

Who are “We”?

Dilemmas of Citizenship in Contemporary Europe

The principles of discourse ethics require that “all those affected by the consequences of the adoption of a norm” have an equal say in its validation if democratic legitimacy is to be attained. For discourse ethics, territorial boundaries and state borders are not coterminous with those of the moral community. Discursive communities can emerge *whenever* and *wherever* human beings can affect one another’s actions and well-being, interests or identity. The boundaries of the moral community and those of the political community do not overlap, and I would argue that they must be kept distinct—for what we owe each other as human beings cannot be reduced to what we owe each other as citizens of the same polity or as members of a historically defined cultural “we” community with shared memories and experiences. Our identities as modern subjects involve all these various dimensions—moral beings, citizens, and members of an ethical community. Throughout this book, I have explored tensions that may arise between these multiple commitments of modern individuals.

MULTICULTURAL INSTITUTIONALISM AND DELIBERATIVE DEMOCRACY

Critics of deliberative democracy who charge that it presupposes a culturally unitary polity (Valadez 2001) do not heed this necessary tension between the universalist claims of discourse ethics, which transcend national and ethical boundaries, and the special obligations to one another created by membership in a polity. Rather, their concern is to show that even within the boundaries of a universalistically oriented deliberative democracy model, certain groups will not find their demands met, and will opt for secession in extreme cases or demand some form of power sharing in others.

Since the principle that the voice of all those affected by a norm, a legislation, a policy be included in the democratic discourse leading to its adoption is fundamental to deliberative democracy, this model is open to a variety of institutional arrangements that can assure the inclusion of such voices. Such arrangements can range from power sharing in legislative as well as judicial organs between diverse cultural groups to multilingual and multicultural media organs, including newspapers, radio, and television. Language differences ought to be no bar to democratic participation.

Special power sharing arrangements can also involve proportional representation as well as local and regional assemblies, and the devolution of power from the center to the periphery. If our principle is to be as inclusive as possible of the voices of all those affected, it would follow that many decisions need to be made at the local and regional levels by those whose interests are most significantly influenced. Throughout these diverse institutional arrangements, however, the normative principles formulated in chapter 5 need to be heeded.

Egalitarian reciprocity. Members of cultural, religious, linguistic, and other minorities must not, by virtue of their membership status, be entitled to lesser degrees of civil, political, economic, and cultural rights than are members of the majority.

Voluntary self-ascription. An individual must not be automatically assigned to a cultural, religious, or linguistic group by virtue of his or her birth. An individual’s group membership must permit the most extensive form of self-ascription and self-identification; the state should not simply grant the right to define and control membership to the group at the expense of the individual. In multicultural societies in which the state recognizes the right of cultural and religious groups to exercise self-governance and autonomous jurisdiction in certain domains (cf. the cases of Canada, Israel, and India, as discussed in chaps. 3 and 4), it is desirable that at some point in their adult lives individuals be asked whether they accept their continuing membership in their communities of origin.

Freedom of exit and association. The freedom of the individual to exit the ascriptive group must be unrestricted, although exit may be accompanied by the loss of certain formal and informal privileges. Ostracism and social exclusion are the informal prices of exclusion; loss of land

rights and certain welfare benefits would be formal costs. With regards to the latter, the liberal-democratic state has the right to intervene and regulate the costs of exit in accordance with principles of citizens' equality.

In concrete institutional terms, these normative principles suggest that if procedures of proportional representation are adopted to assure the inclusiveness of excluded minorities, such groups and associations should respect the conditions stipulated above. Proportional representation methods should not imprison individuals in their ascriptive communities that do not permit them, for example, to vote for candidates of other groups and parties. Members of minority communities should be free to establish coalitions and associations with other groups, including members of the majority who share their views. Cross-cultural and intercultural political associations, delegations, and regional assemblies should be furthered. I do not favor proportional representation methods based on culturally, ethnically, and religiously defined identities; I do, however, favor efforts to widen the democratic inclusion of underrepresented minorities by encouraging them to vote, to organize themselves, and, to establish unions and associations as well as political parties. Overall, institutional arrangements should balance the individual autonomy demands of participants, viewed as self-defining cultural beings, and the collective autonomy claims of groups who want to exercise their rights of self-determination.

Admittedly, there will be cases when such measures of democratic inclusion will not be accepted by the majority or will not suffice to meet the demands of the minority for self-determination. In such cases, we will need to distinguish between oppressive majorities and irridentist minorities and, through an examination of the history, economy, as well as the culture of the conflict, determine whether secession is morally justified. I see no reasons to argue against secession on the basis of a deliberative or discourse model. Individual and collective self-determination rights may require the establishment of new political entities.

I do see a danger, however, in the efforts by some multiculturalists and liberal nationalists to romantically obscure the moral and political costs of ever-new nation-state creations. The Russian dolls phenomenon has been noted by writers on this topic (Tamir 1993). Every new polity, if it takes the form of a nation-state and since in most cases secessionist movements occur precisely because minority groups want to establish their own state in which their culture is hegemonic-entails moral and political costs. Every nationalist minority movement has its own "others." Every polity creates its own rules of inclusion and exclusion. Some of the dilemmas of contemporary liberal democracies can be observed most clearly through an examination of contemporary transformations in the rules and practices governing citizenship-that is, political membership. Ironically, irridentist and secessionist cultural movements are emerging in a world increasingly governed by the unstoppable movement of peoples across state boundaries and the inevitable mingling of cultures. I do not believe that cultures are pure or that they ought to be purified, or that state boundaries should coincide with those of dominant cultural communities; in this chapter, I want to juxtapose to the romance of cultural self-determination a case study about the transformations of the institutions of citizenship in the heart of the oldest nation-states on the globe, namely, those of Europe. The constitutive tension between human rights and self-determination claims is fundamental to liberal democracies if they are to remain liberal democracies and not fall for the romance of national or cultural purity.

HUMAN RIGHTS AND SELF-DETERMINATION IN A GLOBAL WORLD

With globalization and fragmentation proceeding apace, human rights and sovereignty claims today come into increasing conflict with each other (Heiberg 1994). On the one hand, a worldwide consciousness about universal principles of human rights is growing; on the other hand, particularistic identities of nationality, ethnicity, religion, race, and language, by virtue of which one is said to belong to a sovereign people, are asserted with increasing ferocity. Globalization, far from creating a "cosmopolitical order," a condition of perpetual peace among peoples governed by the principles of a republican constitution (Kant [1795] 1957), has brought to a head conflicts between human rights and the claim to self-determination by sovereign collectivities. Because sovereignty means the right of a collectivity to define itself by asserting power over a bounded territory, declarations of sovereignty more often than not create distinctions between "us" and "them," those who belong to the sovereign people and those who

do not. Historically there rarely is a convergence between the identity of those over whom power is asserted because they are residents of a bounded territory and the identity of the sovereign people in the name of whom such power is exercised. In this context, Hannah Arendt's astute observations, although formulated in a different context and with respect to the difficulties of protecting human rights in the interwar period in Europe, are more perspicacious than ever. "From the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an 'abstract' human being who seemed to exist nowhere.... The whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them" ([1951] 1979,291).

The citizenship and naturalization claims of foreigners, denizens, and residents within the borders of a polity, as well as the laws, norms, and rules governing such procedures, are pivotal social practices through which the normative perplexities of human rights and sovereignty can be most acutely observed. Sovereignty entails the right of a people to control its borders as well as define the procedures for admitting "aliens" into its territory and society; yet in a liberal-democratic polity, such sovereignty claims must always be constrained by human rights, which individuals are entitled to, not by virtue of being citizens or members of a polity, but insofar as they are simply human beings. Universal human rights transcend the rights of citizens and extend to all persons considered as moral beings. What kinds of immigration, naturalization, and citizenship practices, then, would be compatible with the commitments of liberal democracies to human rights? Can claims to sovereign self-determination be reconciled with the just and fair treatment of aliens and others in our midst?

In contemporary debates about these issues two approaches dominate: the radical universalist argument for open borders and the civic-republican perspective of "thick conceptions of citizenship." Radical universalists argue that from a moral point of view, national borders are arbitrary and that the only morally consistent universalist position would be one of open borders. Joseph Carens, for example, uses the device of the Rawlsian "veil of ignorance" to think through principles of justice from the standpoint of the refugee, the immigrant, the asylum seeker (Carens 1995, 229ff.; see Carens 2000 for modifications of these early arguments). Are the borders within which we happen to be born, and the documents to which we are entitled, any less arbitrary from a moral point of view than other characteristics like skin color, gender, and the genetic makeup with which we are endowed? Carens's answer is no. From a moral point of view, the borders that circumscribe our birth and the papers to which we are entitled are arbitrary, since their distribution does not follow any clear criteria of moral desert, achievement, and compensation. Therefore, claims Carens, liberal democracies should practice policies that are as compatible as possible with the vision of a world without borders.

Opposed to Carens's radical universalism are a range of communitarian and civic-republican positions, articulating more or less "thick" conceptions of citizenship, community, and belonging (see Galston 1991; Sandel 1996; Kessler 1998). These theories of citizenship, while not precluding or prohibiting immigration, articulate stricter criteria of incorporation and citizenship of foreigners than the theories of the universalists. Only those immigrants who come closest to the model of the republican citizen envisaged by these theories will be welcome; others will be spurned (Honig 1998, 2001). Of course, given how contested such thick conceptions of citizenship inevitably are, communitarian theories can easily lend themselves to the justification of illiberal immigration policies and the restriction of the rights of immigrants and aliens.

I would like to defend a position that will steer a middle course between the radical universalism of open-borders politics on the one hand and sociologically antiquated conceptions of thick republican citizenship on the other. Instead, stressing the constitutive tension between universalistic human rights claims and democratic sovereignty principles, I will analyze the contemporary practices of political incorporation into liberal democracies. Current developments in citizenship and incorporation practices within the member states of the European Union in particular are my primary concern. There are a number of compelling historical as well as philosophical reasons for choosing European citizenship and incorporation practices as the focal point for these concerns at the present time.

Insofar as they are liberal democracies, member states of the European Union cannot form a

“fortress Europe.” No liberal democracy can close its borders to refugees or asylum seekers, migrants or foreign workers. The porousness of borders is a necessary, while not sufficient, condition of liberal democracies. By the same token, no sovereign liberal democracy can lose its right to define immigration and incorporation policies.

I will distinguish conditions of *entry* into a country, like the permission to visit, work, study, and buy property, from conditions of *temporary residency*, and both in turn from *permanent residency* and *civil incorporation*, the final stage of which is *political membership*. These are different stages of political incorporation, very often collapsed into one another in theoretical discussions, but analytically distinguishable. At each of these stages the rights and claims of foreigners, residents, and aliens will be regulated by sovereign polities; but these regulations can be subject to scrutiny, debate, and contestation as well as to protest by those to whom they apply, their advocates, and national and international human rights groups. There is no step of this process that can be shielded from scrutiny by interested parties. A particular people’s democratic sovereignty in immigration and incorporation policy is not an unlimited right. A people’s right to self-assertion must be examined and evaluated in light of its commitment to universal human rights. Developments of citizenship and immigration practices within contemporary Europe reflect some of the deepest perplexities faced by all nation-states in the era of globalization.

DILEMMAS OF CITIZENSHIP IN THE EUROPEAN UNION

Since 1989 and the fall of authoritarian communism, the worldwide trend toward material global integration and ethnic and cultural fragmentation have coincided with another set of epochal developments on the continent: the end of the Cold War, the unification of Germany, and the emergence of the European Union as a political entity with a European Parliament, a European Council of Ministers, a European Court of Justice, and, since January 1999, a European currency—the Euro. But what is Europe? (Benhabib 1997b; 1999b).

For some Europe is not a continent, a mere geographical designator, but an ideal, the birthplace of Western philosophy and the Enlightenment, of democratic revolutions and human rights. For others Europe is a fig leaf behind which big finance capital and,

in particular, the German Bundesbank, hides in order to dismantle the social-welfare states of the Union. Since the Maastricht Treaty and the requirement that national governments cut their annual budget deficits to 3-percent, member states have forced their own populations to accept fiscal stability over full employment, and to place the shared confidence that international financial markets show in their national economies over the quality of life of these countries. Europe has ceased to be an ideal; for some it has long become an illusion. Tony Judt gives voice to the Euro-pessimist position with the following words: “We shall wake up one day to find out that far from solving the problems of our continent, the myth of ‘Europe’ has become an impediment to our recognizing them. We shall discover that it has become little more than the politically correct way to paper over local difficulties, as though the mere invocation of the promise of Europe could substitute for solving problems and crises that really affect the place” (1996, 140).

Whether as ideal or as illusion, “Europe” is being invoked today to define a new set of boundaries. Contemporary Europe is facing the danger that its moral and political boundaries will be redefined via geographical borders. Geography once again will be used to cover the tracks of complex processes of political and moral inclusion and exclusion. Where are the borders of Europe, and within Europe itself, after 1989? How can these borders be justified as boundaries? Whether as an ideal or illusion, whom does Europe include and whom does it exclude? After the Cold War, who are Europe’s “others”?

While foreigners made up 1.1 percent of the population in Germany in 1950, in 1992-93 this number rose to 8.6 percent, according to statistics provided by the Council of Europe. During the same period the foreign population of France increased from 4.2 percent to 6.6 percent; of Belgium, from 4.1 percent to 9.1 percent (in 1994, the foreign population of Belgium stood at 10.7 percent); of the Netherlands, from 1.0 percent to 5.1 percent; and of Luxembourg from 9.8 percent to 29.1 percent (in 1994 this figure was 34 percent). On the whole, the foreign population of Europe increased from 1.3 percent in 1950 to 4.9 percent in 1992-93.

The year 1993 marks a turning point in immigration trends in European countries. After the increase in immigration flows during the 1980s and the beginning of the 1990s, a reduction in the number of immigrant entries occurred. The decline in the number of asylum claims during this period was offset by the predominance of flows linked to family reunion and the need for highly skilled workers (SOPEMI 1998,15).

Reflecting these trends, and despite leveling at 8.6 percent of the total population in 1993, the foreign population of Germany increased to 8.9 percent in 1996. France has remained steady at about 6.3 percent and Belgium at about 9.1 percent. Among the European Union countries, only Austria, Germany, and Luxembourg have foreign populations higher than the 2.5 to 6 percent range characteristic of Ireland, the United Kingdom, Denmark, Sweden, and the Netherlands (as well as Norway, which is not an EU member). In Luxembourg, the foreign population increased from 31.8 percent in 1993 to 34.1 percent in 1996; during this same period, Austria's foreign population went from 8.6 percent to 9.0 percent in 1996 (SOPEMI 1998, 224).

These figures are not broken down according to geographical regions and countries of origin. Foreigners from former East European countries are included in these figures, along with guestworkers from Turkey and refugees from the former Yugoslav countries. A more precise breakdown shows that ethnic Turks and ethnic Kurds are the largest group of foreigners, not only in Germany, but in Western Europe in general. In 1993, they numbered 2.7 million. Of that number, 2.1 million live in Germany and, as of 1999, make up 2.8 percent of the population. The second largest group of foreigners are those from the former Yugoslav states, many of whom enjoy either full or temporary refugee status: 1.8 million Croats, Serbians, Bosnian Muslims, and Kosovo Albanians.

This picture is also complicated by the increasing intercountry migration of EU residents. Already in 1993, Italians working outside their home country numbered 1.5 million; they are followed by the Portuguese, of whom about 900,000 work and live outside Portugal. Spaniards, who are members of the European Union, and Algerians, who are not, each number around 600,000. As of the 1990 census, France counted 614,200 Algeria-born individuals, and 572,200 Moroccans among its population.

After the fall of communism in eastern and central Europe, immigration from the former East Bloc countries to the EU has continued. In 1998, 66,300 Poles entered Germany; about 10,400, France; and about 14,000, the Netherlands. In 1998, there were 20,500 Russian citizens resident in Finland; Greece is host to about 5,000 Russians, 3,000 Bulgarians, and approximately 2,700 Albanians.

Against the juridical and political background of European unification, these developments are bringing about a two-tiered status of foreignness throughout Europe. Different rights and privileges are accorded to different categories of foreigners within the fifteen member states.

1. The Treaty of Maastricht makes provisions for a "Union citizenship." Nationals of all countries who are members of the European Union are also citizens of the European Union. What does being a citizen of the Union mean? What privileges and responsibilities, what rights and duties does this entitle one to? Is citizenship of the Union merely a status category, let us say, just as membership in the Roman Empire was? Does membership in the Union amount to more than a passport that allows one to pass through the right doors at border crossings?

Clearly, Union membership is intended to be more than that. Not just a passive status, it is also intended to designate an active civic identity. Members of the EU states can settle in any country in the Union, take up jobs in these countries, and vote, as well as stand for office, in local elections and in elections for the European Parliament of Europe. As European monetary and economic integration progresses, Union members and observers are debating whether or not Union citizenship should also entail an equivalent package of social rights and benefits, like unemployment compensation, health care, and old-age pensions, which citizens of EU states can enjoy wherever they go.

2. The obverse side of membership in the Union is a sharper delineation of the conditions of nonmembers. The agreements of Schengen and Dublin intended to reconcile diverse practices of granting asylum and refugee status throughout member states. (Neuman 1993). 'Referred to as "legal harmonization," these agreements have made the granting of refugee and asylum status in the Union increasingly difficult. An individual who seeks refugee and asylum status in a member country is not permitted to apply in another country of the Union until the first application is resolved. Although it is left unsaid, the presumption is that once such an application has been denied in one member country, it is unlikely to succeed in another. The decision of the European Council of Ministers to erect a Union-wide office to deal with refugee and asylum issues, while creating legal and bureaucratic homogenization and standardization, by the same token intends to make Europe's borders less and less porous by disallowing individuals in need of multiple venues of aid and rescue.

3. As Union citizenship progresses, discrepancies in each member country are arising between those who are foreigners and third-country nationals, and those who are foreign nationals but EU members. A two-tiered status of foreignness is thus evolving: on the one hand there are third-country national foreign residents of European countries, some of whom have been born and raised in these countries and who know of no other homeland; on the other hand are those who may be near-total strangers to the language, customs, and history of their host country but who enjoy special status and privilege by virtue of being nationals of states which are EU members (Klusmeyer 1993). Members of the fifteen EU countries who are residents in countries different from those of their nationality can vote as well as run for and hold office in municipality elections and in elections for the European Parliament. These rights are as a rule not granted to third-country nationals, though, as I shall argue below, some EU countries like Denmark, Sweden, Finland, and the Netherlands permit foreigners who have fulfilled certain residency requirements to vote in local and, even some cases, regional elections.

Partially in response to the growing pressures created by this situation, Germany on May 7, 1999, reformed its 1913 citizenship law. The German parliament accepted by a two-thirds majority that the principle of *jus sanguinis* be supplemented by *jus soli* in the acquisition of German citizenship (see Benhabib 1999a). After January 1, 2000, children born to foreign parents who have resided in the country for eight years acquire German citizenship without forfeiting other passports they hold. When they reach the age of twenty-three, they must decide for one citizenship or another. In addition to the *jus soli* regulation, the new law expedites the acquisition of German citizenship by foreigners by reducing the residency-to-citizenship transition period from fifteen to eight years. The decision of the German parliament is, of course, to be welcome, but we can understand the significance of this new law only when we place it within a larger conceptual and institutional context.

Since the Treaty of Amsterdam, signed on May 1, 1997, EU member countries have grown aware of the necessity to harmonize the citizenship and naturalization laws of distinct member countries, and to reduce discrepancies in the juridical and political status of EU citizens and third country nationals. According to the Treaty of Amsterdam, naturalization, immigration, refugee, and asylum policies within the EU are placed in the Third Pillar. The First Pillar refers to EU-wide law and regulations; the Second Pillar concerns common security and cooperation measures, particularly those pertaining to criminality and drug traffic; the Third Pillar is defined as "intergovernmental law," and is subject to discretionary agreement and cooperation as well as to the conventions of international public law. In these areas a unanimous decision procedure

will hold till the year 2004 (see Jong 2000, 21-25). In other words, although EU member countries retain sovereign discretion over their immigration and asylum policies, “the Treaty of Amsterdam firmly embeds immigration and asylum policies within an EC framework” (Jong 2000,25).

The resolutions of the European Council, reached in Tampere, Finland, during October 15-16, 1999, reiterate the commitment to European integration based on respect for human rights, democratic institutions, and the rule of law. The Council emphasizes, however, that these principles cannot be seen as the exclusive preserve of the Union’s own citizens: “It would be in contradiction with Europe’s traditions to deny such freedoms to those whose circumstances led them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organize it and commit related international crimes” (van Krieken 2000, 305).

Despite these wishes and guidelines for a coherent immigration and asylum policy at the intergovernmental level of EU institutions, legal and institutional conditions for immigrants and asylees vary widely among member countries. Neither the public nor politicians are clear about how these issues relate to the foundations and well-being of liberal democracies; potentially, immigration and asylum issues remain time bombs in the hands of demagogues and right-wing politicians, ready to explode upon very short notice. Not only politically, but theoretically as well, the incorporation and acceptance of immigrants, aliens, and foreigners into liberal democracies touch upon fundamental normative and philosophical problems concerning the modern nation-state system.

Dilemmas of citizenship in contemporary Europe thus have implications for debates about citizenship in contemporary political philosophy. In discussions throughout the 1980s and 1990s, and particularly under the influence of the so-called liberal-communitarian debate, the concept and practice of citizenship was analyzed largely from a normative perspective (Galston 1991; Macedo 1990; Kymlicka and Norman 1995). Usually one aspect—the privileges of political membership—was in the foreground.’ This normative discussion, primarily about the duties of democratic citizenship and democratic theory, was carried out in a sociological vacuum. Political philosophers paid little attention to citizenship as a sociological category and as a social practice that inserts us into a complex network of privileges and duties, entitlements and obligations. Political philosophy and the political sociology of citizenship went their separate ways. But the privileges of political membership are only one aspect of citizenship; collective identity and the entitlement to social rights and benefits are others. We need to disaggregate the theory and practice of citizenship into these various dimensions and broaden our focus to include conditions of citizenship in sociologically complex, decentered, welfare-state democracies. Through the unprecedented movement of peoples and goods, capital and information, microbes and communication across borders, individuals no longer enter their societies at birth and exit them at death, as John Rawls counterfactually assumed (see 1993, 41; Kleger 1995).

To underscore how constitutive the movements of peoples back and forth across borders have become in the contemporary world, Rainer Bauboeck has observed:

On the one hand, immigrants who settle in a destination country for good may still keep the citizenship of the sending society and travel there regularly so that the sending country rightly regards them as having retained strong ties to their origins.... Temporary migrants, on the other hand, often find it difficult to return and to reintegrate. Some migrants become permanent residents in destination countries without being accepted as immigrants and without regarding themselves as such; others develop patterns of frequent movement between different countries in none of which they establish themselves permanently... Contemporary migration research should go beyond these narrow national views and conceive of migration as a genuinely transnational phenomenon, not only at the moment of border crossings but also with regard to the resulting social affiliations. International migration transnationalizes both sending

and receiving societies by extending relevant forms of membership beyond the boundaries of territories and of citizenship. (1998, 26; see also Cohen 1999)

CITIZENSHIP AS SOCIAL PRACTICE

Sociologically, the practice and institution of “citizenship” can be disaggregated into three components: collective identity, privileges of political membership, and social rights and claims.

Collective Identity. Citizenship implies membership in a political entity that has been formed historically, that has certain linguistic, cultural, ethnic, and religious commonalities, and that can be distinguished from similar political entities. The precise form of such an entity varies historically, whether it is a multinational empire or a national republic, a commonwealth, or a federation. Viewed analytically, though, the concepts of citizenship (in the sense of membership in a political community) and national identity (in the sense of membership in a particular linguistic, ethnic, religious, and cultural group) are to be distinguished from each other. Political communities are not composed of nationally and ethnically homogeneous groups. Historically this was just as true in the multinational and multiethnic Hapsburg and Ottoman Empires as it is today in the United States, the United Kingdom, Canada, Australia, and New Zealand.

Privileges of Membership. The oldest meaning of citizenship is that of the privileges and burdens of self-governance. For the ancient Greeks the *politos* is the member of the polis, the one who can be called to military service as well as jury duty, who must pay taxes and serve in the Ecclesia in his capacity as member of his Demei at least one month of the year. The link between the city and the citizen is retained in the etymology of *civitas* and *citoyenne* on the one hand and *Buergher* and *Burgh* on the other.

Citizenship confers upon its holders the right of political participation, the right to hold certain offices and perform certain tasks, and the right to deliberate and decide upon certain questions. Aristotle writes in the *Politics*: “The state is a compound made of citizens; and this compels us to consider who should properly be called a citizen and what a citizen really is. The nature of citizenship, like that of the state, is a question which is often disputed: there is no general agreement on a single definition: the man who is a citizen in a democracy is often not one in an oligarchy” (1941, 1274b-75a). In making the identity of the citizen dependent upon the type of political regime, Aristotle is emphasizing the contingent nature of this concept. It is not nature but the city and its conventions, the *nomoi*, that create the citizen. Yet we see precisely in Aristotle’s work how this insight into the socially constituted aspect of citizenship goes hand in hand with an exclusionary vision of the psychosexual attributes of citizenship. Even if regime types determine who is a citizen, only some, in Aristotle’s view, are “by nature fit” to exercise the virtues of citizenship; others are not. Slaves, women, and non-Creeks are not only excluded from the statutory privileges of citizenship, but their exclusion is viewed as rational insofar as these individuals are deemed not to possess the virtues of mind, body, and character essential to citizenship. This tension between the social constitution of the citizen and the psychosexual “natural substance” that the citizen ought to possess accompanies struggles over the meaning of citizenship down to our own days. Struggles over whether women should have the vote, whether nonwhite and colonial peoples are capable of self-rule, or whether a gay person can hold certain kinds of public office are illustrations of the tension between the social and the naturalistic dimensions of citizenship.

Social Rights and Benefits. The view that citizenship can be understood as a status that entitles one to the possession of a certain bundle of entitlements and benefits as well as obligations derives from T. H. Marshall (1950). Marshall’s catalog of civil, political, and social rights is based upon the cumulative logic of struggles for the expansion of democracy in the nineteenth and the early part of the twentieth centuries. Civil *rights* arise with the birth of the absolutist state; in their earliest and most basic form they entail the rights to the protection of life, liberty, and property, the right to freedom of conscience, and certain associational rights, like those of contract and marriage.

Political rights in the narrow sense refers to the rights of self-determination, to hold and run for office, to enjoy freedom of speech and opinion, and to establish political and nonpolitical associations, including a free press and free institutions of science and culture.

Social rights are last in Marshall's catalog, because they have been achieved historically through the struggles of the workers', women's and other social movements of the last two centuries. Social rights involve the right to form trade unions as well as other professional and trade associations, health care rights, unemployment compensation, old-age pensions, child care, housing and educational subsidies, and the like. These social rights vary widely from one country to another and depend thoroughly upon the social class compromises prevalent in any given welfare-state democracy.

Were we to try to apply Marshall's catalog to the condition of foreigners in the European Union, we would note an interesting reversal. In all European countries, foreigners who are third country nationals possess full protection of their civil rights under the law as well the enjoyment of most social rights. Noncitizens of EU states enjoy the same protection in the eyes of the law as citizens: their earnings and property are equally protected, and they enjoy freedom of conscience and religion.

Under the provisions of the social-welfare democracies of European states, most foreign residents are entitled to health care benefits, unemployment compensation, old-age pensions, child care, some housing and educational subsidies, as well as certain social welfare benefits, like minimum income compensation. These social benefits are not conferred automatically. They depend on the individual's length of residence in the host country, her residency status-whether permanent or temporary-and, most commonly, on her particular wage or service contract. Despite variations among member states, foreigners in most EU countries benefit from some of these social rights, but their enjoyment of political membership is either blocked or made extremely difficult.

This sociological analysis of citizenship and incorporation regimes suggests a particular methodological perspective: the collective identity of foreigners results from the complex interaction between various factors, namely, the social and cultural attributes of immigrant groups, which originate in their home country; and the juridical, political, social as well as cultural norms and practices of the host country. This then suggests the question, Why are certain rights granted to foreigners and others withheld? Why are certain identity-marking characteristics privileged in certain contexts and not in others? Note the difference between Germany and the Netherlands in their practices of defining the collective and individual status of foreigners. Countries single out certain criteria as constitutive of foreign identity. But how do these criteria compare to the history and self-understanding of a particular country? The treatment of the "others" reveals who we are, because in Julia Kristeva's words, "Nous sommes étrangers à nous même" (we are strangers to ourselves) (1991).

POLITICAL PARTICIPATION RIGHTS IN EUROPE TODAY

The highest privilege of citizenship is the possession of political rights-rights to vote, run for, and hold office-in the narrow sense. It is also through the entitlement to and the exercise of these rights that one's status as a citizen, as a member of the body politic, will be established. The lines which divide members from strangers, citizens from foreigners, the "we" from the "they" are drawn most sharply around these privileges.

Political theory on these issues lags far behind actual developments. None of the following host countries of the European Union grants foreigners the right to participate in national elections: Denmark, the Netherlands, Sweden, Belgium, France, Austria, Germany, and United Kingdom. Yet in Denmark as well as Sweden, foreigners can participate and run in local and regional elections. Norway, Finland, and the Netherlands grant these rights at the local but not regional level. In Switzerland, which is not a member of the European Union, the cantons of Neuchâtel and Jura grant foreigners these rights as well. Similar attempts-in Berlin, Hamburg, and Schleswig-Holstein to grant local election rights to

foreigners who have resided in Germany for more than five years, were declared "unconstitutional" by the German Constitutional Court (Weiler 1995). The Maastricht Treaty, which established Union citizenship for the citizens of the twelve member countries, rendered this decision moot (cf. BVerG, 8.1. 1997). What, then, is the link between the status of active citizenship and "national membership"?

The acquisition of citizenship rights proceeds in most countries of the world along three

categories: the principles of territory, origin, or consent. The principle of territoriality known as *jus soli* means that a political community has sovereign claims over a territory: persons who live in this territory are considered either to fall under the dominion or authority of this sovereign or are themselves viewed as part of the sovereign. The first case corresponds to predemocratic understandings of sovereignty, and defines citizens as subjects, as was the case with the absolutist regimes of Europe. Historically the Ottoman Empire as well as the Hapsburg monarchy and the German Kaiser regime followed this pattern. These old regimes always granted certain protected groups special citizenship rights and privileges—as was the case, for example, for the *Reichsjuden*, the Jews of the Empire—during the period of the Hapsburg Dual Monarchy.

The territorial principle of citizenship can also have a democratic variant. The principles of citizenship, introduced by the American and the French Revolutions, follow the democratic understanding of *jus soli*: each child born on the territory of a democratic sovereign is potentially a member of this sovereign and therefore has claims to citizenship (Brubaker 1992, 45).

The second principle according to which citizenship is granted is that of ethnic origin or belonging, *jus sanguinis*. If one considers France and the United States prime examples of countries that base citizenship on *jus soli*, Germany could until recently, be seen as paradigm example of *jus sanguinis*. The principle of *jus sanguinis* means that citizenship is attained by virtue of belonging to a people or ethnic group. How is belonging to a people or ethnic group to be established? Biological lineage is the simplest and clearest criterion for defining this. The German citizenship law of July 23, 1913 - das *Reichs- and Staatsbuergerschaftsgesetz*, which formed the basis of Germany's citizenship law until January 1, 2000 - stated that citizenship was to be inherited (Klusmeyer 1993). This law was formulated for the specific political purpose of making it impossible for the large numbers of Jews and Poles who then resided in the Kaiserreich to acquire German citizenship (Wertheimer 1987). Only a century earlier, however, the Prussian Edict of Emancipation of 1812 had granted Jews in Prussia the status of citizenship without taking into account criteria of ethnic belonging (Huber 1961). During the Weimar Republic, the German Social Democrats, much like today's coalition government, had sought to reintroduce *jus soli* into German citizenship legislation.

The third practice through which citizenship is granted is “naturalization” or “nationalization.” For countries like the United States, Canada, Australia, and New Zealand, which view themselves as “countries of immigration,” this procedure is as important as the acquisition of citizenship rights through birth right or descent. Increasingly, European Union countries which had not hitherto viewed themselves as such immigration societies, are also recognizing the significance of naturalization procedures and reexamining their old practices.

Naturalization usually involves fulfilling certain years of residency in the country where citizenship is sought. Other requirements may include some proof of language competence, a demonstration of “civic knowledge,” as is the case in the United States, employment and proof that one will not be a “financial burden on the system,” and some certification of good character or conduct, usually satisfied either through searches of police records or by personal letters of affidavit from citizens. Most countries grant naturalization requests on the basis of family bonds—from a spouse, a parent, or a sibling—priority over other types.

It is important to emphasize that the procedures and decisions of naturalization policy have rarely been subject to strict scrutiny either for their constitutionality or for human rights violations. The institutional aspect of citizenship has usually been shrouded in mists of bureaucratic logic, or is subject to the vacillating will of democratic majorities.

CITIZENSHIP AND POLITICAL THEORY

I have examined dilemmas of citizenship in contemporary Europe from the standpoint of normative political philosophy. I also have suggested that these political developments should lead us to rethink our normative categories; we need to bring them more into contact with the new sociological and institutional realities of citizenship in the contemporary world.

A central thesis of my argument is that theories of citizenship have often relied upon obsolete and misleading premises. The first among them is the fiction of a “closed society.” Political philosophers have often assumed a closed society with nonporous borders. In Rawls's crystal-

clear formulation:

The first is that we have assumed that a democratic society, like any political society, is to be viewed as a complete and closed social system. It is complete in that it is self-sufficient and has a place for all the main purposes of human life. It is also closed, in that entry into it is only by birth and exit from it is only by death.... For the moment we leave aside entirely relations with other societies and postpone all questions of justice between peoples until a conception of justice for a well-ordered society is on hand. Thus, we are not seen as joining society at the age of reason, as we might join an association, but as being born into a society where we will lead a complete life. (1993, 41)

In light of global developments in industry, finance, communication, tourism, and the arms industry it is implausible today to proceed from the counterfactual Rawlsian assumption that “a democratic society can be viewed as a complete and a closed social system.” A theory of political justice must necessarily include a theory of international justice. Not only the current level of development of a global civil society, but more significantly, the fact that in democratic societies the right of exit remains a fundamental right of the citizen makes this fiction obsolete.

Furthermore, to be a foreigner does not mean to be beyond the pale of the law. It means to have a specific kind of legal and political identity that includes certain rights and obligations while precluding others. In many European host countries we see today the softening of those legal restrictions that previously made it impossible for foreigners to participate in elections and run for office. The restrictions which barred foreigners from political membership rest, in the final analysis, upon assumptions of who the citizens themselves are and of what the virtues of citizenship consist.

In this respect, the principles of neither *jus sanguinis* nor *jus soli* are consistent and plausible enough to justify the theory and practice of democratic citizenship. There is a hiatus between the self-understanding of democracies and the way they confer citizenship. While democracy is a form of life which rests upon active consent and participation, citizenship is distributed according to passive criteria of belonging, like birth upon a piece of land and socialization in that country or membership in an ethnic group.

A further assumption that has been greatly misleading in these debates is that of *state-centeredness*. Locke was right in insisting that consent was expressed through citizens' participation in the numerous activities of civil society (see [1690] 1980). Our contemporary societies are even more complex, fragmented, and contradictory than those in Locke's time. In such societies human conduct and interactions assume many and diverse forms. We are just as fully members of a family, of a neighborhood, of a religious community, or of a social movement as we are members of a state. While the modern nation-state remains a possible structural expression of democratic self-determination, the complexity of our social lives integrates us into associations that lie above and below the level of the nation-state. These associations mediate the manner in which we relate to the state. If we stop viewing the state as the privileged apex of collective identity, but instead, along with Rawls, view it “as a union of unions,” then citizenship should also be understood as a form of collective identity mediated in and through the institutions of civil society.” In the European context this means foreigners' claims to citizenship in a political entity should be established not through hierarchical decisions from above alone, but through individuals' exercise of certain skills and the fulfillment of certain conditions. Civil citizenship should lead to political citizenship (Janoski 1998).

But what reasonable conditions need to be fulfilled in order for someone to transition from one status of alienage to another? Length and nature of residency in a particular country are undoubtedly top among such criteria. Others are minimal knowledge of the language of the host country as well as certain “civil knowledge” about the laws and governmental forms of that country. Criteria such as these can be formulated and applied reasonably.

Increasingly, it is what one does and less who one is, in terms of ascribed identities of race, ethnicity, and religion, that should determine membership and citizenship claims. Applied to the case of contemporary Europe, this means very concretely: If an Italian or a Portuguese national can take up residence in Paris, Hamburg, or London and run for office as well as vote in local elections in those countries after about six months, what is the justification for denying similar rights to a Turkish or Croatian national, to a Pakistani or to an Algerian who has resided in a

country, has participated in the economy and civil society, has been a member of a trade union or a religious group, a school board or a neighborhood association? The liberal-democratic state is a “union of unions”; while the virtues and abilities that make an individual a good neighbor, a reliable coworker, an honest member of the business community may not be immediately transferable to the virtues and abilities required by political citizenship, it is just not the case that there is an ontological divide between them. We must inquire about those social practices through which the transition from civil to political citizenship can be encouraged and the qualities of mind of an “enlarged mentality” can be cultivated (Benhabib 1992). Such an enlarged mentality allows us to exercise civic imagination in taking the standpoint of the other(s) into account in order to woo their agreement on controversial and divisive norms that affect our lives and interactions. Such an enlarged mentality, which I see as a sine qua non for the *practice*, not the *acquisition*, of democratic citizenship, presupposes the virtues of membership and association, an individual’s ability to negotiate conflicting perspectives and loyalties, and the ability to distance oneself from one’s most deeply held commitments in order to consider them from the hypothetical standpoint of a universalistic morality (Benhabib 1994). The democratic public sphere in which these virtues are cultivated is not opposed to global civil society, but is an aspect of it.

IMMIGRATION AND EMIGRATION: ARE THEY SYMMETRICAL?

Let me return to the central philosophical problem concerning the principles of liberal-democratic membership. Are there any justifiable conditions under which a liberal-democratic polity can close its borders to outsiders seeking admission? My short answer is, No, there are none. There are some justifiable restrictions on the quality and quantity of new immigration which nation-states can allow, but never a justification from closing borders completely. Furthermore, many of these plausibly justifiable restrictions, like limiting the entry of individuals and groups identified as posing a military, security or immunological threat to a country, themselves often permit serious contestation. Think of how the claim that certain individuals pose a “national security threat” can and has been misused throughout history to prevent political dissidents from entering countries and has led to the creation of categories of “unwanted” aliens. The virtues of liberal democracies do not consist in their capacities to close their borders but in their capacities to hear the claims of those who, for whatever reasons, knock at our doors. Hearing these claims does not mean automatically granting them or recognizing them, but it does mean that the moral claim of the one who is seeking admission imposes a reciprocal duty upon us to examine, individually and singly, each case of those seeking membership in our midst.

There is, in other words, a fundamental human right to exit as well as to seek admission into a political community, a right grounded in the recognition of the individual as an autonomous person entitled to the exercise of rights. The fundamental right to human liberty entails the fundamental right to entry and exit. This fundamental right creates a set of reciprocal obligations and duties upon states—for example, to refrain from preventing the exit of those who want to leave or from completely blocking off those who want to enter. Any restrictions to be placed upon the rights of exit and entry must be made compatible with, as well as limited by, this fundamental human right.

This fundamental right of exit and entry is a moral claim and not a legal right, which would or could be defended by established authority with legal, coercive powers? This right articulates a moral claim because the recognition of the human liberty to express allegiance to the political order knowingly and willingly entails the right to exit when such allegiance is not forthcoming. Citizens are not prisoners of their respective states. Only a polity that violated other fundamental human liberties would also be one that limited the freedom of its citizens to exit.

In one of the few contemporary discussions of these issues, Michael Walzer argues that “the fact that individuals can rightly leave their own country, however, doesn’t generate a right to enter another (any other). Immigration and emigration are morally asymmetrical (1983, 40). But the asymmetry of these rights cannot be maintained, for two reasons. The first ground is a pragmatic consideration that is also morally relevant. In a world where the surface of the earth is already divided into nation-states, or at least into political units that exercise sovereignty over

their territory, the individual's right to exit effectively means that one lands upon someone else's territory. There is literally nowhere to go in today's world; at every stretch of the passage one would be crossing into the sovereign territory of some or other political entity. If this is so, then to acknowledge a human right to exit means at least to acknowledge a human right to entry. This *right to entry* must be distinguished from the *claim to membership*, but at this stage only the human right to entry is under consideration.

The second reason why this asymmetry breaks down is that the fundamental human right to exit is meaningful only if one can reverse moral perspectives and consider that for some to be able to go means, for others, that not only will strangers come, but also that we are all potentially strangers in other lands. If we argue that we have a right to leave, then we are also saying that others have to recognize us as potential strangers who may want to enter their country. But if we want this claim recognized for ourselves, then we also must recognize it for others. It is only the mutual recognition of the reciprocal obligations generated by this right that give it meaning as a moral claim. There is a fundamental human right to exit only if there is also a fundamental human right to admittance, though not necessarily to membership.

What is the distinction between *admittance* and *member-ship*?¹⁷ All organized political communities have the right to control criteria of membership and procedures of inclusion and exclusion. Criteria to be fulfilled, qualifications to be met, and procedures to be followed are usually stipulated by all liberal democracies in granting access to membership and, eventually, citizenship. Admittance does not create an automatic entitlement to membership; it does entail one's moral right to know how and why one can or cannot be a member, whether one will or will not be granted refugee status, permanent residency, and so forth. In articulating these conditions, a liberal-democratic polity must treat the foreigner and the stranger in accordance with internationally recognized norms of human respect and dignity, according to transparent regulations for which identifiable governmental authorities can be held accountable. Furthermore, nonmembers and their advocates must have the right to litigate and contest decisions concerning immigration, asylum, and refugee status (cf. Walzer 1983, 60). The prerogative of democratic sovereigns to define criteria of political inclusion is not an unconditional right. Democratic sovereignty and human rights considerations must mutually limit and control each other.

Liberal democracies are always under a burden of proof, when policing their borders, to prove that the ways in which they do so do not violate fundamental human rights. A democratic state may wish to examine the marriage certificates of citizens and noncitizens for their veracity, but a democratic state that subjects women to gynecological exams in order to test whether the marriage was consummated, as Margaret Thatcher's England did, is violating a fundamental human right of equal treatment and respect of bodily integrity.

Democratic states that are anxious to maintain certain standards of living among their population are free to regulate their labor markets; they may punish employers who hire illegal aliens who lack proper documentation, pay them low wages, and furnish unjust conditions; they may allow employers to recruit workers from certain foreign countries who possess certain skills. But a democratic state that admits such individuals must specify the conditions that would allow them to stay; the opportunities that would allow them to change their status of admission once within certain borders; and the rights and benefits to which admission entitles them. A liberal democracy cannot push entire categories of peoples away, as Germany attempted to do in the early 1990s with the argument that immigrants and asylum seekers negatively affected the domestic standard of living. Besides the dubious causal economic connections established in such assertions, there is also the more fundamental problem of the violation of human rights, be it those of asylum seekers under internationally recognized conventions or the rights of foreign residents to claim political membership, with which I have dealt in this chapter. It is important to acknowledge that a state's economic interests can never alone serve as moral trumps in immigration and asylum policies, and that liberal democracies must seek to balance their economic well-being-if, in fact, immigration is affecting domestic markets adversely-with a commitment to and respect for fundamental human rights.'

SOVEREIGNTY, HUMAN RIGHTS AND THE NATION-STATE

In his 1923 work *The Crisis of Parliamentary Democracy*, Carl Schmitt wrote:

Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally. Democracy requires, therefore, first homogeneity and second-if the need arises-elimination or eradication of heterogeneity... Equality is only interesting and valuable politically so long as it has substance, and for that reason the possibility and the risk of inequality ... [that] every adult person, simply as a person, should *eo ipso* be politically equal to every other person, this is a liberal, not a democratic idea" ([1923] 1985, 9-11)

Schmitt thus drives a wedge between liberal and democratic conceptions of equality. While he understands liberalism to advocate universal moral equality, he views democracy as stipulating only the equality of all as members of a sovereign people. This argument neglects the specificity of modern, as opposed to ancient, projects of democracy.

For moderns, the moral equality of individuals qua human beings and their equality as citizens are imbricated in each other. The modern social contract of the nation-state bases its legitimacy on the principle that the consociates of the nation are entitled to equal treatment as rights-bearing persons precisely because they are human beings; citizenship rights rest on this more fundamental moral equality, which individuals enjoy as persons. "The Rights of Man" and "The Rights of the Citizen" are coeval for the moderns.

To be sure, there are conflicts and tensions in these formulations: every national social contract circumscribes the circle of its citizens, thus creating distinctions between those who are signatories of the social contract and those to whom the contract applies but who have no standing as signatories. Modern liberal democracies, established in the wake of the American and French Revolutions, proclaim at one and the same time that the consociates of the sovereign body are to treat one another as rights-bearing individuals by virtue of their status as human beings, not just as consociates. At the same time, these very proclamations, articulated in the name of universal truths of nature, reason, or God, also define and delimit boundaries, create exclusions within the sovereign people as well

as without. There are "mere auxiliaries to the Republic," as Kant called women, children, and propertyless servants within ([1797] 1996, 92), and there are foreigners and strangers without. This constitutive tension does not arise, as Schmitt assumes, because liberalism and democracy contradict each other. Rather, there is a constitutive dilemma in the attempt of modern nation-states to justify their legitimacy through recourse to universalist moral principles of human rights, which then get particularistically circumscribed. The tension between the universalistic scope of the principles that legitimize the social contract of the modern nation and the claim of this nation to define itself as a closed community plays itself out in the history of the reforms and revolutions of the last two centuries.

When Hannah Arendt wrote that "the right to have rights" was a fundamental claim as well as an insoluble political problem, she did not mean that aliens, foreigners, and residents did not possess any rights ([1951] 1979, 226). In certain circumstances, as with Jews in Germany, with Creek and Armenian nationals in the period of the founding of the republic of Turkey, and with German refugees in Vichy, France, entire groups of peoples were "denaturalized," or "denationalized," and lost the protection of a sovereign legal body. For Arendt, neither theoretical nor institutional solutions to this problem were at hand. Theoretically, she ought to have explored further the constitutive tension between national sovereignty and human rights claims; institutionally, several arrangements have emerged since the end of World War II that express the learning process of the nations of this world in dealing with the horrors of the past century: the limiting and testing of parliamentary majorities through constitutional courts, particularly in the domain of human rights issues; the 1951 Convention relating to the Status for Refugees; the creation of the United Nations High Commissioner for Refugees (UNHCR); the institution of the International Court; and, more recently, of an International Criminal Court through the treaty of Rome. While procedures of constitutional review (which are becoming more prevalent in European political practice through the development of the European Court of justice) can help protect the fundamental human and civil rights of ethnic, religious, linguistic, sexual, and other minorities, the UN conventions remain nonenforceable humanitarian

guidelines. TO this day, the authority of the International Court of justice in the Hague is contested. Even the International Criminal Court will deal first and foremost to deal with “crimes against humanity.” There are still no global courts of justice with the jurisdiction to punish sovereign states for the way they treat refugees, foreigners, and aliens. Nor is there a global law-enforcement agency that would carry out such injunctions. In this domain, voluntary obligations on the part of nation-states, self-incurred through the signing of treaties, remain the norm.

Yet the treatment of aliens, foreigners, and others in our midst is a crucial test case for the moral conscience as well as political reflexivity of liberal democracies. Defining the identity of the sovereign nation is itself a process of fluid, open, and contentious public debate: the lines separating “we” and “you,” “us” and “them,” more often than not rest on unexamined prejudices, ancient battles, historical injustices, and sheer administrative fiat. The beginnings of every modern nation-state carry the traces of some violence and injustice; thus far Carl Schmitt is right. Yet modern liberal democracies are self-limiting collectivities that at one and the same time constitute the nation as sovereign while proclaiming that sovereignty derives its legitimacy from the nation’s adherence to fundamental human rights principles. “We, the people,” is an inherently conflictual formula, containing in its very articulation the constitutive dilemmas of universal respect for human rights and particularistic sovereignty claims (Ackerman 1991). The rights of foreigners and aliens, whether they be refugees or guestworkers, asylum seekers or adventurers, indicate that threshold, that boundary, at the site of which the identity of “we, the people,” is defined and renegotiated, bounded and unraveled, circumscribed or rendered fluid.