between republicanism and nationalism. In the first revolutionary Constitutions (1789 and 1793) citizenship and identity were almost entirely based on the 'political element'. As such they were derived from the Roman experience of citizenship and political identity. There was a sense of continuity between the French revolutionary model of citizenship and the Ancient form of social organisation, in particular with respect to the concept of self-determining citizenship in republican Rome. However, the emergence of an external threat to the Revolution and the prevalence of the liberal movement (Thermidorian), favoured the creation of a strong national sentiment. Nationalism was used to implement the republican project of citizenship, and to defend the newly born republican institutions (Habermas 1994).

The French political nation born of the Revolution was based on a link between *ethnos* and *demos*. In the idea of *nation politique* there is a congruence between cultural community, political identity and institutions. The principle of assimilation plays a fundamental role, as it allows the conversion to the national culture of all outsiders, whose entrance in the national community is facilitated by the political nature of the national collective identity. So, if on the one hand the principle of *ius soli* facilitates foreigners' accession to the political community, on the other hand assimilation demands that, once accepted, they endeavour to become

'French'.

This brief analysis of the origin of the French nation suggests that, rather than the accidental result of the evolution of a pre-modern ethnicity in a modern nation state, as argued by Smith (1992b), the political nation is the historical encounter of two different conceptions of the polity, one based on transcendental elements (nationality), and the other based on the principles of self-determination and political activity (citizenship).

1.3 Kinship and association

From the analysis made above of the *nation politique* it is possible to conclude that some nation states do not derive their national identity exclusively from a pre-modern ethnic past, but also from other non-ethnic traditions of collective identity. This is of particular importance for the definition of a type of political identity, independent from the national transcendental identity. There seems to be a common thread unifying the experience of collective identity in the Ancient communities (Roman and Greek), Rousseau's idea of self-determination, the pre-national experience of the French Revolution and the political aspect of the modern French nation. The common thread is represented by a strictly political idea of collective identity, based on a relationship of mutual recognition and self-determination of the citizens, which in the original Ancient community was favoured by the social structure of the city. According to Habermas (1994:24), the idea of a self-determining political community is based on the concept of popular sovereignty, which 'does not refer to some substantive collective will which would owe its identity to a prior homogeneity of descent or form of life', but instead results from the free will and consensus of the citizens.

A fundamental distinction can be made in the field of collective identity between identities based on kinship and identities based on association. The kinship model relies on transcendental elements like ethnicity, culture, language and tradition to create a relationship of common identity among the members of the community. The association model on the other hand links the collective identity of the citizens to the political elements of self-determination and participation in public life, regardless of ethnic and cultural belonging. The German *volk*, whose members are bound by ancestral and cultural ties, is the most extreme example of the kinship model of collective identity. Also the French political nation presents elements of the kinship model, in so far as it requires that all new entrants to the polity

assimilate to the national and cultural identity. The peculiarity of the French nation lies in the fact that, differently from the German *volk* nation, it also relies on the association model to define the national collective identity of the citizens.

In defining a model of post-national European collective identity starting 'from below', that is to say, by looking at the experiences of political identity in the Member States, the distinction between kinship and association based elements of identity, is extremely helpful. It allows for the identification of concrete examples of collective political identity within the national traditions, which can be relevant in the emergence of a European identity. This process 'from below' is opposed to an approach 'from above', in which collective identity is defined according to abstract principles (such as multiculturalism, multinationalism, political pluralism or even subsidiarity) in relation to the existing political institutional structure of the Union. The approach 'from above' lacks a concrete reference to the constitutional tradition of the Member States, which are still the main place of expression of collective political identity.

1.4 The decline of national identity

A theory postulating the ethnic origin of all national identities is a clear obstacle to an approach 'from below' to European citizenship, whose purpose is that of defining a European collective identity by looking at the political elements present in the national traditions. Coherently with his approach to national identity, Smith excludes that European identity could develop without a common cultural element, that is to say, without relying on the 'kinship model' of collective identity. According to Smith (1992a) a European political identity, not supported by a common European culture, would be fundamentally unstable and weak, because in moments of difficulty it would not be possible to turn to myths and memories of pre-modern ethnicity to sustain the community. In this perspective a 'purely political Europe' would be memoryless, and would lack the prerequisites for a stable and substantive collective identity.

In this Thesis on the other hand a strictly political European identity has been preferred to a common European cultural identity, on the basis of the already existing national cultural identities. In fact, a common cultural identity would clash with the existing national identities based on kinship and would raise concerns about pluralism in a European culturally homogeneous community. Only a common identity based on the political elements of

association and self-determination could provide a neutral framework for the exercise and the co-ordination of the different cultural, national and religious allegiances, which European citizens have towards communities and institutions (including the existing nation states) other than the European Union. The approach which identifies a separate and independent strand of political identity among the traditions of national identity is therefore central to this analysis, as it allows for the definition of a European political identity 'from below'.

The preference for a European common political identity with respect to a new kinship based form of identity, also assumes that the monopoly of the national element in the sphere of identity is declining. However, national identity is not here rejected as such in name of a common European identity, but rather it is its dominance and exclusivity in the sphere of identity, which are rejected. European political identity would determine the end of the dominance of the national element, but because of its entirely 'political nature' it would not create another similar dominance and exclusivity in the sphere of identity. National identities would therefore remain along with other types of kinship based identities in the context of a pluralistic and association based European polity.

This contrasts with Smith's argument, that once forged national identities are very difficult to eradicate from their dominant position in the field of collective identity and that it is not possible to imagine a stable collective identity without common myths and memories. Smith (1992a) rejects the argument that an increasingly globalized culture could favour the creation of a supranational European collective identity, because such global culture is based on elements of existing national cultures, which are tied to specific people, places and periods. A supranational identity would therefore either be memoryless, or linked to the myths and memories of national cultures, which is essentially antithetical to the very nature of a supranational identity.

Other authors, however, seem to believe that the decline of national identity and the creation of a European supranational identity, could be determined by the change in the capitalist economic infrastructure. In this case it would be globalized capitalism, rather than globalized culture, to determine the passage to a new form of collective identity. The political and economic structure of the nation state has been based on a national social contract, where the interests of the burghers, creators of wealth, in the freeing of land from the old feudal entailments, coincided with those of the citizens (Dahrendorf 1988). The best account of this national social contract resulting in a national status of common citizenship and identity can

be found in Marshall's well known work on *Citizenship and Social Class*. In Marshall the national social contract is extended to the working classes, through the creation of the welfare state and of the status of social citizenship, parallel to civil and political citizenship. However, Marshall's account of citizenship is unhelpful when dealing with the issue of collective identity in a supranational social order. The national social contract underlying Marshall's citizenship assumes the existence of a well-established national identity, based on relations of cultural kinship. The result is a model of citizenship and identity derived from the English experience, which not only is inapplicable in a supranational context, but which also does not fit other national experiences, because of its ethnocentric approach.

It has been argued that the original link between national ideology and the needs of the bourgeoisie may have been severed by the internationalisation of capital, so that the nation state has become less useful to the capitalists themselves. There seems to be a contradiction between the requirement of capitalism and the narrow bonds of the nation state which results in an incapacity of the nation state to regulate an increasingly globalized capitalism (Gabriel 1992). The nation state is no longer able to maintain the national social contract by mediating between property owners and working class, because its economic autonomy is constrained by international agreements and institutions, so that some political decisions at state level may have adverse consequences for the value of the national currency within the international money markets (Turner 1992).

The end of the national social contract, in which the interest of capital in the freeing of land from feudal entailments coincided with the interest of the citizens, corresponds to the appearance of a new social contract, whose earlier formulation can be found in the Treaty of Rome, or in other 'world regional' custom unions and free trade area agreements (NAFTA, ASEAN, or even the same WTO at the global level). In the EC Treaty the interest of globalized capitalism in the freeing of the factors of production from the national constraints coincides with the rights of the individual citizens to free movement throughout Europe (Meehan 1993a).

In the context of this new social contract, the nation state no longer represents the exclusive place for the expression of citizens' identity. The emergence of a larger supranational political and economic structure, would require the creation of a new, non-exclusive type of collective identity. It is difficult to imagine, following Smith's argument, that a single European cultural and national identity could be created to sustain European citizenship. The same nation state

has proved on many occasions to be too large an entity for a single and exclusive cultural and national identity of the citizens.

In multinational states the existence of different national cultures has limited the sphere of collective identity to the political element, but with different results (see, the examples of Canada, Switzerland, former USSR and former Yugoslavia). In the Roman Empire the multicultural nature of the community allowed emperor Caracalla to extend Roman citizenship to all free people living in the territory of the Empire in AD 212 with the *Constitutio Antoniniana*. The enlargement of the political community determined a huge increase in tax revenues, which has been pointed at as the real reason for the extension of citizenship, but did not create a single cultural or national collective identity. The issue which dominates the analysis in the next Sections is whether it is possible to have a stable collective political identity in a multicultural and multinational context.

2. Alternatives types of collective identity

The rejection of a kinship based national identity, as the collective means of identification in a European post-national context, leaves unanswered the question of which type of collective identity should sustain European citizenship. It has been noted above that Marshall, in his ethnocentric and evolutionary theory of citizenship based on the English experience, assumes that national identity is the only possible collective means of identification for the citizens. Similarly Smith suggests the construction of a common European cultural identity, based on relations of kinship identical to those supporting national identities, as the requisite underpinning European citizenship (Smith 1992a).

An author has noted that one of the principal assumptions behind Smith's theory of national and cultural identity, is that collective identity, as the foundation of community integration, has not evolved since the pre-modern era (Howe 1995). The ethnic origin of national identity not only undervalues the political element, but also, more in general, does not take into account the fact that new elements may have emerged, which play a role in the way people see themselves as members of a larger community. On the contrary Parson (1966) argues that the boundaries of the community have changed in different historical periods, because people attach importance to different elements and values they share in common, thus determining new conceptions of collective identity. According to Parson the elements which

bind people together have become increasingly detached from the concrete elements of people's lives. The pre-modern ethnic collective identity based on the substantive elements of common ancestry and cultural ties, might have evolved into new types of collective identity based on increasingly more abstract elements. One of the objectives of this Chapter is to identify some of those less substantive elements and to link them to non-national, alternative types of collective identity.

It has been argued that the key to building and sustaining a community is not cultural or ethnic identity, but social communication. The essence of the community would lie in the 'ability to communicate more effectively, and over a wide range of subjects, with members of one large group than with outsiders' (Deutsch 1966:97). This raises the issue of whether language is an indispensable element of collective identity in a model of integration based on communication. Elements like language, culture and traditions are not in themselves essential, as long as there are sufficient 'communication facilities'. According to Deutsch cohesive communities are marked by distinctly superior communication facilities. This is of great interest for the definition of a supranational European identity in a time when globalized communication networks (travel, media, telecommunications, trade, etc.) are helping to bridge gaps between different national cultures. However, in Deutsch's theory of social communication the abstract element of communication could turn into a more substantive foundation for collective identity, if, instead of being regarded in itself as the constitutive element of identity, it was considered as the device to build a cultural collective identity. In this 'substantive perspective' an increased quantity of communication among Europeans could lead to a collective European cultural identity, by creating shared memories, symbols and habits.

Habermas (1994:24) outlines a model of collective identity based on the idea of 'constitutional patriotism', in which the identity of the citizens is completely independent from transcendental elements of ethnicity and culture and relies on the practice of political citizenship. The founding element of political identity is popular sovereignty, which does not refer to some substantive collective will based on ancestry or common culture, but is based on the citizens' self-determination. Self-determination is the result of 'consensus achieved in the course of argument among free and equal citizens,' which 'stems in an identically applied procedure recognised by all.' Habermas's model of collective identity is 'less substantive' than Deutsch's theory of social communication, as it is entirely based on the political element,

and does not imply a subsequent cultural assimilation, deriving from increased communication. In contrast, 'constitutional patriotism' is compatible with cultural and national pluralism because it is a purely associational model of collective identity, as opposed to the kinship based models which dominate at national level.

An even more radical model of association-based on collective identity is suggested by Tassin (1992), who makes a distinction between two different types of subjectivation and expression of the individual in relation to the collectivity he/she is part of. The first type of subjectivation is concerned with concepts of individual and collective identity, and answers the questions 'who am I?' or 'who are we?'. The answer is always one of strictly speaking 'identity', based on transcendental elements such as ethnicity, culture or traditions, which tend to be the founding elements of national identity. Tassin considers political membership (citizenship) as a different type of subjectivation of the individual with respect to the community, and not as an alternative type of collective identity in itself. Citizenship does not affect the field 'identity' strictly speaking, but the field of 'activity', as it addresses the question 'what do we do?' rather than 'who are we?'. The former is not a question of communitarian identity, but one of public activity.

A liberal approach to the issue of collective identity was recently suggested by Howe. This author has argued, on the basis of Parson's argument that the integrative element of the community has become increasingly detached from peoples concrete lives, that collective identity in the modern liberal community is held together by something even less substantive than 'good communication' (Deutsch) or political activity (Habermas, Tassin). According to Howe most theories of collective identity fail to capture the essence of the modern liberal community, which is based on the recognition by each individual citizen of the rights of community membership of other citizens. The disposition towards other citizens arises from our beliefs about the boundaries of the community, so that collective identity can be based on the mere belief of the citizens that others are part of the same community. On this basis the European Union could become a modern liberal community on the example of the United States or Canada, where the belief that others are of the same community provides the social cement for the living together of different ethnic and national populations (Howe 1995).

The progressive abstraction of the elements sustaining collective identity, from the pre-modern substantive ethnic community to the abstract modern liberal community can be illustrated in the following Table:

TABLE 5

Integrative element		Type of community	
Ethnicity	(Smith)	Nation state (nationality)	Concrete
Culture			
Social communication	(Deutsch)		Abstract
Constitutional patriotism	(Habermas)	Political Community (citizenship)	
Political activity	(Tassin)		
Mutual recognition	(Howe)		

Both Deutsch's theory of social communication and Howe's model of identity in a liberal community have the merit of shifting the attention from the traditional substantive elements of national identity (ethnicity and culture) to alternative forms of collective identification. Their theories question the assumption that any form of collective identity must be based on substantive elements of kinship in order to sustain a stable political community, on the example of national identity in the nation state. Despite their merit, however, these two liberal approaches fail to recognise the importance of the political element in the shaping of collective identities. Political identity can perform an independent role in holding together the community, without necessarily being tied to transcendental elements of kinship such as ethnicity and culture. In the analysis 'from below' of collective identity in the nation state, it was noted that some national identities, far from having a fully ethnic origin, have been determined by the union of two different types of collective identity, one based on kinship, and the other based on association (*supra* and also Chapter III).

3. Collective political identity

The independence of the element of political identity in the tradition of the nation state is

crucial to the formulation of a model of collective post-national identity, based on concrete experiences of collective identity (approach 'from below'). Habermas and Tassin provide two interesting models of political identity, based on the activity and self-determination of the citizens. However, the association model of 'constitutional patriotism' has been criticised for the fact that it could result in an excessively abstract construction, incapable of creating a common political conscience and identity among the citizens (Schnapper 1993).

The answer to this type of criticism consists in defining those common political activities and experiences, which should contribute to the formation of the collective identity of the citizens. This is important to avoid the risk that political identity and 'constitutional patriotism' remain abstract formulas, far from the real life of the citizens, while the cultural and ethnic elements of national identity maintain the attractiveness of being substantive, easily accessible and well-established. Political self-determination, which should be the founding principle of an exclusively political collective identity, requires two essential elements: (1) a democratically agreed constitution and (2) citizens' involvement in public life. On the other hand a process of creation of collective political identity 'from above', not only would produce scarce results, but would also foster a revival of all sort of kinship based types of identity.

The French concept of political nation is considered by Smith the result of a process of bureaucratic incorporation of the community by a dominant *lateral ethnies*, rather than an independent type of association based identity parallel to the kinship based national identity. This approach has been contrasted with a non-ethnic approach to the French *nation politique*, based on Marx's analysis of the pre-capitalistic Ancient form of social organisation, and on its influences on the Jacobin period of the French Revolution (*supra*).

However, Smith's approach to national identity is more persuasive with respect to the analysis of the formation of the German ethnic nation. In this case Smith argues that the emergence of a community, whose collective identity was based on the ethnic and cultural unity of the *volk*, was due to the failure by the dominant *lateral ethnies* to incorporate the minoritarian *ethnies* into a politically and territorially defined state. The attempt made by the Prussian Reformers at the end of the nineteenth century to build a political nation on the model of the French one failed, because the Prussian state was imposed from above on pre-existing strong ethnic communities and realised a fracture between the abstract bureaucratic

state and the individual members of the community.⁸⁸ In France the creation of a common political identity was successful because it took place democratically 'from below' through the means of the Revolution (rather than through incorporation by the dominant *ethnie*, as Smith argues). In Germany the political nation failed to emerge, because it represented the affirmation of one dominant ethnic group over the others. The result of this failure was the consolidation of the ethnic and cultural collective identity of the German community.

In the EU there is no risk at this time in history that a dominant *ethnie* might impose its model of collective identity and political institutions upon weaker *ethnies*. However, the creation of institutional structures and political identities 'from above' by means of bureaucratic incorporation could endanger the whole process of European integration, and foster a revival of kinship based models of identity at the national level. The current constitutional structure of the European Union does not provide a complete political and legal framework for the exercise and the development of a full European political identity. It has been argued that before the Treaty on European Union, the constitutional structure of the Community was imposed on the European citizens, whose identities were divided among the different areas of Community competence. The result was a non democratic bureaucratic structure, and a European citizen with a 'segmented identity'. In the absence of real political identity, the European citizen existed, according to the situations, as market citizen, consumer citizen, environmental citizen, etc. (Neunreither 1995).

The political and economic structures of the European Union have been created before the European citizens. The political will of national governments has contributed to create a paternalistic institutional structure, which lacks the fundamental elements of a social contract, and in particular the consent of the citizens. It is doubtful that a common European political identity and citizenship could be forged from above by a Euro-bureaucracy, supported by the national governments. In a situation analogous to that in which a lateral *ethnie* attempted to incorporate the wider community in a political and territorial state, a non democratic European Union is very unlikely to forge common political identity and citizenship from above. Without self-determination and citizen participation in the public sphere, political identity is an abstract and imposed concept, which inevitably gives way to better established and more easily accessible models of identity based on kinship.

⁸⁸ For an analysis of the failure to build a 'political nation' in XIX century Germany see, Brubaker (1992).

The Treaty on European Union, with its provisions on citizenship and the 'politicisation' of the rights of free movement and residence, represents an important step towards the creation of a complete European political identity. The impact of the new Treaty on identity is, however, limited by the link between Member States' nationality and Union citizenship. Union citizenship, contrary to the segmented Community citizenship,⁸⁹ involves the political identity of the individual, but because of its derived nature it only creates an 'indirect citizen' (Neunreither 1995). The issue of identity is of fundamental importance for European citizenship. Without a common identity European citizenship remains an abstract formula, and the constitutional framework of the Union assumes the features of an imposed bureaucratic structure, deprived of any democratic legitimacy. Citizenship of the Union should not be reduced to a mere legal status and a set of rights, but it should involve the identity of the European citizens. A European identity underlying Union citizenship, would act as a legitimising device for the whole European constitutional structure.

The next Section deals with the substance of collective political identity. The analysis focuses on the relationship between collective identity and the way individuals participate in the public life of the community.

4. Modes of participation in public life and political identity

If 'political identity' is regarded as an independent form of expression of collective identity in the community, rather than the accidental result of the historical evolution of kinship based forms of identification, it becomes necessary to define the means which determine the identification of the individual with a particular political community. Until now this problem has been approached mainly 'from below', by looking at the experience of political identity in the context of the nation state. The French political nation born of the Revolution and Marx's model of Ancient community have been used as the main historical references for the definition of a concept of collective political identity based on the principles of popular sovereignty and self-determination. Once determined the historical background, the object of this analysis should focus on the way collective political identity is created by individual

⁸⁹ Under a terminological point of view a satisfactory distinction between 'Union citizenship' in TEU and the status resulting from the set of socio-economic rights enjoyed under the EEC Treaty before TEU, has been provided by O' Leary (1995), who refers to the latter as to 'Community citizenship'.

citizens interacting with one another and with the institutions which represent them.

In the political type of nation the democratic form of the state and the degree of citizens' participation in public life are founding elements of the community, and contribute, together with culture, language and tradition, to shape the national identity of the citizens. Nevertheless, the political elements do not constitute essential prerequisites of the narrower concept of national identity, intended as kinship based type of collective identity. Quite to the contrary national identity strictly speaking is based on a principle of ascription, which determines the boundaries of the community according to transcendental elements (ethnicity, culture, etc.). These elements, by virtue of their transcendence, are beyond the will and the choice of the individual.

As a consequence authoritarian forms of government are compatible with a model of national identity based on ethnic and cultural solidarity. Moreover, in absence of a political tradition of self-determination, national identity would tend to support a non-democratic form of government, because of the ascriptive nature of its founding elements. Political identity and citizenship on the other hand, both in the context of the political nation state, and as independent frameworks of collective identity in a supranational context, require democratic government, because the principles of self-determination and participation are essential elements of the identity of the citizens. With the exception of the political nation, where national identity is determined by the union between political and transcendental elements, a connection could be made on one hand between national identity (ascriptive) and authoritarian forms of government and on the other hand between political identity (voluntary) and democratic forms of government.

This connection suggests that there may be a link between the way individuals participate in public life and their collective identity as members of the community. While in the case of nationality the individuation of the constitutive elements of national identity (ethnicity, culture, language and traditions) is made easier by the same transcendental nature of these elements, with respect to citizenship the basis of identity is much more difficult to identify, as it is not pre-determined, but must be found in the activity of the citizens. The link between political participation and identity assumes crucial importance in the case of citizenship, where political identity is not transcendental, but it is defined from below, that is to say, by looking at the way individuals interact with each other and with the institutions, which represent them.

The importance for citizenship of the link between modes of participation and political identity is most evident in the case of the newly born citizenship of the European Union. In the absence of transcendental elements to sustain Union citizenship (there is little support for a common European culture of even ethnicity⁹⁰), the political element assumes a fundamental role in the creation of a common European identity. The European Commission, in its Second Report on Citizenship of the Union of 27 May 1997, noted that 'Citizenship of the Union conferred on nationals of all Member States is meant to make the process of European integration more relevant to the individual citizens by increasing their participation, strengthening the protection of their rights and promoting the idea of an European identity.'

The crucial role of self-determination and participation for European identity has so far been let down by the existing provisions on citizenship of the Union and by the general constitutional structure of the Community. The Court of Justice has consistently held that the EEC Treaty 'constitutes the constitutional charter of a Community based on the rule of law' and that that 'the Community treaties established a new legal order for the benefit of which the States have limited their sovereign rights, in ever wider fields, and the subjects of which comprise not only Member States but also their nationals.'⁹¹ Nevertheless, the main actors in the Community constitutional framework remain the Member States, the individuals being limited to a minimum of participation. The involvement of the individual takes the form of 'legal participation' though the enforcement of EC rights in the national and in the Community judicial systems, while political participation is almost non-existent. The very limited nature of political rights, included in the provisions on citizenship of the Union, falls short of introducing self-determination and democratic participation in the Community political system.

In the context of the European Union, a very interesting example of the importance of democratic self-determination and political participation for collective identity is provided by the common 'Declaration on Citizenship' and by the 'Danish Declaration on Citizenship' made at the Edinburgh European Council of December 1992. The two Declarations on citizenship of the Edinburgh summit (differently from the 'Declaration on Nationality' annexed to TEU, which stressed the difference between EU Citizenship and Member States'

⁹⁰ For the opposite view see, Smith (1992a), who believes that a European political identity would be too unstable and weak without the support of common memories and myths, and thus suggests the creation of a common European cultural identity.

⁹¹ Opinion 1/91 on the compatibility of the EEA agreement with the EEC Treaty, [1992] ECR I-6102.

nationality) are concerned about separating Union citizenship from national citizenship. Union citizenship is regarded as merely additional to national status of citizenship. The complementarity of union citizenship to national citizenship was further restated by an amendment of Article 8 EC introduced in the Amsterdam Treaty of October 1997. The following sentence was added at the end of Article 8(1) EC: 'Citizenship of the Union shall complement and not replace national citizenship.'

It is important to underline how the concern behind the Declarations of the Edinburgh summit and the Amsterdam Treaty amendment to Article 8 EC is different from that which inspired the Declaration on Nationality annexed to TEU. The Declaration on Nationality deals with issues of sovereignty, concerning the exclusive competence of Member States to determine who is a national. The Edinburgh Declarations and the amended Article 8 EC on the other hand deal with proper issues of citizenship and identity. In particular, some Member States were worried that, due to the weak nature of the political rights of Articles 8 to 8e EC, the taking over of national citizenship by Union citizenship could lower standards of social and political rights, with a consequent watering down of collective political identity based on citizenship. This concern was stronger in Denmark, where opposition to EU citizenship was not dictated by concerns about national sovereignty (like in the UK), as much as it was determined by the necessity to protect the particularly strong Danish institutions of political citizenship from the downward pressure of a weak European citizenship (Meehan 1993). The Danish high standards of political and social rights are the foundations of a collective political identity based on citizenship. The failure of the first Danish referendum on the Maastricht Treaty might be read as a rejection by the Danish people of a new political identity (Union citizenship) not supported by satisfactory standards of social and political rights.

5. Liberal and democratic citizenship

The connection described above between modes of participation and political identity is based on the assumption that the more individuals are involved in the government of the community, through the means of social and political rights, the stronger their collective political identity as citizens. Leaving aside the extreme case of a non-democratic form of government, supported by a strictly ethnic and cultural form of national identity, a distinction could be traced between political identity in less participatory forms of government and

political identity in more democratic structures. An extremely liberal form of government, in which individual rights consist mainly of negative liberties (civil rights) and political rights are limited to rights of representation, is likely to be sustained by a kinship based form of collective identity, given the weak foundations of political identity. On the other hand, in a truly democratic framework, political participation supported by high standards of positive liberties (social and political rights), could sustain a form of collective political identity so strong as to make the recourse to transcendental elements of identity unnecessary.

Habermas stresses this distinction between liberal government and national identity on one hand and democratic government and political identity on the other hand, and outlines two models of citizenship, liberal the first, democratic the second. The liberal tradition of citizenship is based on the separation between private individuals and abstract state. The citizens are pre-political individuals, who need to defend their private sphere from the abuses of the state (negative liberty) and their identity tends to be based on transcendental elements, like culture, ancestry, language and traditions. The democratic citizens on the other hand are integrated in the political community in a relationship of parts to a whole. In absence of a fracture between abstract state and private individuals the citizens derive collective political identity from their self-determined membership of the community. Political participation is a value *per se* which contributes to the formation of the citizens' political identity in a web of egalitarian relations of mutual recognition (Habermas 1992a). Habermas's models of citizenship can be illustrated in the following Table:

TABLE 6

Liberal citizenship	Democratic citizenship
Liberal tradition of natural law (Locke).	Tradition of political philosophy (Aristotle).
<u>Individualist</u> and instrumentalist reading of the role of the citizen.	<u>Communitarian</u> and ethical understanding of the role of the citizen.
<u>Citizenship</u> : membership of an organisation which secures legal status.	<u>Citizenship</u> : achieved membership in a self-determining ethical community. It can only be realised as a practice of self-determination.
<u>Individuals</u> are external to the state, contributing only to its reproduction in return for the benefits of membership. They are private persons who bring their pre-political interests vis-à-vis the state apparatus.	<u>Citizens</u> are integrated into the political community as parts into a whole. The Community shapes the identity of the individuals.

These two models of citizenship are broad examples of the link between modes of participation and collective identity of the citizens. An extremely liberal conception of the polity could undermine the political identity of the citizens and favour models of identity based on relations of kinship. On the other hand, a strong political identity, underpinning a democratic form of government, could undermine other individual and group identities, if regarded as the dominant and exclusive form of allegiance. Identities based on kinship can be rejected as the integrative element of the larger community in favour of a common political identity, but at the same time they should be allowed to continue to support smaller groups within the larger community.⁹²

It becomes an issue of pluralism if in name of the common political identity these other identities are denied a place in the democratic polity. In this perspective a 'European political identity' is not set to take the place of national identity as the exclusive source of loyalty and belonging, but rather to overcome the principle of exclusivity. Due to its supranational

⁹² Regarding the monopoly of the political element in the sphere of identity and the issue of pluralism see, Walzer (1992).

character, European identity should not be exclusive but it should co-ordinate different types of identities (ethnic, cultural, national, religious, etc.) and at the same time create a common political bond among European citizens.

6. Democratic citizenship and political identity

In the context of the political nation state, democratic citizenship and political identity have existed parallel to nationality and national identity. As a norm, it has been a transcendently defined pre-contractual group, which at a certain time in its history has decided 'to go political'. Political citizenship (when it has emerged) has always been subordinated to nationality. The transcendental elements of belonging have maintained priority over the exercise of political and democratic activity in the shaping of national identity. In contrast, the European Community is the result of the opposite process, that is to say, it is not the precondition for the rise of political institutions and identity, but rather it is the result of a political process of gradual integration (Tassin 1992). In such a politically created framework the identity of the citizens could be shaped by relying entirely on the association model of collective identity, without the need to resort to transcendental elements of kinship.

The main purpose of this Section is to define a political and contractual model of identity for the European Community. The contractual nature of the model depends on the degree of democracy which characterises the new institutional structure and the formative processes of collective identity.

6.1 Constitutional patriotism

If in the nation state democracy was achieved through national and cultural homogeneity, the challenge facing European integration is to reproduce democratic institutions and political identity at supranational level. The argument of this Thesis is that not only is this possible, but also that democracy can be better realised out of the context of the nation state, if the link between nationality and citizenship is severed. This means that a model of collective identity must be defined, without relying on any of the classical transcendental elements of nationality, namely ethnicity, culture, traditions and language.

Habermas (1992a) suggests that, if the link *ethnos-demos* is severed, a post-national

collective identity could be based on the practice of citizenship resulting from the concepts of self-determination and popular sovereignty. The consensus underlying self-determination and popular sovereignty is achieved through the association of free and equal citizens and stems in the final instance in an identically applied procedure recognised by all. In a pluralistic society the constitution lends expression to the formal consensus. The association of citizens which determines collective political identity is structured by relations of mutual recognition, which ensure that everyone can expect to be respected by everybody else as free and equal.

Far from being a totally abstract framework, Habermas's model of constitutional patriotism assumes self-determination and political participation as values *per se*, and is based on a common political culture, rather than on a common national or ethnic culture. But what exactly is a 'common political culture'? According to Habermas (1994) a common political culture does not have to be based on all citizens sharing the same language, the same ethnic and cultural origins, or even the same history. A political culture is based on the common practice of citizenship, meant as activity of the individuals in the public sphere, where 'everyone can speak in the second plural person.' A European collective identity based on constitutional patriotism would be compatible with national cultural identities, because a common political culture does not impinge on the transcendental elements of identity, but only requires common political activity of the citizens.

The relationship between the activity of the individual in the public sphere and the formation of political identity is a crucial element of Arendt's idea of political citizenship. In Arendt's model, collective identity is established through participatory citizenship, in a process of active deliberation about competing identity projections (Passerin d' Entrèves 1992). A common political identity is created by the political action and discourse of the different individual identities acting in the public sphere. According to Arendt the public realm, in which the process of identity formation takes place is characterised by three fundamental features:

(1) Artificiality of public life. Public life, differently from ethnicity and culture is not transcendental, but it is artificially created by human beings. There is not a natural predisposition for politics, which instead are the product of action and speech (Arendt 1958). The public realm is based on relations of association (artificial), while the private realm is based on relations of kinship (transcendental).

(2) Spatial quality of public life. The political activities and practices which determine

identity must take place in a material public space, where the citizens can meet. Political opinions can never be formed in private, but need a public space where they can be elaborated into a sophisticated political discourse. The political unity of the citizens or their collective political identity is determined by a shared public space, a common set of institutions and common practices and activities (Arendt 1965).

This idea of a common public space as a founding element of political identity can be traced back to Marx's analysis of the pre-capitalistic Ancient form of social organisation and production. According to Marx the spatial element of the city played a fundamental role in the shaping of the collective political identity of citizens in ancient Rome and Greece, while the distance separating German tribes, living in forests, contributed to the consolidation of an ethnic type of identity (Marx 1964).

(3) Distinctions between the public and private realm. In a context where politics is the foundation of the collective identity of the citizens, there cannot be separation and opposition between public and private realm. The public realm is not the abstract third person ('it') with respect to the individual citizens, but is the result of our activity as citizens. As Habermas (1992a) argues, everybody should be able to use the first and second plural person in the public realm. This, of course, does not mean that the public realm must be intrusive on the private realm of the individual; when this happens we are faced with the issue of how to reconcile democratic citizenship and pluralism. For Habermas and Arendt citizenship as political agency results in collective political identity, as, whenever we engage in action and political discourse, we are thereby also engaging in the creation of a 'we' with which we are able to identify both ourselves and our actions (Passerin d' Entrèves 1992).

In contrast, Tassin (1994) argues that constitutional patriotism and political agency cannot be based on a scheme of identity, even if it is called political or post-national. This author traces a fundamental distinction between citizenship and identity, in which the first is based on a principle of action (political) and the second on a principle of 'being' (transcendental). The citizen is not defined by his belonging to the community, which is a matter of identity, but rather by his actions in the public space, which are linked to those of the other citizens. If on the one hand identity answers the questions 'who am I?' and 'who are we?', on the other hand citizenship relates to action and answers the questions 'what do I do?' and 'what do we do?'.

If one agrees with Tassin's argument, the creation of a European citizenship and public

space should not cause any problem of compatibility with the existing national and cultural identities, because 'citizenship' would not affect matters of 'identity' in the first place. The separation between citizenship and identity makes it easier to distinguish between a political Europe, founded on the action and the practice of citizenship and a 'Europe of the mind', where issues of identity are inextricably linked to the definition of a common European culture. According to Tassin (1992) the existing European Community has not been based on a philosophical idea of cultural Europe ('Europe of the mind'), but on a concrete political experience, the common resistance to nazism and fascism. The idea of European political community and citizenship draws its original meaning from an armed struggle.

6.2 European resistance

Tassin points out that nazism and fascism were not the problem of the German and the Italian nation states only, but phenomena which affected the political concept of nation state in Europe. In this perspective the result of the second world war cannot be seen as the victory of one set of nations over another, but rather as the affirmation within all European nations of one idea of society against another. Resistance against nazi-fascism can be considered the founding political experience of a common European identity based on political citizenship. Together with the defence of those liberties (civil and human rights) which had been denied by fascism, the resistance carried values of self-determination and involvement of the individuals in public life. Before assessing the role of resistance to fascism with respect to European political identity, it is important to define the nature of the opposite values for which fascism was standing.

Umberto Eco (1995) gives a definition of fascism which includes different experiences of totalitarianism in twentieth century Europe. In spite of the differences between Italian fascism, German nazism, Spanish Francoism or the Balkan fascism of the Ustashes, all share some common elements, so that it is possible to speak of a broad concept of fascism, or, as Eco puts it, Eternal fascism (Ur-fascism). As far as identity is concerned, several features typical of Ur-fascism are of significance: (1) the cult of tradition; (2) irrationalism; (3) the sense of the outsider (natural fear of difference); (4) popular elitism; and (5) the myth of absolute sovereignty.

(1) The cult of tradition. The concept of 'traditionalism' predates fascism and is founded

on the idea that a 'revelation', whose content has been subsequently lost, was received by mankind at the beginning of its history. Although the content of this revelation was lost, it resurfaces in different cultures, which, despite their diversity, allude to the same primeval truth. The main consequence of this approach is that it does not admit any progress in the field of knowledge, as truth has been spelled out once and for all, and one can only keep interpreting its obscure message.

(2) Irrationalism. Traditionalism in the fascist tradition also implies the rejection of modernism, and in particular the achievements of the French and American Revolutions. This rejection takes the form of 'irrationalism'. The Enlightenment is rejected as the beginning of modern depravity.

(3) The sense of the outsider. One of the main features of national identity is the natural fear of everything which is different, which results in the perception of the other as an outsider to the group, whose collective identity is based on elements of kinship, such as culture ethnicity or language. Fascism exacerbates this fear and reinforces feelings of national identity, by appealing against foreign intruders. In fascism, more than in any other form of national identity, the perception of the outsider as a permanent threat contributes to the formation of a strong national collective identity.

(4) Popular elitism. The sense of identity of the individual is also supported by 'popular elitism', according to which every citizen is made to believe that he belongs to the 'chosen people' and is educated to despise the uses and traditions of foreign peoples. Popular elitism coupled with the fear of difference encourages feelings like xenophobia and racism.

(5) The myth of absolute sovereignty is the foundation of the nation state. The nation is the supreme political entity, which expresses the general will of all the citizens. The notion of national sovereignty is quantitative in a democratic state, that is to say, the general will originates from the individual wills of the citizens, who have rights and obligations. In contrast, in the fascist nation state this notion is qualitative. For Ur-fascism individuals as such have no rights and the general will is a qualitative expression of the 'People'. Having lost their power of delegation, citizens do not act, they are only called upon to play the role of the 'People'. In these circumstances the 'People' is a mere theatrical fiction. The 'Leader' will often appeal to the fact that the Parliament lacks legitimacy because it no longer represents the 'Voice of the People', and will pretend to be the interpreter of the qualitative general will (Eco 1995).

The main argument of this Section is that all these elements of Ur-fascism are not exclusive to a totalitarian form of government and identity, but that they are derived from the kinship model of national identity. The fascist state and the fascist collective identity are an extreme form of nation state and national identity. The fascist cult of tradition is a degeneration of the element of transcendence which characterises the kinship model of national identity. The founding elements of collective identity are not the result of a democratic process of self-determination and mutual recognition, as in the association model of collective identity, but instead they are revealed as part of an originary and transcendental 'truth'. Nationality and national identity are part of a system based on a law of nature, which man cannot manipulate or determine, but only interpret and understand. On the other hand the opposite process of identity formation takes place in the association model of collective identity, which can be traced back to the ancient Roman and Greek traditions of political citizenship, and more recently to the French Revolution. In particular the French Revolution and the Enlightenment marked the start of a new age of reason based on the idea that nature could be manipulated and eventually brought under control. In the fascist model of national identity traditionalism degenerates into irrationalism, intended as a return to the law of nature and the rejection of a process of identity formation based on a socially-constructed political process. The 'sense of the outsider' based on the natural fear of difference, which characterises the kinship model of collective identity, is exacerbated by fascism and degenerates into racism and xenophobia.

The analysis of the relationship between the national model of collective identity based on kinship and fascism leads to the conclusion that if on one hand fascism is a 'degenerate' form of collective identity, which in the present century has ultimately resulted in the tragedy of two world wars, on the other hand the origin of the troubles might lie in the same concept of national identity and national sovereignty. This was the view expressed by a group of Italian anti-fascists, who, at the height of Italian resistance against fascism and nazi occupation, founded the 'European Federal Movement' (Movimento Federalista Europeo). The European Federal Movement regarded the resistance movements taking place in Nazi-occupied Europe as the foundation of a 'political Europe' opposed to a Europe of the nations, which, according to them, had led to the excess of totalitarianism and the catastrophes of war. There is an in-built totalitarian logic in the system of the nation state, where sovereignty is based more on transcendental elements of kinship (ethnicity, culture and traditions) than on democratic self-

determination. In the nation state popular sovereignty often degenerates into the absolute sovereignty of the nation, in which the element of kinship is dominant, and where, as seen in Eco's analysis of fascism, the 'People' perform a symbolic role. The principle of absolute national sovereignty and the contemporary existence of more than thirty nation states in one continent were regarded by the founders of the European Federal Movement as the ultimate cause of two world wars in Europe.

The main argument of the Federalists is that a political Europe could be built only by overcoming the principle of absolute sovereignty and the institutional framework of the nation state. A federal political framework is seen as the triumph of the principle of collective political identity (association based) over the idea of national identity (kinship based). In such a context federalism is closer to Proudhon's idea of 'United Communes of Europe', than to the Anglo-Saxon idea of 'United States', in which absolute sovereignty is transferred from the original state entities to the new sovereign federal nation state. For Proudhon the French Revolution failed to overcome the nation state structure, and this failure resulted in the combination of kinship and association forms of collective identity (*nation politique*), which then became the model for the modern broader concept of national identity.

Proudhon (1979) rejects the political model of the nation state and indicates the 'Commune' as the ideal self-determining political community.⁹³ The small size and local nature of the Commune allow for real self-determination and participation of the citizens in public life. The purpose of federalism is therefore that of bringing together the smaller political units into a larger federal entity, without compromising self-determination and political participation. A federal process of this kind in Europe would result in a wider concept of collective political identity and self-determination, but not in a larger federal nation state.

7. European citizenship and political identity

The resistance movements represented the ultimate confrontation between two opposed views of collective identity and citizenship, one based on natural kinship, the other on political

⁹³ Proudhon was originally an anarchist, who rejected any state form as such. However, at a later stage of his life he accepted that a federal institutional framework could reconcile the anarchist principle of individual freedom from state constraints with the necessity to coordinate the political activity and identity of the citizens in even larger forms of association (Commune, Federation).

association. In this perspective European resistance is the founding political experience of modern European political identity, however, it is questionable that still today this identity continues to be built on resistance to nazi-fascism. If resistance belongs to the past, it is the continuous practice of human rights and citizenship which sustains European identity in the present. A special role in the formation of a collective identity is performed by the political rights of self-determination and participation in public life.

In the EC almost forty years of European constitutional history have contributed to create common practices of self-determination and citizenship among the 'peoples of Europe'. The most evident examples are the provisions on the freedom of movement of persons. Not only have these provisions resulted in a practice of citizenship (free movement and residence) fundamental to the process of identity formation, but they have also evolved towards a more complete status of citizenship. This has happened mainly through the case law of the Court of Justice and has been followed up by constitutional reforms in the Single European Act and most recently in the Treaty on European Union.

The provisions on citizenship in the Treaty on European Union (TEU) fall short of introducing a complete European constitutional citizenship, because of the remarkably weak nature of the political rights (d'Oliveira 1994). However, despite its limited and weak political nature, Union citizenship has the merit of extending the practice of common citizenship among European citizens, reinforcing their political identity. Of particular importance for the issue of political identity are the provisions on active and passive electoral rights in the country of residence for Union citizens at local and European elections (Article 8b EC). These provisions allow for the participation of individuals in local and European elections in their capacity as Union citizens, rather than as nationals of the Member States (see, Chapter V). The effect on political identity of European Parliament elections on the basis of residence is diminished by the very limited role of the Parliament in the Community legislative process. In local elections, the right to vote and to stand as a candidate, conferred on Union citizens in the country of residence, is of great importance with respect to the issue of self-determination and identity. In fact, the right of Article 8b(1) EC allows Union citizens to be involved in a political decision making process which most closely affects their daily lives. The exclusion of certain categories of resident individuals from the local political process can be regarded as one of the most serious threats to their potential identity as citizens.

Also the other rights of Union citizenship in TEU contribute to strengthen the sense of

identity among EU citizens by extending the practice of citizenship. The constitutionalisation of free movement (Article 8a EC) follows the jurisprudence of the Court of Justice by transforming a right reserved to economic actors into a full right of citizenship. The identification of free movers therefore is no longer limited to that of 'workers' or 'self-employed', but it extends to 'citizens'. Diplomatic protection (Article 8c EC), although limited in its nature, brings one of the main means of identification as the national of a state into the sphere of European citizenship and identity. The two rights of petition, to the Parliament and to the Ombudsman (Article 8d EC) impinge in the sphere of political identity in so far as they involve the citizens in the European political decision making process, thus strengthening the concepts of self-determination and participation. The fact that these two rights have been conferred on all resident persons and not only on legal citizens is also of importance in the context of a non-national definition of citizenship and political identity. It is considered below how, if the exclusion of non-nationals based on the idea of kinship has been a permanent feature of national membership and identity, political citizenship and identity based on self-determination reject the same idea of exclusion.

At the European level the public activity and involvement of the citizens, which contributes to the formation of a common political identity is not limited to the classical rights of citizenship (civil, political and social). The jurisprudence of the Court of Justice has contributed to the emergence of the individual in the European public sphere, by providing for the direct effect of Community law (Treaty, Regulations and, under certain conditions, Directives)⁹⁴ and for the liability of a Member State against the individual in its failure to implement (or for the mis-implementation of) EC Directives.⁹⁵ This type of activity of Union citizens in the European public sphere is of extreme importance for the shaping of a collective political identity, especially in the light of the fact that such a 'practice of European citizenship' is often played against the nation states, in name of supranational values and identity.

⁹⁴ Case 26/62, *Van Gend en Loos v Nederlandse Administratie der Belastingen*, [1963] ECR 1; Case 41/74, *Van Duyn v Home Office*, [1974] ECR 1337; Case 152/84, *Marshall v Southampton Area Health Authority*, [1986] ECR 723; Case C-106/89, *Marleasing SA v La Comercial Internacional de Alimentation SA*, [1990] ECR I-4135; Case C-91/92, *Faccini Dori v Recreb Srl*, judgment of 14 July 1994.

⁹⁵ Cases C-6, C-9/90, *Francovich and Others v Italy*, [1991] ECR I-5357.

8. Positive liberties, negative liberties and political identity

If political rights and the practice of political citizenship play a primary role in the shaping of a collective political identity, this should not lead one to undervalue the importance of social and civil rights for the process of identity formation. Habermas (1992a) argues that the political rights of citizenship endow the individual with self-referential competence and are therefore central to the issue of identity. In contrast, civil and social rights can exist in a non-democratic context, without the support of political rights, if they are granted by a paternalistic authority. The rule of law and the welfare state can in principle exist without the concomitant existence of democracy. In such a case, however, social and civil rights would have little bearing on the issue of identity. In a democratic context social and political rights support each other, both contributing to the achievement of civil rights. Social rights are not merely the result of political action and discourse, but, by guaranteeing material equality, they also ensure that political participation is effectively exercised.⁹⁶

The main conceptual difference between positive liberties (political and social rights) and negative liberties (civil rights) is that the former are realised when the state and the citizens take positive action (mainly in the form of legislation and participation), while negative liberties require the government to abstain from invading the sphere of the individual. It is the field of social and political rights, which plays a fundamental role in the shaping of a common political identity based on the practice of citizenship. However, if political and social rights play the primary role, civil rights too perform an important function in the field of political identity. Negative liberties do not require continuous action by the citizen or the state to be effective, nevertheless they are the result of 'the founding political experience' of modern European democratic society: the resistance against a model of identity, fascism, which denied civil and human rights. Although the resistance may no longer be a living feature of European political identity, the values of civil and human rights that it affirmed fifty years ago are still part of our identity as European citizens, because of the role that European integration and the European institutions have performed in upholding these rights and values and in

⁹⁶ Article 3 of the Italian Constitution is a clear example of the importance of social rights for the issue of political identity. It states: 'The Republic aims to remove all economic and social obstacles, which, limiting in fact freedom and equality of citizens, prevent the full development of the human being and the effective participation of all workers to the political, social and economic organization of the Country.'

preventing the return of totalitarianism and war in Europe.⁹⁷ In this sense negative liberties are as important as the daily practice of positive liberties to the issue of political identity.

The classic model of citizenship of Marshall (1992), which distinguishes between civil, political and social rights, undervalues the importance of the rights of citizenship for political identity. Marshall does not need to insist on the relationship between the exercise of citizenship's rights and the formation of a common political identity, because he works on the assumption that a national collective identity based on kinship already supports citizenship in the nation state. His model of citizenship is based on an evolutionary and ethnocentric approach in so far as civil, political and social rights are seen as progressive achievements of modern society, based on the political system of the nation state.

Marshall's theory provides an exhaustive account of the evolution of citizenship's rights in Britain, however, it overlooks the importance of the relationship between civil, political and social rights and the issue of identity, which goes beyond the analysis of the 'successive appearance' of these rights on the scene of the (British) nation state.

Marshall's ethnocentric model of citizenship can afford to overlook how identity relates to citizenship rights, because it assumes the pre-existence of a national identity based on transcendental elements of culture, language and ethnicity. In Marshall the rights of citizenship are supported by a mainly pre-political national identity, and therefore do not constitute the essential elements of an 'association based' model of collective identity.

9. Pluralism in the European democratic polity

A common European political identity based on the practice of citizenship inevitably calls into question issues of pluralism, given the numerous cultural and national identities, which characterise the peoples of Europe. Article F(3) of the Treaty on European Union sets the limit to a European common identity in so far as it provides that 'the Union shall respect the national identities of its Member States.'

⁹⁷ It is significant that for some new Member States (like it was the case for Italy and Germany at the origins of the Community) accession to the European Community has followed the passage from totalitarian forms of government to democracy. This has happened in Greece, Spain and Portugal.

Communitarian citizenship

The model of republican citizenship and political identity outlined above must be distinguished from a communitarian conception of citizenship and identity. Communitarian citizenship is also based on the principles of self-determination and participation, however, it goes beyond the republican idea of common political identity, because it links the political elements (participation and self-determination) to historically and culturally sedimented communities. The result is a more comprehensive form of identity, demanding political as well as cultural allegiance from the members of the community. The fact that belonging to a particular community should form all aspects of an individual's identity is bound to cause clashes when 'self-determined' members of the community want to maintain allegiances to external communities or organisations (dual nationality, religious diversity, ethnic minorities, etc.). Communitarian citizenship contrasts with the liberal idea of cultural pluralism, because it attempts to bring together the citizens under a single collective political and cultural identity (see, Chapter II). For this reason Tassin (1992) argues that European citizenship cannot be defined as communitarian, where this would be at odds with the need to respect cultural and national diversity.

European citizenship and identity should be substantially different from its national counterpart, and individuals should be able to appeal to more than one set of enforceable standards when claiming their rights in the European polity. The result is a type of citizenship which is neither national nor communitarian, but 'multiple', in so far as it allows members of the community to have different allegiances to an 'increasingly complex configuration of common supranational institutions, states, national and transnational voluntary associations, regions and allegiances of regions' (Meehan 1993b:185).

Some statistical data

Periodic surveys of European public opinion carried out by the European Commission support the idea of European multiple citizenship sustained by collective identity at different scales.

A majority of Europeans perceive their own identity as both European and national or European only (57%) rather than national only (40%). The largest share of this majority (46%) put their national identity ahead of their European identity, the rest feeling first European and then national (6%) and European only (5%). The geographical differences between national and European feelings of identity seems to depend on the time of accession

of the Member States. The feeling of belonging only to one's own nationality is strongest in the Member States, who acceded the Union in 1995 (Sweden 64%, Finland 56% and Austria 50%), followed by Britain (57%) and Denmark (56%), which joined the Community in 1972. In the six original Member States there are far fewer people who consider themselves as being 'national' only.⁹⁸ This geographical pattern supports the link between European collective identity and common constitutional history, where the cement of identity is political association rather than cultural or ethnic kinship.

Another survey shows that a proportion of almost three to one European citizens (62:23) believes that national and European identity are not incompatible and can co-exist. As for the more specific question of whether further European integration is 'the only way to protect national cultural identities and their diversity' or on the contrary that 'it will signify their end', most citizens answer that they are confident that the European Union will protect national cultural identities and their diversity.⁹⁹

The large majority of Europeans declare themselves 'proud of their nationality' (70%). This data, however, does not seem to contrast with the emergence of a common European identity and citizenship. Quite to the contrary national pride is associated with widespread optimistic or hopeful feelings towards the 'new European Union'.¹⁰⁰ The data on national pride is also to be read in conjunction with the survey (*supra*), which indicates that most Europeans see themselves, in terms of identity, as both national and Europeans (national ranking first). This corroborates the thesis of the compatibility between national and European identity.

Attachment to political institutions and geographical units, however, does not end at the levels of the nation state and the European Union. A vertical section of geographical spaces in Europe shows that people feel more attached to smaller entities. This includes not only the nation state (89%), but also the region (90%) and the town/village (87%). Only 43% of the interviewed declare themselves 'to be attached to the European Union.' The Commission concludes that these differences should not be taken as a rejection of larger structures but rather as showing that people identify more with smaller groups.

European citizens have recently shown increasing support for the concept of a 'European

⁹⁸ See, European Commission, *Eurobarometer*, no 44, Spring 1996.

⁹⁹ See, *Eurobarometer*, no 38, December 1992.

¹⁰⁰ See, *Eurobarometer*, no 42, Spring 1995.

government responsible before the European Parliament,' compatibly with the strong feelings of attachment to local and national geographical units, resulting from the survey referred to above. The number of Europeans supporting a European government has risen from 47% in 1993 (in a Community of 12 Member States) to 59% in the autumn of 1995, including the lower support coming from the new Member States, where citizens had little time to develop feelings of identity and attachment to the European institutions.

Multiple citizenship

Multiple citizenship is not only a device to divide political identity 'vertically', that is to say to maintain allegiances at local and national level, while at the same time being part of a larger political organisation (the EU). It also operates horizontally, by breaking the monopoly of the political element in the sphere of identity and allowing for the pluralistic expression of other forms of identity (cultural, linguistic, religious, etc.).

Where political identity is a crucial element, keeping the larger community together, it cannot monopolise the sphere of identity, which is composed of a variety of other elements. Michael Walzer (1992) approaches the issues of citizenship and identity from the point of view of the 'most supporting environment for the good life of the individual.' He identifies four types of community, each one offering an alternative model for the 'good life': (1) the republic (political community); (2) the marxist-economic community; (3) the market community; and (4) the national community.

In the political community the good life coincides with participation in public life and in government. The main reference points are the Greek and Roman models of society and modern communitarian theories. In the Marxist model politics and democracy have no value in themselves, they only serve the scope of setting productive labour free. The good life is therefore identified with the economic emancipation of the citizenry. The market model of community substitutes political decisions with personal choices. The good life is autonomy in the market place for what is a consumer citizen. Finally, the national community is based on ascriptive criteria like birth, culture, history. Political choice is excluded and the good life is more a matter of identity than activity (Walzer 1992).

Walzer rejects all four models of good life, not because of their respective merits (or demerits), but because of their 'singularity'. By advocating one model of the good life and therefore the supremacy of one type of community over the others, all four models miss the

complexity of human society and the inevitable conflicts of commitment and loyalty to different communities, groups and institutions. As an alternative to the four models Walzer outlines a structure of social organisation based on the concept of civil society.

The national model is based on ascription and oppresses the concept of self-determination, while the market model ignores the same idea of political self-determination and assumes that citizens can live as consumers in the market place without the need of society. The two leftist models of the good life, the republican and the socialist are more 'political', as they are founded on the concept of self-determination. However, according to Walzer, they commit the fundamental mistake of ignoring the complexity of human society by systematically undervaluing all kind of associations except the *demos* (political community) and the working class.

A model based on the idea of 'civil society' presupposes that people freely associate and communicate with one another not for the sake of a particular formation (family, tribe, nation, religion, commune, etc.), but for the sake of sociability itself. Such a civil society is not a fifth model of the kind considered above, but it is a setting of settings for the pursuit of the good life (Walzer 1992). The republican model is the most similar to the idea of civil society, because the political element is the least oppressive among all the elements of identity. However, Walzer points out that the model of the active and engaged citizen is flawed, as it does not correspond to the real life of many citizens. This is partly due to the decreased influence of the individual citizen in the political process of the modern state, but also to the fact that individuals pursue interests and values other than politics. Economic activity, religious faith, commitment to a career, time devoted to leisure, are all elements which contribute to the formation of an identity and that are often competitive with citizenship and political identity.

Meehan's 'multiple citizenship' and Walzer's 'civil society' have the merit of clarifying the issue of the relationship between political citizenship and pluralism. Both models can be seen as modifications of the republican model of citizenship, where on the one hand they postulate the multiplicity of identity and loyalty, and on the other they both accept the prominence and the special role performed by citizenship and political identity. Walzer in particular sees citizenship as just one form of membership in civil society, albeit a special one, which frames and co-ordinates the community. Political identity is not the exclusive or dominant form of identity within society, nevertheless it constitutes the tie that bonds together

all individuals and groups of individuals who are engaged in different relationship of loyalty and identity. The special role assigned to the political element differentiates Walzer's model of civil society from pure liberal models, which deny the existence of any form of 'political common good' and run the risk of degenerating into a model of market citizenship, where individual freedom is reduced to autonomy of the consumer in the market place.

10. Cultural identity and European citizenship

The relationship between political identity (citizenship) and other bonds of attachment is of great importance to the issue of European citizenship, as the larger European polity would have to accommodate not only a wide range of cultural, ethnic and religious identities (like some of the existing nation states already do), but also the whole set of well established national cultures and identities (the same nation states).

Kymlicka (1995) argues that among national cultures (intergenerational communities more or less institutionally complete, occupying a certain territory and sharing a history and language), there are two broad patterns of cultural diversity: multinationality and polyethnicity. Multination states are the result of incorporation of previously self-governing and territorially based cultures into a larger state. In contrast polyethnic states are countries whose cultural diversity has been determined by individual and familial immigration. Many modern states are both multinational and polyethnic, including Canada, the United States and Belgium. Other countries fall more definitely into one or other category; Germany, a country of immigration, is polyethnic, while Switzerland, the former USSR, and former Yugoslavia, are and were mainly multination states. Some states are more difficult to classify, such as the UK, which is certainly a polyethnic state, but whose multinationality is rather 'remote'. Scotland, Wales and Northern Ireland were incorporated at an early stage in the history of the British nation state, so that today they do not enjoy proper rights of self-government.

The EC, of course, will face both patterns of cultural diversity, if it is to develop into a state-like entity, or at least into a more integrated political community. The existing nation states together with their national minorities, which they already accommodate, are the foundations of European multinationality, while the new tide of non-European immigration is determining the rise of a polyethnic society. There seem to be two alternative solutions to the European cultural jigsaw. The first one is the development of a common European cultural

identity to support the common political identity of citizenship. The second one consists in creating a system in which different cultural and national identities coexist in the context of a common political identity and citizenship.

Smith (1992a) argues that at present a common political identity is too weak and unstable to sustain European integration. For this reason the European project should be based on firm and deep cultural foundations, which are to some extent independent of economic and political fluctuations. Although European citizens do not share myths and memories of a pre-modern ethnic past to support their cultural identity, Smith believes that there are elements, which can constitute the foundations of a European common culture. These elements are: (1) linguistic affinities: all European languages (except Finnish and Hungarian) share a common Indo-European origin; (2) cultural geography and territorial symbolism: a geographic Europe could be identified with the territory extending from the Atlantic to the Urals, and which lacks significant geographical barrier; (3) religious cleavages: despite the intra-Christian division, the vast majority of Europeans are Christian; (4) sense of the outsider: the sense of the outsider directed to non-European immigrants determines the creation of an 'out-group', which could have a vital effect on the formation of cultural identity.

Even Smith accepts that these elements are still far from constituting patterns of a common European cultural identity, however, he points out that a cultural Europe may exist as a 'family of cultures'. Common traditions, memories and myths have never been shared by all Europeans at the same time, but at one time or another all Europe's communities have shared some of these traditions. There is a strong component of cross-fertilisation among traditions of cultural identity in Europe. The family of cultures may evolve into an homogeneous common culture with shared myths and memories, if supported by the four elements described above. In particular the sense of the outsider could play an important role in the creation of a deep continental cultural identity, supporting political unification. A strong and stable European identity will require an ideology of European cultural exclusiveness (Smith 1992a).

Smith's argument on cultural identity is based on John Stuart Mill's assumption that a common political identity and government are possible only among people of the same nationality (intended as culture, language and traditions). According to this theory the nation state is the only political framework which can sustain democracy, while all other kinds of supranational and multicultural organisations are destined to collapse, precisely because of the lack of the necessary cultural cement. However, if this argument is supported by the collapse

of two major multination states such as the USSR and Yugoslavia, it is equally contradicted by the 'resistance' of strong political communities and identities in multination states such as Canada, Belgium and Switzerland.

It has been argued that national minorities and ethnic communities can coexist in a political framework and share a common political identity, if they are granted 'group-differentiated rights' (Kymlicka 1995). Alternatively, the major territorial and political nations have been formed through the assimilation of minority ethnic groups by a dominant *ethnie*, which has imposed its culture language and political institutions on the minorities (Smith 1992b).

Group-differentiated rights protect minorities and at the same time allow for the existence of a unitary political structure. Earlier, diversity among cultural groups was broken down to two different patterns: multinationality and polyethnicity. In the first case diversity is the result of incorporation of pre-existing national groups, while in the second case it is the result of immigration. The type of differentiated rights, which should be granted to cultural minorities varies according to whether they are national minorities or immigrant ethnic groups. According to Kymlicka national minorities should be granted rights of self-government (political autonomy and territorial jurisdiction), while immigrant ethnic groups would be entitled to polyethnic rights (group specific measures, intended to help ethnic and religious minorities to express their particularity). The reason for this distinction lies in the fact that national minorities are pre-existing self-governing communities who were incorporated in the larger political entity, while immigrants have voluntarily chosen to leave their societal cultures and therefore are more ready to integrate in the political community they have joined.¹⁰¹ The importance of self-governing rights for national minorities can be seen in the fact that the state inevitably promotes certain cultural identities and thereby disadvantages others. A complete separation of state and culture akin to that between state and church is not possible because the state is obliged to make certain choices which endorse a particular culture (language, internal boundaries, public holidays and state symbols, etc.)

¹⁰¹ It is interesting to note that in the recent referendum on Quebec's independence from Canada, a crucial role was played by the 'ethnic vote'. The narrow victory of the federalists against the Quebecois independentists (50.4% to 49.6%), was blamed by the Premier of Quebec (Mr Parizeau) on the immigrants, a large majority of whom voted to maintain the union with Canada. Apart from the political inappropriateness of a statement of this kind coming from the Quebec's Premier, Mr Parizeau's declaration underlines how the ethnic minorities have played against the national minorities in the decision about political union with Canada. Immigrants are more attached to the larger political community, which they voluntarily joined, and which is neutral with respect to their own cultures. At the same time immigrants fear the cultural homogeneity of the national minority, based on common language, culture and traditions.

(Kymlicka 1995). The recognition of group-differentiated rights (self-government for national minorities and polyethnic rights for ethnic groups) is therefore an application of the principle of equality among the different cultures.

Group-differentiated rights are fundamental for the working of the larger political community because they allow individuals to access their 'societal cultures'. These societal cultures need not coincide with the larger political community (the EU in this context), but can be tied to other groups and organisations at the national and sub-national level. Membership of a societal culture is essential to individual freedom as it enables the individual to make meaningful choices and support his identity. Only free individuals can participate to an exercise of collective self-determination, which allows them to become citizens of a larger political community, with a common political identity shared with the members of other societal cultures. Common citizenship in multination and polyethnic states can be achieved by imposing the culture of the majority upon the minority, but in such a case it would not be followed by a common political identity, as the process of self-determination cannot take place in the absence of individual freedom. The creation of a common political identity in a multination state would involve accommodating, rather than subordinating national identities (Kymlicka 1995). Group-differentiated rights are not only compatible with political unity and common citizenship, but also, in presence of different societal cultures, they are the necessary premise for the formation of a freely determined political identity.

For the European Union, group-differentiated rights are highly relevant as they could apply to the existing national communities (self-government) and to the large population of third country immigrants (polyethnic rights). A European political constitution will have to be multicultural, due to the fact that the peoples of Europe comprise different national cultures and a growing tide of non-European immigration.¹⁰²

The Amsterdam Treaty of October 1997 has amended Article 128(4) of the EC Treaty, dealing with culture. Article 128(4) now reads: 'the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.' The second sentence, which was added by the Amsterdam Treaty, emphasises the separate roles of political identity and cultural identity, in so far as Community action, based on a common political identity should not affect cultural

¹⁰² See, Article A of the Treaty on European Union, which refers to 'an ever closer union among the peoples of Europe', rather than to a single European people.

diversity.

11. Inclusion and exclusion from citizenship

Notions of inclusion and exclusion from citizenship are central to the argument on European political identity. As exclusion and inclusion define the question of who is a member of a particular collectivity and who is not, they are often debated as issues of immigration policy rather than identity as such. In fact, immigration policy is closely defined by the way a community sees itself, that is to say its collective identity. Here exclusion and inclusion are examined from the point of view of identity, arguing how a particular type of immigration policy ('fortress Europe') could eventually affect the formation of a European collective identity.

Exclusion from citizenship can take different forms. A first broad distinction can be made between formal exclusion and material exclusion. Formal exclusion is the result of the distinction between citizens and non-citizens and is generally directed towards members of other national collectivities. Material exclusion concerns those citizens (ethnic minorities, homosexuals, women, disabled persons, long term unemployed, etc.), who, despite their formal membership of the community, cannot take full advantage of their rights of citizenship, because of their social and economic status.

The most evident example of formal exclusion are non-national permanent residents. The members of this category are often referred to as 'denizens', a status, which is substantially equivalent to that of citizen (same social and civil rights, and some political rights, especially at the local level), but which denotes a formal exclusion from the political community (no political rights at the national level).¹⁰³ Aliens and illegal aliens are formally as well as materially excluded from citizenship (neither formal membership, nor social rights), although most countries grant them human right protection.

Regarding the national concept of citizenship it is possible to outline three kinds of exclusion, which in turn correspond to different status of the individual. The relationship between exclusion and national citizenship is exemplified in Table 7.

¹⁰³ See, Hammar (1990), who defines the status of 'denizenship' as opposed to 'citizenship' and 'alienship'.

TABLE 7

	Type of exclusion	Origins of exclusion	Status
Within the national Community	Material exclusion	Unemployment, gender discrimination, class discrimination	Citizenship
Outside the national community	Formal exclusion	National identity and belonging	Denizenship
	Formal and material exclusion	National identity and belonging	Alienship

Dahrendorf (1994) notes how material exclusion from citizenship within the nation state results in the creation of an underclass of long-term unemployed, persistent poor and disadvantaged ethnic groups, who are substantially excluded from the entitlements of citizenship, but who formally belong to the legal community. Equally the same exclusion is both formal and material against immigrants members of other national collectivities, who are denied access to the legal status of national citizenship on the basis of their nationality.

According to Garcia (1992) there are two fundamental factors which are putting into question the 'national social contract' and therefore national citizenship in Europe: unemployment with respect to material exclusion and immigration with respect to formal exclusion. Both formal and material exclusion from national citizenship achieve the result of creating an underclass of 'non-citizens', composed, within the nation state, of long term unemployed (material exclusion) and third world immigrants (formal exclusion). This underclass could be extended, by analogy, outside the nation state, as to include the citizens of the least developed countries with respect to the developed world. An 'underclass' is not a 'class' in the traditional meaning of the word, because it is not economically needed by the rest of the population and therefore is politically harmless. Tolerating an underclass (both within and outside the nation state) is therefore a feasible and politically riskless operation, but it betrays a readiness to suspend the basic values of citizenship, thus running the risk of weakening the universal claims of these values. Exclusion is a permanent feature of national

citizenship, however, at the same time it challenges the moral foundations of a society based on equality of citizenship (Dahrendorf 1994).

It is possible to reach some interesting conclusions on the issue of exclusion, by going back to the distinction traced above between citizenship and nationality as two alternative models of collective identity, the first 'association-based' and the second 'kinship-based'. The associational model of citizenship, based on self-determination and political participation is, in its original formulation, the 'enemy of exclusion'. There is no transcendental limit to membership of the community, as both entry and acquisition of a political identity are determined by the will and the activity of the individual. The prime example in modern times of this kind of universally inclusive type of political citizenship is represented by the French revolutionary Constitution of 1793, which conferred citizenship on all foreigners, who were resident and who had lived in France for at least one year and performed any social or economic function.¹⁰⁴ The French Revolution represents a crucial moment to understand the relationship between citizenship and exclusion. The external threat to the new born Republic, represented by the other European nation states, determined the rise of a French national identity based on transcendental elements of kinship (culture, language, ethnicity). The revolutionary society based on equality of citizenship was rescued by the ideal of national sentiment, which provided the cement to hold together the French republican polity and defeat the counter-revolutionary attacks coming from outside. This 'unnatural marriage' between citizenship and nationality determined the emergence of the French idea of *nation politique*, which preserves the political and associational features of citizenship, but at the same time accepts a certain degree of exclusion, resulting from the transcendental nature of national identity.¹⁰⁵

If citizenship is the 'enemy of exclusion', nationality is the origin of this same exclusion. Collective identity based on transcendental elements of kinship (culture, language, ancestry) presupposes that membership of the community is beyond the will and the activity of the individual. The most exclusive type of identity is the ethnic one, which discriminates the

¹⁰⁴ Article 4 of the Constitution of 1793, attached to the Declaration of the Rights of the Man and of the Citizen, states that is a French citizen 'Every foreigner fully twenty-one years of age, who, domiciled in France for a year, lives there by his labour, or acquires property, or marries a French woman, or adopts a child, or maintains an old man; finally every foreigner who is considered by the legislative body to have deserved well of humanity.'

¹⁰⁵ See, Brubaker (1992) and Gamberale (1995).

members of the community according to ancestry, and makes membership for outsiders impossible. However, other types of national identities based on culture and traditions still maintain strong patterns of exclusion, as, although they do not completely foreclose membership to outsiders, they demand cultural assimilation.

In Europe formal exclusion from citizenship takes different forms. In Germany immigrants, who are not ethnic Germans, are *de facto* denied access to formal citizenship and nationality,¹⁰⁶ although they are granted most social and civil rights (denizenship), while in France a complete formal and material exclusion from citizenship (alienship) for non-nationals, is mitigated by a relatively easy access to nationality (by birth and naturalisation).

In the European Union the issue of exclusion could play a fundamental role in the shaping of a common collective identity. A 'fortress Europe' immigration policy is seen by many European citizens as the necessary corollary of a stronger political union. If 'fortress Europe' and exclusion were to become features of European citizenship, the emerging European identity would be affected. At present the 'fortress Europe' type of exclusion is not based on transcendental elements (ancestry, culture, language and traditions), as in the nation state. Such an exclusion is not the result of an existing European collective identity, but rather as a proposed solution to the issue of immigration. It has been argued that in Europe the rationale for exclusion of third world immigrants has shifted from substantive elements of identity (kinship) to the abstract idea of 'welfare chauvinism' (Habermas 1992a). In this context the rationale for excluding non-Europeans from EU citizenship would be the goal of preserving scarce welfare resources for European citizens. Yet, the fundamental question raised by this type exclusion from EU citizenship is how it could affect the whole idea of European citizenship and especially the collective identity of the citizens.

For Dahrendorf (1994) exclusion within and outside the nation state, which results in an underclass of non-citizens, is both feasible and riskless in economic and political terms. However, he notes that tolerating exclusion betrays the basic values of citizenship based on self-determination and participation. From this perspective, exclusion, even if it is based on non-transcendental values like 'welfare chauvinism', is not without consequences for political identity and citizenship. Fortress Europe could move towards a cultural and ethnic Europe,

¹⁰⁶ The rigid formal exclusion of denizens was slightly relaxed by a reform of German nationality and naturalisation laws, which allows access to German citizenship for non-ethnic immigrants on condition of cultural assimilation and long term residence. See, Sections 85 *et seq*, *Ausländergesetz* (1990).

because in the long term more 'substantive' reasons than 'welfare chauvinism' might be needed to justify the denial of citizenship to non-Europeans. Therefore, although 'fortress Europe' is economically feasible and politically riskless in terms of immigration policy, it is not without risks for what concerns the evolution of European identity.

The idea of the 'outsider', the foundation of exclusion, is a powerful cement by which to forge cultural and ethnic identities. Signs of such a shift from fortress Europe to ethnic and cultural Europe can already be detected in the emergence of a new tide of racism and xenophobia against non-European immigrants. Third country immigration tends to be associated with a cultural and religious challenge to European society (such as a supposed 'Muslim threat') and this is partly reflected in the fact that some Member States have recently been very reluctant in discussing the possibility of granting freedom of movement within the European Union to third country nationals already resident in one Member State. In the mind of many European citizens immigration of Europeans coming from other Member States has become perfectly acceptable, while strong resistance is opposed to third world immigrants, regardless of the fact that they come from outside the Community or from another Member State.

European political identity, differently from cultural and ethnic identity not only does not need exclusion to consolidate its foundations, but also its very existence is threatened by exclusion. Any type of exclusion, in fact, undermines the principles of self-determination and participation, which are the foundations of political identity and citizenship.

12. Conclusions

The idea of European citizenship inevitably involves the question of the identity of the European citizen. The rights and obligations of citizenship need to be supported by a common collective identity. In the nation state this collective identity has taken the form of national identity, based on elements of kinship among the citizens (ancestry, culture, language and traditions) as well as on the idea of political association.

The re-creation of a similar type of culturally homogeneous collective identity at the European level is not only undesirable from the viewpoint of cultural pluralism, but it is also very unlikely to take place, given the varied cultural and national backgrounds, which characterises the peoples of Europe. Political association rather than affinities among

Europeans should sustain a European political identity, parallel to European citizenship. Such a citizenship, in fact, could only become a reality if set free from the ascriptive elements which characterise national membership. Europe is far too wide a cultural arena to accept a single national identity and citizenship, based on elements of kinship like ancestry, culture, language or traditions.

It has been considered how the ethnic and cultural nation is not the only setting which can support a stable collective identity of the citizens. A totally ethnic approach to the issue of collective identity undervalues the political element present in the national traditions and the fact the integrative element of the community might have evolved since the pre-modern 'ethnic past'. The analysis has focused in particular on the 'political element' to outline a concept of collective identity free from transcendental elements of kinship and entirely based on self-determination and political participation. In such an 'associational' model of collective identity there is a fundamental link between the way citizens see themselves as being part of the same community (identity) and their participation in the public life of the same community.

A 'democratic' form of government, which favours citizens' involvement in public life, is a better vehicle for political identity than a purely 'liberal' one, which protects the individual from the abuses of the public sphere, but undervalues the element of participation. A European supranational identity and citizenship, nevertheless, must be bound by the liberal principle of political and cultural pluralism in so far as it should not take the place of national identity and citizenship as exclusive source of loyalty and allegiance of the citizens, but rather co-ordinate, in a larger political arena, various types of political, cultural, ethnic and religious identities.

As a solution to the issue of European collective identity, a model of European citizenship and identity has been outlined. It has been argued that the political elements of self-determination and political participation can in themselves sustain a common political identity without the need to resort to transcendental elements of kinship. European political identity has been traced back to the experience of resistance against nazi-fascism during the second world war, which sustained a model of collective identity based on political action and self-determination against a degenerate and extreme form of transcendental national identity. Resistance is, however, only the founding political experience of a European collective identity entirely based on the principle of political association. This political identity is not

buried in a remote past, but renews itself in the continuous practice of citizenship in the European Union (through civil, political and social rights).

Regarding the issue of pluralism it is important to stress how the multiple nature of the model of European citizenship, which has been suggested, is not only a device to divide political identity 'vertically', that is to say to maintain allegiances at local and national level, while at the same time being part of a larger political organisation (the EU). It also operates 'horizontally', by limiting the influence of the 'political element' in the sphere of identity and allowing for the pluralistic expression of other forms of identity (cultural, linguistic, religious, ect.). This is of great importance in the European context, where common citizenship involves not only issues regarding centralisation of power (vertical), but also issues of cultural and political pluralism (horizontal). Such European cultural pluralism is a consequence of the existing different national identities in Europe and of the new tide of non-European immigrants, coming from different cultural and religious backgrounds.

The idea of 'fortress Europe' - to exclude non-Europeans from citizenship - could be criticised not only for being morally unjust, but also for the fact that it assumes the existence a particular type of European identity. In fact, there is not a common European national and cultural identity, which could support European citizenship and keep out all those who do not share the same identity. In this sense Europeans are already all outsiders to each other, being part of different national, cultural, linguistic and religious traditions.

A European supranational citizenship and political identity would be compatible with the high degree of national and cultural diversity currently existing among the peoples of Europe. For the same reason, however, a European nationality and national identity could not sustain and define the European polity, thus excluding third country immigrants on the basis of common ethnicity, culture, language and traditions.