The Significance of the European Union for the Evolution of Citizenship and Immigration Policies: the cases of the United Kingdom and Italy

by

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Abstract

This thesis analyses the link that the establishment of European citizenship creates between citizenship, nationality, and immigration policies. To be a European citizen, one needs to be a national of a member state. According to this criterion, nationality and citizenship are bound to each other. There is no possibility of access for those who do not have the status of national citizenship. European citizenship legitimised a privileged position to which not all individuals are entitled, and conditions of access are under the jurisdiction of each member state. It is argued that normatively European citizenship reinforces the ideology of nationality while empirically it has been used to forge a sort of European identity. In other words, the underlying argument is that European citizenship functions to define European identity and nationality functions towards the establishment of national immigration policies. This process leads to the formation of a binary typology of 'us and them', strengthened by legislation and political debates. The formation of the category of 'us' as Europeans does not find a response at the empirical level as the public does not fully identify with the Euro-polity. What emerges instead is that the public regards 'compatibility' between a European and national identity as more optimal. The principal benefit of Euro-citizenship is to re-prioritise the means of citizenship from political rights to social and economic rights. This 'opportunity structure', nevertheless, remains in a void as long as Community membership relies on the condition of nationality. The thesis proposes the introduction of a 'legal subjectivity' based on the redefinition of the concept of legality detached from nationality and grounded in the active exercise of civil, political, and social rights. Such a redefinition is necessary to sidestep the difficulties entailed in any attempt to separate citizenship from nationality in theory and practice. This would deprive citizenship of its regulative functions in terms of inclusion and exclusion, and it would reduce the importance attached to the inherent link between citizenship and nationality.

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Immigration and citizenship in Europe quite obviously constitute a subject in which the terms of discussion are changing on an almost daily basis. It has been impossible, therefore, to incorporate into this thesis some of the most recent developments, especially those that transpire subsequent to submission.

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List of Abbreviations

Bull. EC	Bulletin of the European Community
EC	European Community
EC Treaty	Treaty Establishing the European Community
EEC	European Economic Community
EU	European Union
ECJ	European Court of Justice
Euro-citizenship	European Citizenship
EP	European Parliament
IGC	Intergovernmental Conference
IT	Italy
O.J.	Official Journal
TEU	Treaty on European Union
UK	United Kingdom
JHA	Justice and Home Affairs

I. 1 Main argument

This study examines the inherent link that the establishment of Euro-citizenship creates between citizenship and nationality on the one hand, and between citizenship practice and immigration on the other. It follows two different lines of analysis, one institutional and the other empirical or attitudinal. The institutional analysis addresses legal and political aspects of citizenship and immigration, and the empirical analysis assesses public attitudes as revealed by opinion polls.

I argue that the establishment of European citizenship embodies the 'opportunity structure' for an effective change in what I call citizenship's means, which is to say civil, political, and social rights. The re-prioritisation of social and economic rights over political rights not only offers an escape from the original functions of citizenship, which is to say exclusion and inclusion, but it also redefines the idea of political community and membership in the community. There are both normative and empirical impediments to this. In normative terms, Euro-citizenship reinforces the ideology of nationality and empirically, Euro-citizenship functions towards the formation of a European identity. This is largely because nationality has become the primary criterion used to determine eligibility for European citizenship, leading to a 'binary typology' of 'us' and 'them'[1].

If Euro-citizenship functions to define European identity, nationality functions towards the establishment of national immigration policies. These policies,

[1] This typology is widely used in the literature. See in particular Delanty (1995), Garcia (1993), Mouffe (1992), Weiler (1996b).

in turn, serve as a legitimate means for the exclusion of those who do not belong to the Euro-polity. This is best illustrated through a comparative analysis that considers the impact of European citizenship upon two different models of national citizenship. Italy and the United Kingdom are interesting models because they reveal dissimilar practices and traditions in terms of both the process of granting citizenship rights and in the attitude towards immigration. Moreover, these two states fall within two different philosophical categories. Citizenship practices in the UK have been mainly based upon a liberal-individualistic approach and rights take precedence over status, which is to say that the rights held by an individual determine his/her status. Italian republicanism, on the other hand, has conceived citizenship as a civic value of political participation in which rights are derived from status and citizenship is a *conditio sine qua non* for obtaining citizenship rights. The analysis of European citizenship highlights the limits of these two models in shaping the idea of a new Community that has to deal with both liberal pluralism and new forms of political participation.

The thesis focuses on the formation of the typology of 'us' and 'them', through two categories: (a) the normative undertaking, comprising the legal and political dimension of European citizenship, and (b) social reality, concerned with the process of public identification with the new polity. At the level of the European Union, the connection between normative models and social reality is weak because the normative undertaking that is intended to shape a European identity does not involve a process of identification with the Euro-polity. Empirical analysis of public attitudes provides a means by which to reconsider the value of a supra-national citizenship. Greater consideration of public attitudes could enable governments to

promote a more inclusive regime through normatively created supra-national institutions.

The rise of post-materialist orientations and the decline of traditional social barriers such as class and religion already suggest a considerable level of adaptation towards supra-national institutions. Adaptation does not necessarily mean identification, but the creation of a European identity is really beside the point, and governments would be better advised to devote more attention to the dynamics of change at the empirical level.

The establishment of Euro-citizenship re-prioritises the means of citizenship from political rights to economic and social rights but community membership at the supranational level still relies on the condition of nationality. This creates an unequal distribution of social rights between citizens and non-citizens, and it impedes the independent operation of economic and social rights afforded on bases other than nationality.

I.2 Theoretical Framework

The thesis does not follow a specific theoretical model, but its use of particular concepts sometimes differs from current usage. It is therefore necessary to delineate the definitions intended in the use of concepts such as citizenship, national identity, universalism, legal subjectivity, republicanism, and liberalism, comparing the definitions applied here with those used by other authors.

I. 2.1 Formal and substantive functions of citizenship

The concept of citizenship is neither purely legal nor exclusively sociological. Citizenship is an 'idea' that finds its expression in law. As a legal concept, it creates a 'community', or *Rechtsgemeinschaft*, which includes and protects those who belong to the same system of rules. Citizenship therefore may be considered as a set of rules that defines citizens as components of a polity. The creation of the community *per se* embodies an anthitetical mechanism that defines a class of outsiders.

Another aspect of citizenship concerns its sociological or empirical underpinnings, wherein identity plays an important role. In certain communities identity is established by the practice of citizens who actively exercise their rights, which is to say that rights precede citizenship. This is a characteristic of the British tradition of citizenship, in contrast to the Italian tradition. In Italy identity is established by citizenship that is to say that rights stem from identity and that citizenship status precedes the allocation of rights.

Rawls addresses the problem by distinguishing between institutional and non-institutional identity, and he formulates a liberal democratic theory of citizenship in which members have a double identity, with two kinds of commitments and attachments (1996: 30-2). The distinction is founded on the notion that we understand ourselves as citizens within the political system differently from the manner in which we understand ourselves in our personal affairs. In this approach, it is argued that the institutional identity should take precedence over the non-institutional one. Citizenship is seen here as based on a universalist liberal principle while identity is based on democratic constitutional principles rooted in the political

culture. Similarly, Bottomore's criticism of Marshall also attempts to distinguish formal from substantive citizenship, and substantive citizenship from nationality (Marshall and Bottomore, 1992: 83)[2]. As Bottomore observed, formal citizenship raises issues 'concerning national identity and the historical role of nation-states as the pre-eminent modern form of organisation of a political community'. Substantive citizenship, on the other hand, addresses the social rights of individuals living in a community (Marshall and Bottomore, 1992: 85). Brubaker's book (1989) gathers several contributions on this theme. One of the more important contribution is that of Hammar which focuses on the concept of 'dual citizenship' (1989: 81). It does not answer the question concerning the universalisation of citizenship but it does offer a theoretical approach to the separation of functions between formal and substantive citizenship.

Following these approaches we have a dichotomy: substantive-citizenship-universal and formal-identity-particular. Citizenship is susceptible of universalisation only through its substantive functions. The question here is whether or not citizenship can be universal. For Turner, the process of modernisation provides a social context in which it is possible to develop a theory of universalistic citizenship. The autonomy of the market creates a space in which citizenship is susceptible of universalisation (1986; 1992). On the contrary, according to Weber, citizenship is not susceptible of universalisation as it refers to particular structural condition which may be peculiar of the West (1966). Barbalet's approach is even more narrow when he considers the dichotomy between formal and substantive citizenship. The

[2] Bottomore's criticism stresses the impact of the historical development of classes on new conceptions of citizenship.

substantiation of citizenship is necessary because formal citizenship *per se* has no value, but the process of substantiation precludes the possibility of citizenship becoming universal (1988)[3].

In my view, citizenship *per se* could never embrace a universal essence. The absolute preclusion of a universal approach to the concept of citizenship would nevertheless fail to take into account the changing structural conditions occurring in Europe. In Bottomore's view, citizenship is susceptible of universalisation only if civil, social, and political rights are based on a conceptual framework that emphasises human rights rather than citizenship[4]. Within such a framework, the rights of citizenship are in a continuous process of development which is profoundly affected by changing conditions and by the emergence of new problems and the search for new solutions (Marshall and Bottomore, 1992: 89). In this approach, of human rights are not conceived as separate from the set of civic, political, and social rights but are seen as an integral part them. Moreover, the dynamic change of citizenship is conditioned by external factors. The two problems that arise from this approach concern the value of 'legality' and the legitimisation of the political community. In other words, does 'legality' have a universal application, and is formal citizenship alone sufficient to establish and preserve the political community?

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[3] The particular structural conditions in Barbalet's discourse are narrower than in Weber since they concern particular administrative and professional infrastructures with which individuals interact. In this approach, the argument between substantive/active and formal/passive cuts across the classical differentiation between citizens and non-citizens. This is because the capacity of individuals to participate in practice in the same community where they hold a legal status can be granted or denied to both these two categories.

[4] Bottomore seeks to discover elements of universal validity in the concept of Euro-citizenship and he correctly discerns the link between citizenship and immigration. For Bottomore, the European scenario adds a fundamentally new dimension to the concept of citizenship. EU citizens have a kind of dual citizenship, which implies detachment between substantive citizenship and nationality. It also grants civil and social rights, and to some extent political rights, to all citizens who live and work in another EU country.

An appropriate response to the questions would perhaps be oriented more towards the redefinition of legality within the conceptual framework of citizenship rather than collapsing citizenship within the category of human rights.

I. 2.2 Understanding citizenship between liberalism and republicanism

Citizenship is generally understood to mean membership in the republic but the meaning of the term republic is itself very broad and ill-defined. The conventional philosophical categorisation of citizenship between the republican and liberal-individualistic traditions can be re-formulated as a universalist and a communitarian understanding of citizenship (Preuss, 1995a). Civic Republicanism places the ideal of a 'common good' above all considerations of individual advantage. The defensive attitude towards the 'community' is pervaded by a strong sense of civic virtue (Skinner, 1992). In the republican view, civic duties have priorities over individual rights and civic bonds are emphasised (Beiner, 1995: 12). In the liberal view, by contrast, citizenship rights help to promote individual self-interested definitions of good. The most propitious means by which to resolve the dilemma between universalism and particularism would be to uphold the principle of state neutrality against the communitarian argument (Lehning, 1997: 113). Skinner argues against the liberal view, refusing in particular the claim that individual liberty and political participation can never be reconciled[5]. Among those who try to reconcile civic republicanism and liberalism, Mouffe argues that while liberalism contributed to the formation of a universal citizenship, it also reduced citizenship to a mere legal status

[5] Other variations on the republican theme can be found in Arendt (1958), Walzer (1983), Oldfield (1990), Miller (1995).

(1992). Civic republicanism, on the other hand, emphasises the value of political participation and the citizen 'plays an active role in shaping the future direction of his or her society through political debate and decision-making' (Miller, 1995: 443). Mouffe importantly questions the necessity to conceive the political community as compatible with liberal pluralism and democracy. She attempts to harmonise the two approaches by rejecting both the concept of the common good and the definition of citizenship simply as a legal status (1992).

What emerges from Mouffe's analysis is a minimalist approach in line with that of Oakeshott (1975). It combines both liberal and communitarian elements in that it upholds the principles of freedom and equality for all while understanding citizenship as a form of political identification with a wider community It conceives citizenship not as a given but as something to be constructed. The community, however, is 'without a definite shape or a definite identity and in a continuous re-enactment' (Mouffe, 1992: 233). People are bound together by their common recognition of a set of ethico-political values, though Mouffe fails to specify the nature of these values and whether or not they are universal. At the same time, she rejects the idea of an abstract universalism stating that the exercise of citizenship consists in identifying ethico-political principles of modern democracy and that there can be as many forms of citizenship as there are interpretations of those principles (1992: 237). Importantly, she claims that though politics aims at constructing a political community and creating a unity of we/us, such a community can never be realised since there will be permanently a 'constitutive outside' that will always redefine the construction of a we/us (1992: 233).

Delanty and Lehning both claim that neither republicanism nor liberalism is sufficient to address problems surrounding citizenship beyond the level of the nation-state and that the two traditions jeopardise the very idea of political community (Delanty, 1998: 353; Lehning, 1997: 109). Lehning stresses that the revision of citizenship in modern societies should address the question concerning the compatibility of national unity with increasing social and cultural pluralism, and he suggests that Euro-citizenship embodies a more universal concept of citizenship. Lehning says that 'the same citizenship that copes with the problem of pluralism in the nation-state should be also applicable across borders', following a federalist approach as already envisaged by Meehan (Meehan, 1993: 21-22). To support this aspect of his argument, Lehning applies Rawls' concept of 'double identity' (Rawls, 1996: 30-36)[6] to a federal Europe. The idea is that in a federal Europe, a shared citizenship/identity will supersede rival identities based on nationality. An intrinsic element of the Federal model is that its 'federal partners [and their citizens] do not have to or wish to accept deep, monolithic, conceptions of citizenship and identity as the basis of their union' (Lehning, 1997: 118). According to Lehning, Euro-citizenship would be conceivable only in a federal state that emerges out of an 'overlapping consensus'[7]. (Lehning and Weale, 1997: 9). Both the idea of overlapping consensus and double identity should lead 'not only to the idea of " belonging" that comes with the concept of national identity, but also to "belonging"

[6] Rawls' concept of 'double identity' stems from his own formulation of a democratic theory of citizenship, wherein citizens' self perceptions are shared between their political and their personal associations. In other words, citizens of liberal democracies have double identities, with political and non-political commitments.

[7] For citizens of a federal union, the idea of 'overlapping consensus' refers to the compatibility between national identity and various forms of social association. Lehning here refers to Norman (1994) and Rawls (1987).

that goes with a number of different levels of social organisation: the neighbourhood, the town, the country, and the region, in addition to the nation' (Lehning, 1997: 119).

A comparison of citizenship policy between Italy and the United Kingdom serves to emphasise the limits of these two philosophical approaches in shaping the idea of a new community. In my view, the European Union context conceives citizenship as a civic value in which rights are derived from status, which is also one of the idiosyncrasies of civic republicanism. Identity, therefore, is not derived from the practice of citizens who actively exercise their rights, and as a consequence, rights and identity are not adequately experienced in the context of the EU. This is the reason why 'it is a mirage to speak of European citizenship' (Lehning, 1997: 157).

I. 2.3 Normative undertaking and social reality

One might say that citizenship is evolutionary in that it is constantly adapted to regulate social changes and conflicts, as Turner noted in his criticism of Marshall (1950). For Turner, citizenship is indeed 'the outcome of struggles bringing the state into the social arena as a stabiliser of the social system' (1992: 38). These processes of change also affect what I call citizenship's means rather than citizenship as an institution *per se*. The means of citizenship are simply the civil, political, and social rights that citizenship entails. The functions of citizenship are affected by its evolving regulatory aspect but only in relation to each means of citizenship. The means of citizenship, in other words, are distinct from the functions of citizenship, which refer to the exclusive and inclusive power that citizenship embodies in relation to each of citizenship's means.

The establishment of new priorities for the means of citizenship requires a redefinition of the concept of legal status. While Turner argues that the evolution of citizenship is driven by social conflicts, Mann claims that this process is driven by 'dominant powers that impose their strategies on lesser powers' (1987: 351). The two approaches are not mutually exclusive but find common ground in Turner's claim that citizenship evolves through its regulative power towards always new and changing social conflict in a sort of dialectical process. Turner and Mann are referring not to different processes but to different levels of analysis. Mann's analysis is institutional and normative while Turner's approach is social and empirical. The normative process involves the institutionalisation of citizenship with political and administrative practices that are detached from the social phenomena from which institutional change derives. As a consequence, there is a disjuncture between the normative undertaking and the social/empirical reality. The thesis examines this dichotomy foremost in the formation of the typology within the European Union in which the attempt to establish a link between the normative undertaking and the social reality ends in failure. The main difference between Mann and Turner is that the former focuses on the normative undertaking the latter on the social reality. In Turner's view, Mann's analytical framework appears to preclude the impact of new social movements on the expansion of citizenship from below. This also implies a conception of the citizen as a mere subject rather than as 'an active bearer of effective claims against society via the state' (Mann, 1987).

In analysing citizenship within the European Union system, it is clear that there exists a conspicuous gap between the Euro-polity and individual citizen. The problem here is twofold: (1) Euro-citizenship like national citizenship has become

regulative in terms of its inclusive and exclusive functions; and (2) social needs now concern more the sphere of practical necessities than the need to identify with the new polity. The transformation of social needs affects the priority of citizenship's means, which is to say that social rather than political rights constitute a more important means of social inclusion. What emerges at EU level, however, is that Euro-citizenship has become again regulative without developing new priorities for the means of citizenship. This, in my view, exacerbates the gap between the normative undertaking and social reality.

The line of reasoning pursued in this thesis follows that of Mann to the extent that it conceives Euro-citizenship not as the outcome of social movements but as a political strategy for the regulation of social conflicts in favour of vested interests. Without denying the importance of social movements in expanding citizenship rights, it is also important to bear in mind that the relationship between citizenship rights and social movements is no longer simply causal. On the other hand, modifying Turner's criticism of Mann, the influence of social movements on the expansion of citizenship from below consists of a greater direct relationship between the normative undertaking and social reality. From above, it occurs through a sharper analysis of public attitudes.

Social conflicts and social needs, by nature, have become more de-territorialised and more cross-national, reflecting more sectoral interests than community interests. Many claims, such as the right to work and the right to reside anywhere, occur in the name of legal subjectivity and humanity rather than citizenship. In this study, the categorisation of legal subjectivity is neither diametrically opposed to citizenship nor intended to displace citizenship, but refers

instead to a redefinition of the concept of legality detached from nationality and based on the active exercise of civil, political, and social rights. Such a redefinition is necessary to side-step the difficulties entailed in any attempt to separate citizenship from nationality in theory and practice. The introduction of a legal subjectivity would deprive citizenship of its regulative functions in terms of inclusion and exclusion, and it would reduce the importance attached to the inherent link between citizenship and nationality.

I.2.4 Citizenship and Nationality

In analysing citizenship within the European Union system one of the main problem consist of separating Euro-citizenship from national citizenship (Kostakopoulou, 1998). In doing that the main obstacle is to separate citizenship from nationality. At the supra-national level, at least in theory, citizenship and nationality are no longer interchangeable but in practice the interchangeability persists. The idea of liberating Euro-citizenship from nationality is among the themes discussed in this thesis, and it relates to Preuss's conceptualisation of the 'status path' (1996: 135). This idea conceives the basis of residence within the physical boundaries of the Community as entirely independent of whether a person is a national of a member state. It would thus be possible to be a Union citizen without being a national of any of the member states. Perhaps the designation of 'Union subject' would be more appropriate than 'Union citizen'. This acknowledges the link between citizenship and nationality, but it also gives citizenship a more ethno-cultural connotation, and Union subjecthood would be relevant at both the national and European level.

Lehning sceptically argues that, in practice, Euro-citizenship entails no departure from the traditional link between nationality and citizenship (1997: 183). Meehan (1993), along with Heater (1990) and Leca (1990) suggest that the link between nationality and citizenship is not always indispensable, inevitable, or necessary. Meehan describes citizenship as a 'legal nationality', while national identities are subject to change since individuals' interests 'do not always coincide with dominant conceptions of the national interest' (1993: 151). She has a positive slant towards the Community as already offering the opportunity for citizens to act on the basis of identities other than the one linked specifically to nationality. This is in line with Kaldor's concept of collective identities in which the link between citizenship and nationality collapses in the formation of a trans-national civil society (1996: 27). What makes Kaldor's and Meehan's analyses similar is that they both believe the process of transferring sovereignty from a national to a supra-national entity functions to detach citizenship from nationality.

Meehan's approach is satisfactory as long as it is restricted to EU citizens and their relationship with the EU as a new 'opportunity structure' in which they can transcend national identities. I identify this process with the concept of 'compatibility'. Soysal even goes so far as to proclaim in this process the end of citizenship (1994). In the formulation of European citizenship, as already noted, Lehning questions whether there is a departure from the traditional link between nationality and citizenship. He regards certain aspects of Euro-citizenship to be in line with the liberal democratic conception of citizenship and it is precisely in these aspects that EU citizenship is most able to overcome differences based on ethnic and

cultural traits and to cope with pluralism (1997: 182). He nevertheless denies that these aspects are met in practice.

I do not entirely agree that the detachment of nationality from citizenship occurs in the process of 'transferring sovereignty'. I argue instead that the establishment of Euro-citizenship enhances national citizenship rather than precipitating its demise. The new supra-national legal order is based on the prerogative of nationality as the determining factor for access to citizenship rights, which means that nationality and citizenship are interchangeable once again. This study considers the case of third country nationals not merely as a dimension in which European citizenship risks a continuation of the traditional, exclusive aspect of citizenship (Meehan, 1997: 77). Rather, it is considered as the exception that confirms the rule.

Following Weber, Parsons argues that the modern citizen requires the constitution of an abstract political subject no longer formally confined by the particularities of birth and ethnicity (1966). Until now, according to Preuss, democratic revolution has produced two different phases in the development of citizenship. The first phase was characterised by the passage of citizenship rights to passive legal subjects which implied passivity and submissiveness. In the second phase, the nation became the criterion for an individual's belonging to the democratic community. 'It is from this point', stated Preuss, 'that statehood and nationhood engage in a very closed relationship and from here nationality and citizenship are linked' (1996: 128).

Weale has put forward a definition of citizenship in which he distinguishes between its identity aspect and its normative aspect (1990: 156). In his approach, the

link between nationality and citizenship is due merely to the link between identity and norms. Supra-national norms are incorporated into national legislation and they are effective for individuals because of their membership within one of the member states. Who you are determines your rights and duties. Weale states that citizenship remains constant while the community changes in terms of membership. This is, in my view, the main problem with Euro-citizenship which does not affect citizenship's function and government have retained for themselves the right to confer nationality. States are still the main repository of citizenship's rights and obligations (Weale, 1990: 158). The emergence of the EU is not necessarily at the expense of the nation-state and Mann has indeed noted that the 'European nation-states are neither dying nor retiring [but that] they have merely shifted functions' (1993: 133). The link between citizenship and nationality is the outcome of the legal system and in particular of two different legal practices for the acquisition of citizenship, which are based respectively on of *jus soli* and *jus sanguinis* (Closa, 1995; Brubaker, 1992) These practices, or more precisely the extent to which the legal system relies upon one or the other determine the extent of the relationship between citizenship and nationality (Brubaker, 1992: 179).

The major problem at the supra-national level consists not only of liberating citizenship from nationality (Closa, 1995; Brubaker, 1992; Meehan, 1993, 1997; Kaldor, 1996; Weale 1990), or of understanding citizenship as a normative concept and nationality as an ethno-cultural idea (Delanty, 1995) but rather in re-defining the concept of legality in which civil, political, and social rights are afforded on bases other than nationality or citizenship.

I.2.5 Citizenship and immigration

The relevance of Preuss's argument to this study lies in the fact that Preuss considered the impact of the European Union and immigration on the inner balance of the nation state. Other scholars have stated that the complementary nature of the physical and symbolic criteria of belonging to the modern state make migration particularly difficult (Spencer, 1994; Close, 1995) and I argue that the establishment of the European citizenship exacerbates this difficulty. Subjecthood and citizenship are once again set apart in order to distinguish new comers from citizens. In communities in which physical association with a territory is insufficient to establish an individual's belonging, non-physical boundaries tend to emerge (Preuss, 1996: 134). Delanty and Mann suggest that the connection between national identity and citizenship is growing stronger today in the face of the threat of mass immigration (Delanty, 1995: 162; Mann, 1993: 132). Delanty argues that 'immigration laws are the crux of European identity for these are the instruments Europe uses to restrict democracy and civil rights' (1995: 163). Nationality functions towards the establishment of national immigration policies, which in turn serve as a legitimate means for the exclusion of those who do not belong to the Euro-polity. This is the binary typology of 'us and 'them'. In other words, Euro-citizenship functions to define European identity as long as it is linked to protectionist policies against the 'other' (Einhorn, *et al.*, 1996).

The ideological redefinition of immigration as a 'law and order' problem affects third-country nationals negatively and reinforces their inequitable position in the emerging Euro-polity. This creates an unequal distribution of social rights between citizens and non-citizens, or between 'us' and 'them', impeding the

operation of economic and social rights afforded on bases other than nationality and placing constraints on any attempt to encourage the growth and persistence of a pluralistic society in Europe. Unlike Preuss, who differentiates between the 'active status' of national citizens and 'the passive submission' of permanent resident aliens (1995a: 109), this study envisages a more complex differentiation of status at the national and European levels. The citizens of the nation-state now become the active legal subjects of other member states. These are European Union citizens who do not hold full political and social rights in another member state. The other categorisation refers to the passive legal subjects who are permanent resident aliens with a limited set of rights in the host country. There are then three main categories of citizens: (1) national citizens (active/passive citizens); (2) active legal subjects (European citizens); (3) passive legal subjects (legal immigrants). The status of legal subjectivity would eliminate the substantive difference between these categories in terms of an individual's access to resources but it would not affect national identity and cultural affiliation.

Many believe, however, that European integration holds out the possibility of a citizenship of inclusion (Schmidtke, *et. al*, 1996). Inclusive social policies normally apply to individuals who reside permanently within the territorial boundaries of a given country, irrespective of their nationality. In this way, Preuss argues that it is possible to escape from the exclusive communitarian view of social citizenship in which national citizenship becomes a moral justification to exclude (1995a: 115). Considering the significance of Euro-citizenship for the formation of a European identity, in practice there are no bases to believe that this process would be inclusive.

The process of 'Europeanisation', indeed, remains selective and exclusive (Kostakopoulou, 1998).

Kostakopoulou proposes the principle of 'domicile' in opposition to nationality as a legal criterion for membership in the EU (1998). This is a possible way to escape the criteria of admission modelled upon those required by national laws. She indirectly criticises scholars who propose a foundation for EU citizenship which is not detached from nationality (e.g., O'Keeffe, *et al.*, 1994; Evans, 1994; O'Leary, 1992). She agrees with Meehan in arguing that Euro-citizenship is a citizenship that involves multiple, overlapping, and strategically interacting publics (Meehan 1993: 185). She also sees immigration and citizenship as strictly linked and she believes that opportunities to attain EU citizenship depend upon a re-examination of immigration policy since 'immigration shapes the boundaries and the content of citizenship' (Kostakopoulou, 1998: 167).

I.2.6 The problem of identification

There is a broad consensus that citizenship will be released from the boundaries of the nation to become a force of contention in a new politics of identity (Cesarani *et. al*, 1996; Close, 1995; Einhorn *et. al*, 1996; Lehning *et.al.*, 1997). This thesis disputes the assumption that Euro-citizenship should function towards the formation of a European identity. As long as Euro-citizenship is related to the idea of European identity, nationality will continue to function towards the establishment of national immigration policies, and nationality and citizenship will remain interchangeable. This constitutes the main problem of rescuing citizenship from nationality. The problem of identification is thus not only an empirical difficulty but it is also

normatively questionable when there is a lack of consensus in a supra-national normative setting. In contrast, I argue that the problem of identification can be confronted by adaptation and that 'compatibility' is achievable when governments devote more attention to the dynamics of change at the empirical level. As Holmes has noted, the 'Maastricht Treaty did not create a project that people could identify with'. Holmes suggested that, at least until now, the *modus operandi* of the elite has been 'to act first and convince public opinion afterwards' (1996: 66).

For Garcia, the challenge with which the EU is faced is 'to construct a Europe in which public opinion is left behind by national and European elite' (1993: 3). Though she stresses the importance of the development of an identity linked to citizenship (1993: 4), she relates the formation of identity to social relations rather than kinship (1993: 13). A European identity, in other words, should permeate people's lives and daily existence (1993: 15). Closing the gap between normative undertakings and social reality would require a high degree of adaptation and interaction with supra-national institutions.

In his analysis of the problem of identification at the supra-national level, Closa puts fundamental empirical practice in the context of a democratic discussion (1998). Like many others, Closa believes that citizenship is a normative necessity with respect to the debate concerning universalism versus particularism. EU citizenship is established on universalistic elements fixed in a normative particularistic setting (Closa, 1998: 181; Weiler, 1995; Delanty, 1995). According to Closa, the democratic process is suffering from a rupture between private autonomy and public self-determination. On the one hand, public regulation of individual activity is removed from the traditional framework of the nation-state, while on the

other, Euro-citizenship is not sufficient to create public self-determination (Dahl, 1994; Habermas, 1995). It is questionable as to whether citizenship requires identification at all. The problem is not so much that Euro-citizenship *per se* is unable to create a reconciliation between private autonomy and public self-determination. On the contrary, the entire process of public self-determination should be detached from the effort to create a European identity. This would shift the focus of normative and institutional undertakings towards residence rather than nationality (Welsh: 1993) or towards 'legal subjectivity' rather than citizenship.

I.3 Outline of the thesis

Chapter 1 briefly illustrates the development of citizenship throughout history. It explains the manner in which changes in societal circumstances enable citizenship's means to be re-prioritised. The chapter also analyses which rights constitute the essential condition of citizenship in a transition from a national to a supra-national community. It stresses that the re-prioritisation of social rights over political rights engenders the need to redefine individuals' legal status and to detach citizenship's means from national citizenship.

Chapter 2 discusses the relationship between citizenship and immigration policies in Italy and the UK. It deals mainly with the definition of citizenship and immigration policies in a comparative perspective before and after the Maastricht Treaty. After the establishment of Euro-citizenship at Maastricht, immigration policies have become a filter used to define EU citizens in both Italy and the UK. This process also entailed the redefinition of the concepts of membership and

citizenship, strengthening the principle of nationality as the primary criterion of EU citizenship and giving rise to the typology of 'us' and 'them'.

Chapter 3 investigates the mechanisms that facilitate the formation of the binary typology 'us' and 'them'. One of these involves the expansion of what I call the 'inner circle' of citizenship rights. It shows that the establishment of Euro-citizenship expands the rights attached to national citizenship while defining the category of 'us'. The chapter also discusses the extent to which this expansion of rights embodies an opportunity structure for mobilising resources that could positively affect the nature of Euro-citizenship.

Chapter 4 focuses on political debates on Euro-citizenship both at the European and national levels. It identifies the manner in which the idea of Euro-citizenship is supported, neglected, and challenged in the political arena. The political debate have been most concerned with just how far Euro-citizenship should encroach on national citizenship and with the extent to which the political discourse has fostered a connection between European identity and the establishment of Euro-citizenship.

Chapter 5 examines political debates on the integration of immigrants and border control policies. The aim is to determine the manner in which the category of 'them' is conceptualised at both the European and national levels, and to identify any common political positions within the political discourse. The chapter also focuses on suggestions for encouraging the integration of immigrants by means other than the formal acquisition of citizenship. This permits the contextualisation of the relationship between immigration and citizenship.

Chapter 6 is an empirical exercise that analyses the attitude of the public towards the EU and Euro-citizenship. It examines the relationship between political and legal undertakings on the one hand and public orientations on the other. The chapter first considers the degree to which Euro-citizenship encourages the development of a European identity and the degree to which identity constitutes a determining factor in the formation of supra-national values. The analysis focuses on the nature of the category of 'us' and the ways in which the category diverges from the political aim to homogenise the public sphere through the development of European identity.

Chapter 7 concludes the thesis by demonstrating that the establishment of Euro-citizenship re-prioritises the means of citizenship. Social rights have become more functional than political rights to the process of integration but community membership at the supranational level still relies on the condition of nationality. This creates an unequal distribution of social rights between citizens and non-citizens, but it also reveals that social rights in practice are still an important component of citizenship. This reinforces the construction of the categories of 'us and 'them' in that social rights cannot be carried across national borders as far as non-EU nationals are concerned.

Chapter 1

Societal needs and the symbolism behind citizenship practice

Introduction

Citizenship is considered the oldest institution in Western political thought. The multi-layered character of citizenship practices that has emerged through the history of city-states, nation-states and the latest formation of the European Union renders it impossible to contain its meaning in a single comprehensive definition (Riesenberg, 1992, xvi). The various models of citizenship throughout history have had different defining goals and powers. Hence, the concept of citizenship has remained much contested in a manner in which a 'complete or elaborate theory of citizenship does not exist' (Turner 1993: VIII). In my view, this assumption mirrors the inner nature of citizenship, which finds its rationale and its intrinsic value within the logic of changing societal circumstances. One needs to consider not merely the coherence of the modern development of citizenship with the nostalgic idea that delineates what the good person's conduct should be (Aristotle), but rather the evolution of the concept within the context of society's needs. Once the dynamic nature of citizenship is identified as such, any comparative approach will serve to identify the factors that constitute its active nature.

In this chapter, I shall distinguish between four different models of citizenship (Fig.1) that illustrate the development of the concept through different historical periods in order to discern the different symbolic practices of citizenship within different societal systems[1]. Each of these models will study citizenship's means (which

[1] My historical classification builds upon the work of Peter Riesenberg but differs in arguing that there have been only two forms of citizenship. 'The first lasted from the time of the Greek city-state until the French Revolution, the second has been in existence since then' (1992: xviii).

is to say the three main set of rights: civil, political and social) in relation to both citizens and non-citizens. I shall attempt to demonstrate the degree to which societal circumstances transform the priority of citizenship's means. It is important to understand whether or not this mechanism influences the symbolic function of citizenship.

If one understands the real symbolism behind citizenship practices it is then possible to interpret the manner in which the re-prioritisation of citizenship's means can occur. Those who are able to discern this mechanism can thus exert civil, political or social pressure in order to satisfy their needs and at the same time those of the society. This can help to explain, for example, the formation of 'Guilds' in the 'Middle Ages' and 'NGOs' or interest groups in current times. Any change in the categorisation of legal status within a given societal context would either require to redefine the concept of citizenship or to detach citizenship's means from citizenship itself. In this respect I shall describe the different conceptualisation of citizenship in the four community models emphasising the shift from the nation-state to the European Union model.

1.1 Community models

Throughout history, citizenship has been compatible with many forms of political organisation. Democratic (Athens) and non-democratic forms of regimes (Sparta) have served as citizenship models. In antiquity the control of government by the few and the ideas of patriotism and military service were very closely linked. Aristotle reminds us that 'the good citizen should know and have the capacity both to rule and be ruled, and

this very thing is the virtue of a citizen' (Aristotle: *Politics* bk.3). From the Greek city-state throughout the Roman Empire one can detect the first form of citizenship: small-scale, monolithic, discriminatory and also moral, spiritual, active, participatory and communitarian. During the Roman Empire, in particular, citizenship evolved into a body of legal expectations and powers. This was opposed to the ethical relationship between the individual and the community that was a distinctive element of the Greek city-state. In this first phase, the citizen is an active political person who through active participation in government has a real possibility to gain virtue as defined in Aristotelian terms.

The second model of citizenship appears in the late Middle Ages and continues up to the French Revolution. During this period, a progressive assimilation of the 'citizen' into the 'subject' takes place. This process entailed the transformation of the active political person into the passive political person[2]. Entrepreneurial success and personality enhancement tended to prevail over community values, particularly in the development of some southern European city-states such as Florence. I shall deal with this aspect more in depth in the next section.

The third period is marked by the French Revolution up to the formation of the nation-state in which the subject becomes citizen again, but of the second citizenship that is a passive citizen[3]. From this point, it cannot be denied that the notion of the passive citizen, as opposed to the active citizen becomes the new norm of political reality. Today we live under the third citizenship, which has received a strong impact

[2] The term 'subject' here confines generally to the meaning of 'passivity'.
[3] See Mann's discussion of the historical background of the European nation-states (1993). Kaldor argues that citizens replaced subjects with the birth of the nation-state, but she does not emphasise the

from the first two, but there are important differences. Civic virtues appear to have been dissipating in the first citizenship but they are also re-articulated for larger societies in terms of changing forms of community behaviour, particularly with respect to such things as voluntarism and dissent. Finally, the fourth model is the European citizenship model, which could entail the possibility for a further change in the status of persons from citizens to 'subjects'[4], or perhaps better to 'European subjects'.

The first two models refer to a limited environment and citizens were usually a minority, in the context of regime in which citizenship can be defined as partial, as only a part of the population is eligible. The third and fourth models refer to a citizenship that is invariably universal within a given set of parameters. It is based upon birth or specified residence in a large territorial space whose size makes direct participation in politics impossible. The passivity of citizenship in these two models is given by changes in the political regimes. Governments of large states are based on constitutions, treaties and/or legislative acts acceptable to its people. These are institutions that decide the distribution of civil, political, and social rights. In the first model (Ancient Greek), politics was frequently intense and personal participation in it often entailed 'heroic' action. One was not really considered a citizen until he was seen to participate actively in politics. Under the third model (nation-state), personal heroism was not necessarily expected, but any good action is a sign of an appropriate obligation. As Riesenberg has noted 'the fierce devotion of the few has been replaced with the slack association of the many' (1992: xix).

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role of citizens in the nation. She defines them as members of the nation' (1996: 10-13, esp.10).

[4] The term 'subject' here confines with my definition of legal subjectivity and does not necessarily imply a passive nature.

All of these models have as a common factor the notion that the primary function of citizenship concerns privilege and exclusion. Systems in which the function of citizenship serves to distinguish citizens from non-citizens, and in which the role of the citizen is well defined, tend to enhance the principle of discrimination. On the other hand, history is a witness of times where the difference between citizens and non-citizens is less perceivable. This is because 'subjectivity' of individuals, in my view, did not only mean passivity but also a more accessible society. This becomes a distinctive fact during the Middle Ages and introduces the second model of citizenship.

Fig.1 **Models of citizenship**

I Ancient Greek-Roman Empire Citizen (Active)	II Middle Ages Subject (Passive)
III French Rev.-Nation-State Citizen (Passive)	IV European Union Subject (Passive/Active)

1.1.1 From citizens to subjects

The persistence of elements from earlier manifestations of citizenship in later periods affords the prospect of a comparative approach. In the medieval urban world, particularly in Italy and on the northern shore of the western Mediterranean regions, one finds early traces of modern aspects of citizenship. First citizenship was considered

as a set of rules that define a person as a component of the polity. Secondly, it came to be regarded as a status that conferred to a person virtuous capacity (Barbalet, 1988).

It is argued that medieval citizenship had never become the intense political issue it had been in the Ancient Greek world. In the Roman Empire, administration was divided into many local units. Governance in the core of the empire followed the precepts of Roman law, but the Germanic inheritance also had a relevant impact. The disintegration of the Roman world led to further fragmentation, and citizenship in the middle ages thus became even more local and confined but it was also more flexible and it reflected different values. The juristic language of this period was affected by changes in the political reality.

Small political units often governed themselves in terms of the qualifications for citizenship and the details of reciprocation, but of greater interest here is the appearance in the middle ages of traces of a sort of universal constitutionalism. Specific obligations varied from city to city, but not basic principles, and similarities in the process of naturalisation in particular reflect the need of many local societies for such procedures (Riesenberg, 1972). There are two main variables to be considered, first the need of society and secondly the flexibility of system, the latter being a consequence of the former.

In terms of societal needs, a clear appreciation of self-interest facilitates an understanding of why cities encouraged immigration. There was movement of citizens between cities, which indicates that citizens were searching material improvement through inter-urban and inter-regional trade, and through migration. Each man sought what he needed. What made these movements possible and desirable was a basic

uniformity throughout the Mediterranean regions, were institutions, laws, and values were relatively homogeneous. An ethic of work and material success was more or less universal, and we find as a consequence beside the figure of citizen that of 'habitator', which refers to a resident who is not a citizen. Residency of course entailed the assumption of some local responsibility and the enjoyment of some privileges of citizenship, and the 'habitator' was very much like a citizen. The effective junction of 'civis' and 'habitator' was intended to fulfil the city's real need and in fact, a new unified citizenry emerged, including citizens and residents. The importance given to resident status contributed to the city's strength while new avenues to acceptance and membership were kept open (Visconti, 1940; Violante, 1953; Cortese, 1960; Riesenberg, 1972).

The important thing to notice is that immigration and naturalisation were institutionalised. This was also due to the fact that the value of 'competence' in this period was functional to the market. The community benefited by having a large number of competent and effective people who served the town. All this meant economic advantage. Individuals also benefited since they were able to attain full citizenship through their 'competence'. The significant factor here is that within this kind of society there was the potentiality for a material improvement, even in the absence of full political integration. The requirement of 'competence' for the society was sufficiently intense, in other words, to permit the integration of immigrants into the new community. The function of citizenship, in this context thus served more to delineate societal boundaries. Citizenship itself was less discriminatory and exclusive but it served as a device with which to reduce tensions by making expectations explicit.

Men were most in demand as merchants, or soldiers, and everywhere common needs generated a potential for citizenship and an acceptance of immigration that prevailed over the xenophobia and suspicion.

There are two important points to be made, the first of which concerns the fact that immigration in this period did not challenge the order of values and rules within cities. This is because citizenship was not the only means by which to be integrated into society. Secondly, there was no need to establish in these societies a common citizenship. Europe was divided into many local units, but the systems were sufficiently alike in the structure of their laws and society. All of them were organised to receive outsiders, which effectively provided outsiders with a quasi-legal status. As noted above, this system was prevalent to the Western Mediterranean regions and above all in Italy. The emphasis on Italy, in fact, is justified by the precocious institutional development of the Italian cities, and above all by their actual function as independent political units in which citizenship existed at both formal and substantive levels (Bowsky, 1981).

What of English citizenship during the Middle Ages? In the north, cities were less independent and participated to a much greater degree in a feudal regime, at the top of which lay emperors or kings. Although the economic bases for urbanism were more or less the same as in the south of Europe, the cities were much less free to determine their own political and economic policies. In Italy, on the other hand, the merchants were often in fact the legitimate executives of the community and made policy in accord with the city's needs. The so-called 'burgers' of northern Europe were people of

a 'special law'[5]. Citizenship in the north was very limited and not so coherent. This citizenship was closer to that of the Roman Empire than to that of the Republic or the ideal of the democratic Greek *polis*. By the end of the thirteenth century, parts of England, in particular the city of London, and a few other regions in northern Europe were beginning to change. In London and in other English cities the 'Guilds' began to develop and to exercise their control over the town corporation. Membership in the 'Guilds' became a prerequisite for citizenship, and by the middle of the thirteenth century, citizenship became a political issue owing more to the legal and economic benefits that it entailed than to the political rights that it afforded. Because citizenship meant privilege and benefit, it was to be protected and restricted, and thus it became highly politicised. Given the economic uncertainty of the period, it is not surprising that Guild members tried to protect the privileges of citizenship against dilution through any further extension of citizenship rights. This was still far from being the world of traditional Mediterranean civic morality but enough to pull northern Europe into the main course of citizenship (Reynolds, 1977, 1984).

Not all citizens in the Middle Ages were active participants in the formation of a general will but rather they participated passively as individuals required to follow the general will. The distinction is explained more fully below in this chapter, but suffice it to say for the moment that citizens who participated passively therefore can be defined as 'subjects'. In sum, citizenship in this period served to mark social functions but it did not necessarily imply a closed system.

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[5] Burgers were a distinct class simply by virtue of the fact that a large proportion of urban population in northern Europe were excluded from their ranks. The criteria that admitted some to the burgers class while excluding others are still hotly debated by institutional historians of the Middle Ages.

1.1.2 The epilogue of the political community

During the revolutionary period, in the 18th century the affirmation of citizenship aimed at freeing citizens from their status as faithful subjects in relation to the established authority, by stressing, once again, the aspect of active participation in the political life of the State. Significantly, this period was characterised by the establishment of the mechanisms of political representation and social contract, and by the development of the concept of public opinion as a significant impulse in the shaping of political life. Citizenship took on a marked unitary value, and it supplied all individuals, at least theoretically, with a political dignity by which they were able to express a need for both collective identity and for individual autonomy. In other words, individuals once again had become citizens rather than subjects, but citizenship itself had assumed a more passive aspect. Walzer argued that the period of the French Revolution marks the moment in which citizenship corresponds to identity[6] (1990).

On the one hand, this passage indicates that political activity became less attached to the direct practice of citizens, which is to say that the citizen no longer created the law directly in the Aristotelian sense but was protected by the law. On the other hand, the crystallisation of democratic values in the function of citizenship rights remains invariably associated with the notions of individual participation in self-government through the exercise of the right to vote.

The transition from an active to a passive citizenship in the modern age is perceptible in the process that obliges citizens to perform their rights, for instance when

[6] According to the Jacobin ideology, citizenship was a universal function. Everyone was required to serve the 'Community', even though it was not yet a nation but still a country, or *patria*, which constituted the legal basis for the conscription of the masses into the army.

citizens are called upon to exercise their voting rights. This can be seen also as the change from the politics of participation to the politics of power (Pranger, 1968). The politics of power creates a political culture that directs the citizen's attention towards certain political aspects of the reality and at the same time diverts attention away from others. This political culture, on the one hand, accords citizens the responsibility of political participation, and on the other, it accords government the responsibility to take decisions on behalf of its citizens.

This can be defined the decay of 'civic virtue' which is the result of the dichotomy between power and participation. Private interests and individual choices make citizens more private in their attitude towards participation and consequently the 'community' function is eroded. The liberty of private life is, in fact, the liberalism of the modern age. The classical liberal view of politics insisted on diversity and freedom of private opinions against the threat of uniformity of beliefs. John Stuart Mill, in his 1859 essay 'On Liberty', accordingly expressed the fear that the spread of mass opinion would mean that Europe was 'decidedly advancing towards the Chinese ideal of making all people alike' (1962: 203). The citizen becomes a passive citizen when he approves the legitimate function of representative institutions, courts and welfare systems. Mann's argument likewise considers citizenship as a strategy for the regulation and institutionalisation of class conflicts by public or governmental agencies rather than a set of practices which articulate popular demands for participation[7] (Mann, 1987).

The main criticism advanced by communitarians against liberalism takes issue

[7] See the introductory chapter above.

with the conceptualisation of citizenship as the 'enjoyment of laws', a notion that dominates contemporary law, and they assert instead the necessity of activist practices that citizens should promote. In other words, it is the sense of responsibility, and not just the enjoyment of the protection provided by authority, produces a passive citizenship (Walzer, 1990). In narrow political terms, the 'communitarian' tradition focuses upon the relationship that links a citizen to the state during the formation of the nation-state. 'A citizen [...] is a man whose largest or most inclusive group is the state' (Walzer, 1970: 218). The linkage reveals more than a mere relationship. It tells us about the world of common values or meanings that political citizenship has been shaping. Among these, the value of the self-determination and, consequently, the preservation of the community are considered the most relevant. Citizens will be concerned to sustain their particular set of meanings and are entitled to exclude those who might interfere with their designs. The stronger the value of self-determination the more negative will be the perception that citizens have towards the presence of aliens (Delanty, 1995; Einhorn, 1996). One of the means by which citizens distinguish themselves from foreigners is through their degree of access to legal protection (Garcìa, 1993). In the following chapters it will be argued that the so-called *communitising* project of the European Union risks moving in the direction of greater self-determination thereby enhancing the negative image of aliens[8].

1.2 Communitarism, political and civil rights

There are three objections to the communitarian approach that need to be stressed.

[8] In particular see Chapter 4 below.

Firstly, citizenship *per se* does not create identity but it is politically employed to function in this manner[9]. For instance, the British communitarian approach emerges as a consequence of policies intended to control immigration, this aspect will be analysed in more details in chapter 2. Secondly, the mere awareness of the necessity of a community does not provide a strong basis for the maintenance of such a community or for belonging to it. Finally, communities place restrictions on freedom. As a consequence, the nation-state is to be the sole political unit in which it is possible to achieve citizenship rights. This is also Marshall's assumption (1950), which reveals the autonomous aspect of nation-states in which governments are immune from pressures within the world-system of capitalist nations (Giddens, 1985).

Citizenship in the nation-state is politicised to fulfil the need to protect and to restrict the benefits that citizenship entails. This protective mechanism produces the symbolic construction of a given community's values, and political rights symbolise that function. The emphasis given to political rights within a community can be summarised in the three elements of political citizenship, which are intended (a) to confer upon citizens the power to influence the political process; (b) to provide a central condition of citizenship including the ability to defend rights; and (c) to control the access to resources. It will be argued that with the establishment of supra-national institutions political rights become dysfunctional since they increase the difference between citizens and non-citizens, both EU nationals and non-EU nationals. This is evident in the restrictions on political participation place on those who are not nationals.

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[9] See Chapter 4, 6 below.

Rather than advancing the process of integration, the political rights of citizenship are exclusive and serve as a means by which to control access to resources. Political rights at the local level facilitate a degree of integration but immigrants from non-EU states are treated differently with respect to local political rights than immigrants from states within the European Community (Welsh, 1993: 29). Third country nationals, for example, cannot vote for the European Parliament even though decisions taken at the European Union level have ramification at the local level. Third-country nationals may possess local rights, but they cannot influence the political process[10]. Many scholars argue that political participation at the national level is more important than participation at the local level, since decisions of more direct relevance to the work of the community are taken at the national level (Kostakopoulou, 1998: 166; Evans 1991: 210; Meehan, 1997: 72). Political rights thus fulfil a traditional condition of citizenship, but they are not functional to the establishment of a new community in which the legal status of nationals of member states is changing.

Can one say that civil rights constitute the essential condition of citizenship? Through the 'minimalist approach', the civil association in which citizens are involved has no substantive purpose and the legitimisation of a community occurs not through a political association but rather via civil association (Oakeshott, 1975). Citizens are concerned with those rules that make the achievement of a variety of objectives practical. In this sense, politics carries little weight, and any person consenting to legal authority satisfies the conditions of citizenship (Parry, 1972). According to this approach the subscription by citizens to the rules at this minimal level does not

[10] See Chapter 5 below.

necessarily require an element of active participation. The circumstances of guest-workers nevertheless provide an example of a category of individuals bound merely to acknowledge the authority's rules. The kind of subscription required of citizens certainly involves more than a mere acknowledgement or tacit consent of these rules (Layton-Henry, 1990; Meehan, 1993). This implies that civil rights through the civil association do not always satisfy the condition of citizenship to defend and assert one's rights on terms of equality with others.

1.2.1 Social rights and universalism

At this point, one may ask whether or not social rights represent an essential condition of citizenship. Social rights become a fundamental element of citizenship when they can only be claimed through citizenship. In order to be effective, social rights must protect the conditions of life necessary to offer a material basis to civil and political rights. The right to work, security, education and health need to be safeguarded, but the safeguarding of these more universal values clashes with the legal and political restrictions taking place within the European Union. In the transition from the third to the fourth model of citizenship, social rights are becoming fundamental in influencing the political process and more bound to the process. They represent the means by which individuals articulate their aspirations and influence the evolution of citizenship.

Marshall's scheme outlines a development of citizenship that involves a transition from societies based upon ascriptive criteria to societies based upon achievement criteria (1950). The shift also involves a transition from particularistic to universalistic values (Parsons, 1966). In criticising Marshall's approach, Bottomore

argues that a general theory of citizenship should pursue a comparative and historical approach since the character of citizenship varies systematically between different societies and over time (Marshall and Bottomore, 1992). According to Bottomore, the political community and historical role of the nation-state refer to the concept of formal citizenship and national identity. Substantive citizenship on the other hand concerns rights and particularly social rights, but it is constantly challenged by social struggles (Marshall and Bottomore, 1992: 85). Bottomore indeed emphasises the role that social groups have played in developing substantive citizenship (Marshall and Bottomore, 1992: 83). The expansion of substantive citizenship, for example, recently has been driven by certain social groups involved in trans-national struggles, which further illustrates the universal element in substantive citizenship. Social rights are political instruments through which various political movements seek compensation for their circumstances and the legitimisation of their claims against society. Social rights are strictly related to human rights, but this is where the contradiction begins. Restricted access to the community is justified neither in political nor in legal terms.

Barbalet has suggested that the institutionalisation of social rights requires new political, legal and administrative practices (Barbalet, 1988). He argues against the universalism of social rights because social rights must be analysed in conjunction with social services. Differences between individual needs are such that access to social services is far from being universal. The universality of social rights remains impossible to grasp except as an ideal. This is because access to most social services must be considered in terms of particular needs, and these needs are influenced by specific structural conditions (Weber, 1966). By the same line of reasoning, however,

social rights undeniably contain a trace of universalism since one can discern the same societal needs across different political cultures. The negative approach is based on the following reasoning: the substantive element of social rights relies on the capacity of citizenship rights to allow participation in the social context.

The difference between substantive and formal citizenship occurs when citizens are unable to exercise rights that confer upon them a particular virtuous capacity. If the formal capacity of citizens cannot become substantive, citizenship is without value. The system of common values that protects the community decays since the practical ability to employ rights and legal capacities associated with citizenship are not equally available to all residents. The integration of a particular society by means of the cultivation of a system of common values cannot be reached in a community in which the conditions and social opportunities are unequally distributed. This emphasises the fact that the expansion of substantive citizenship needs to be explained in relation to specific social groups who are involved in the struggle for access to rights (Marshall and Bottomore, 1992: 73).

Neither Barbalet nor Marshall, by contrast, consider social conflict to be an important element in the expansion of citizenship rights. They both argue that the integrating function of citizenship derives from the status of equality. Marshall argues that the development of citizenship provides a 'status' that reduces the class inequalities and thereby decreases conflict and tension between classes. Dahrendorf challenges Marshall's exclusion of social conflict from discussions concerning the structural conditions of citizenship. For Dahrendorf, the status of equality is a symbolic ideal of citizenship that continuous social conflicts aim to achieve (Dahrendorf, 1974).

Ultimately, as Turner has so eloquently argued, social equality is linked to and limited by the logic of 'need', 'profit' and the 'accumulation' of capital, which is to say the logic of the market. The result is a new universalistic culture that undermines religious values (Turner, 1986). The hierarchical state is replaced by contractual relationships. Contemporary politics is characterised by the struggles of new movements for social membership. The central idea is that citizenship is the outcome of class conflicts, migrations, and egalitarian ideologies. The mobilisation of the working class and its power has been an essential condition for the expansion of citizenship rights. The unification of the proletariat tends to produce a class awareness in which the citizen begins to recognise his relationship not only to the state but also to other citizens. As noted above, these relationships are essentially contractual and political, regulated not only by the State but also by the market through supra-national agreements.

The development of modern citizenship corresponds to the constitution of the nation-state within the economic system. The contradiction is that social rights function through a market that is increasingly global while political systems still mirror a national nature. When people move from one nation-state to the another, their political rights lose either significance or efficacy. A citizen of one member state moving into another member state may retain his/her political rights as far as local and European elections are concerned, but individuals cannot enjoy national political rights in the member states into which they move. This alters the significance of rights, because local political rights are insufficient to give individuals a tangible sense of influence at the level where the most important political decisions are made.

The right to participate in politics at the national level nevertheless remains

attached to the concept of nationality and citizenship, and it is thus incompatible with the principle of free movement across nations. Social rights, on the other hand, can be transferred across the frontiers of member states unhindered by nationality, as long as the bearer of those rights is a citizen of a member state. What we are left with is a national system of citizenship in a social context that requires a more pluralistic approach (Turner, 1992; Mouffe, 1992; Rawls, 1996; Meehan, 1997; Lehning 1997).

Turner formulates a theory contrary to that of Marshall. Whereas Marshall (1950) claimed that citizenship should erode the negative effect of capitalism on class relationships, Turner (1986) argues that citizenship could be a support for the continuity of capitalism. There are two main assumptions in Turner's theory: (1) citizenship supports the continuity of the capitalist practice of production giving an adequate expression to the needs of the bourgeois in the market; and (2) citizenship supports capitalism providing for the elimination of some forms of social conflict. Turner gravitates closer to Marshall's line of reasoning on the latter point. Capitalism is violent and abusive, he acknowledges, but it creates a confluence of progressive forces that can create the potential for the enlargement of citizenship rights. The ideological defence of the market by the bourgeois in support of property rights against feudal power ultimately turned against the bourgeois as the working class mobilised in the quest for equal social rights and welfare benefits. The needs of the industrial nation-state helped to turn the citizen-soldiers into an organisation of working men and women. Whereas military service was once regarded as an opportunity to contribute to the national strength, the opportunity to work is now considered in these terms. By the twentieth century, the good citizen had become a figure in a grey flannel suit (Shklar,

1991). To achieve greater participation in society nevertheless demands a wider distribution of wealth and a broader concept of citizenship. As a consequence, traditional practices and attitudes will change. This reveals: (1) the intrinsic value of citizenship in relation to changing societal circumstances and (2) the degree to which societal needs transform the priority of citizenship's means.

The expansion of citizenship rights is the effect of collective struggles to preserve and to reinforce membership in a community. While this process tends to improve access, citizenship *per se* still associates the question of access with the availability of resources in the society. If it is true that citizenship is strictly identifiable through the potential participatory nature that it guarantees what is the meaning of participation in the new social system? This is why one needs to analyse the confines of the society to which citizenship refers.

The fourth model of citizenship, Euro-citizenship, occurs with the formation of a new community. Conceptually, citizenship now becomes detached from the nation-state in that the rights associated with citizenship can be also regulated and guaranteed by supra-national institutions. It has been argued, for example, that the ECJ has developed mechanisms for social protection, and it has pushed the decision-making process through case-law to overcome social inequalities and discrimination (Meehan, 1997: 74). In contrast to Aron's argument that socio-economic rights are not citizenship rights (1974), it may be stated that while the political rights associated with citizenship remain strictly national in character, socio-economic rights assume a supra-national validity[11].

[11] Aron's nationality-based conception of citizenship distinguishes between political rights and socio-

It is now obvious that many old assumptions regarding citizenship are untenable. The problem of social advancement is at the forefront of our political problems. There are many fundamental disagreements about the nature and function of citizenship in a post-industrial or post-modern society. If the problems of social integration are to be adequately addressed in a world where nation-state sovereignty and civil solidarity are profoundly challenged by globalisation, Europeanisation and immigration, then further consideration must be given to social rights.

1.2.2 Citizens, legal subjects and non-citizens

As noted above, the condition of citizens has changed over the course of centuries from active to passive and from citizen to subject. Throughout much of history, foreigners and non-citizens have been granted a certain degree of legal status contingent only upon being free men and not feudal subject. The deepest division line was not so much the one between citizens and foreigners, but the other between free human beings and slaves. In the passage from subject to citizen I argued that the citizen in the nation-state is both citizen and subject at the same time. As an active party, the citizen is a participant in the formation of a general will, and as a passive one, the citizens is an individual requested to follow the national will. Because citizenship is something into which people are born, it indicates a condition of 'subject' that devolves upon the individual by virtue of external forces. However, citizenship represents neither the entire 'human subjectivity' nor the entire 'legal personality' of the individual (Ferrajoli,

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economic rights, associating with citizenship only the former. He recognises a universalistic element in social rights since they can be regulated by other than national governments, but he denies the universalistic element of citizenship. See also Meehan's criticism Aron (1997:70-73).

1993). This confers to citizenship an 'exclusive' function. The possession of this status implies that there is some human being that does not possess such a status.

In this study the distinction between legal subjectivity and citizenship is not gratuitous. The categorisation of legal subjectivity is neither diametrically opposed to citizenship nor intended as a substitute for citizenship. It follows from the redefinition of the concept of legality in which access to rights hinges on criteria other than nationality.

This approach differs from the theory articulated by Habermas claiming that a continuum exists between the two notions and the conditions of legal subject and citizen (1994). On the contrary, there is a distinct tension between the two. History and literature reveal that it is incongruous to conceive an open and inclusive idea of citizenship. A fundamental tension, thus, emerges between the universal inclusive concept of legal subjectivity and the particular exclusive notion of citizenship. We could say, therefore, that citizenship, in whatever form is exclusive with regard to legal subjectivity as long as citizenship is ascribed only to nationals.

The common element between legal subjectivity and citizenship is that they both refer to a legal status which consists of being a holder of rights. It is possible to draw the following distinction between civil, political, and social rights. Civil rights protect a space of individual autonomy, political rights guarantee some form of participation, and social rights protect conditions of life held as socially relevant. In other words, civil rights would defend the value of individual freedom, political rights the value of participation, and social rights the value of justice. One could then ask if the value of individual freedom, participation, and justice are more consistent with the

'exclusive' definition of citizenship/nationality or a more universal categorisation of legal subjectivity?

Unmistakably, as we move towards the European Union level of analysis, a nominal categorisation of the legal status from citizenship to legal subjectivity occurs. The active/passive citizens of the individual nation-states (nationals) now become the active legal subjects of other member states. These are called European citizens who possess full political and social rights in the member state in which they are considered 'nationals' but not in other member states. The other categorisation refers to the passive legal subjects who are permanent residents-aliens with limited set of rights in the host country. It follows that there are three main categories: (1) national citizens (active/passive citizens); (2) active legal subjects (European citizens); (3) passive legal subjects (legal immigrants). The normative establishment of European citizenship reformulates the dichotomy between active and passive legal status into a broader political unit and citizenship is exclusive once again. To avoid this, legal subjectivity should ascribe civil, political, and social rights to another definition of legality based on a criterion other than nationality. The principle of 'domicile' (Kostakopoulou, 1998) or 'residence' (Welsh, 1993) would suit this substantive change. In consequence, citizenship and nationality will remain interchangeable without impinging upon an individual's access to resources. On the other hand, legal subjectivity would eliminate the substantive difference between passive and active without impinging upon national identity and cultural affiliation.

Under the present political circumstances in Western European countries, there are no very strong reasons for withholding all civil and social rights from all men and

women resident in a particular country whatever their actual citizenship might be. Even political rights could be conceded to non-citizens if they are *de facto* members of the political community as a consequence of residence. These observations draw attention to the decision-making process and particularly to the criteria by which legal status is awarded to non-citizens. Here lies the main contradiction in the conceptualisation of European citizenship. The difficulty is whether or not one should still confer relevance to citizenship if such relevance does not become inclusive of the values that guarantee the full integration of those who are legally persons in the 'community'. This thesis argues that the European model merely re-formulates the communitarian function of citizenship.

Conclusion

This chapter has emphasised the distinct manner in which civil, political, and social rights throughout history have served societal needs and have influenced the symbolic function of citizenship. Citizenship thus finds its rationale and its intrinsic value within the logic of changing societal needs and circumstances. Active participation in politics was a prerequisite for the citizenship status in the Greek city-state while the medieval citizen was more detached from the political process. In particular, the self-interest of society during the Middle Ages and the need for 'competence' in trading led to the wholesale emancipation of ordinary citizens. This conferred upon citizenship a major social function but it did not necessarily imply a closed system

The necessity to forge a political identity during the formation of the nation-state bestowed upon citizenship a unitary value, which is to say that it gave individuals

political dignity through which they were able to express a need for both collective and individual identity. In the fourth model of citizenship, Euro-citizenship, certain rights are guaranteed by supra-national institutions. This means that certain rights are detached from the status of national citizenship and a substantive redefinition of legal status becomes essential. With legal subjectivity as a legal status equally extended to residents rather than simply to nationals, the status of citizen becomes somehow residual and less significant than it customarily is. Only a system that easily recognises the legal status of non-citizens would be able to accomplish this objective. The following chapter will focus on the evolution of new restrictive legal measures at the national level that make this objective very difficult to achieve.

Chapter 2

Immigration and citizenship policies: the redefinition of the concept of nationality in the United Kingdom and Italy

Introduction

This chapter focuses on the link between citizenship and nationality on the one hand and between citizenship and immigration on the other. I shall describe first the rights that have most defined citizenship at the national level in Europe prior to the formulation of Euro-citizenship. Secondly, I will argue that immigration policies at the national level, after the Maastricht Treaty and with the establishment of new citizenship rights, have become a filter used to define EU citizens. I will do this through an examination of citizenship in the United Kingdom and Italy, emphasising the redefinition in these two countries of the concept of membership and citizenship.

Though the definition of non-EU citizens varies throughout the member states, a common element is that of defining the class of outsiders (the category of 'them') to serve an exclusion function of Euro-citizenship. It will be argued that the presence at the national level of an increasingly diverse population – some as temporary residents, others with the intention to stay – has significant implications internally for the re-definition of national citizenship and for the rights and responsibility attached to it. The concept of nationality, is thus not only the primary criterion for European citizenship but it is also fundamental for immigration purposes. As this process develops, it engenders the typology of we/us and them/others.

2.1 Citizenship in the UK: an atypical case

The approach towards citizenship in the United Kingdom is peculiar in that rights take precedence over citizenship status, which means that rights can be granted to anyone without the necessary condition of being a citizen. Rights held by an individual

determine his/her status[1]. This peculiarity has distinguished British practices from those of other member of the European Union in granting citizenship rights. In the UK, citizenship does not denote any specific right, but the citizen status and that of membership are quite close.

The vast literature on the history of British nationality stresses the lack of a central character in the definition of British citizenship (Jones, 1956; Holmes, 1978; Hobsbawm and Ranger, 1983; Parry, 1957; Dummett and Nicol, 1990). Nicol and Dummett try to show that the deficiency of a single document constitution or basic law listing rights and duties causes what is called British constitutional formalism in which the national identity has been shaped by laws and 'policies on entry into the United Kingdom' (Dummett and Nicol, 1990). This theory implies that British nationality became established on the basis of immigration, unlike arrangements in most other states, though sometimes these policies have not been integrated into the main body of legal tradition (Dummett, 1986).

It is worth mentioning that through its 'formality' British society has been in some aspects more generous than other European countries in granting rights to some non-citizens (Spencer, 1995). From 1948 to 1962, Britain operated one of the most liberal migration regimes in the world, granting citizenship to hundreds of millions of colonial subjects (Hansen, 2000: 16). Hansen argues that this was the result of a policy aimed to support 'the ties between Britain and the Old Dominions' (2000: 19). An important factor, however, is missing in this analysis. It was the lack of a constitutional

[1] According to the *General Provisions regarding leave to enter or remain in the United Kingdom* Article 12 states that: 'A person claiming to be a British citizen must prove that he has the right of abode in the United Kingdom by producing either: (I) a United Kingdom passport describing him/her as a British citizen or as a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom; or (ii) a certificate of entitlement duly issued by or on behalf of the Government of the United Kingdom certifying that he has the right of abode'.

definition of citizenship that permitted a more flexible redefinition of nationality and immigration as stated in the 1948 British Nationality Act and the 1962 Commonwealth Immigrants Act. This point is further substantiated by the fact that as soon as a British citizenship was established in 1981, 'the UK find itself broadly convergent with the rest of Europe in that it combines relatively easy access to nationality with strict immigration control' (Hansen, 2000: 207). Importantly, this process created a dissociation between nationality law and immigration. In other words, before 1981, Britain lacked the obstacle of an exclusive citizenship mechanism that characterised other European countries. The policies of other states make it difficult for some residents without national citizenship to attain certain rights. The aim here is not to reconsider the history of the British nationality and immigration but rather to delineate the rights attached to citizenship in the UK before and after the establishment of the Euro-citizenship, and to consider to what extent citizenship in this case has been functional in shaping British nationality.

2.1.1 The shift from 'subjecthood' to citizenship between 1948 and 1981

The term of 'citizenship' was introduced into British law in the British Nationality Act of 1948, which created a citizenship of the United Kingdom and its Colonies. The legislation was intended mainly to reinforce an alliance with the colonies and to symbolise a 'common loyalty and equal status'[2]. Until this time nationality was rooted in the concept of 'subjecthood' with the connotation of domination and without substantive rights attached to citizenship. The 1948 Nationality Act aimed to replace

[2] *Changes in British Nationality Law: Position of the Colonies.* 1946. CAB 130/13. Cabinet Committee on British Nationality, Memorandum by the Secretary of State for the Colonies.

'subjecthood' with 'citizenship', although this ambition was not actually realised before the introduction of the Nationality Act of 1981. A combined citizenship of the United Kingdom and colonies was seen nevertheless as a 'gateway through which the common status of a British subject should be conferred upon the inhabitants of the United Kingdom and the Colonies'[3].

At this stage, British citizenship remains rather formal in its essence. This is because both the Commonwealth concept of citizenship and British 'subjecthood' were still bound together by a common allegiance to the Crown. In this phase, the connection between citizens and the state is still very weak. Traditionally, any person born in the UK or in territories linked to the Crown possessed British nationality. As former colonial territories gained their independence the 1948 Act aimed to consolidate British citizenship alongside the original nationality: thus a Canadian was a Canadian citizen and a Commonwealth citizen with the right to vote and to move freely in the UK. The situation changed during the 1960s, when it was considered to have been a mistake ever to have included colonial citizens in the same citizenship as people from the United Kingdom. Attention increasingly centred on the effort to restrict citizenship to people with a United Kingdom connection (Dummett and Nicol, 1990: 216-217).

A report of the European Commission on Human Rights of East African Asians versus UK is a fascinating reminder of immigration and race politics of the late 1960s. The 31 applicants were UK citizens of Asian origin who had settled in Kenya, Uganda, and pre-independence Tanzania (then named Tanganyika). Not qualifying for the citizenship of those countries on independence, they retained their UK citizenship. In the late 1960s, the governments of East Africa began imposing restrictions on their

[3] *Ibid.*

Asian populations as a part of their policy of Africanisation. These restrictions culminated in the destruction of livelihoods, the confiscation of homes, and expulsion[4].

In February 1968, the Labour government responded to the increasing number of British Asians fleeing East Africa with the Commonwealth Immigrants Act, which came into force just seven days after it was introduced on 1 March. The Act removed residence rights from UK citizens with no ancestral connection with the UK, replacing these rights with a special voucher system (Hansen, 2000: 153-178). The argument used then by Labour Home Secretary James Callaghan resembled those used in the late 1990s by the Conservative government against refugees: fewer make for better race relations. The argument rendered racism respectable and gave a stimulus to 'Powellism'[5] and to the open manifestation of hostility towards black people. Political parties were cautious about introducing contentious legislation while Britain was not yet a member of the EEC (Layton-Henry, 1984). At that time, certain patriotic discourses occurred especially in the field of immigration. Importantly, the impact of Powellism on the younger generation of Conservatives gave rise to nationalist concerns (Foot, 1969).

Despite the Commission's condemnation of the 1968 Act as racist, it was not until 1998/99 that residence rights were restored to the UK citizens originally excluded by the Act, who for 30 years were obliged to wait their turn in the queue for a 'special voucher'. The 1968 Act instead was followed by the 'patriality'[6] clauses of the Conservative government's 1971 Immigration Act, and then in 1981, citizenship was brought into line with residence rights and the British Asians excluded by the 1968 Act

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[4] European Commission of Human Rights. 1994.
[5] Powell's impact on the debate on British national identity is discussed in Rich (1986).
[6] Patriality referred to those who had special ties of blood and kinship including most, but not all citizens of the UK and its Colonies, and several million Commonwealth country citizens. Everyone else British Commonwealth or Alien was non-patrial and subject to control.

were no longer British. New immigration rules came into effect introducing new limits on the acquisition of citizenship. Non-patrials and Commonwealth country citizens who became settled in the UK after the commencement of the Act would be required to go through a process similar to the naturalisation procedure. The Nationality Act of 1981 was a response to problems concerning immigration and the need to place nationality law on a clear foundation.

The 1981 Nationality Act distinguished between three categories of citizenship: (a) British Citizenship, (b) citizenship of the British Dependent Territories[7], and (c) British Overseas citizenship. The former Citizenship of the United Kingdom and its Colonies ceased to exist. The measure was intended to end the confusion between citizenship rights and immigration created by the Commonwealth Immigrants Act of 1962. A person of the second or third category had neither the right of entry into the United Kingdom nor an enforceable right of travel between one British dependent territory and another. The act does not, however, affect the position under the immigration law of anyone lawfully settled in Britain, although it introduced some amendments to the immigration law so as to allow the 'right of abode' in Britain in terms of citizenship. The 'right of abode' conferred a status free from conditions, and it defined the category of citizen. Only British citizens had the right of abode, which thus excluded other British subjects and citizens of Dependent Territories (now called British Overseas Territories)[8].

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[7] A 1999 White Paper officially renamed what were previously called Dependent Territories as British Overseas Territories without following the French example of formally absorbing them into the metropolitan territory and granting them representation in parliament. See The Guardian, 17 March 1999 on the grant of full citizenship to 150,000 members of the old empire. The Foreign Minister Robin Cook had already declared a year earlier that the term 'Overseas Territories' would be a more politically correct definition than Dependent Territories. See The Guardian, 16 July 1998.

[8] Citizens of the Republic of Ireland had also the right of abode.

The problem of new Commonwealth immigration was not the main reason to introduce new nationality legislation in the United Kingdom. The entry of Britain into the EEC also fostered the need to direct attention towards a new nationality act (Rich, 1990). The main innovation in the citizenship condition was the acceptance of *ius sanguinis*. The new condition did not abolish *ius soli* entirely, but it established that birth on UK territory no longer gave automatic right to British Nationality[9]. Only individuals born in the UK to someone legally resident in the country are British at the birth (Hansen, 2000: 215). In accordance with the *ius sanguinis* practice, applicants should have been able to demonstrate a kin connection with the United Kingdom[10]. This was also a traditional practice among other member states such as Germany, Italy and Greece.

Before the introduction of the British Nationality Act 1981, the status of British 'subject' applied to both British and Commonwealth citizens, but the Act abolished this status. The term 'subject' now applies to British subjects without citizenship, which is to say stateless individuals within the Commonwealth and Irish citizens born before 1 January 1949 who have expressed the desire to remain British subjects (Hansen, 2000: 214). Shifting the ascription of rights form 'subjecthood' to citizenship represented not only the nominal shift from one status to the other, but it also implied the association of

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[9] *British Nationality Law: Outline of Proposed Legislation*. 1982. Cmnd 7987.

[10] British Nationality is granted to all persons born in the UK if either the father or the mother is a British citizen or settled in the UK. A child born outside the UK has the right to British nationality if, at the time of birth, one of the parents had British citizenship or had worked as a servant of the Crown. The practices of 'registration' and 'naturalisation' are still in force but they are left to the discretion of the Home Secretary if the candidate is over 18 years of age, resident on British territory for five years according to immigration laws and residence conditions, good reputation, intention to stay in the United Kingdom, and good knowledge of the English language. Moreover, the spouse of a British citizen can apply for naturalisation through a simplified procedure: proof of uninterrupted residence on UK territory for three years is required.

civil, political, and social rights with the concept of nationality. In this respect, citizenship and nationality have become interchangeable.

The Irish case constitutes a relevant example. Irish citizens have always held a special status in the UK and they have never been considered as 'aliens', but the redefinition of citizenship in the UK has also affected the rights of Irish citizens. According to section 51(4) of the British Nationality Act 1981, the term 'alien' designates a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland. This does not mean, however, that these categories of people are entitled to all the benefits of UK nationality. The redefinition of citizenship in the UK has homogenised these three categories into a single group of as 'non-British citizens', but Irish citizens also benefit from their status as citizens of the European Union.

In the O' Boyle and Plunkett[11] cases, in which lower court decisions were appealed under the heading of 'domestic and law challenge', the appellants' argument was based on two propositions that challenged UK domestic law. The first stated that since Irish citizens are excluded from the definition of aliens, they must be treated as UK nationals and entitled to all the benefits of UK nationality. The Court's opinion on this proposition was that Irish citizens have a special status and therefore they are neither aliens nor UK nationals. The Court also stated that the definition of

[11] Michael O'Boyle and Suzanne Plunkett are two Irish citizens who applied for employment in the UK, the first with the Fire Authority for Northern Ireland and the second with the Inland Revenue. Both employers rejected their applications on the ground that the applicants were not nationals of the United Kingdom and therefore could not be considered for employment. Both applicants disputed the lawfulness of these decisions, arguing that the denial of employment constituted infringement on their right to freedom of movement under Article 48 of the EC Treaty. This ground of appeal will be discussed in chapter 7. The discussion here concerns only the second ground of appeal made under the head of 'domestic and law challenge' See *O' Boyle and other applications for judicial review.* 1998. Northern Ireland Judgments Bulletin, pp. 242-255 and, O'Boyle and Plunkett (Applications for Judicial review) Court of Appeal CARC 2763. Hearing-dates: 19 February 1999. Judgment by Carswell LCJ.

the category of UK nationals and the definition of aliens were not exhaustive, which implies that the UK Government has discretionary power in the definition of these categories. The second proposition stated that because 'no alien' may be appointed to the Civil Service, anyone who is not an alien must be eligible for appointment. The Court opinion on this proposition was that this did not mean that every other category of nationality must be eligible for appointment. Again, the Court stated that it is up to the Government to decide that other 'classes of persons' as well as aliens may be barred from appointment.

2.1.2 The definition of British nationality for 'Community' and national purposes

Since 1962, British nationality law has been based upon the law of immigration, and it continued to follow immigration law until the period of harmonisation of frontier-control in the European Union, which demanded the clarification of concepts such as nationality, individual rights, and state sovereignty. In the British case, immigration control has been not only a means by which to define the external border, but it has also been used to define internal political priorities. Unlike many other countries in Western Europe, Britain also saw immigration as an area of political controversy and partisan conflict (Layton-Henry, 1990). With the entrance into the EU, certain political priorities had to change. The definition of who would be British nationals for Community purposes was amended in 1982 just before the British Nationality Act came into force. The definition included only British passport holders with the 'right of abode' under domestic law. The rights of all other British nationals have been curtailed. As a

consequence, there are within Britain some instances in which an EU national from another state has rights superior to those of British citizens.

The historical differentiation between subjects and aliens and the lack of a general right of entry illustrate quite clearly the fact that the UK did not really have individual citizenship on its own (Holmes, 1988). The juxtaposition of citizenship and immigration law was therefore an artificial attempt to link together in an unnatural connection an immense variety of people by denying a unitary meaning of citizenship. This pattern is partially evident within the idea of Euro-citizenship, which creates a stronger link between nationality, immigration and citizenship for European Union purposes.

The establishment of Euro-citizenship guarantees the validity of national citizenship. The European Council declared that giving nationals of member states additional rights and protection would not in any way take the place of national citizenship[12]. This declaration underlines the dependence of Euro-citizenship on national citizenship and also the link between an individual and his respective state of nationality rather than with the Union itself as the basis for his enjoyment of Euro-citizenship. Although each member state is competent to formulate its own definition of nationality, and even to define its nationality for EC law purposes differently from the definitions it employs for other purposes[13], each state must meet the reciprocity demands made by other member states. Changing conditions may therefore require the occasional redefinition of nationality in order to satisfy reciprocity demands (Böhning,

[12] Bull. EC, Supplement 12/1992.

[13] The current definition of UK nationality for Community law purposes was applied as a basis for holding that a British Overseas Citizen was not rendered ineligible for a Union-financed research fellowship in the UK by virtue of possessing the nationality of that Member State (Case T-230/94, Frederick Farrugia *v.* EC Commission). As noted above, such an application of the definition was consistent with the functional requirements of the Union scheme.

1972)[14]. Where a member state makes an alteration to its conditions of nationality, it might be said that discrimination would be involved against former nationals of this State who had exercised freedom of movement prior to the alteration. In such instances, individuals whose residence rights are affected by changes in the nationality law of the State to which they 'belong' may enjoy some protection under the human rights provisions of international law. Individuals who have exercised their rights of free movement and have chosen to move, however, may not necessarily be afforded the same protection in other states.

The link between nationality conditions and the exercise of additional rights of Euro-citizenship that derive from nationality can be problematic when nationality law is employed as an instrument of immigration control having effects so incompatible with free movement requirements at the European level. Unilateral changes in nationality law by a member state may be regarded as inconsistent with the spirit of Euro-citizenship. The employment of a different definition of nationality for Community law purposes implies that persons having both a right of entry and a right of residence in the member state concerned nevertheless may be subject to control elsewhere in the Union. In other words, legal status granted in one member state may be denied by other states. Legal status in this case is limited to a single nation-state and the same definition will not necessarily be recognised by other member states. In the case of the UK, the status of legal subject[15] now affords only limited access to rights, with the result that rights no longer take precedence over status, at least as far as the relationship between the UK and the European Union is concerned. For an individual to whom British citizenship

[14] The original definition of UK nationality for Community purposes was affected by demands of existing Member States.

[15] The term legal subject here refers to those individuals who reside legally in UK without being citizens.

has conferred a right of abode in the UK access to rights at the European Union hinges entirely upon that status[16].

A good example of the way in which a member state can make an independent decision regarding nationality is the British Government's review of nearly 150,000 residents of former colonial territories[17] who are to be granted full British citizenship rights. This includes the right to live and work in Britain and to travel without visas in the European Union[18]. This review excludes citizens of the British Indian Ocean Territory and the Sovereign Areas in Cyprus 'all of whom have alternative nationality'[19]. The Falkland Islands and Gibraltar, claimed respectively by Argentina and Spain, are also excluded form this review because their residents already hold full British citizenship.

The UK case shows that immigration law serves Union citizenship purposes in terms of defining EU citizens, but the harmonisation of nationality at European level fails because immigration and nationality in the UK are strictly linked. For the UK, immigration controls at the national level compensate for the decrease of sovereign power at the national level. The limits of judicial law in this area are underlined in calls by the European Parliament for the harmonisation of nationality laws[20]. More

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[16] *Citizenship and rights of abode.* Second Report of the Select Committee on Foreign Affairs discussing the issue of citizenship and rights of abode for the overseas territories. 3 February 1998.

[17] The British overseas territories affected by the decision, with their respective populations in parenthesis, include Anguilla (10,000), Bermuda (61,000), The Cayman Islands (33,600), The Pitcairn Islands (58), The British Virgin Islands (19,300), Montserrat (12,000), St Helena (6,000), Turks and Caicos Islands (13,500).The total population of the affected territories is 155,458.

[18] The 1999 White Paper announces that 150,000 will be eligible to live and work in Britain and travel without visas in the European Union. This provision overcomes the limit imposed by the British Nationality Act of 1981 to right of entry and abode in the United Kingdom for British Dependent Territories Citizens (now called British Overseas Territories). See The Guardian, 17 March 1999.

[19] *Britain and the overseas Territories.* Statement by the Foreign Secretary, Robin Cook, House of Commons, 16 March 1999. Foreign Commonwealth Office.

[20] In connection with the need to reduce Statelessness, see the *European Parliament Resolution on the British Nationality Bill*, Official Journal no. C. 260/100, 12 January 1981.

particularly, the Parliament considered that free movement and the extension of Euro-citizenship call for the replacement of the principle of *ius sanguinis* by the principle of *ius soli* as a basis for citizenship[21].

The absence of a written Constitution setting out the rights and duties of British citizens led the all-party Citizenship Commission in 1990 to call for a review and codification of the law relating to the legal rights, duties and entitlements of the citizen in the UK and for the dissemination of this information in a clear way to all citizens[22]. This recommendation was not accepted, however, and the UK has been left to scour through numerous pieces of legislation and regulations where one finds, in fact, no clear distinction between the rights of citizens and those of various categories of non-citizens. British citizens enjoy full voting privileges and right of entry in the UK. Commonwealth citizens are allowed to vote and to stand as candidates in both local and national elections, and also in European Elections despite the fact that they are not being nationals of a member state. Other foreigners can live in the UK for a lifetime without ever acquiring voting rights. This explains why the reliance on a nationality condition in the case of the United Kingdom as the basis for enjoyment of Euro-citizenship, though necessary as a step towards the fulfilment of Euro-citizenship, may actually prejudice its realisation for some residents.

2.1.3 Rights, nationality and new immigration measures in the UK

Nationality status has never been a criterion for the enjoyment of social rights. The condition of access to social rights and economic benefits, such as the right to work and

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[21] See the *Resolution on respect for human rights in the European Community,* O.J. No. C. 115/178, 26 April 1993.
[22] See *Encouraging Citizenship*, Report of the Commission on Citizenship, 1990.

housing benefits, are dictated more by immigration procedures than by nationality acts. In fact, changes in legislation concerning immigration over the last two decades have affected access to rights and benefits more than the promulgation of nationality acts, which highlights another peculiarity of the relationship between rights and nationality. Non-citizens who are habitually resident in UK are entitled to treatment under the National Health Service and, for instance, to social security benefit such as income support, or public housing. British citizens who are not habitually resident, on the other hand, cannot claim these rights, even though they are able to claim these rights as European citizens in another member state. The status of being 'habitually resident' therefore confers access to benefits and services, while citizens living lawfully in another country for example, – au pairs, overseas students and even the foreign spouses of recently married British citizens – are not entitled to benefits such as income support or public housing.

In the case of residence rights, the effect is that European citizens (including British) may be obliged to prove that they possess the right to live in the UK, instead of presuming not only that they have the right to live there but also that such a right is sufficient to afford access to other rights and services enjoyed by those habitually resident in the UK. Section 8 of the Asylum Immigration Act of 1996[23] illustrates this point declaring that those people who are subject to immigration control and do not have permission to reside in the UK cannot undertake any type of work[24]. Under this

[23] Current Law Statutes. 1996. *Asylum and Immigration Act 1996.*

[24] There are other main provisions introduced by the Asylum and Immigration Bill which are: (1) the drafting a 'white list' of designated countries of origin for asylum-seekers that are deemed safe which require asylum claimants from these countries to overcome a legal presumption of safety. With respect to the first provision noted about, the white listed safe countries are Bulgaria, Cyprus, Ghana, India, Pakistan, Poland, and Romania, though Amnesty International at the time expressed serious concerns about all of these countries; (2) the extension of 'fast-track' appeals, currently used for

measure citizens and non-citizens are equally subject to immigration control when they search an employment. They are required to provide documentation to attest to their position[25].

There are two important points to be made. First, the status of being a citizen is neither a sufficient condition nor the only condition of access to economic and social benefits in the UK. Secondly, some citizens – such as employers and landlords – are often considered possible transgressors as they might shelter illegal immigrants. They are therefore subject to immigration control. In the European Union, the conditions of access to social rights are dictated at the national level and are based upon a new definition of nationality. Access to social rights changes from one state to the other only for non-EU citizens, but access to social and economic rights in the UK differs from other member states. Residence rights in the UK also have different implications than residence rights in other EU countries.

The High Court confirmed in August 1997 that foreign husbands and wives of British citizens are in a worse position than spouses of other European Union citizens when it comes to deportation. European Community law grants EU workers, students and others the right to move freely within the EU and come and live in Britain, if they so desire, and it also guarantees the right of family members to join them regardless of

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asylum-seekers who have traveled through safe countries of transit; (3) up to seven years' imprisonment for anyone who helps an asylum-seeker to get into the country (except those who work for *bona fide* refugee assistance organizations); (4) no local authority housing for immigrants of a class to be specified by the minister; (5) no child benefit for immigrants (including permanent residents).

[25] The document may be one of the following: (a) National Insurance Number; (b) a passport which describes a person as a British Citizen or having the right to live in or be re-admitted to Britain; (c) a passport of British Dependent Territories Citizenship arising from a connection with Gibraltar; (d) a letter from the Home Office confirming naturalisation as a British Citizen; (e) a birth certificate from the UK or the Republic of Ireland; (f) a passport from a state which signed the European Economic Area Agreement, or EEAA, confirming that a person is a national of such a state; (g) a passport which confirms that a person has the right to abode in the UK as a member of a named EEAA national who is resident in the UK.

whether the family members in question are EU citizens of another member state. Someone married to an EU citizen even if he/she is not an EU citizen, can only be deported as a matter of public policy and on very serious grounds involving, for example, a serious criminal offence; but marriage to a British citizen confers no such a rights, and it does not prevent deportation for 'overstaying'.

This was the case of Kullwinder Phull, an Indian citizen married to a British man, who asked the High Court to prevent the Home Office from deporting her for overstaying. Mrs Phull had an unhappy first marriage and when she left her violent husband she forfeited her right to stay in Britain. She had since remarried to another British man and she had given birth to a British child, but the Home Office insisted on deporting her. Her lawyers argued that her British husband was a European citizen by virtue of the Maastricht Treaty and that he therefore had the same rights to family unity as other EU citizens. The Court disagreed, saying that Maastricht added nothing to the pre-existing rights and that EC law did not apply in a purely domestic situation. Their ruling leaves several hundred couples and families in danger of forcible separation[26]. This case illustrates that EC law cannot influence the national order imposed by immigration measures that are subject to modification only at the national level. In this way, an undefined nationality does not *per se* influence the effectiveness of Euro-citizenship that instead is rather vulnerable to changes in immigration control (Evans, 1984)[27]. In addition, the definition of a class of outsiders serves an exclusive function of Euro-citizenship.

[26] See The Independent, 18 August 1995.

[27] In relation to this aspect Evans considers the kind of integration entitled by Union membership as threat for maintaining a multiple definitions of nationality within each member state.

2.2 The Italian citizenship: between adversity and social integration

In contrast with the British case, Italian practices towards the allocation of rights are intimately related to the acquisition of citizenship. This occurs at least up to the moment in which immigration in Italy has acquired particular characteristics compared to other European countries. Italian citizenship has been predicated by law n.555 (13 June 1912) and the few revisions made since its first promulgation have not brought relevant changes to the original text (Casali and Semprini, 1995). It is worth mentioning that nationality in this case is neither a status nor a condition of the juridical capacity of citizenship. This is because citizenship and nationality are interchangeable.

The juridical capacity in particular embodies some important functions of citizenship's status. Aramburo considers juridical capacity as entitlement with a dual function. It is an independent and private capacity for access to rights that does not require the condition of nationality, and it is required to be in a state of equity (Aramburo, 1931). Moreover, the state of equity does not require the condition of nationality but the same juridical entitlement. In such a way, citizenship becomes a precondition for participating in the allocation of rights. Among the prerequisites for obtaining Italian citizenship, none of the five principles described below require nationality status, but rights have always been derived from the status of being a citizen and, therefore, nationality has become an intrinsic element of citizenship.

The prerequisites for obtaining Italian citizenship are based on the following criteria: (1) *ius soli* (territorial rights), (2) *ius sanguinis* (ancestral rights), (3) 'election', (4) naturalisation, and (5) marriage. According to the first and third criteria (*ius soli* and 'election') a citizen is any person born in Italy regardless of the nationality of his of her family. Moreover, those over eighteen years of age whose parents have been resident in

Italy for ten years at the time of their birth can declare to 'elect' for citizenship. The criterion of *ius sanguinis* was revised[28] because previous legislation declared that only descendants with an Italian father could obtain the Italian citizenship.

The new legislation has overturned the distinction between patrilineal and matrilineal ancestry, so that direct descendants of any Italian are now eligible for Italian citizenship. As far as naturalisation is concerned, any immigrant who has been resident in Italy for at least five years is eligible. The naturalisation process is based on a discretionary power similar to the British case. Marriage is another means through which it is possible to become an Italian citizen. As a result of legislation introduced in 1983, the foreign spouse of an Italian citizen is eligible for citizenship after being resident in Italy for six months or after three years of his/her marriage[29].

Citizenship in Italy case has never been shaped by immigration policies. This is because there has never been a need to differentiate nationals from non-nationals. Citizenship has always been synonymous with nationality and vice versa and rights and obligations that citizens hold derive from this institution and are stipulated in the Italian constitution. This probably explains Italy was unprepared to handle the dramatic increase in the foreign presence in the country in the 1970s and in the 1980s. Immigration measures merely offered a formal possibility of integration without creating real conditions for integration that took into account social exigencies.

In the first two pieces of relevant immigration legislation[30] introduced as a result of this new wave of immigration, the issue of citizenship is not even mentioned; immigrants remain excluded from the citizenship system but with a new status that

[28] The revision was introduced by law 123/83 (Art.5).
[29] *Ibid.*, art.1.
[30] The two pieces of legislation in question, Laws 943/86 and 39/90, regulated the position of many clandestines for the first time, in particular those who by the end of the 80s were illegal in Italy.

differs from the status afforded to immigrants under the original system (d'Harmant François, 1990; Pugliese, 1993). They are now severely limited in terms of access to social provisions and partially excluded from civil and political rights. Only in 1997, after the introduction of new immigration legislation, were immigrants granted 'semi-citizenship rights'[31]. The way to Italian citizenship is comparable to an obstacle course in which distinctive barriers define the different levels of membership and rights, extending in a continuum from illegal presence to full and legal membership. The most important mechanisms of integration are nevertheless strongly linked to the acquisition of citizenship.

2.2.1 Immigration in Italy: some features

Over the past few years, largely as a consequence of its geographical position, Italy has been compelled to face the arrival of thousands of refugees from nearby countries alongside regular migration flows. Refugees from Somalia were the first to arrive, followed by Albanians, Rwandans, Serbs and Croats, Albanians for a second time, and finally and most recently the Kurds. No arrangement had been made for this sort of immigration in either the 1986 or 1990 laws on immigration and political asylum. Italian officials treated each case separately by means of *ad hoc* provisions of limited effectiveness over time. These cases clearly cannot be considered alongside classic migratory phenomena, and they have illustrated the inadequacy of ordinary restrictive instruments of immigration control to deal with exceptional circumstances. In these instances, the standard instruments of immigration control clearly undermine the fundamental principles of human rights (Monticelli, 1992).

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[31] The 1997 immigration legislation is discussed at greater length below.

In Italy immigrants from outside the EU for the calendar year 1997 amounted to 1,072,596, of which about 800,000 were eligible to seek employment (Monticelli, 1992). The official figure for the total number of new immigrants, constituting 1.9 per cent of the Italian population, does not take into account the full impact of the illegal immigration. Before the 1970s, migration flows in Italy were negative, which is to say that emigration from Italy outweighed immigration into the country. It was during the same decade, however, that most northern European countries decided to reduce the flow of immigration into their own countries. Within a space of a few years, Italy became a country of immigration rather than of emigration. Immigrants came to Italy from over 200 non-EU countries. The composition and distribution of non-EU immigrants also in Italy possesses characteristics different from those in the rest of the EU. The structure of immigration in Italy differs even with respect to gender, owing partly to the fact that the Italian government adopted a policy to facilitate the reuniting of families. The policy enabled wives and children of non-EU citizens working in Italy to immigrate into the country especially during the initial years after immigration began to outweigh emigration in Italy. The entry of non-EU citizens to reunite with their families indeed still represents a third of new entries, and the presence of children of non-EU nationals entering into Italy or born in the country is growing constantly. Italian schools are populated by about 50,000 foreign students, comprising about 0.55 per cent of the total student population[32].

In the 1980s and 1990s, immigrants have contributed positively to the national economy by occupying a central position in the tertiary sectors, and in services by providing a new vitality to otherwise declining activities and by satisfying the labour

[32] *Ibid.*

demand in the agricultural and service sectors. Over the last 20 years 44 per cent of non-EU workers in Italy are employed in the service sector, mostly involved in satisfying the need for domestic work and in providing assistance to the elderly. The percentage of non-EU workers employed in agriculture and fishing is smaller but still significant, resting at about 20 per cent, while smaller proportions are engaged in industry, especially in construction, and in a variety of other small-sized industrial activities for which qualifications are typically low[33].

2.2.2 Alignment with European requirements

The extremely fragmentary and incoherent policies of European countries leaves some doubts about a suitable model of integration for third country nationals. Bringing Italian legislation into line with that of other European countries meant, first and foremost, to discourage and to inhibit the immigration of non-EU citizens into Italy. If the problem for the United Kingdom is its definition of nationality for European purposes through immigration policies, the problem for Italy is instead to design a coherent policy that takes into account both regular and exceptional migration flows. The necessary change in immigration and citizenship policy throughout Europe concerns mainly to the redefinition of rights.

On several occasions, Italian ministers have appealed to member states to consider a solution to a problem not only in the interest of Italy but also in the interest of all member states, but these appeals have been unanswered. In March 1997, following the collapse of the pyramid investment schemes in Albania, for instance, the Italian government reinforced coastal vigilance and, in November of the same year

[33] ISTAT. 1991. (Istituto Statistico Italiano). *La presenza straniera in Italia.*

repatriated those who did not have a right to stay in Italian territory. Viewed in the context of the lack of co-operation from other countries and of the problems related to the emergency itself such as the causes of the exodus and the criminal elements exploiting the situation, the decision of the Italian government effectively denied victims to basic human rights (Turco, 1998).

The recent arrival of Kurdish immigration and refugees in Italy has once again illustrated the need for co-operation between member states to address problems of this sort that touch upon a number of issues at the same time, such as human rights, the sovereignty of states, and the security of citizens. The position of the new Italian government was to confirm the need to accept and to grant asylum to people who are without a state homeland and persecuted or threatened with persecution, while recognising the responsibility to fight every form of exploitation and illegal trafficking of clandestine immigrants. There have been meetings of police forces of the EU concerning the Kurdish problem, to which Turkey was also invited. On the 30th and 31st of January 1998, at an EU meeting in Birmingham, the ministers of Justice and of the Interior agreed on the need to approve a Council proposal on several measures related to the recent influx of Kurdish refugees. These measures were designed to facilitate the acceptance of refugees from Iraq and neighbouring countries, to help populations at risk, to monitor human rights violations, and to establish control measures on the demands for political asylum and temporary protection to curb what in Germany is called 'shopping for asylum'.

The difficulties involving immigrants in Italian society are related not only to these specific regulations but they depend also upon the general uncertainty that characterises the Italian response to this new problem. The Italian immigration

legislation has been marked by a contradictory mix of increasingly restrictive measures on new entries, and liberal provisions for regularisation. The 1986 legislation[34] was aimed at those immigrants lacking convincing evidence of entry, while the 1990 legislation[35] called 'legge Martelli', attempted to promote an equalising system granting social rights to foreigners through the imperfect mechanisms of the labour market. Based upon the regularisation process implemented in November 1995[36] 243,000 undocumented immigrants have applied for a residence permit in Italy, and all but 9000 of these have managed to obtain one. A watchdog agency on migration based in Milan has estimated that at least another 150,000 have been excluded by the conditions required for the regularisation[37].

These two pieces of legislation, and particularly the latter, have followed the logic of the labour market, whereby immigration flows are regulated in response to market demand. The effect of these policies, instead of guaranteeing easy access to the labour market and social rights, was to tighten the controls on extra-communitarians who wished to apply for a work permit. The regulatory attitude, in other words, turned more towards a policy that was concerned with acceptance than to one preoccupied with social integration. Both of the laws noted above completely exclude some civil rights, such as freedom of movement, and neither law mentions political rights. Moreover, the principles on which entry permits are granted often depend on immigrants' moral behaviour (Melotti, 1993; Lazzarini, 1993).

In general, the immigration policies in Italy reflected more or less the European 'stop policy'. This policy was characterised by (a) the stop and control of extra-

[34] Law 943/86
[35] Law 39/90
[36] Law 489/95
[37] Ministero dell'Interno (Italiano), 1996.

communitarian entry, (b) the introduction of acceptance conditions, and (c) the strict control of immigration flows. The outcome of previous policies had been unsatisfactory and contrary to expectations. The earlier policies functioned to distinguish non-EU citizenship from EU citizenship, and emphasised the relevance of citizenship at the national level. Even in the Italian case, the definition of 'outsiders' through immigration control was subordinated to the 'exclusive' logic of the Union, and diplomatic pressure from other European partners was indeed evident in the formulation of the most recent legislation on immigration (14 February 1998)[38].

The 1998 legislation agrees with the main points of a European Commission proposal[39] under discussion at the time. The proposal aimed first to guarantee common regulations for the immigration of salaried and self-employed workers, students, and the relatives of non-EU nationals resident in the EU. With regard to entries for reuniting families, there are international duties and rights of individuals to which all member states have subscribed. The proposal also aimed to ensure a status of certainty regarding the rights and duties of the membership towards non-EU nationals who have legally entered the Union and who have been living there in order to guarantee the continuity of their permanence and participation in the social and political life in their place of residence.

The Treaty of Amsterdam concluded in June1997 indeed points in this direction. Incorporated into the First Pillar[40] of the Treaty is a new chapter on freedom of movement of people, immigration and asylum and it also contains a clause of non-discrimination. The Treaty establishes an area of inter-governmental co-operation in

[38] Particular aspect of this recent legislation are discussed below in this chapter (2.2.4).
[39] COM (97)387 final).
[40] First Pillar is the so-called Community Pillar which is under the jurisdiction of the European Court of Justice. Further discussion on this aspect is given in chapter 3and 7 below.

regard to these matters, and it grants the Community's institutions the power to adopt binding regulations for all member states[41]. Although the Amsterdam Treaty legitimises a more conservative approach regarding immigration policy at the national level, it also establishes the foundation for a potentially more liberal approach to those immigrants granted entry.

The exigencies of Union policy thus have indirectly promoted restrictive legislation at the national level, which legitimises a more conservative approach to immigration. The effect of Union policy is that progressive elements in national governments are denied the avenues through which to introduce any distinctive programme of reform.

2.2.3 Discriminatory effects

The marked differentiation between citizens and non-citizens has had discriminatory effects entirely legitimated by public or even private statute. As one example of its effects in the private sector, a Bengali worker named Gola Mowla was sacked because he was not an Italian. The cleaning firm in which he worked for four years, called Pulitecnica, was taken over by a new company. The head of the firm denied discrimination against people of colour but claimed that he was merely applying article 3 of the firm's statute, which states that 'the co-operative consists only of Italian citizens'. A petition was organised by workers at the firm in support of Gola Mowla, and the Sapienza University in Rome promised to give him a job if the firm did not take him back.[42]

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[41] See Title IV of the Amsterdam Treaty and in particular Article 61 (ex Article 73i); Article 62 (ex Article 73j); Article 63 (ex Article 73k) and Article 65 (ex Article 73m).
[42] Il Manifesto, 23 June 1994.

Even certain Italian political propaganda focused on the importance of limiting the number of immigrants to contain racist reactions. In his election manifesto during the 1995 campaign Silvio Berlusconi pledged that 'Our country must welcome as many immigrants as it can maintain with dignity'[43]. At the same time, a council on the outskirts of Florence had threatened to bulldoze a squatters' camp, home to over 1,000 Bosnian and Romanians refugees and immigrants. At the camp, babies and children had been attacked by hungry rats, and poisonous chemical waste was found on a rubbish tip.[44] On another occasion in Mentena almost one hundred police officers were deployed to clear immigrants out of a former hospital. Twelve of the immigrants living there were found to be without documents and, as of the summer 1994, were to be deported (Il Manifesto, 6/8/94).

The treatment of an Ethiopian refugee by the police has been dubbed by the press as the 'Italian Rodney King episode'. Film showed a footage male police officer standing over a black man. The man had been drinking and was now lying on the ground moaning, presumably because he had been pushed over by the officer. The officer proceeded to stamp his boot in the man's face. When the refugee tried to evade it, the officer pressed his boot down, grinding it still further into the refugee's face. Many viewers who have seen the video have said that this is the kind of behaviour that drunks, regardless of their colour, can expect. A Roman police chief, commenting on the police behaviour, said that, although it was unorthodox, it was not particularly brutal. He denied that racism was involved[45].

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[43] Berlusconi was candidate for Forza Italia centre-right political party in 1995 and became PM.
[44] Il Manifesto, 2 July 1994.
[45] Il Manifesto 24 November 1992.

The 1998 legislation on immigration has made the possession of a work permit a prerequisite for obtaining a residence permit. In order to qualify for any legal job, immigrants first must be registered as unemployed, but in so doing, they expose themselves to heightened risk of deportation. Without residence permits, they are forced to work in the underground economy, thereby escaping the complicated bureaucratic procedures but remaining without a residence permit and therefore effectively illegal. In this way, illegality is a synonym of marginalisation.

The press campaign against immigrants[46] and police officers' overreaction towards unusual cases certainly have had an impact on public opinion, though Italian citizens have tended to hold ambiguous attitudes towards immigration as is shown more clearly in chapter 6. While they demand greater severity from government, they dissociate themselves from government when they observe the severe application of measures against immigration, first through the news media and then in televised docu-dramas. When the regular instruments of control and expulsion have been applied to mass immigration phenomena, the backlash has been particularly strong, as the reaction to the expulsion of around 20,000 Albanians in the space of a few days in 1991 indeed illustrated. The images of those expulsions are still vivid in the memory of many Italians.

2.2.4 The Italian immigration law between restrictive and progressive measures

The 1998 legislation contains both restrictive and progressive measures. On the one hand, the law makes provisions for the establishment of a temporary camp for

[46] It has been reported that the 'Indipendente' called for more measures to make entry more difficult and 'La Stampa' argued for more deportation (Il Manifesto, 20 November1992).

undocumented immigrants waiting the implementation of the expulsion orders[47]. On the other hand, it increases the sphere of social rights for legal immigrants. The more progressive aspects of the law establish the provision of granting to immigrants some political rights in municipal elections for the first time. A progressive element can also be discerned in the phrase of *un percorso di cittadinanza* which is to say 'a path to citizenship'. For the first time, citizenship is conceptualised within the problem of immigration. While the restrictive measures of the law will actually make legal entries more difficult and weaken guarantees for the protection of human rights, the sections concerning the provision of more rights to legal immigrants remains vague and its scope questionable.

The general objectives of the law can likewise be divided into two categories. The first concerns entry modalities on the basis of an annual quotas and provision for frontier control. The arrangement is strongly linked to market dynamics. The second aims to guarantee social rights and to establish the conditions of semi-citizenship, which entitles its holders to health care, education, social services and political representation.

In the field of labour migration, the law introduces a system of quotas for an entry policy that is co-ordinated with the demands of the market. The quota has to be set every three years by the government under a 'migration flows plan' in accordance with the general conditions of the economy[48]. In other words, the system of quotas should establish the numbers of immigrants and the countries of origin for skilled and unskilled

[47] This refers to the establishment of common space were individuals whose expulsion orders cannot be immediately implemented, are to be gathered. In a display of perhaps extreme hyperbole it has been suggested that these temporary camps are 'the modern version of concentration camps'. NGOs such as the Lega Anti-razzismo, the Green party, and the left wing of the ruling coalition have strongly criticised these measures, doubting their constitutionality.

[48] This measure is in contrast with Article 4 of the EU regulation, which declares that a member state must not restrict by number or percentage the employment of foreign nationals in any undertaking or activity.

workers and for seasonal labourers to be allowed to enter Italy. This measure excludes the direct relationship between the demand and the supply of labour in as much as it places limits on all entries of workers from abroad. As now it is envisioned, the system will also give preference to countries that have signed bilateral agreements with Italy.

In any event, the actual number of entry permits will be very small owing to the persistent high level of unemployment in Italy and variable demand in the labour market. It remains to be seen, therefore, how this system will actually work and which agencies in the labour exporting countries will regulate the selection of workers to be sent to Italy. It is reasonable to suppose that such a system will make the market for immigrant labour more rigid and also susceptible to bureaucratic abuses. It also fails to address the matter of undocumented immigrant workers already present in Italy.

The measures concerning integration processes in Italy have also laid the groundwork for the introduction of a system of rights and duties of semi-citizenship and of the routes of access to semi-citizenship. The qualifying points of the integration policy are strictly related to the introduction of the residence card *(carta di soggiorno)*. It entitles the holder to almost all the rights of citizenship[49], excluding those rights and obligations that are specific to nationality, such as the defence of the state. In this respect, nationality and citizenship are partially detached in that access to most citizenship rights does not require the condition of nationality. Beginning with the 1999 administrative elections, however, the provision for local political rights allows only Italian citizens to be elected mayor or vice-mayor, thereby excluding immigrants from serving in these offices. By contrast, the European Convention on the Participation of

[49] Other rights include the possibility to undertake any legitimate activity; re-entry without visa requirements into national territory; equal access to government subsidized housing; full access to free education, and equal access to public health services.

Foreigners to Public Life at the Local Level suggested a requirement of five years of continuous residence before immigrants become eligible for enfranchisement.

Although most of these measures appears quite progressive and would certainly contribute to making the presence of many immigrants less informal and more secure, there are certain limits to these measures that deserve consideration. The residence card can be issued only to those who have resided legally in Italy for at least five years. Immigrants therefore must wait five years before attaining a status that does not even grant them full citizenship rights. This measure may also discourage immigrants from seeking naturalisation, which would grant Union citizenship rights.

The lengthy process by which immigrants obtain semi-citizenship and bureaucratic inefficiencies inherent in the process will also exclude many applicants. The requirement of a minimum income for immigrants on the basis of the number of persons in his/her family, excludes other applicants on criteria related to family composition, placing large families at a disadvantage. In practice, the minimum income requirement actually weakens the right to family reunion. Finally, the residence card can be withdrawn if the holder is charged with certain categories of crimes. It is conceivable, for instance, that someone can be accused and brought to trial simply on the basis of allegations brought by another individual. An immigrant therefore would face the possible loss of the residence card simply because of what might in the end turn out to be a mere defamation.

The progressive measures contained in the law are thus limited in scope, and there are two areas in the law which remain open: namely, (1) the right to vote, and (2) the law on citizenship. Extending the right to vote would require a revision of the Italian Constitution, while any broadening of the law on citizenship necessitate more 'liberal'

concept of citizenship. If immigration both in the UK and in Italy has contributed to a crisis in national identity (Husbands, 1994), the situation is even more complex when one considers also the criteria for Euro-citizenship to which both countries belong. The condition of semi-citizenship is comparable with that of denizenship a concept proposed by Hammar for the British case (1990). New measures underline the discrepancy between the fundamental principles of citizenship and nationality, and especially concerning the manner in which nationality rights function as exclusive mechanisms for the purpose Euro-citizenship[50].

Conclusion: through a comparative approach

Since immigration analysis cannot be separated from the study of social contexts, discussion about the integration and assimilation of immigrants also entails discussion about society as a whole. Dubet as noted the same in relation to the French case (1989: 7). Integration involves the host society and the immigration community in a process of relationship and integration that changes both. The complex relation between society and immigrant populations is reflected in legislation.

The concept of 'legality' does more than merely distinguish between citizens and non-citizens. It also involves other intermediary and sometimes ambiguous positions such as the 'denizen' status in Britain and 'semi-citizenship' status in Italy. These intermediary positions are internally differentiated and determined at the national level. Both Italy and the United Kingdom embrace in their legal practices a sort of a second class citizenship. The passage from this status (denizen or semi-citizen) to the condition of active citizen illustrates the dichotomy between national citizenship and

[50] The precondition of Union citizenship is to hold the nationality of a member state. Article 8 TEU.

citizenship rights. When the transition from local participation to national citizenship is poorly negotiated, citizenship and nationality remain detached.

British ethnocentrism sometimes considers that immigrants, even those coming from countries traditionally closer for historical and cultural reasons, will never become 'good Britons'. Britain therefore accepts minorities taking for granted their significant diversity, but the logic of the British position insists that immigrants remain in a state that will not prejudice the nation. This was also evidently a major issue in Italian debates on whether immigrants should be allowed to vote in local elections. This has been the Italian case so far where rights were granted only to Italian citizens. Voting rights were denied to foreigners because this entitlement could endanger the nation. Although the British and the Italian models of citizenship have evolved independently from distinctive histories, full citizenship in both cases hinges upon the precondition of nationality, which conceals conditions of deep inequality. The establishment Euro-citizenship illustrates the limits of both liberalism and civic republicanism upon which the patterns of citizenship in these two countries have respectively been based.

The British model fell into the liberal-individualist tradition in which citizenship is reduced to a mere legal status. Rights are inherent in the individual and the individual is free from hindrance by the state. Citizenship sets out the rights that individuals hold in their relationship with the state (Mouffe, 1992). Rules govern society rather than a shared belief in the common good. Before the introduction of Euro-citizenship British rights, took precedence over citizenship status. It was the right of residence that conferred political rights rather than citizenship. Now, conversely, only those who have British or European citizenship are afforded voting rights whether full or partial. The fact that citizenship is no longer a matter of choice, moreover, makes it impossible to

opt-out of national or Euro-citizenship without loosing one or the other. This is one of the main criticisms levelled against the new paradigm by sceptical political groups at the parliamentary level.[51] In short, immigration and nationality in the United Kingdom have always been linked and citizenship is formal. The establishment of Euro-citizenship has borne upon immigrants' rights, leading to the redefinition of the status of citizen, and tying together even more firmly citizenship and nationality[52].

The Italian tradition, on the other hand, has always reflected the civic republicanism in which citizenship is a shared experience of participation in the political community. In contrast with the British tradition, citizenship status takes precedence over the allocation of rights. This means that the Italian attitude towards the allocation of rights is intimately related to the acquisition of citizenship. Citizenship and nationality are interchangeable but immigration and citizenship have always been detached. However, the impact of Euro-citizenship rights in the Italian case affects immigration policies rather than the sphere of citizenship *per se* which renders the relationship between citizenship and immigration stronger[53].

The inherent link between citizenship, nationality, and immigration is the result of process of homogenisation, but neither the liberal nor the civic republican tradition provides the necessary framework to deal with pluralism and new forms of political participation. In re-defining the categories of 'us' and 'them' the establishment of Euro-citizenship has intensified the relationship between citizenship and immigration within the Italian tradition, while it has reinforced the link between nationality and citizenship within the British tradition. At the European Union level, however, the problem of

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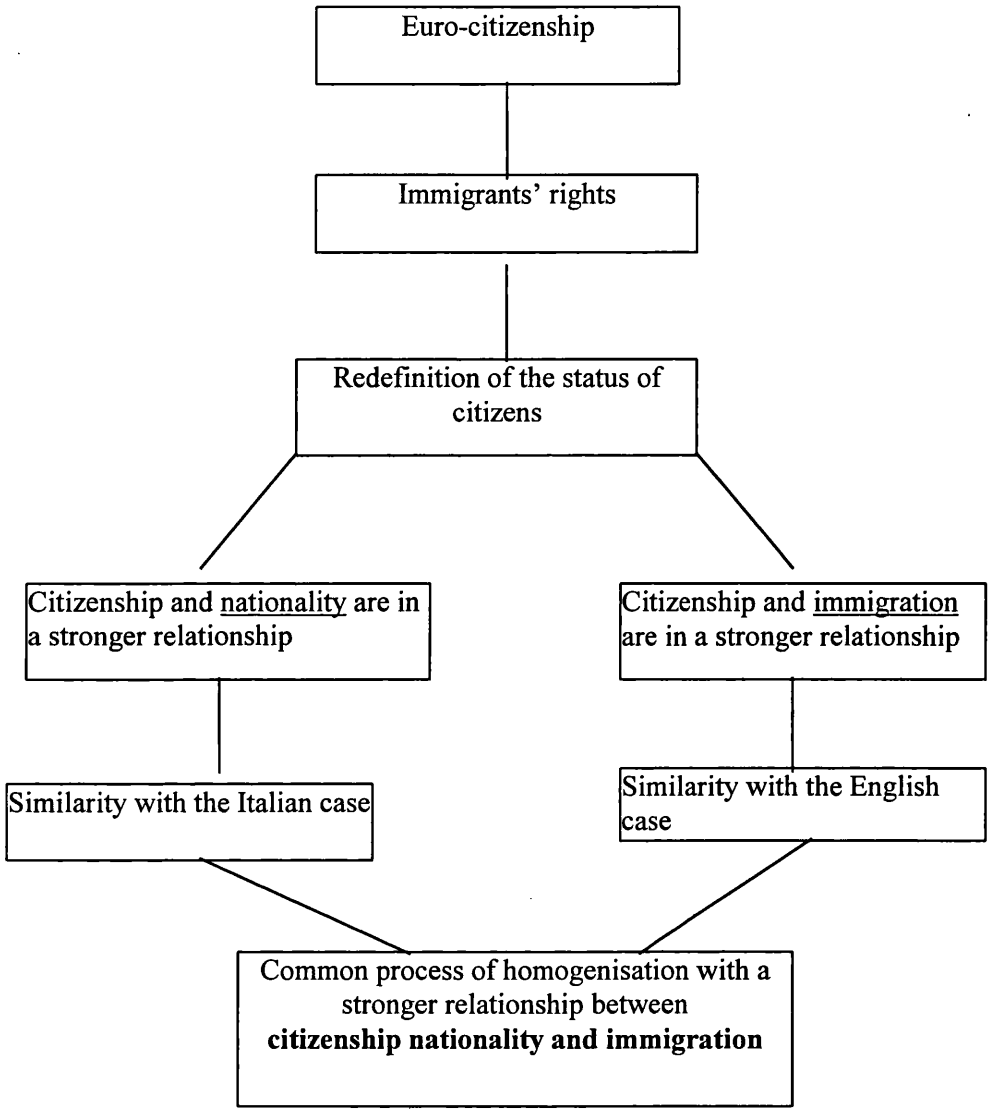
[51] See Chapter 4 below.
[52] See Fig.1 below.
[53] *Ibid.*

immigration constantly challenges this re-definition and threatens to undermine the communitarian ideal of unity.

The concept of 'legality' or legal status needs to be detached from both nationality and citizenship, and it needs to become more universal in its nature. Citizenship and nationality remain interchangeable at national level in as much as they are based on democratic principles rooted in the political culture, and there is little need to separate them at this level since the real problem lies more at the European Union level. A more universal and comprehensive re-definition of 'legality' or 'legal status' detached from citizenship would make this link less problematic. In this way citizenship and nationality will be detached from rights and they will represent cultural and ethnic traits in a pluralistic community.

Although both the British and Italian forms of semi-integration incorporate local political rights and employment rights, full citizenship rights are still attached to national citizenship. The redefinition of legal status should guarantee a range of rights from a minimum level of security and welfare to full participation in the society. This would mitigate the negative effects of the exclusion function of citizenship while reducing the unequal distribution of resources among all categories of 'legal subjects'. Instead, under present conditions, immigration encourages the definition of semi-citizenship status by introducing new element of heterogeneity.

Figure 1. Summary



Chapter 3

Forms and Functions of the Euro-citizenship

Introduction

This chapter examines the extent to which Euro-citizenship leads to a 'binary typology' of 'us' and 'them'. It is possible to discern two processes, the first of which expands the 'inner circle' of citizenship rights in each member state and defines the category of EU citizens, while the second reinforces national citizenship when Euro-citizenship stands against the 'outer circle' of non-citizens[1]. This implies both an internal and external mechanism of legal recognition, which reproduces inclusion and exclusion functions that are a typical feature of citizenship practice.

The first part of the chapter explores the expansion of citizenship rights with respect to the so-called *acquis communautaire*[2] that delineates potential resources for citizenship policy-making. Within these mechanisms, moreover, immigration policy can be used to mobilise resources that affect the nature of Euro-citizenship, expressed for instance in the enlargement of citizenship rights based on residence and not on nationality. In the process of expansion of the 'inner circle', free movement rights become first the set of values fulfilling the necessity of a firmer control of external

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[1] The expression 'inner and outer circle of loyalties' is used by Wight to describe the manner in which the new loyalties to the state replaced the conventional loyalties to an 'immediate feudal superior' (Wight, 1978: 25). I use this terminology here to refer to the passage from the model of nation state to the European Union.

[2] This expression appears in the Draft European Union Treaty by the EP on 14 February 1984, known also as the Spinelli Draft. The term *acquis* means literally 'acquired' and, in a figurative sense, achieved. It is understood as the body of principles and political objectives of the treaties and agreements between member states connected with the Community's activities. The term, therefore, has a strong constitutional implication since it refers to what the Community has achieved. The oldest concept concerns the enlargement of the Community, the so-called 'accession *acquis*' which refers to the body of rules, political principles, and judicial decisions to which new member states must adhere when they become a member of the Community. The term has been used in different contexts. In this chapter, the *acquis communautaire* is emphasised as a means to safeguard the model created by the Treaties of Paris and Rome, and to discourage any fundamental modification of the model. See also The Oxford Encyclopaedia of European Community Law.1990. Vol. I, Institutional Law, pp. 9-10.

frontiers. Free movement rights that embody economic and social resources are leading the symbolic process of Euro-citizenship.

The second part of the chapter focuses on the problem of the creation of the public sphere and the legitimisation of the new European setting. One of the core principles underlying Euro-citizenship concerns the protection of fundamental rights, but this raises questions about the role of the judiciary in safeguarding such rights and about the difference between citizens and non-citizens. Ultimately, Euro-citizenship performs its inclusive and exclusive functions through its relationship to nationality in each of the member states.

3.1 The formation of Euro-citizenship within the *acquis communautaire*

A comparison of Euro-citizenship with the pattern of citizenship in modern European nation-states reveals similarities as well as differences. In the preceding chapter, I argued that citizenship practices at the national level are defined by citizenship laws and immigration regulations. The latter govern the condition of those who are not protected by the former. This means that legal borders are drawn to differentiate citizens from non-citizens. The challenge of Euro-citizenship affects not only national citizenship but bears also upon immigration policy and political opportunity that Euro-citizenship entails. It is possible to observe changes in policy-making at the national level (Tilly, 1975 and 1984; Bendix, 1964), but it would be inappropriate to maintain that these changes have resulted in a transformation of citizenship. Changes in policy-making at the national level should be seen rather as a consequence of the establishment of Euro-citizenship.

The effect of Euro-citizenship on national citizenship has to take into account several variables such as resources, actors, and political patterns at any given time. As a distinctive institutional feature, the *acquis communautaire* embraces the development of the European construct and what the European Union has achieved in relation to the unity of the market. In other words, the *acquis communautaire* serves as a body of legal resources that is given shape through the policy-making process. The Maastricht Treaty gives Euro-citizenship a constitutional status by designating it as a part of the *acquis communautaire.* It is mentioned both in the Common Provision (Art. B; Art. C) and in the preambles to the Protocol and the Agreement on Social Policy[3].

For present purposes, the articles state that the Union shall (1) strengthen the rights of the nationals through the introduction of a common citizenship, and (2) maintain in full the *acquis communautaire* in the sense of the 'community patrimony' and constitutional status. Only the development of a substantial *acquis* of citizenship at the level of the European Union would provide the mobilisation of resources sufficient to accomplish these tasks, and this is where the controversy lies. From the substantial *acquis* of Euro-citizenship, there emerges the idea of a Community that is more than a mere mechanical system of economics and that constitutes instead a system commensurate with the society that it has to govern. This would lead to a legal system corresponding to the concept of social justice and to the requirement of the integration in Europe not only of the economy but also of the people. In practice, the general political attitude at the European Union level is in accord with this ambition. Many believed that the construction of the Community could not ignore that any human

[3] Before to Maastricht Treaty, however, the concept of the *acquis communautaire* had been used in different contexts. In particular, it referred to the enlargement of the Community (the 'accession *acquis*').

construction is ultimately conceived for the benefit of man, and more specifically of social man (Monaco and Trabucchi, 1965).

The human face and the social content of that 'mechanical system' turned out to be an imperative for the concrete establishment of a new model of citizenship, though they did not guarantee its effectiveness. The European Commission has often emphasised that the principles of liberty, democracy, respect for human rights, and fundamental freedoms are essential elements for membership of the European Union[4]. These factors are considered essential for shaping a common heritage in terms of citizenship that comprises tangible institutions, constructed meaning and practices. This would then constitute the citizenship *'acquis'*.

Any shift of normative and institutional undertakings towards the condition of residence rather than nationality would suggest that Euro-citizenship depends upon an expansion of the resources of the citizenship *acquis*. If human rights and fundamental rights were conceived as part of the citizenship *acquis*, for example, then citizenship would be susceptible of universalisation. This would provide a framework for the formulation of immigration policy in relation to the *acquis* of citizenship as far as the rights of third-country nationals are concerned. In practice, however, citizenship rights are bound to nationality rather than residence that undermines any prospect for substantive change in the *acquis* of citizenship.

3.1.1 The fundamental changes on policy-making: the historical setting

The evolution of citizenship status at the European level is linked to the transformation of institutional 'possibilities'. The principal changes that occurred in policy-making

[4] COM (97) 357; and O.J. C.115/178, 1993.

affected the constitutional framework of citizenship before the Maastricht Treaty. Until then, there was no institutional recognition of Euro-citizenship but the *acquis communautaire* established the groundwork for its constitution. The provisions of the *acquis communautaire*, in other words, were able to serve more wide-reaching specific goals.

In the middle of the 70s, the *acquis communautaire* is used in several documents concerning the European construct. At the Paris Summit in 1974, as an outcome of several debates on 'European Identity', ministers adopted a new set of provisions regarding 'special rights' and passport policy[5]. The EC[6] also wanted to consolidate a more European role in global politics[7]. Special working groups produced reports for the development of passport union, special rights, universal suffrage, and a concept of European Union[8]. For the first time, citizens were considered active in the process of the European integration.

The *acquis communautaire* began to incorporate principles and values that could not be repealed in full or in even part without altering the system as drafted in the founding treaty. The category of fundamental principles and values included those regarding democratic guarantees, judicial protection, fundamental rights, and respect for national identity. More than a mere incorporation, the *acquis communautaire* endorsed these fundamental principles in the process of integration. I shall analyse these categories more in detail in the following sections, but it is worth noting that this

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[5] Bull. EC. Supplement 12, 1974. See Copenhagen Summit. *Declaration on European Identity.* Copenhagen 14-15 December 1973. See also Wiener (1998, 61-122).

[6] The terms EU and EC will be used interchangeably throughout the thesis. The EC is mainly used when refering to circumstances pre-1992.

[7] Bull. EC, Supplement 5, 1975.

[8] Bull. EC, Supplement 7, 1975. The Commission's report *Towards European Citizenship* concerns policy-related problems regarding the granting of special rights and the introduction of a passport union.

political mechanism of 'recognition' relies on the importance of these values for citizens though it does not yet reflect citizens' expectation and their substantial needs.

The European Commission on a few occasions has considered the circumstances of European citizens who reside in an EU country other than the one in which they hold nationality, and the Commission has laid out provisions for adding rights related to the original nationality to the rights in the host-state[9]. At the European Union level, naturalisation is replaced by 'additionality', which refers to the addition of specific rights more than belonging or participation in the sense of the intense commitment to direct political action. This certainly does not agree with the aim of shaping a new political Community. To issue a uniform passport can have a symbolic function of self-representation as an entity *vis-à-vis* the rest of the world. But what about the feeling of belonging among citizens of the Community to that entity?[10]. The fact that the *acquis communautaire* is mutable and subject to expansion in order to embrace additional citizens' values and principles does not imply that it functions to serve this purpose.

The emphasis on political and social rights during the 1980s, when the main objective was the creation of an internal market without frontiers - denotes first of all that the market policy also was oriented towards the construction of a social space (Byre, 1989; Meehan, 1993), and secondly that the political status of Community citizens towards the Community needed to be preserved. Once citizens moved, in other words, they lost access to participation in politics. Citizens are not considered according to what they really need but the political mechanisms reflect what politicians think to be

[9] Bull. EC, Supplement 7, 1975.
[10] Bull. EC,Supplement 12, 1974.

the citizens' main priority[11]. If the additional right of free movement allows citizens to change their priorities, then this transformation should be respected politically.

Based on the movement of workers, two types of special citizens' rights were negotiated. These rights include, first of all, social rights such as the right to establish residence and access to health care, and secondly, the right to vote and stand in municipal elections which is to say local political rights). The latter is insufficient in terms of citizens participation in politics but it definitely represents a shift in Euro-citizenship practice since it tries to link normative values to the politics of the market. As I shall discuss later in this chapter, this is functional in terms of expanding the *acquis communautaire* but not sufficient in terms of citizens' consensus.

3.1.2 The political achievement of the citizenship *acquis*

The following stage began after the Maastricht period when Euro-citizenship was institutionalised. At that time, there were important citizenship debates and proposals that contributed to the mobilisation of some resources fundamental to the development of the citizenship *acquis*[12]. The evolutionary aspect of Euro-citizenship within its 'inner circle' is attested in the fact that Euro-citizenship was interrelated with other areas of Community policy[13]. This enabled the institution of citizenship to develop in response to changing societal needs. The political discourse continued to address the idea of belonging, but the focus of the debate in the post-Maastrcht period shifted from creating

[11] This will be analysed further in the two following chapters.
[12] See: O.J. EC. C. 77/33, 1984. Europe Documents No.1653 2 October 1991; Bull. EC, Supplement 2, 1991; Europe Documents, No.1709/1710, 1991); O.J. EC C.183/473, 1991.
[13] Euro-citizenship is also an issue included in other areas of legislation such as the Act of 'Common Provision'. The second and third pillar of the Maastricht Treaty, 'Common Foreign and Security Policy' and 'Justice and Home Affairs', concern among other things asylum policy, immigration policy, and residence rights of third-country nationals. It is worth noting that with the Amsterdam Treaty, Asylum and Immigration are incorporated into the first pillar.

a feeling of belonging to establishing the legal ties of belonging. This constitutes a fundamental step in defining those who were to be included in the new 'inner circle of loyalties', and the period was in fact marked by a new debate about inclusion and exclusion at the Union level, symbolising the institutional formation of the category of 'us'.

While the function of citizenship had been broadened it had not yet been changed. In terms of citizenship rights, the *acquis communautaire* has been expanded with several implications for citizenship practice, but citizenship practice relies not only on institutions. The emerging public interest mediated by interest groups (NGOs) and political parties implies that citizenship now includes more actors and a changed set of values. Interest groups and the EP in particular demanded certain changes in the citizenship legislation of the Treaty and the so-called 'place-oriented' citizenship was proposed based on residence rather than nationality (Jenson, 1991)[14]. Instead of granting European citizenship to every person holding the nationality of a Member State[15], the ARNE group[16], for example, also requested citizenship for every person residing within the territory of the European Union. The discourse of place-oriented citizenship facilitates another perspective on the conceptualisation of Euro-citizenship. In other words, arguments that residence should serve as legal criteria for membership in the EU (Kostakopoulou, 1988) contrast with normative undertaking for a route to Euro-citizenship linked to nationality. Within this framework, which focuses upon the changing political structure, it is possible to argue that the provision embodied in the Maastricht treaty facilitate to a certain extent the involvement of individual citizens in

[14] See European Parliament.Van Outrive Report. 1992.
[15] Article 8 (1) of the TEU.
[16] Antiracist Network for Equality in Europe.

the political process by enabling interest groups to express concerns about rights, access and belonging with reference to Euro-citizenship as a new centralised institution. The additional rights provided by Euro-citizenship affect national citizenship in this respect but the new provisions neglect the link between immigration and citizenship (Brubaker, 1989). The realisation of a place-oriented Euro-citizenship will also depend upon a re-examination of immigration policies in an inclusive rather than exclusive manner.

3.2 The outer and inner circle: naturalisation or exclusion

The emergent Euro-citizenship entitles its holders to important privileges, which distinguish them from non-citizens. The Maastricht Treaty declaration on citizenship affected single member states in the definition of who is included under Euro-citizenship and who is not. In this regard, nothing has changed in terms of citizenship although member states have had to strengthen their regulations for Community purposes. As noted above, member states still retain exclusive power to determine their own criteria for nationality, but the ECJ obliged member states to observe EU objectives and principles in its decision on the Micheletti case[17]. Nationals from third countries may expect different conditions of access to Euro-citizenship rights depending on the country where they attempt to naturalise.

Naturalisation reflects different historical and national concepts of citizenship, but in general the naturalisation option is not an adequate measure since it strengthens the conditions of nationality and perpetuates conditions of unequal treatment. A strict interpretation of Article 8 would suggest that member states are no longer completely free to determine policies of naturalisation independent of the interests of the

[17] See Micheletti and others v. Delegacion del Gobierno en Cantabria, case C-369/90, 1992.

Community. As a consequence national laws regarding the naturalisation process throughout the European Union are becoming more homogeneous (Clarke *at al.*, 1998), though the ECJ still has no jurisdiction in most cases in which naturalisation is denied. The failure to develop a condition of residence rather than naturalisation for the enjoyment of Euro-citizenship rights may ultimately discourage immigration while placing aliens already resident in member states in a perhaps delicate situation. Home countries, particularly non-member states, may attempt to deter their nationals from integrating into the member states to which they have moved by depriving them of their nationality if they are ever naturalised there[18].

The literature is divided with respect to solutions for enabling Euro-citizenship to function. One recommendation suggests that the state of residence should 'oblige' third-country nationals to file for naturalisation after a legal period of residence and to become citizens. In other words this solution entails the relaxation of naturalisation laws in the member states (Evans, 1994). This would make third-country nationals eligible for EU citizenship subject to the satisfaction of certain criteria modelled upon those required by national laws, such as lawful entry and residence, age, employment, etc. (O'Keeffe, 1994: 105). In such a way, there would not be an uneven distribution of rights and duties between citizens and residents. This solution nevertheless seems impractical in countries such Germany where rates of naturalisation have remained low because of reluctance to grant citizenship to foreign nationals.

Another recommendation calls for the recognition under EC law of resident status with its own rights and duties, which would undermine the distinction between

[18] Convergence in naturalisation practices among member states, according to Clarke, can be identified in general reduction in the residence period required prior to eligibility for naturalisation.

resident and citizen. Residence within the physical boundaries of the Community should be independent of whether the person in question is a national of any of the member states (Preuss, 1996: 135). If the focus on residence rather than nationality seems to coincide logically with the EU's commitment to facilitating free movement, then there is little reason why immigrants from non-EU states should be treated any differently than immigrants from states within the Community (Welsh, 1993: 29). This recommendation rejects the view of harmonising nationality laws for the purposes of free movement (O'Leary, 1992). The difference between these two recommendations is that laws concerning nationality in the former would still provide the basis for the exclusion of substantial numbers of individuals from participation in the political and social life of their state of residence. In the latter instance, by contrast Euro-citizenship would be related to the status of legal subjectivity rather than citizenship and, it would refer to the criterion of residence rather than nationality. In other words, Euro-citizenship, in the latter instance, would be detached from the function of inclusion and exclusion that are inherent in the concept of national citizenship.

The social tensions posed by immigration and free movement are some of the consequential effects of the broadening of the concept of *acquis communautaire*. These problems will constitute an ever-increasing pressure for co-ordinated solutions that are available only at the European Union level. The legal borders of citizenship are put into question and a 'de-territorialised' citizenship becomes the new imperative. This explains why political citizenship rights lose their importance within a geo-political region when they are stipulated on both the supra-national and on local levels. The mobility of local voting rights throughout the Union's countries relies on the principle

of residence and no longer on citizenship. This also explains why in some member states local voting rights are granted to non-citizens.

The normative content of Euro-citizenship is dissociated from that of national identity and therefore it cannot accommodate restrictive and obstructionist asylum or immigration policies. However, supra-national norms are incorporated into national legislation and they are effective for individuals because of their membership within one of the member states. Citizenship remains constant while the community changes in terms of membership (Weale, 1990). States nevertheless remain the main repository of citizenship rights and obligations. The moral-theoretical discussion regarding the definition of 'special duties' and 'special responsibilities' is restricted to the social boundaries of a community. The main problem with Euro-citizenship is that government have retained for themselves the right to confer nationality. The formation of the inner circle or the category of 'us' in which the citizen status is functional to the creation of the community reinforces nationality. In the outer circle or category of 'them', on the other hand, not all persons who reside within the same geo-political space enjoy the same citizenship privileges.

3.2.1 From the political to the market citizen

As far as European Union relations with citizens are concerned, it is possible to envisage a new model of participation. Individuals are perceived to exercise a number of functions that are affected by European Union intervention. Citizens would have a direct interest in the formulation of EC regulations at least to the extent that these regulations bear upon their actions. In this new form of participation, the legal status of being a citizen is still crucial though citizenship is no longer functional to the process of

legitimisation in the political community. In this respect, Majone considers the Euro-polity as mainly a regulatory order that does not derive its legitimacy from citizenship but from its ability to enhance functional logic of regulatory flows – labour, communication, finance, market, etc. (1996). If stateless persons, refugees, and those deprived of rights will determine the market of this century, then Arendt's analysis will turn out to be correct. The capacity of the economic system to absorb these people is not so important as long as the readiness to integrate immigrants politically and socially depends more upon how citizens perceive the social and economic problems posed by immigration.

The 'market citizen' is still very far from the political European citizen. This is because the typical interplay between citizens and public power does not take place at the European Union level. The absence of an intermediate structure that constantly transmits input necessary for citizens' self-identification does not grant to citizens the means of opposition or consensus. Their participation in European elections is not politically effective. This is partly due to the fact that European parliamentary elections lead to the formation of neither a government nor a coherent programme of public policy. Moreover, political rights of citizenship in the European context perform differently than in national systems.

As information becomes more and more the key element for a higher degree of citizens involvement in the decision making process of the European Union, it is not only to the politicians that we have to turn but also to the information specialists (Neunreither, 1994). There is, however, the high risk of information deficit as the channels of access to this form of participation are still not affordable by all. Moreover,

most information on EU activities is transmitted in a nationally biased way making it difficult for citizens to receive objective information.

The new model of a horizontal society potentially allows each member to become an actor on the basis of that individual's level of information and competence. Direct access of an interested citizen to basic knowledge in relevant areas of policy could mean the beginning of a new era in the relationship between citizens and government. Although the political function of citizenship in these forms is diminished, some citizens would be able to participate actively in policy matters of a large territory. The de-territorialised citizenship through the autonomy of the market is still far from creating a space in which citizenship can become susceptible of universalisation (Turner, 1986, 1992).

At this stage, information and education are strictly linked. Well-informed citizens would be more inclined to challenge the claims of their representatives to be experts on complex questions of EU policy. The change in our political systems under the impetus of the EU therefore affects citizens and their relationships both horizontally and vertically, and it undermines the classic functions of political rights for the participation and integration processes. Full participation in the political process is absent in the creation of the new legal order.

An analytical approach presents two different dimensions of the issue. In the first place, the inclusion of certain groups implies the exclusion of others, and secondly, Euro- citizenship draws attention to the extension of the rights and duties that form the condition for participating in the public life of a community. In a sceptical view, d'Oliveira argues that Euro-citizenship is exclusively a symbolic concept without substantive content. The concept of additional rights does not delineate the rights and

duties entailed in Euro-citizenship (1995). If Euro-citizenship is based not on political rights but rather on free movement, then the spill-over from market ideology to social, political, and civil dimensions requires a new structure that facilitate the evolution of free movement not in accordance with the needs of Euro-citizenship but rather with societal needs. Such a structure would be less discriminatory towards third-country nationals, who are disadvantaged by current policies[19]. A new structure created along these lines would also encourage the emergence of a pan-European public-sphere.

3.2.2 The direct impact of Euro-citizenship on third-country nationals

It is sometimes argued that the establishment of the principle of free movement within the EU threatens the control of external frontiers[20]. It is plausible, however, that the free movement of persons as a key element in the definition of Euro-citizenship facilitates a firmer control over external frontiers. This is because the privilege given to Union citizens affects the free movement of aliens. Furthermore, it shows that the power of the EU in controlling national policies is stronger than it sometimes appears. I define this mechanism as negative control since it prevents individual states from adopting liberal measures towards third-country nationals. The EU may intervene directly only when conflicting national policies towards non-citizens threatens the free movement of citizens within the Community. Euro-citizenship is an exclusive privilege of member states' nationals, and there are no provisions governing the acquisition of Euro-

[19] Discrimination of third country nationals is evident in the TEU's explicit enumeration of rights under the jurisdiction of the ECJ, which inhibits the ability of third country nationals to defend their rights on equal terms. This discrimination should disappear with the transfer of Asylum and Immigration policies in the Community Pillar and therefore under the jurisdiction of the ECJ, though it is to early to analyse the effect of this change (Amsterdam Treaty).

[20] See chapter 4 and 5 below.

citizenship by nationals of non-member states. Article 8 of the Maastricht Treaty stipulates only that:

> Every person holding the nationality of a Member State shall be a citizen of the Union[21]

As already noted above, resident third-country nationals may also enjoy some of the rights enjoyed by Union citizens. This is the case, for example, in the right to address a petition to the EP and the right to make complaints to the Community Ombudsman (Articles 138D/E). The main problem here is that these rights are not substantive, but mere procedural rights. They nevertheless allow third-country nationals to seek the protection and promotion of their substantive rights, on which the Maastricht Treaty did not introduce anything novel.

With respect to the regulation of the legal position of third country nationals, the action taken by the EU has been very ambiguous. In the last few years, there has been a progressive empowerment of the EP in the legislative process. This has led to several EP proposals regarding the status of third-country nationals. According to the EP, resident third-country nationals should be entitled to vote and stand for election at the local level[22]. With respect to the internal market, the Commission envisaged a harmonisation of national legislation on asylum, entry, residence, and access to employment of non-community nationals by the end of 1992[23]. Because of the reluctance of member states to cede their sovereignty in these sensitive areas, it is only after the ratification of the Amsterdam Treaty that decision-making in matters passed

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[21] Article 8 of the TEU, par.1.
[22] O.J. 1989, C. 71/2.
elections in their Member States of residence.
[23] See COM (85) 310 final. Bruxelles 14 June 1985, 15.

from an inter-governmental to a supra-national approach, which is sometimes referred as the 'Community method'.

What is not very clear is how member states should proceed in this co-ordination. Schengen for many reasons has been not a correct answer. The Schengen *acquis* has had the effect of focusing efforts on measures to compensate for the loss of internal frontier controls. The objective for the integration of the Schengen *acquis* has so far been closely linked to free movement of people, which is conceived as one of the fundamental rights for EU citizens[24]. The Amsterdam Treaty enhances the Schengen *acquis* by introducing greater inter-institutional co-operation in policing and criminal justice. Bringing asylum and immigration matters under Community arrangements indeed makes it necessary to give Community institutions a role in co-ordinating co-operation between member states in these areas[25].

The Amsterdam Treaty has 'communitised' four areas: (1) free movement of persons; (2) controls on external borders; (3) asylum, immigration, and the safeguarding of the rights of third-country nationals; (4) judicial co-operation in civil matters. These areas formerly came under Title VI of the Maastricht Treaty (Justice and Home Affairs or Third Pillar), but they are now included in a new Title IV written in the Amsterdam Treaty. Communitisation means transferring a matter which, in the institutional framework of the Union, had been dealt with using the inter-governmental method (Second and Third Pillars) to the Community method (First Pillar). The Community method is based on the idea that the general interest of

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[24] 'With the integration of the Schengen acquis the Union will receive a foundation on which to build a genuine area of freedom, security and justice within the Union framework'. Bull. EC, Supplement 7/8, 1998.

[25] *Ibid.* 'The integration of Schengen rewards the efforts of the member states which embarked on this cooperation and gives the Union a base on which it will have to build further'.

Union citizens is best defended when Community institutions play their full role in the decision-making process, with due regard for the subsidiarity principle. In other words after the Treaty of Amsterdam came into effect, questions relating to the free movement of persons, which had been treated under Title VI, were 'communitised' and so will be dealt with under the Community method after a five-year transitional phase. One of the main achievements of the Amsterdam Treaty in this field is the fact that the ECJ will have jurisdiction in the area of immigration and asylum. This constitutes a positive step with respect to the problem of social discrimination towards third-country nationals.

It is obvious that national immigration policies *vis-à-vis* third-country nationals may affect Community labour market and social policies. Moreover, the distinction between the powers of the Community in the area of the labour market on the one hand and social migration policy on the other (subject to inter-governmental co-operation)[26] may not be easy to draw. Under Articles 49 and 7a EEC Treaty, the Community claims a power to regulate access to the labour market of third-country nationals who are already residing in the territory of one of the member states. Measures concerning nationals of non-member states may also be taken within the ambit of social policy (EEC Treaty, Article 117 et seq.).

Beyond the framework of the social policy (Article 118), the ECJ has also given the EU power to regulate the legal status of third-country nationals within the EU (Article 238)[27]. Originally, the ECJ justified the wide application of the social benefit

[26] Part One - Principles TEU, unchanged in the Amsterdam Treaty (Art.2 and 3 of the TEU).

[27] This Article refers to the Association Agreements with third states. The ECJ concluded from Article 238 that an agreement of association creates a special relationship between the EC and the associated state covering all areas regulated in the EC Treaty including the freedom of movement for workers. Article 238 thus makes it possible to extend market freedoms to nationals of associated states as part

clause in Regulation 1612/68[28]. In order to permit the complete freedom of movement within the Community, every discrimination in social rights and benefits that could be perceived as an obstacle preventing EU nationals exercising their freedom of movement had to be abolished. Freedom of movement for third-country nationals would also require equal treatment in social rights such as a minimum salary, financial assistance for families with children, unemployment payments, and university scholarships.

On this point, there is consensus that harmonisation cannot be achieved easily. The Commission stated that the current employment market situation does not give the Community the grounds for operating an entry and residence policy of the very open kind that prevailed in the 1950s and 1960s. More generally, a common immigration policy at the European Union level will need to be flexible so that it can reflect the manifold dimensions of migratory flows, be they economic, social, cultural or historical relating both to host countries and to countries of origin[29]. The Commission is also planning to look into the legal position of third-country nationals holding a long-term residence permit and into the application of a provision enabling third-country nationals lawfully residing in one member state to reside in another member state (Article 63[4]). The legal status of non-citizens, remain ambiguous, however, and this is one of the reasons why the criteria for entry, residence, and access to employment of third-country nationals should be harmonised[30].

The full integration of third-country nationals will be impossible as long as their legal status is not defined. In accordance with the Council and Commission Plan of

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of an association treaty. The provision in the Association Agreement with Turkey was declared not directly applicable within the domestic legal order of the member states, and no consensus could be reached on the freedom of movement for Turkish nationals.

[28] This regulation will be analysed more in depth in chapter 7.

[29] COM (99) 638 final (section 1.4).

[30] O.J. 1990, C. 175/180.

Action of 3 December 1998, an instrument on the legal status of legal immigrants should be adopted within two years of the Amsterdam Treaty taking effect. Rules on the conditions of entry and residence, and standards on procedures for the issue by member states of long-term visas and residence permits, including those for the purposes of family reunification, should be prepared within five years[31]. A clearer definition of the legal status of third-country nationals should result from the harmonised criteria of entry, residence, and access to employment. The residence permit is defined in broad terms to include all categories of applicants residing in the territories of the member states irrespective of their reasons for the residence there[32].

It is very doubtful that freedom of movement for non-EU nationals resident in the Community will be granted in the absence of further progress towards the co-ordination of migration policy and co-operation in police matters throughout the EU. It also demands at least a minimum level of co-ordination in social schemes that now differ widely between EU member states. As discussed in the preceding chapter, there is also a common interest in reducing immigration pressure, visible in the new national mechanisms for controlling immigration flows. This illustrates the manner in which EC law in general and the legal principle of the Euro-citizenship in particular affect national migration policies. This control is based in principle on the restrictive approach adopted by member states towards the harmonisation of admission policy. Some member states insist on their sovereign power to determine the residence rights of non-EU nationals and harbour serious reservations about extending some rights of Euro-citizenship to resident third-country nationals.

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[31] Proposal for a Council Directive on the right to family reunification (presented by the Commission) COM (1999) 638 final (Article 2 General Provision).
[32] *Ibid.*,

The process of 'communitisation' is functional to the definition of the category of 'them' in relation to the inner circle. The concept of citizenship is challenged only to the extent to which it no longer presupposes a large set of common or shared values. In one sense, this is positive in that it implies the ability of individuals to handle differences in their dealings with others who do not necessarily share the same values. In another sense, however, it is disappointing because the institutional effort to arrive at a common definition of legal subjectivity for third-country nationals maintains the traditional link between citizenship and nationality. National unity thus becomes compatible with increasing social and cultural pluralism though at the expense of third-country nationals. Some scholars have posed the dilemma in considering the revision of citizenship in modern society (Mouffe, 1992; Lehning, 1997; Meehan, 1997).

3.3 The foundation of a European public sphere: the problem of legitimacy and fundamental rights

It has been shown that the expansion of the *acquis communautaire* reflects the political necessity to gain a unitary character in the public sphere through the establishment of Euro-citizenship. In this process, political means are employed to guarantee the social and civil rights that become leading values in the process of the symbolisation of Euro-citizenship. The gap between governments' interpretation of societal needs and citizens' expectations is illustrated by a lack of political legitimacy and the shortcomings in the safeguarding of fundamental rights.

3.3.1 The public legitimisation in the development of the European Union democracy

At the European governmental level, it has often been argued that a genuine European citizenship would entail, *inter alia*, the right of individuals to participate in the political life of member states on the basis of residence, beginning with the full recognition of the freedom of expression, association and assembly. This idea was supported by the Commission, which advocated the inclusion of the right of political association in the Treaty. It also saw Euro-citizenship as an important means by which to counter a perceived democratic deficit and to strengthen the democratic legitimacy of the Community[33]. It is important to stress the citizens themselves had not requested Euro-citizenship through ordinary channels. The legitimacy of the EU nevertheless has relied on the criterion of a supra-national citizenship and the tacit consent of the overwhelming majority of the populations of member states towards the Union.

The problem of legitimacy and consent needs to be analysed with respect to citizenship's functions rather than simply as a matter of constitutionalisation. The social context in which Euro-citizenship performs its symbolic functions is marked by the absence of popular participation, defined as the 'technocratic' aspect of the European Community (Habermas, 1995). This profile of the European community leads us to a sceptical approach regarding the normative expectation associated with the role of the democratic citizen. In point of fact, citizens have no really effective means by which to oppose the European decision-making process[34]. The Maastricht Treaty began the process of demonstrating the existence of common and shared rights, and the liberal principles of the single market were equated with democratic rights. The 'technocratic' features of the

[33] Bull.EC, Supplement 2, 1991.
[34] For an argument concerning the absence of European public opinion see Lepsius (1990).

Treaty brought forward the problem of the democratic deficit. The lack of parliamentary legislation at the EC level, and the inadequate transparency and parliamentary accountability of the decision-making process have led to a detached attitude among citizens, many of whom feel they are governed by distant ministers and bureaucrats from other countries. In general, the law-making process of the EU lacks transparency and democratic legitimacy, which exacerbates the difficulty experienced by many European citizens in the identification with the new legal order.

The constitutional traditions common to member states, as a general principle of Community law, do not offer a sufficiently precise answer for many of the constitutional problems of the EU. This is reflected in the tensions between the Treaty objectives on the one hand, and the limiting of Community powers by the principle of subsidiarity and the requirements that decisions be taken as closely as possible to the citizen on the other. According to a key passage in the TEU:

> The Treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken as openly and as closely as possible to the citizen[35].

This declaration is to be commended, but on its own it is insufficient. Without an explicit formulation of the rights that can be asserted in relation to the decision-making, there is no real guarantee of institutional accountability. It is important to bear in mind that citizens' experience in the nation-state is of interacting with an existing polity in which the distribution of power has already been determined. In the European scenario, however, citizens are confronted with a political system in the making (Neunreither, 1994). Habermas argues that European citizens belong to a pre-political community which is the economic community (1995). In the economic sphere, the association of

[35] Second paragraph of 'Title I' Common Provision Article A TEU. Art.1. Amsterdam Treaty

interests is structured by relations of 'mutual recognition' of rights and obligations. This was one of the key principles of the 1992 'Single Market Programme'. The result, according to Habermas, is the risk that citizenship merely serves the interest of a 'client'. This could occur if the different apparatus of the state become entirely autonomous, cutting themselves off from their environments and obeying only their internal imperatives of money and power. In this way, they would not fit into the model of a self-determining community of citizens (Habermas, 1995).

The model to which Habermas refers is one of a deliberative democracy based on communication flows, which is to say on the interplay between institutionalised processes of opinion and informal networks of public communication. In this model, citizenship carries more than the passive enjoyment of political rights bestowed upon individuals by the paternalistic authority of the state. Even if nothing else, the Habermas model certainly provides an additional means by which to rescue the concept of citizenship from the logic of the nation-state (Habermas, 1995).

In practice, citizenship grounded in the plurality of EU nationalities has not been enough to secure a thoroughly democratic decision-making process. The reconciliation of private autonomy linked to the market on the one hand and public self-determination on the other thus has been substantially weakened by the European integration process. The legitimacy dilemma consists of 'the ability of citizens to exercise democratic control over the decisions of the polity versus the capacity of the system to respond satisfactorily to the collective preferences of its citizens' (Dahl, 1994: 28).

Political exigencies on the European Union level are contingent upon the perceived desirability of supra-national democratisation in which European citizenship becomes a normative imperative. The supranational processes follow their own logic,

which tends to relegate not only democracy but even politics itself to a subsidiary role. Soysal has argued, for example, that public spheres are constructed either on an international basis or a trans-national basis. The referent is no longer national citizenship but an abstract individual entitled to claim the collective right and to bring it back to the public sphere as his/her 'natural' right (Soysal, 1996). This means that identity derives not only from a pre-democratic element of national democracy but also from an amorphous set of universalistic values. It is thus reasonable to call into question the creation of an EU democracy based on forms of European identity that replicate models of national identity. There is no automatic or self-evident relation between national identity and democracy, and the formation of a unitary identity in Europe based on nationality therefore would guarantee neither democracy nor legitimacy[36].

The absolute priority of domestic matters combined with the expectation that they should be resolved by national governments has been problematic for the emergence of a European public sphere. The logic of self-interested nationalism in Europe, which everyday behaviour tends to follow, has served as a contradiction to the rhetorical ideal of a common European interest and thus to EU politics. The revaluation of legal subjectivity as a meaningful and alternative status to national citizenship finds its counterpart in 'actorhood' rather than membership as the essential element to define participation (Soysal, 1996). If Euro-citizenship becomes the very mechanism by which preferred forms of life are secured, it is thus within the public sphere and through public consent that Euro-citizenship should find its rationale.

[36] This is discussed below in chapter 6 through the analysis of the Opinion Polls.

3.3.2 The protection of fundamental rights

The connection between Euro-citizenship and the protection of fundamental rights is one of the principal factors underlining the status of the European citizen. This is based not upon ethno-cultural identity but rather upon the civic and judicial protection of citizens while respecting their diversity, and it constitutes the political premise of the deepened European democracy. The founding Treaties contained no specific provisions on fundamental rights. Before the Amsterdam Treaty, the only legal recognition of fundamental rights is given by Article F (2) of the Maastricht Treaty (TEU), which states:

> The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 1950 and as they result from the constitutional traditions common to the member states, as general principles of Community law.

By bringing fundamental rights to the fore, those who drafted the Treaty of Amsterdam were endeavouring to give formal recognition to human rights. The Treaty of Amsterdam clarifies Article 6 (former Article F) of the TEU by stating unequivocally that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles are common to the member states. Moreover, the Amsterdam Treaty gives more power to the ECJ in this area by amending Article L of the TEU. The amended article, issued as Article 46 of the Amsterdam Treaty ensures that Article 6 will be applied. The Court now has the power to render decisions concerning respect for fundamental rights in the EU.

It is possible to argue that Euro-citizenship has served the *acquis* on fundamental rights through the extension by the ECJ of the judicial and legislative protection of fundamental rights. Individuals in the European legal system generally nevertheless

continue to derive their supra-national rights from their constitutional position as nationals of a member state (Mancini, 1989). Most member states grant 'everyone' freedom of expression at the constitutional level while freedom of association and assembly are subjected to more severe restrictions since they involve organised political participation. In this way, Euro-citizenship does not fully symbolise a common constitutional institution in recognising fundamental rights. Euro-citizenship should express of a common European interest. To the degree that this interest is symbolised by the need for the protection of fundamental social, political, and civil rights, the question at issue concerns the capacity of Euro-citizenship to serve that function. Judicial protection and equal treatment are two important needs connected with the relationship between the individual and the community, and Euro-citizenship has the opportunity to address this relationship. Euro-citizenship really contains little *per se*, but it could lend greater significance to the Union through the creation of a system that guarantees equality for all legal residents through judicial protection.

It has already been argued that a sense of belonging at the European Union level needs to be based on an additional set of values that require legitimisation and protection (Garcia 1993:13). Preuss stresses the fact that the nation-state has remained the basic political organisation able to guarantee protection (Preuss, 1995b: 273). In this respect the Treaty of Amsterdam introduces an important change by giving the ECJ power jurisdiction in the protection of fundamental rights, which provides a common denominator that in time may translate into shared values. Individuals would be able to address their complaints to the European Court, which in turn might facilitate a belief among Europeans in a unitary body that protects their interests. It is undeniable nevertheless that one of the main obstructions to the shaping of a common denominator

is that these rights, granted at national level, are undoubtedly perceived by certain national constitutional Courts as inalienable evidence of their sovereignty[37]. On the contrary, the protection of fundamental rights must now be understood as a principal factor in the relationship between the individual and the supra-national state in Europe.

The concept of a supra-national citizenship thus has served the expansion of the *acquis* on fundamental rights. The expansion of the ECJ's jurisdiction overcomes the need to refer to national status. Consequently, there is no longer any need to refer to national status and the legal status of people living lawfully in the community should be a sufficient condition for granting citizenship rights (civil, political, and social rights). The new challenge is the detachment of civil, political and social rights from the status of nationality.

Conclusion

While the territorial organisation of the EU clarifies the boundary between insiders and outsiders, the categorisation of legal status among member states follows no unitary criterion. The elimination of conditions of nationality for the exercise of certain rights is an important step towards the coexistence of the European and the national models. This would imply first that national citizenship will become inconsistent in relation to the European system, and secondly that Euro-citizenship becomes substantially different from the former in performing its functions. As the concept develops through the expansion of the *acquis communautaire*, it can provide a shared platform for individuals by which they can participate in that process, enhancing democratic legitimacy.

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[37] Among several pertinent judgements of the Constitutional Courts, see for example Frontini v Ministero delle Finanze. Case C- 27/12/1973.

If one legitimises Euro-citizenship based on nationality, this indirectly confirms the *acquis* on fundamental rights derived from principles common to the legal traditions of each member state. Yet, the notion of Euro-citizenship should in practice go beyond this and allow the expansion of rights terms of subject matter rather than nationality, which would overcome the need to refer to the status of nationality. Although the ECJ has assumed that all the individuals throughout the Union constitute a single Community, this has to be combined also with considering the individual within a supra-national context as detached from their ethno-cultural characteristics. This entails the possibility to detach Euro-citizenship from nationality and afford citizenship rights on bases other than nationality. It would thus be possible to be a Union citizen without being a national of any of the member states. Perhaps the designation of 'Union subject/subjecthood' would be more appropriate than 'Union citizen/citizenship'.

Chapter 4

The conceptualisation of Euro-citizenship in the European and national debate

Introduction

This chapter examines in a comparative perspective the political debate on Euro-citizenship at both the European and national levels. It focuses on the tensions that exist between supra-nationalists and inter-governmentalists who disagree on how far European citizenship and interests should encroach on national citizenship and interests[1]. In so doing, it considers the extent to which Euro-citizenship can develop independently from national citizenship. The European political élite, who are the prime constructors of the typologies of 'us' and 'them', are split between those who desire deepened integration at all levels of society and those who defend state sovereignty in all policy areas, favouring reform and territorial expansion in the EU to deepening existing ties. Supporters of both positions nevertheless agree that a cultural identity is necessary to legitimate existing EU institutions, though they differ on how strongly this component should be emphasised. This chapter considers the question through an analysis of two fundamental issues: (1) the role that Euro-citizenship has in the formation of the Euro-polity, and (2) the degree to which the political discourse has fostered the formation of the typology of 'us'.

The aim of this and the following chapter is to compare the supportive and sceptical views of Euro-citizenship and immigration at the both the European and national levels. These chapters use the example of the United Kingdom to illustrate the difference in these approaches at the level of the nation-state for several reasons. First, the intent is not to compare supportive and sceptical approaches between nation-states.

[1] Supranationalists support the expansion of European jurisdiction across the EU over a wide range of policy areas. Intergovernmentalists, by contrast, wish to preserve as much as possible the independence and sovereignity of each nation, keeping fundamental decisions in the hands of democratically organised societies (Nugent, 1994: 433; Heywood,1994:67).

Comparison of these two approaches need not consider both Italy, and the United Kingdom at the national level. In many ways, Italy is ill-suited for such a comparison because support for Euro-citizenship is relatively strong there and the sceptical view, comparatively speaking, is poorly represented. In the United Kingdom by contrast, both the supportive and the sceptical approach to Euro-citizenship and Immigration are very much in evidence, and both views can be discerned across the main political parties. Moreover, the debate on Euro-citizenship at the national level has been far more animated in the UK than in Italy.

4.1 The relationship between Europe and people

The identification of democracy with national representation obscures a conceptual problem. Democratic theory is intimately associated with the form it has assumed under the prevalent form of political power in modern societies. Representation is the mechanism that enables large populations to participate indirectly in the political process while accommodating differences of opinion, belief and values. As long as representation is restricted to nation-state, the political subjects are nationals. In a supra-national context, however, the deepening criteria of the political subject for purposes of democratic representation need to be reconsidered. There is no reason why representation cannot be structured in such a way as to transcend national political boundaries. According to Preuss, representation is a mechanism of mutual support for 'pre-existing feelings of commonness and institutions' that simultaneously 'reflect and [...] actively shape the community' (Preuss, 1995b: 277).

The idea of national representation is merely one historical construct into which formal democracy has transformed itself. In relation to the four historical models of

citizenship outlined in the first chapter, it is possible to identify three ways in which the representation process was transformed. The first transformation resulted in the advent of the Greek city-state, followed by subsequent incarnations of the city-state in Roman antiquity and the later Middle Ages. The second form has been representative democracy within the nation-sate. The third transformation is currently taking place through the supra-national form of governance, which affects citizens' daily lives at the same time that it restricts their ability to influence decisions (Dahl, 1994).

The manner in which the relationship between 'Europe and people' is put at the centre of European political concern reveals that the main political objective in the process of unification is concerned with the formation of a *demos* through the rationale of an 'ever closer union between people'[2]. Weiler objects to this point stating that Europe should diverge from the purpose of being 'about nation building'. (Weiler, 1996b: 112). According to this view, there is no European *demos* and there should not be one. What is needed is a rationale to justify the normative order that has already been created. As long as a European *demos* is non-existent, however, the idea of belonging to a European Union and the hope of realising European citizenship is very dim (Lehning, 1997: 189). Because it is not possible to conceive Europe in terms of a relationship between an individual and the nation-state, the idea of a single *demos* is not only unnecessary but also unlikely. The normative order that has already been established requires a rationale that is not 'statal'. Euro-citizenship as it stands now can be seen as a part of 'a statal *telos* and exclusionary *ethos* according to which Europe is about

[2] O.J. No 4-470, 15 November 1995, 'State of the European Union', President of the Commission Santer. Further details regarding European parliamentarians are listed below in Appendix 1.

redefining a polity in which the 'us' would become European and the 'them' non-European' (Weiler, 1996b: 113)[3].

The whole discussion about a European *demos* becomes superfluous in a supra-national context requiring a shared understanding of rights rather than a shared understanding of *ethos* (Weiler, 1996b). Current narratives on the democratic deficit in Europe convey different implicit understandings of who should be the political subject of democracy. The definition of an EU-democratic regime seems to imply a legitimacy dilemma, a choice between two models of legitimacy, either formal or substantive. The legitimacy of the EU seems to rest first and foremost on its efficiency, that is, its ability to solve problems.

Left-wing groups, which tend to express an optimistic view on Europe, attempt to conceptualise the main social problems as instrumental to the discussion on citizens' consensus. For instance, the political concern about the right to work is considered to be the European internal challenge that citizens stress the most[4]. The former President of the Commission Jacques Santer has reiterated that the issue of unemployment remains the greatest problem for the citizens of Europe, and he has acknowledged the importance of the right to work by stressing the need to combat unemployment. Protecting the right to work would provide Europeans with the economic security necessary for them to put their faith in the new order. According to Santer, it would also help to reconcile Europeans with the idea of Europe:

> 'People still do not feel that Europe is active in their daily lives dealing with problems of unemployment. Therefore, the first operation we must

[3] The term *telos* refers to the rationale behind the establishment of Euro-citizenship as a normative institution. The term *ethos* is interpreted as the attitude of the community.

[4] O.J., No 4-470, 15 November 1995, 'State of the European Union', President-in-Office of the Council, Gonzalez Marquez (Spain). The right to work has also been identified at the 'Amsterdam Summit' (1997) as one of the most important matters with which the Union must deal with.

> undertake is to develop a whole strategy for combating the scourge of unemployment. That is of great priority if we are to reconcile the citizen, the man in the street, with our Europe'[5].

The positive approach of left-wing parties consists of regarding the origin and the effects of this challenge beyond national frontiers and demanding a European response. The response should be effected 'without detracting from the fundamental freedoms and rights that form part of a common identity'[6]. It is believed that a common response could help citizens to develop a sense of 'collective fate'. The communitarian element is still strong through this political practice. The common fate of European citizens extends beyond national frontiers though it is still restricted to the nationals of the member states. The support of European citizens is considered indispensable for the construction of a European 'social model'. Political influence also plays an important role: 'this can be exerted showing the people of Europe that the Union is effectively addressing the issue that is top of the public's concern'[7]. Forging a level of social cohesion in the EU is essential for the Union to gain legitimacy and viability as a supra-national unit. The introduction of state-resembling institutions such as Euro-citizenship, however, is not sufficient to achieve this aim. Legal and political institutions establish only a formal vertical relationship between the EU and non-state structures of government, but there is no assumption that this correlates to a horizontal relationship which incorporates a unifying identity between individuals across the community (Shaw, 1998: 231).

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[5] O.J., No 4-470, 15 November 1995, 'State of the European Union', President of the Commission Santer.
[6] O.J., No 4-470, 15 November 1995, 'State of the European Union', President-in-Office of the Council, Gonzalez Marquez (Spain).
[7] O.J. No 4-470, 15 November 1995, 'State of the European Union', Pauline Green (UK-Lab) Chairwoman Party of European Socialist Group.

A more pessimistic political view, often expressed by right-wing parties, is based on the lack of a clear vision about the current purpose of the European project. According to Jean-Claude Pasty 'the larger Europe becomes, the more the meaning of building Europe becomes obscured'[8]. This is certainly reflected in a growing pessimism in public opinion, even though the lack of vision stems largely from real problems related to the working of the Single Market. Given that EC law is constructing a supra-national sphere for economic activity, the EU is increasingly providing the scope for individual autonomy through the logic of the Single Market. This should be welcomed by those of a conservative orientation who see the politics of a common identity linked to the role of the market in a modern society (Plant, 1990).

The main problem here is that the public power regulation of this private sphere, which has a growing influence on individual autonomy, is being taken away from the traditional framework for individual self-realisation: the state. In other words, the public regulation of individual activity is removed from the traditional framework of the nation state (Closa, 1998). Therefore, the politics of a common identity linked to the role of the market pursued by the conservatives would necessarily entail a redefinition of the concept of common identity. Yet, this is not the role that Euro-citizenship is performing.

As Closa puts it, 'the practice of European citizenship grounded in the plurality of EU nationalities has not been enough to secure the reconciliation of private autonomy and public self-determination, which is at the very basis of the idea of democratic citizenship' (1998: 173). This is inevitable considering the fact that the EU

[8] O.J., No 4-470, 15 November 1995, 'State of the European Union', Jean-Claude Pasty (France). Chairman European Democratic Alliance Group.

is the paradigmatic case of an enlarged area for private spaces whose corresponding institutionalised public spheres are still very much delimited by the boundaries of each member state. In this situation, nation-states are facing a truly democratic dilemma: 'the ability of citizens to exercise democratic control over the decisions of the polity versus the capacity of the system to respond satisfactorily to the collective preferences of its citizens' (Dahl, 1994: 28).

This democratic dilemma is emphasised in Habermas' argument on the existing gap between the nation state's increasingly limited manoeuvrability and the imperatives of inter-woven, world-wide modes of production which create the illusion of real sovereignty. In his words, 'the greater danger is posed by the autonomization of globalized networks and markets which simultaneously contribute to the fragmentation of public consciousness' (Habermas, 1995: 305). For Habermas, the effects of this will be post-industrial misery because of the surplus population and moral erosion of the community. National self-determination is more of a chimera than a reality, whilst supra-national processes have their own logic that supersedes not only democracy but also politics itself. The loss of sovereignty arising from supra-nationalism is counterbalanced by the collective strength of the EU as a whole. In this way, member states are able to promote economic growth, to control economic and financial forces no longer confined to national boundaries, and to strengthen their political influence (Nugent, 1994: 434). This is the basis on which the desirability of supra-national democratisation based on supra-national citizenship becomes a normative imperative.

4.1.1 Citizenship in the political debate and its impact on public opinion.

The political debates current during the time in which Euro-citizenship was established emphasised the role of the 'citizen' in the new social context. In particular, these debates revealed a change in the relationship between citizens and institutions: 'European history is now concerned to establish its second great historical role, the role of the European citizen. The institution of citizenship attempts to establish a number of basic concepts and bring the European institutions closer to citizens'[9].

These words entailed what Habermas calls a liberal political culture that can 'hold together a multicultural society only if democratic citizenship [...] can be recognised and appreciated as the very mechanism by which the legal infrastructure of actually preferred forms of life is secured'. For Habermas, these 'forms of life comprise not only liberal and political rights, but of social and cultural rights as well' (Habermas, 1995: 33-34).

For Habermas, the emergence and survival of this political culture depends on the recognition of Euro-citizenship as the very mechanism that secures preferred forms of life. Rather than a comprehensive ensemble of rights that is more coherent within national contexts, the development of rights attached to Euro-citizenship needs to be carefully balanced with those available under national citizenship. In political debates, however, Euro-citizenship is often seen as a threat to cultural specificity. Antonio Marques Mendes of the Portugal's Social-Democratic party sought to allay such fears in stating that 'it is necessary to reaffirm that Union citizenship does not in the least diminish the importance and meaning of national citizenship, just as it cannot be

[9] O.J. No 4-470, 15 November 1995, 'State of the European Union', Dimitros Tsatsos (Greece-Panelino Socialistiko Kinima) Party of European Socialist Group.

granted to those who are not nationals of member states'[10]. Worries about cultural specificity nevertheless persist in view of the fact that European citizenship has its own nature, and once it is put entirely into practice, it will consequently challenge national citizenship in spite of political promises.

The fact that the rights of citizenship are granted without an explicit consensus dictates a tacit political obligation to confer rights that come first according to citizens' priorities. Although the point of reference is 'the citizen', citizenship is not only a question of conferring a political and social status, but it is also a question of creating a sphere for citizens' action. The sceptical approach towards Euro-citizenship followed two different lines of reasoning. The first argued that Euro-citizenship is vague and lacks substance. As an advocate of the sceptical approach Philippe Herzog of the French communist party insisted that 'this citizenship does not exist, because no public social order exists, there are no Union obligations towards its citizens and no direct relationship between them and the Union'[11]. Although the causal relationship between citizenship status and the creation of a public sphere has not been firmly established (Soysal; 1996), the absence of a coherent legal status of citizenship is relevant in normative terms. An interpretation of Euro-citizenship along these lines thus would need to identify the practical requirements that may help to create a new legal status for individuals and arenas for public deliberation.

The second line of reasoning followed by the sceptical approach was a discourse of denial. This argument stated that 'the citizens of our European nations are intrinsically European citizens; European citizens must necessarily be citizens of the

[10] O.J. No. 3-441, 18 January 1994, 'Citizenship of the Union', Antonio Marques Mendes (Portugal-Social Democratic party), European Liberal Democratic Reformist Group.
[11] O.J., No. 4-470, 15 November 1995, 'State of the European Union ', Philippe A. Herzog (France-French Communist Party) Group for the European Unitarian Left.

nation of Europe as well and so we do not need European citizenship [...] the Treaty on European Union establishes a group of States and not a State of European people'[12]. This approach saw Euro-citizenship as a way of forcing upon the people of Europe 'things they do not want'. It also followed a logic that legitimated the denial of Euro-citizenship: 'if the European Union is not a state and does not have a people, it cannot introduce citizenship'[13]. This view follows the conventional definition of citizenship in which citizenship mediates the relationship between citizen and state[14].

Although democratisation may seem an unavoidable future necessity of the Euro-polity (Schmitter, 1996), efforts in this direction are neither normatively neutral nor have they gone unchallenged. It is probably true that the people of Europe would acquiesce to the factual existence of political structures associated with Euro-citizenship (Howe, 1995: 34). Given the lack of normative consensus, however, practical attempts to create a political sphere in the European Union from Euro-citizenship can be legitimately accepted only if they satisfy the paradoxical condition of being compatible with processes of public deliberation. This not only implies a process of de-nationalisation among member states, but it also places normative strategies within a supra-national context.

4.1.2 Europe's citizens: more than a constitutional matter

Efforts to arrive at a public consensus continued in other areas of constitutional concern, particularly with respect to institutional change. The debate in the European Parliament has followed three distinct approaches corresponding broadly to different

[12] O.J., No. 3-441, 18 January 1994, 'Citizenship of the Union'. Johanna Christina Grund (Germany) Non-attached, Independent Group.
[13] *Ibid.*
[14] For further discussion on this subject, see below in this chapter.

political orientations: Right, Centre, and Left. Figure 1 outlines the general approach in each political coalition.

a) The right-wing view

The approach taken by right-wing groups was characterised by a sceptical political reaction. Challenges against institutional changes reflected the fear of possible irreversible effects on public opinion if the people were to benefit from such changes and strengthen their consensus. An example of this fear can be found in the statement that:

> 'The European super-constitution will simply be a weapon in the hands of the Euro-unitarians, the Eurocrats. The idea of a European constitution is a travesty, a denial of the idea of and desire for a confederation of Europe's free peoples working freely together'[15].

Euro-citizenship was, moreover, seen as an ambiguous notion to be used with discretion but not to replace the national citizenship rooted in the individual histories of each nation. Some commentators even considered Euro-citizenship as a threat: 'the very notion of the European citizenship and the ill-considered use of the term may constitute a real danger'[16]. According to this approach the idea of Euro-citizenship was regarded as a challenge to the primacy of national citizenship, and it is interesting to note that here citizenship and nationality are used interchangeably. Euro-citizenship is related to European identity and the fear is that the latter will eventually supersede national identity. What stands out in this approach, therefore, is the preservation of nationality.

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[15] O.J., No. 3-442, 9 February 1994, 'Consttution of the European Union', K. C. Dillen (Belgium Flemish-Block, Flemish National Party), Technical Group of the European Right.
[16] O.J., No. 4-470, 15 November 1995, 'State of the European Union', Jean Claude Pasty (France, EDA/RPR).

b) The centrist view

The 'Centre Group' believed that the development of European institutions would enable people to better understand the function of the Euro-polity. Centrists wished to address an objection frequently levelled against the Maastricht Treaty 'that its structure and language are so complicated that Europe's citizens are unable to understand it'[17]. Those who supported the introduction of a 'draft constitution' were also sympathetic towards the issue of public consensus:

> 'Clear structure and a clear allocation of responsibilities may make it possible to regain approval, and this is an important issue. A draft constitution of this kind can provide the capacity to act that is urgently required if the Community is to be in a position to form the nucleus of a pan-European structure of peace and freedom and to strengthen itself internally. The draft is needed to enable us to embark on the necessary debate on more civil rights, greater closeness to citizens and greater involvement of citizens: that is remedying the democratic deficit'[18].

This approach conceives Euro-citizenship as functional to the establishment of a European public sphere that legitimates the new Community.

c) The left-wing view

The 'Left Group' considered the issue of 'public consensus' very important but, they did not believe that it necessitated the transformation of the Maastricht Treaty into a European Constitution. They also recognised that any effort towards this sort of institutional change would be compromised by a series of structural defects in terms of democratic guarantees and transparency:

> 'Thinking of a written constitution does not imply that these important democratic principles would be sufficient to give different signals to the citizens. It cannot be in the interest of the citizens to provoke an institutional

[17] O.J., No. 3-442, 9 February 1994, 'Constitution of the European Union', J.M. Gil-Robles (Spain, Partido Populare), European People's Party.
[18] O.J., No. 3-442, 9 February 1994, 'Constitution of the European Union', Elmar Brok (Germany, Social Democratic Centre Party) European People's Party.

> battle. What we really need to do is take measures to combat mass unemployment, protect the environment on a cross frontiers basis and use means available to us to secure peace in Europe'[19].

This approach emphasised the expansion of rights as functional to the establishment of supra-national values. The Left also argued that citizenship should come after the Union is built. Citizenship is thus seen as a consequence of the construction of a new political community rather than functional to its construction.

d) Comparing the 'centrist' and the 'left-wing' orientation

The European People's Party and the Socialist Party Group, respectively, constitute the Centre and Left in the European Parliament. They both searched for popular consensus, but they approached institutional change and European citizenship in different ways largely because they viewed citizens differently. The Centrist approach stated that citizens should have obligations in the process of unification. According to J.M. Robles of the European People's Party (Spain):

> 'The Maastricht Treaty made it clear that the citizens of the European Union – whose citizenship is established by the Treaty itself – now have a role in the process of building the Union, which cannot be ignored'[20].

Conversely, the Left argued that it was not clearly conceptualised why citizens should have the duty of building the Union as long as they received no direct and immediate benefit from their new status.

The methodological tools to evaluate these two different perspectives are related to a different perception of the public sphere. In the Centrist approach, the perspective of the EU public sphere is modelled on the nation-state. This approach seeks to preserve

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[19] O.J., No. 3-442, 9 February 1994, 'Constitution of the European Union', Klaus Hansch (Germany, Social Democratic Party) Party of European Socialist Group,.
[20] O.J., No. 3-442, 9 February 1994, 'Constitution of the European Union'.

national citizenship and to establish public consensus while searching for common values. In this view, the capacity to reproduce romanticised elements of the nation-state is the criterion defining the *demos*. The influence of the nation-state model continues to be attractive to certain authors who argue, for instance, that 'it is an empirical question [...] whether the populations of the Member States share common ideas, values, interests and feelings of unity and social solidarity, which have become characteristic of the political and cultural coherence of the nation-state and which are amenable to be represented in common institutions and to be reflected in a common public sphere' (Preuss, 1995b: 278). A certain degree of homogeneity is thus seen as an essential element of democracy.

National identity becomes the fundamental constituent for the kind of political communities in which democracy operates (Smith, 1992). It emerges as the element on which democracy is based, and the absence of a pre-democratic element in Europe, in other words a distinctly European identity, appears to be an obstacle for the formation of EU democracy and thus also for the formation of a public consensus. According to Grimm, for example 'the obstacles to EU democracy are the weakly developed collective identity and the low capacity for trans-national discourse' (1995: 297). In chapter 6, it is shown that parts of these arguments are indeed empirically founded, though identity is not a fundamental element in the constitution of the Euro-polity.

The concept of democracy is remodelled according to the concrete sociological features operating in a given national context. These features are assembled as the model of the public sphere, which then assumes normative status, effectively neutralising alternative proposals that are not explicitly grounded on the empirical model of the national democratic state. In this political perspective, conceiving

democracy above the nation-state level is empirically difficult, owing to an obvious problem of identification with a model derived from national public sphere in a supra-national setting. The implication is that the supra-national sphere is incompatible with the national public sphere (Closa, 1998).

By contrast, the approach of the Left brings into question the survival of a model based exclusively on the nation-state. For the Left, identity is based not merely on pre-democratic elements of national democracy but also on universal values rooted in basic human rights. Delanty argues that the new order derives legitimacy neither from citizenship nor from the political culture of democracy. It derives its legitimacy instead from its ability to permeate people's lives through 'functional logic of regulatory flows' such as labour, communication, finance and markets, which suggests that Euro-citizenship should also be conceived in terms of function (Delanty, 1998: 353-354). Directly criticising Grimm's thesis, Habermas argues that 'the burden of majority and solidarity formation must not be shifted from the levels of political will formation to pre-political, presupposed substrata because the constitutional state guarantees that it will foster necessary social integration in the legally abstract form of political participation and that it will substantially secure the status of citizenship in democratic ways' (Habermas, 1995: 306). In other words, there is no automatic or self-evident relation between national identity and democracy. The transformation of the Euro-polity into a democracy requires new experiments or concrete manifestations of citizenship, representation, and decision-making.

Fig. 1 General Approach in each European Political Coalition about Institutional Change/ Consensus and Euro-citizenship

	Institutional change	**Public Consensus**	**Euro-citizenship**
Right	Denial	No Interest	Concern preservation of nationality
Centre	Support	Interest	Essential Functional
Left	Denial	Interest	Not Essential

Note: This table summarises my own interpretation of the debate.

4.2 Two case studies

It is useful to delineate, through parliamentary debates, the impact of Euro-citizenship on voting rights and the freedom of movement. This will facilitate a consideration of the extent to which limits on voting rights and the freedom of movement in the EU run counter to democratic values and frustrate the hopes placed on European integration, effectively denying the spirit embodied in Euro-citizenship.

4.2.1 Voting Rights

By creating the notion of Euro-citizenship in Article 8b(2), the TEU guarantees every citizen the right to take part in European elections in the member state in which he is resident even though he may not be a national of that state. The Article also states that 'this right shall be exercised subject to detailed arrangements to be adopted by 31 December 1993 by the Council, (...) these arrangements may provide for derogation where warranted by problems specific to Member States'.

Derogations actually allowed from this principle of non-discrimination offer a shelter to certain communitarian understandings of the relations between individuals and the state based on nationality. Anxieties about national identities thus are well protected by current EU provisions, for example in derogations for citizens in the Grand Duchy of Luxembourg on restrictions on voting and eligibility. Another example can be found in Council Directive 94/80/EEC of December 1994 included a express derogation in favour of the 'Kingdom of Belgium' allowing the Belgian Government to draw up a list of municipalities where the percentage of non-Belgian nationals exceeded 20 per cent of the municipal population. The derogation enabled Belgium to make the right to vote in municipal elections for non-nationals contingent on a period of residence in the municipality equal to the length of an electoral term. The Council was accused of not having consulted the Parliament on this derogation, this was perceived as a breach of the institutional balance, 'depriving public opinion of the opportunity of joining in a debate on derogation concerning the fundamental issue of citizenship'[21].

The way in which a similar matter was treated in Spain perhaps better illustrates the point. In elections on 28 May 1994, only citizens of the European Union coming from the Netherlands, Denmark, and Sweden were able to vote according to Royal Decree 202/9, based on a criterion of reciprocity. The Spanish Decree thus discriminated against citizens of other EU countries resident in Spain on the grounds of nationality. This could be conceived as a breach of Article 6 of the European Community Treaty and an infringement on the freedom of residence. Such a situation demonstrates the need for measures guaranteeing the right to vote, which should

[21] O.J., No. 4-461, 4 April 1995, 'Right to vote for citizens of the European Union in municipal elections', Carlo Casini (Italy, Christian Democrats Party) European People 's Party.

prevent derogations of EU provisions from discriminating against EU citizens and devaluing this right.

Because of their inevitable indirect consequences, these measures could affect the rights of EU citizens who are migrants in other countries of the Union. This could also cause serious abuses at the municipal level, fomenting tensions and resentments instead of creating more positive expressions of the new Euro-citizenship. The argument in favour of derogation viewed it as a means by which to strengthen support of Euro-citizenship and to give it greater chances of success in particular countries. The justification of this position is based on the political will to introduce certain safeguards so that electoral law could make allowances for specific circumstances in various countries. It was for this reason that the principle of derogation was enclosed in the Treaty. The opposite view argued that the principle of derogation would actually open the door to discriminatory measures, since it would not necessarily apply equally to the citizens of all member states, thus compromising the fundamental principle of equality.

Lundberg argued convincingly that the right to vote and to stand as a candidate in local elections already included under Euro-citizenship cannot be exercised effectively without full guarantees of political freedom: expression, assembly and association (1995). Whilst freedom of expression falls into the category of human rights and is consequently widely accepted in all member states, rights of assembly and association have a more discretionary interpretation in the national legislation of EU countries.

Germany's Aliens Act makes it possible to restrict or to forbid non-national political activity and the Portuguese constitution requires either explicit or tacit government permission before engagement in political activities is even allowed. This

is not much of a problem in practical terms. As Lundberg argues, it is likely that the ECJ will remove difficulties deriving from such restrictive interpretations and concerning the exercise of the political rights protected by article 8 of the TEU by recourse to the doctrine of *effet utile* and the principle of equality (1995:129).

In the political debate, it was disputed whether a high degree of participation implies a parallel high degree of legitimacy. The position of the 'Left Group' regarding citizens' participation emphasised the expansion of rights rather than mere political participation. In this view a fuller definition of the political rights of Euro-citizenship will likely emerge as a spill-over effect from regulations on other rights. Basically, participation should mean political action in a Union where too often everything happens at the level of experts, civil servants, and States. The problem here was to understand whether citizens' political action was wanted at European level:

> 'Who really wants political action within the Union? Who really wants to create the conditions to allow the citizens to participate in the debate to consult them not just at the election time but continuously, so that Europe becomes a part of every day political life?'[22].

Nationality in these special cases was still perceived as an obstacle to the exercise of voting rights. Some spill-over effects were to be expected from provisions for Euro-citizenship, but nationality still remains under the exclusive jurisdiction of individual member states. EU citizens resident in EU countries other than their country of nationality are limited in their exercise of political rights by the naturalisation rules that apply in each member state. Incremental changes in the forms of direct participation seem fully consistent with the development of the discursive capability of a European *demos*. Though diverging arguments about the public good have the functional effect of

[22] O.J., No. 3-438, 17 November 1993 'Rights to vote and stand as candidate for European Parliament', J. Cravinho (Portugal, Partido Socialista) Party of European Socialist Group.

identifying focal points of interest, thinking of European unity as a theme around which to create a European public sphere should be avoided (Schmitter, 1996).

A closer relationship between Europe and its citizens relies on inter-institutional bargaining within the EU. The EP can influence the legislative outcome when this bargaining is positive. A positive inter-institutional relationship occurs when the other institutions like the Commission and the Council of Ministers pay attention to the EP's requests. As it is now, the EP does not symbolise an institutional body that represents the people and rules can be adopted without its consent (Judge, *et al.*, 1994), and this does not encourage other institutions to heed to its requests. Weale suggests that one of the major developments in the political constitution of Europe would be a shift from the Commission and the Council of Ministers towards the EP 'as the locus of policy initiative and decision within the Union' (1995: 223). This process would eventually contribute to the formation of a European political identity.

The right to vote and to be elected to the EP in a Member State other than one's own can be very functional to the formation of a European public sphere. However, in so far as the EP has neither legislative initiative nor full legislative power however this right will not give much strength to Euro-citizenship. It is nevertheless important to recall that this right collides on the one hand with the narrow concept of national sovereignty and on the other with the idea that the European Union is an association of individuals.

If the Union is an association of individuals rather than a collection of peoples and if the EP is representative more of citizens than nations, then the political legitimisation of the new European polity is not so bound to collective identities built through national membership. The question here is not how we can make Europe more

like the nation states it composes, but how the nation states could develop a model of pluralistic relations with a new political identity (Weale, 1995: 224). In Weale's view, the process of identification with habits and norms of the new polity depends on how democratic Europe will become (1995). This is a problem of political legitimisation implicit in the construction of a European political order itself and not solved with the establishment of Euro-citizenship.

4.2.2 Euro-citizenship in the frontier regions

The second aspect emphasised by the European political élite as partly undermining the substantial effect of Euro-citizenship, regards the matter of living and working conditions in the frontier regions. In relation to this functional problem both the European People's Party and the Socialist group proposed establishing a directive under which every national law should be reviewed in terms of its effect on people in frontier areas, and frontier commuters in particular. 'This is to realise the citizens' Europe for workers also in relation to social issues'[23]. Inflexible national structures continued to prevent people in frontier areas from experiencing Europe as an entity. In this debate two major problems emerged: social and institutional. Particular attention was given to residence rights since freedom of movement as the core of Euro-citizenship essentially involves the right to reside. This right of residence was emphasised repeatedly in the debate as not only the right to live anywhere but also the right to enjoy social and economic conditions similar to those enjoyed by everyone else.

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[23] O.J., No. 3-427, 8 February 1993, 'Living and working conditions in frontier regions', Elmar Brok, Report on the behalf of the Committee on Social Affairs, Employment and the Working Environment on the Commission Communication on living and working conditions of community citizens resident in the frontier regions with special reference to frontier workers.

In many practical respects, there still is in frontier areas no citizen's Europe with respect to social issues and employment. In particular, the problem of double taxation was raised. A German national working in the Netherlands but living in Germany, for instance, is still unable to rely on free movement rights in any sensible way in regard to taxation. Even when the hospital on the Dutch side of the border is a lot nearer, German sickness insurance generally refuses to allow patients to be treated in the Netherlands because the daily treatment rates there are calculated differently from the way in which they are calculated in Germany. In the context of the Rhine/Ijssel/Ems Euregio, a joint initiative was taken to provide the young unemployed both German and Dutch with professional qualifications. The German Employment Protection Act nevertheless states that such a grant cannot be made from Nuremberg if the activity is taking place five meters away on the other side of the German border.

The issue was one of 'rational choice', since these European citizens/workers 'do not choose daily or weekly exile out of capriciousness, but out of a legitimate quest for higher pay or because the alternative is unemployment'. The problem, moreover, did not involve 'frontier workers commuting between a country of the European Community and a third country'. MEPs recognised 'a whole series of problems that are daily irritants in the lives of frontier workers' incomes, which we recommend should be settled by bilateral agreements, on the understanding of non-discrimination on residential grounds'[24]. The cultural as well as social aspects of this problem also constitute a case in support of the construction of a new Europe without frontiers:

> 'It is really a sad state of affairs that precisely those people who are interpreting the spirit of the Community and go to work in a neighbouring country are still facing so many problems in 1993. I see commuters as being

[24] O.J., No. 3-427, 8 Februry 1993 'Living and working conditions in frontier regions', Fayot, Party of European Socialist Group.

> the interpreters of the trans-frontier idea. They can tell us better than anyone else how much has to be done in the field of free movement of persons'[25].

The institutional conflict arises when the European Commission's answer to this problem implies again an inter-governmental approach that diminish the validity of the European Parliament's position in representing citizens' interests. On this occasion, in fact, the Commission repeated that 'there is no need for a specific status for frontier workers but it can be taken into account in some fields provided that objective reasons justify different treatment'. The report of the Commission on the issue also demonstrated support for an inter-governmental approach: 'This matter could more adequately be dealt with by the member states themselves. This would be the best way to proceed'. This reveals that issues related to Euro-citizenship as a supra-national institution can still be left to national rulings.

4.3 The definition of Euro-citizenship in the British parliamentary debate.

Discussions concerning Euro-citizenship in the British Parliament before the implementation of the Maastricht Treaty[26] faced the problem of the original definition of citizenship. The debate centred more on the effects of Euro-citizenship on the expansion of citizenship's rights in the UK and particularly on the political implications of the formation of the new Euro-state on relations between citizens and the state.

Reaction in the UK to European citizenship was divided between those who were sceptical about the formation of a supra-national state in Europe and those who saw euro-citizenship as both an evolutionary development in the tradition of citizenship and an essential element in the process of European integration. These two main

[25] O.J., No. 3-427, 8 February 1993, 'Living and working conditions in frontier regions', Oomen-Ruijten (The Netherlands, Christian Democratic Appeal) European People's Party.
[26] In 1993 Conservatives lead the government.

approaches towards Euro-citizenship are not necessarily divided along party lines between Right and Left[27]. It is possible, instead to discern two different supportive and sceptical approaches with respect to the main political split.

4.3.1 The politics of assurance in the redefinition of rights and obligations

a) The supportive approach

Support for Euro-citizenship was not oriented towards a constructive conceptualisation of the new relationship between citizens, rights, and obligations. It was built instead on assuring citizens that the acceptance of Euro-citizenship imposes no new duties on individuals (Ashdown, 1989)[28]. Arguments in favour of Euro-citizenship stressed that 'it is the existing duty of us all to comply with the law as is directly applicable in this country' and that 'sometimes a United Kingdom court judgement will impose a duty on an individual to comply with what is the law of the land because of our European Community membership, but no new duties are being enclosed'[29].

Euro-citizenship was thus presented as a matter intrinsic to United Kingdom law and the obligation to observe it was seen as the law of the land: 'The duties that fall on us as a result of Britain's membership of the European Community, and any future membership of the European Union, will arise from those legal obligations on us all to

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[27] Since 1979, in general, the Conservative Government in Britain has pursued what might be called a politics of common identity based on market logic and individual empowerment, which emphasises consumer choice and individualism (Plant, 1990). On the other hand, citizenship has become a basis for the politics of the Left offering the basis for a new approach to the idea of common identity and an alternative to the government's appeal to indivualism and consumer choice as the basis for it. In other words, in the Left's approach citizenship and its attendant rights and obligations provide a real alternative to the market-based approach, in terms of individualism and consumer sovereignity. It is possible to find a trace of this ideological differentiation within the debate on Euro-citizenship.

[28] Further details regarding UK parliamentarians are listed below in Appendix 2.

[29] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill', col.35, K.Clarke (Conservative Party).

obey the law of land'[30]. In this view, obligations stemming from membership in the EU were always regarded as imposed directly by each member state, and the repository of rights and obligations remained the state, which regulated the identity of individuals as citizens.

This politics of assurance and identification nullifies the substantive values of Euro-citizenship, which are also defined by the new relationship between citizens and their obligations. In other words, this approach minimises the importance of the new status for citizens of the Union and it underestimates the obligations attached to it. The function of the terminology used by then Secretary of State Kenneth Clarke was to reassure the public about any perceived loss of their nationality:

> 'I feel no sense of outrage at the idea that, together with being a national of the United Kingdom, I shall be a citizen of the European Union. I understand that some people in this country feel qualms about that proposition, but I do not believe that their view is held by the majority'[31].

The positive approach of the Left, on the other hand, rationalised Euro-citizenship merely as a formal relationship between rights and obligations. They argued that it has a symbolic function in that it establishes a 'formal status' in the European Union for the first time. The word *symbolic* was intended to indicate that nothing had changed since the introduction of Euro-citizenship and that the new institution would entail no radical changes in the future. The debate made it abundantly clear, in fact, that there was overwhelming support for guarantees enabling each European country to determine its own criteria for nationality:

> 'Citizenship is established by the new treaty, but the rights that people have are rights that they already had to a certain extent under the Single

[30] *Ibid.*, col.41.
[31] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill', col.34, K.Clarke (Conservative Party).

> European Act. The purpose of citizenship is to add, in part symbolically, to the rights that people already possess'[32].

Euro-citizenship naturally results from the fact that people are given certain rights and obligations in the wider Community. The symbolic function attributed to Article 8 of the TEU in the UK demonstrates the degree to which the emphasis in the debate lay in influencing public perception to achieve the broadest possible consensus.

> 'Many people understand that the European Community has a power over the citizens of the Community, so it is entirely sensible that, where people both ruled and have a share in ruling, citizenship should be established for them. Indeed, we should be looking for new and better ways to involve the citizens of Europe in the decisions that will affect them'[33].

The new institution of Euro-citizenship was thus seen simply as an initial step in promoting greater involvement in Community decisions while preserving the autonomy of member states in matters related to nationality and national citizenship. The Government's position with regard to the function of Article 8 also revealed a general misunderstanding since it was perceived as establishing just a *co-operation function* rather than a *community function*: 'I see nothing in Article 8 which is contrary to the Government's policy of the interests of the United Kingdom'[34]. The positive approach portrayed the European Union as having little if any direct authority. Membership in the EU would result in no conflict between the laws of the United Kingdom and those of the Union. The intent of this approach, in other words, was to assure people that EU membership entailed no significant change in the daily lives of UK citizens. It dismissed both the imperative to identify with the EU and the fear of losing any sense of nationality.

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[32] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill', col. 30, A. Blair (Labour Party).
[33] *Ibid.*, col.31.
[34] House of Commons, 1 February 1993 'European Communities (Amendment) Bill', Col. 43, K.Clarke (Conservative Party).

The symbolic function of Euro-citizenship was also stressed in efforts to garner support among the younger generation, many of whom already regard the UK as an integral part of Europe and saw both the restrictions on individual citizenship and divisions between European countries as archaic:

> 'Many members of the younger generation find it extremely difficult to understand the narrow nationalism portrayed by so many of the artificialities and distortions. The symbolism provided by citizenship of a greater Community should be welcome. It is important to have formal but tangible recognition of the rights of European Community citizens in the Community at the beginning'[35].

This is consistent with findings on the significance of age for public support towards Europe, which are discussed below in Chapter 6.

The arguments in support of Euro-citizenship maintained a strict connection between identity and the norms of citizenship. Within the European Union as a whole, on the other hand, the advent of European citizenship has produced an increasingly conspicuous gap between the community as sets of individuals and the norms of citizenship as institutional practices (Weale, 1990: 158). While the community changes in terms of membership the norms of citizenship remain constant, which implies that citizenship is increasingly detached from identity and that it serves less and less to serve as a means for identification.

b) The sceptical approach

The sceptical approach towards Euro-citizenship acknowledged the possibility that fresh duties could be imposed on citizens as a consequence of closer ties with Europe. This was based on the belief that the further development of the European Union would

[35] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill ', Col. 60, J. D. Fraser (Labour Party).

involve new Treaty obligations. Paradoxically, the central argument of the pro-citizenship group established the basis for the principal objection of the anti-citizenship group, which wondered why the entitlements stemming from Euro-citizenship actually required citizenship and why there was the need to pass the Bill at all since the rights and obligations of Euro-citizenship already existed under the previous EC (Amendment) Act of 1986.

This objection about citizens' obligations emphasises one of the structural problems of Euro-citizenship whereby agreements concerning rights and obligations are spread over a variety of Treaties that involve different decision-making procedures. In this respect, the so-called 'pillar structure'[36] on which European governance is based is considered inaccessible to the understanding of citizens. Should the European citizen attempt to comprehend his/her citizenship, it would be necessary to search for its meaning scattered among the various 'pillars' where decisions proceed according to different processes. All of this results in a distorted approach towards the new relationship between citizens, rights, and obligations. Although the rights of common citizenship are enacted at the Community level, there remains uncertainty regarding obligations since they are distributed amongst all the Community's institutions.

These structural obstacles provoke feelings of uncertainty in public opinion. From the citizen's perspective, the fact that Euro-citizenship is a supra-national

[36] The Treaty of the European Union established a new organisation of the European Union based on three pillars: the European Communities, a Common Foreign and Security Policy, and Co-operation in the Fields of Justice and Home Affairs. The First Pillar incorporated most of the EU's policy responsibilities, including those concerning Citizenship in the Union. Immigration and Asylum were incorporated in the Third Pillar, which entailed co-operation only in areas of 'common interest'. The European Court of Justice has no jurisdiction in this Pillar. At the administrative level, the mechanisms of co-operation are headed by Article K.4 Co-ordinating Committee and, at the political level, by the Council of Ministers meeting in the form of the Justice and Home Affairs ministers. The Amsterdam Treaty establishes the transfer of immigration and Asylum policies from the Third to the First Pillar.

institution rather than an intergovernmental one is beside the point. What really counts is the way that people perceive the practical implications of their new status. The rationale behind Euro-citizenship, moreover, cannot be divided and confined to various 'pillars' but must be found in the European Union as a whole.

Proponents of the sceptical approach justified their attitude by emphasising one aspect of public understanding concerning the development of the institution. They suggested that young people would be slightly less enthusiastic about being European if they suddenly discovered that their future in Europe is to be determined by a large organisation in which they would have a little say. According to this perspective, Article 8 on Euro-citizenship was portrayed as 'undemocratic'. The sceptics drew attention to paragraph 2 of Article 8a, which states that decisions regarding citizenship should be the purview of the Council of Ministers rather than national legislative bodies or the popular will. Although any decision of the Council of Ministers requires unanimous approval, the sceptical argument intimated that the Council acts in response to neither national legislatures nor the popular will. Instead, this argument encourages the public to believe that the power to legislate in matters of citizenship would rest entirely with the Commission, thus both demonstrating and inciting fears about the loss of power from the Parliament to Brussels.

Sceptics refer to the changing requirements for voting rights in domestic law as an example of the shift of power from national to supra-national institutions. This particularly affects the United Kingdom since residence no longer confers national political rights[37]. At the national level, the status of residence loses its original function

[37] See Chapter 2 above.

in conferring political rights while national citizenship is strengthened. This places greater emphasis on national citizenship for the exercise of voting rights.

The question concerning the political rights of legal residents in the UK gave rise to a whole series of related questions. How long must an individual reside in the UK before becoming eligible for legal resident status? Would there be any right to appeal if residence were refused? What would happen to a person denied the right of residence, given that there are no deportation rights under the prevailing provisions? These questions can be answered only if the issue of residence is justifiable by a citizen of Europe in exactly the same way as it is now under the domestic law of the UK.

It is in this respect that the Community level becomes significant for individual member states. Although the qualification for residence is a key element of Euro-citizenship, the definition of who is considered a legal resident still depends on national law. One of the most controversial issues concerns the residence qualifications for European citizenship. An answer to this question could probably give more significance to the Community level. What is clearly misinterpreted and left out is that Article 8 carries with it an extension of possible 'opportunities' within the opportunity structure of the EU. Neither the politics of assurance nor the politics of denial adequately portrayed the positive consequences that this new institution entails. All of this may have affected public opinion in terms of confidence in the new Euro-polity.

4.3.2 Two paradigms of denial

a) The rejection of a new state

The sceptical discourse was built around the preconception that the only point in creating citizenship is to set up an obligation to a State. According to this approach, the

introduction of Euro-citizenship implies the formation of a new State without public consent. The sceptics' argument was punctuated by recurrent expressions of denial formulated in terms of imposition, subordination, conquest, and abuse. This approach implied two main forms of denial: (1) first, Euro-citizenship is rejected if it involves the formation of a new state, (2) secondly, Euro-citizenship is a vacuous concept if it does not relate to a state.

The lack of understanding that citizenship without a state is no longer meaningless attests to the failure to acknowledge all the possible implications that Euro-citizenship entails. Sceptics nevertheless portrayed Euro-citizenship as an imposition, declaring that it is 'an insult to the concept of citizenship if people are obliged to have it whether or not they want it'[38]. The new institution was also seen in terms of subordination, since national citizenship would have been subordinated by Euro-citizenship. National citizenship, according to this view, is acquired primarily by virtue of birth, or else it is acquired by conscious and carefully considered application, which is the process of naturalisation. The acquisition of Euro-citizenship, by contrast, is compared to a process of conquest. The debate has even stressed 'This is the manner in which citizenship has been traditionally imposed on those who did not wish to assume it voluntarily'[39].

There are two main counter arguments against this view. Firstly, the acquisition of citizenship by birth can also be considered an imposition since one cannot voluntarily decide about it at the time of the birth. Secondly, naturalisation cannot be assumed to be an entirely voluntary decision when one has no other choice for

[38] House of Commons, 1 February 1993 'European Communities (Amendment) Bill', col. 51, A. R. Marlow (Conservative Party).
[39] House of Commons, 'European Communities (Amendment) Bill', 1 February 1993, col. 52, A. Rowe, (Conservative Party).

obtaining specific rights. It should be taken for granted, moreover, that the acquisition of Euro-citizenship also stems from birth since that the vast majority of citizens of the Union were born within the European Community. This undermines the argument comparing Euro-citizenship to a citizenship imposed by 'conquest'.

In general, those who are more sceptical towards Euro-citizenship believed that the introduction of Euro-citizenship would lead to abuses of British citizenship and that, to discourage such abuses, one must be careful about to whom one grants it.

> 'The signatories of the proposed treaty of the European Union are not careful. They think that they can bestow it on anybody, whether or not he or she wishes it, so long as the individual happens to hold citizenship of a European Community country'[40].

Criticism was directed at the fact that Euro-citizenship hinged upon national citizenship, which thus made national citizenship a means by which to gain supra-national citizenship in Europe. This lends greater weight to citizenship policies at the national level, resulting in a more protective attitude towards national citizenship. The problem here is that Euro-citizenship was conceptualised as having the same function as national citizenship and, as a consequence, it was assumed that the implications were also the same. Part of this discourse was directed against the traditional citizenship theory of the Left, which suggested a radically different vision of the relationship between the citizen and the state. Another problem involves terminology. Sceptics defined as 'weasel words', for example, the language used to encourage a feeling of involvement in European integration.

> 'One signals one's intention with weasel words, which can mean anything, so that people cannot say that they were not warned. We are warned that by European citizenship we will encourage a feeling of involvement in European integration. In years to come people will say that they made it

[40] House of Commons, 'European Communities (Amendment) Bill', 1 February 1993, col. 51, J. A. Wilkinson, (Conservative Party).

> clear that they wanted Euro-citizenship. No one can say that he was not warned that we were going down the path of reducing our national rights and increasing our international burden, and changing the relationship between the British citizen and the Queen or British citizens and other citizens of the Euro-state'[41].

The controversy had thus shifted towards the relationship between the individual and the state, and towards the question of jurisdiction in matters of citizenship. Sceptics argued that only the law of the state can determine citizenship policy and that citizenship sets up an obligation to the state. The rationale against the introduction of a new citizenship is thus based on concerns over the formation of a Euro-state.

> 'The European state will be superior to the existing nation state. It will have the power to decide and to enforce rights and duties. Citizenship ought to indicate where ultimate power lies. Can the government put their hand on their heart and promise us that, if Maastricht is ratified, the importance of British citizenship will not be progressively downgraded, that Euro-citizenship will not become more important?'[42].

The real intention of the framers of the Treaty and its signatories is often emphasised.

> 'It seems clear to me that the real intentions are to diminish the nation state and the concept of national citizenship in favour of the Euro-state. If all that were wanted were reciprocal rights, there is no reason why they could not have been provided without the concept of citizenship'[43].

The request for reciprocal rights, in other words, should not necessarily lead to the creation of a new citizenship.

b) Euro-citizenship as a vacuous concept

The second form of denial follows from the assurance that there is nothing in the Treaty to imply that the Union is taking on the essential attributes of statehood.

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[41] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill', col. 76, Sir Ivan Lawrence (Conservative Party).
[42] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill' col. 79, Sir Ivan Lawrance (Conservative Party).
[43] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill', col. 75, Sir Ivan Lawrence (Conservative Party).

> 'The Union has no legal personality. It has to act through those of its component parts which have a legal personality - the communities - whenever there is a question of giving rights enforceable in law'[44].

This statement is a response to the liberal objection to the notion that citizenship requires a direct relationship between the individual and the state. This approach regards citizenship as an empty concept as long as it is not 'a status defined in terms of rights and duties between the individual and the sate' (Delanty, 1998: 353). If there is no Euro-state, Euro-citizenship is vacuous and therefore is meaningless. In this view, citizenship means something only in terms of a relationship that links the individual to the political structure in which he/she lives or by which he/she is governed.

The inadequacy of the Government's response when asked simple questions about the significance of the creation of a new citizenship attested to the importance of identifying a new relationship that differed from that between the individual and the state, thereby giving substance to an otherwise vacuous concept. The political discourse embodied the conviction that Euro-citizenship as delineated in the Treaty is essentially indistinguishable from nationality as it applies to the nation state.

This observation was echoed in discussions concerning the possibility for a citizen to opt out of European citizenship. The fact that an individual could not simply reject Euro-citizenship became a very disputed point. The controversy is based on the fact that there is no separate provision whereby a person can remain a United Kingdom national but renounce citizenship of the European Union. Conversely, when someone now wants to renounce his/her citizenship an additional consequence will follow, since he or she will also lose European citizenship: 'There is no process for renouncing European citizenship, whereas a British citizen can renounce citizenship whenever he

[44] House of Commons 'European Communities (Amendment) Bill ', 1 February 1993, col. 80, B.C.Gould (Labour Party).

or she wishes'[45]. If a British citizen renounces his or her citizenship, it will have an impact on his or her citizenship under the Treaty. This crucial point also illustrates another important aspect of Euro-citizenship, which is to say that Euro-citizenship rights are added to birthrights and nationality rights acquired by naturalisation. It is thus impossible for a citizen to renounce Euro-citizenship without renouncing British birthrights or British nationality rights. In general terms, this means that the renunciation of national citizenship in any member state would also entail the renunciation of Euro-citizenship. In other words, with national citizenship goes the only right to claim Euro-citizenship. This illustrates the manner in which European citizenship and nationality are strictly linked. This process, typical of states such as Italy in which citizenship and nationality are interchangeable, now also involves those states such as the Untied Kingdom, in which citizenship and nationality are no longer separated.

The main criticism of this arrangement concerned the fact that the rights conferred by citizenship include the right to deny oneself citizenship, to renounce it. Instead, the only way in which a European national could renounce his European citizenship is to renounce the nationality acquired by birth or by naturalisation. According to this view, the Treaties should provide for renunciation of Euro-citizenship.

Another way to establish Euro-citizenship in such a way as to permit its renunciation would have been by some means independent of national citizenship in one of the member states. Euro-citizenship would have had its own status, independent

[45] House of Commons, 1 February 1993 'European Communities (Amendment) Bill', J.A. Wilkinson (Conservative Party).

of the nation-state to which each citizen belonged. As a consequence, however, Euro-citizenship would have assumed a character similar to the kind that those who oppose the Euro-citizenship are arguing against: the citizenship of an independent unit, the European Community.

It is illogical to demand that a citizen should be able to give up that citizenship when it must and should be entirely dependent upon his/her citizenship of another European Community country. The debate thus deviated from the central problem, which is not a matter of defining citizenship as dependent or independent from the national state but rather to acknowledge it in terms of new possibilities at the societal level. Moreover, as Delanty suggests, the emergence of a European citizenship leads to a new discourse different from the liberal-pluralist and the communitarian approaches. The new discourse should conceptualise Euro-citizenship beyond the nation-state and it should involve both the question of rights and the question of participation (1998).

Figure 2. Summary of the Supportive and the Sceptical approach:

European Level:

Supportive approach
Euro-citizenship functional for the legitimisation of the EU/Symbolic function
Sceptical approach
Preservation of nationality

National Level:

Supportive approach	
Right	**Left**
Politics of assurance	Symbolic function/ formal status

Sceptical Approach
Against the politics of assurance/ New duties will be attached
Two paradigms:
1- Euro-citizenship is rejected if it does involve the formation of a new state
2- Euro-citizenship is a vacuous concept if it does not relate to the state

4.3.3 In addition to the politics of assurance

The definition of citizenship as part of the relationship between the individual and the state is no longer appropriate as far as the relationship established by Euro-citizenship is concerned. Some important observations dealt with examples of the creation of citizenship in the absence of a state. In political debates, it was pointed out that Commonwealth citizenship indeed creates type of citizenship that goes beyond that of the nation state[46]. In addition, the Government's efforts to preserve national sovereignty have been undermined by the supra-national reach of the European Court of Justice. For example, a person can use the fact that he/she owes a superior duty and allegiance to the European Union as his/her defence in cases where the issue of citizenship is critical. If conflict arises between national and Community law, the European Court of Justice would find in favour of Community law. This gave rise to a further criticism against the supra-national responsibilities held by European institutions. The fact that the European Court of Justice will have superior jurisdiction in some cases became a highly controversial point: 'We can be perfectly sure that what is and what is not a duty will be interpreted not by a British court but by the European Court of Justice'[47].

It is worth highlighting two points: firstly, the European Union defined in the Treaty has a legal reality, and this undermines the Government's discourse of assurance; secondly, citizenship envisaged by the Treaty does not have a centralising function, which effectively weakens the argument against the introduction of Euro-citizenship. Citizenship of the European Union is undoubtedly a new concept and opponents criticised not the lack of substance in the Treaty but its institution. It was the

[46] House of Commons, 1 February 1993 'European Communities (Amendment) Bill', col. 46, J.D. Fraser (Labour Party).
[47] House of Commons, 1 February 1993 'European Communities (Amendment) Bill', col. 67, Sir Ivan Lawrence (Conservative).

matter of *subordination* that was contested. Opponents feared that citizenship in the member state would be subordinated to Euro-citizenship. In point of fact, those who supported the institution of European citizenship thought of it as 'a great proposition and that the United Kingdom, as one of the contracting parties, is a subordinate constituent of what the contracting parties are forming: the union of Europe. This means that the United Kingdom must of itself be subordinate'[48].

Attacking the concept of European citizenship simply on the basis of safeguarding the nation state is not satisfactory if one views the nation state as a relatively modern phenomenon. Moreover, it is a contradiction to insist on retaining full British sovereignty while benefiting from European economic liberalisation. This process deprives the Community's citizens of both the social and political dimension of participation in European decision-making. The significant feature of this new process is that it is not the relationship between individual and state that changes but rather the function of certain rights that link an individual to the state. More broadly, the political debate also fails to acknowledge that political rights are now losing their importance as part of a relationship with a superior body of law and a wider geographical entity. What seems to be more important in comparing national and Euro-citizenship is to examine whether the latter embodies the practical values embodied in the concept of citizenship in general.

One of the main problems, or fortunes, with Euro-citizenship is that it is granted under an exceptional governmental system, without a written constitution. Under this system, citizenship rights are not clearly defined in all the Community's institutions.

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[48] House of Commons, 1 February 1993, 'European Communities (Amendment) Bill', col. 107, Robert MacLennan (Liberal–Democratic Party).

For the most part, this is not a real problem at the European level since the Treaty leaves plenty of room for change and evolution. It does present a problem at the national level, however, where Euro-citizenship is sometimes seen as a challenge to the traditional idea of national citizenship, precipitating a defensive reaction that reinforces the national definition.

Conclusion

The political conceptualisation of the new idea of citizenship is very controversial; strategies of both support and denial presume a certain degree of gullibility among the public. The contradictory nature of Euro-citizenship no doubt encourages such approaches. The existence of concrete obstacles to the establishment of Euro-citizenship also lends greater legitimacy to objections.

This chapter explored the challenge posed by the construction of a European citizenship to the supremacy of national sovereignty and identity's supremacy. Efforts to construct both a new European polity and a European identity are hindered by disunity within the European political élite, which is split between inter-governmentalist and supra-nationalist supporters who have opposing prescriptions for the future of the European project. For the UK, one of the main difficulties at the national level consists in internalising notions of Europe into their own identity constructions and considering other member states as 'us' rather than as 'others' whilst preserving the peculiarity of their nationality.

The European Union serves as the medium for individual autonomy, though mediation between citizens and the state occurs more through the politics of the market than the politics of citizenship. The anticipated economic benefits of European

integration may provide sufficient impetus for the formation of a stronger, more overarching sense of European identity. Neither debate deeply considers that the construction of a supra-national sphere for economic activity requires the same development for the rights of individuals. The whole European project is threatened to be undermined if it cannot find expression and meaning at a grassroots social level across the community. The problematic inter-institutional relationship delays the creation of a closer relationship between citizens and the Euro-polity and this is the central argument of the sceptical approach against Euro-citizenship.

The pro-citizenship argument is based on the 'politics of assurance' at both levels with little attention paid to the evolution of the different functions that Euro-citizenship could perform. This approach seeks to achieve public consent for Euro-citizenship and, through the politics of the market, solutions for common problems. Though the debates give a certain relevance to social rights as pivotal elements of Euro-citizenship, they fail to describe them as the means to perceive new societal relationships.

Discussions about Euro-citizenship are inspiring alternative modes of social organisation without necessarily implying the end of the nation-state. The extent to which Euro-citizenship influences society beyond the domain of the nation-state is still very limited. As these new ideas circulate among the political élite, the élite are encouraged to alter their own identity and interest constructions. Euro-citizenship thus increasingly becomes functional to legitimise the new order and to internalise notions of Europe into the identity of each member state. In the struggle between liberal and communitarian attitudes towards Europe, however, a multi-layered form of political community would better reflect the multiple identities of EU citizens.

Chapter 5

The social mechanism of integration and the political representation of immigrants' rights at European and national level

Introduction

This chapter analyses political debates on the integration of immigrants at the European and national levels. The process of integration is multi-faceted, but this chapter identifies three main spheres: *cultural-national, trans-national,* and *eurocentric.* All these spheres are interrelated and changes at the European Union level will affect the national level through new institutional practices. Although the thrust of European legislation has been to dismantle political boundaries within the Union, this conflicts with the natural impulse of the nation state to maintain control of rights of entry into the territory and to deny entry to individuals who are perceived to be undesirable. This chapter also examines the conceptualisation of the category of 'them' in the political discourse and as revealed through common practices. It also considers whether the integration of immigrants can be achieved in the absence of the formal acquisition of citizenship.

5.1 The integration practices: a general approach

The processes of social and political integration for immigrants, which are distinct from those concerning acceptance and assimilation, rely mainly on the reorganisation of the societal system. Any change in the societal system affects the relationship between citizens and the state in terms of both citizens' priorities and their political representation. The context of the new societal system in which those who are considered European citizens dwell can be divided into three main spheres, identified above, and each of these spheres involves a different level of integration.

The first of these three main spheres, the *cultural-national* sphere, is the sphere in which political rights play a central role in the mechanism of integration, and it is possible to define integration at this level as *settled integration.* The *trans-national* sphere involves economic rights enjoyed by residents who are usually but not necessarily citizens. At this level, foreigners can remain members of the political system of their nation-state of origin yet become members in the economic or educational systems in their host country. Here, residence rights are not related to membership in the political system. I define this a *transient integration.* In this sphere, according to Brubaker, 'citizenship status is no longer the axis of routine exclusion'. This sphere provides a temporary model of integration and it 'no longer matters to the state whether or not immigrants have citizenship' (Brubaker, 1992: 182). This is better explained by the fact that political representation in a *trans-national* context loses its primary function. The last of the three main spheres is the *eurocentric* sphere which represents a level of integration in which social rights, particularly the right to work and residence rights, are the major forms of inclusion for both citizens and non-citizens.

It is possible to discern a level of interaction among these three spheres. For instance, the *eurocentric* sphere constitutes a point of departure from national sovereignty, which is to say the *cultural-national* sphere through institutional practices. This could happen, for example, if the Union were to implement new common social policies in fields like social relations, education and, most importantly, immigration policy. This process has been defined as the *communitising* project through which the relationship between the citizen and the nation-state changes[1]. This not only creates conditions that allow movement across the spheres but it also signals an important

[1] For further explanation on the *Communitising* project see section 5.1.2 below.

change in values and priorities that arise any time new possibilities are developed. In short, by breaking the traditional structure that binds the individual to the nation-state, the European Union is setting up a social context in which the mechanisms of inclusion need to allow for avenues of participation, that occur through something other than political rights. The difference between the *eurocentric* and the *cultural-national* sphere is that in the former individuals are now actively involved in democratic legitimisation as members of society rather than of the polity (Bauböck, 1994).

In the *cultural-national sphere*, only a selected number of foreigners are eligible to undergo the process of naturalisation under the condition that they transfer their political loyalty to the political community of the host nation-state. Residence, on the other hand, is granted when inclusion in the community by means of something other than the political rights is deemed desirable or unavoidable. This has two consequences. First, it encourages supra-national migration regimes to regulate the discriminating effects of the nation-state's segmentation of the policy system (Soysal, 1994). Secondly, the discrepancy between citizenship and residence may spark domestic conflict over the criteria and procedures for excluding or including persons in the social systems of a particular nation-state. As Brubaker reminds us, 'citizenship is a decisive instrument of closure' (1992: 181). Migration can fuel conflict in nation-states as long as the universalist inclusiveness of the political system is mediated by the societal organisation of nation-states. The classification of non-citizens can be drawn simply by using the opposite definition of the statute that defines the citizen within national boundaries. Non-citizens for the most part can be defined as all foreigners outside the country, but especially those foreigners outside the country seeking to come in; those who are in the

country as permanent residents; those in the country whose residence is temporary; and those who are seeking recognition as refugees.

Within the *eurocentric* sphere, the introduction of Euro-citizenship.has given member states a more homogeneous definition of the status of the non-citizen: those who are not nationals of a member state. Such a definition is nevertheless inconsistent with the recognition of different legal categories that still define the status of national citizenship. Definitions of citizen and non-citizen are therefore strictly related and they both refer to the same sphere of action. Non-citizens, if included, will belong only partially to the *cultural-national* sphere if not they are considered outsiders. This implies that they are excluded from both the *communitising* project conceptualised at parliamentary level and democratic legitimisation through membership in the new societal system.

Based on these preliminary remarks, the study of the formation of the typology of 'them' relates to three main political attitudes: (1) partial integration, (2) representation, and (3) exclusion. The formation of the typology of 'them', by extension, also permits the formation of the opposite typology, that of 'us'. Although political rights are no longer the only means of achieving a significant level of integration, the advocacy of non-citizens' rights in the political arena is still the first step towards the integration of non-citizens.

The fundamental variables for the social integration of non-citizens at the European level are the right to work and residence rights. This is because, these two rights are closely linked in any consideration of social policy on immigrants, the right to reside is linked to the purpose of the stay, which in most cases depends on a work

permit. In this manner, employment itself becomes a major form of participation and inclusion[2].

The extremely incoherent policy of European Union countries leaves doubt over the real and substantial model of European social integration. The lack of adequate solutions related to practical and very real problems relegates immigrants to a status lacking substantive rights. The concept of legality varies across member states and even assumes a new meaning in the European Union scenario. An immigrant can be legal in one European Union country and illegal in another. This is owing to the intricate nature of immigration law in each of the member states, which makes it impossible for an individual subject to immigration control to move confidently in the new frontier-free Europe. People who are lawfully resident in one of the member states could be excluded from the benefits of the new European order. Without the same rights as citizens of the Union, third country nationals, including those who lawfully reside in one of the member states, will inevitably suffer discrimination.

As has already been noted, an expanded naturalisation policy is in itself not the answer, though naturalisation is often presented as the only alternative. It is unlikely, however, that member states will happily renounce their rights to determine their own criteria for nationality or citizenship. This is evident, for example, in the difficulties experienced in negotiating shared external frontiers and common visa policies. By the same token, for a variety of reasons, not all of those settled within the European Union wish to acquire the status of citizen. As the majority of third country nationals are from

[2] Although Article 23 of the Universal Declaration of Human Rights (UN 1948) states that everyone has a right to work, few Western nations have incorporated this right into their constitution. This is particularly the case for foreign citizens exploited on the black market, which is useful to capitalism but contrary to any form of social integration.

visible ethnic minorities, moreover, the spectre of racial discrimination will be raised specifically at the national level.

5.1.1 Representation and integration practices.

In the political debates at the European level, many European institutional proposals towards equal treatment of lawfully resident third country nationals have encountered serious obstacles. Political debates can be considered institutional practices of representation functional to the process of social integration and in which rights are conceptualised. The political barriers at the national, sub-national, and, consequently, at the European level prevent any concrete progress. The mechanism of representation should not simply convert what it perceives to be the desires of its constituents into specific policies and goals. They should also constitute a suitable channel through which immigrants can direct their concerns since they have no voice in the political process except for the voices of those few who speak on their behalf in the full knowledge that their political advocacy will not translate into votes at election time.

The process of representation is functional in exerting both social influence to affect 'public' attitudes and legal control, which has a direct effect on immigrants' rights. Political parties and interest groups are the intermediaries between citizens and government. It is obvious that this relationship excludes immigrants from being represented since they are not political constituents in the fullest sense[3]. International obligations and the indirect effect of the debates on good race relations can constitute the only means by which their interests can be voiced. Even at the sub-national or local

[3] In saying that 'immigrants are not political constituents' I am referring to the fact that legal immigrants who are not citizens are ineligible to vote in national elections.

level where they might have more rights, the pressure they are able to exert on the decision-making process will be too weak usually to engender significant change. Representation at the European Union level, moreover, still hinges on national government policies since immigration is still under the jurisdiction of each individual member state. In this scenario, the only solution would be to establish a system whereby immigrants' rights must be claimed at Community level.

This point was developed by the Green Group's report on the 'Status of third-country nationals in the EU'. This report highlighted the importance of the right of abode, the right to work, and the right to education. The right of abode was claimed as fundamental: 'immigrants should be housed in a way that creates balance within a quarter'[4], or in other words not in ghettos. In fact, access to decent housing is another factor in integration. Interestingly, the report also suggested that immigrants' rights ought to be governed and represented at the Community level. This would necessarily involve the implementation of a legal framework that guarantees fundamental rights and equal opportunity. The main problem, therefore, concerns not so much immigrants' access to basic rights in their place of residence but whether any practical system of representation can be achieved.

The role played by supra-national institutions in providing immigrants with access to rights at the Community level is crucial. The role of national parliaments, moreover, should be essentially indirect[5]. In 1994, a Communication from the Commission on Immigration and Asylum Policy expressed concerns about the strengthening of integration policies for the benefit of the 10 million third country

[4] O.J., No. 3-441, 8 January 1994, 'Status of third-country nationals in the EU'.
[5] With the Amsterdam Treaty national parliaments have been denied any direct involvement in the legislative procedures of the European Parliament.

nationals who are legally resident in the Community. The Communication was meant to reflect concerns that had been aired in the European Parliament on many occasions. Some of the priorities that have surfaced in parliamentary debates nevertheless seem to have been ignored in the Communication. For instance, the EP called for separate rights on immigrants and refugees in addition to the right of asylum while the Commission's Communication contained no real proposal on this matter. The proposal from the Commission, instead, basically aimed to reject the idea of a segmented society and favoured taking steps that would have gone further towards assimilating the rights of third-country nationals with those of citizens of member states[6]. The Commission has presented a report to the Council on this plan and a new set of initiatives was proposed. These initiatives concerned rules for immigration and residence permits, including measures to facilitate family reunification; review of the rights and obligations of legal immigrants in the Union (this covers work permits, basic security, education of children and so forth); and temporary residence permits for refugees and displaced persons.

The Communication promised that 'things are going to change', but the main thrust of criticism over the Communication casts doubts on the prospects for significant change while complaining that the Council of Ministers[7] acts as if the Maastricht Treaty did not exist as far as the Third Pillar is concerned[8]. One of the paradoxes of the Maastricht Treaty lies in the fact matters relating to the Third Pillar, which most often

[6] O.J., No. 3-477, 'Immigration and Asylum Policy', 19 April 1994.
[7] The Council of Ministers is the main inter-governmental institution at European Union level.
[8] In the Maastricht Treaty 'immigration policy' is included in the 'Third Pillar' in which the European Commission, the Parliament and the European Court of Justice have no jurisdiction. Therefore, decisions are taken at intergovernmental level and Member States have strong influence in the process of decision making.

directly concern the fundamental rights of citizens, were matters in which intervention by the European Parliament was minimal[9].

As has already been noted, the Amsterdam Treaty attempted to change the existing scheme by re-addressing Parliament's position in several respects though the EP still lacks legislative initiative or full legislative power[10]. For the first five years after the Treaty of Amsterdam's entry into force, moreover, the policy areas transferred from the Third to the Community Pillar will be only partly under the Community umbrella. This is because the Commission continues to share its right of initiative with the member states, Council decisions still have to be unanimous, and the European Parliament still is not directly involved in decision-making but is simply consulted. The purview of the EP is still very limited while the European Court of Justice has become involved in co-operation in the Third Pillar on a wider scale[11].

The debates on refugees in particular and the status of third-country nationals in the EU illustrate the manner in which politicians think in tackling the problem of immigrants, immigration, and political asylum in relation to EU citizens' interests. These debates divert attention from a fundamental aspect of the issue because they focus more on the deportation of immigrants and the destination for deportation rather than the means by which immigrants might be integrated. On this matter the

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[9] Although the Maastricht Treaty stated that the Parliament should be consulted by the Council on all matters, it is usually informed after the event and is therefore unable to express an opinion on discussions while they are taking place. It is worth mentioning that Article K9 of Title VI of the Maastricht Treaty provided the possibility for shifting the decision-making process from the Third Pillar to the First Pillar. This constituted an open door for shifting some policy areas such as asylum and immigration policy into the Community Pillar in the following Treaty (Amsterdam).

[10] See chapter 4 above.

[11] In particular, The Amsterdam Treaty gave the European Court of Justice is powers to settle disputes between member states on Third Pillar issues. The Austrian government then appealed to the ECJ in its new capacity for a clarification of its powers governing visas.

Commission has been accused of supporting the behaviour of member states, which have adopted a policy of 'passing the buck', often to other nearby member states or states slated for entry into the EU. Some member states are indeed seen as 'dumping asylum seekers and immigrants in their neighbours' back gardens'[12]. For instance, Germany has been accused of shifting much of its responsibility on to the shoulders of its eastern and northern neighbours[13].

What is visible in the political discussions is that the populist policy was aimed more at reassuring public opinion than proposing a real policy on this issue: 'we must be able to show that we take people's worries and questions seriously'[14]. Additional requests to strengthen integration policies for legal immigrant workers and their families in Europe and to illustrate more clearly the contribution that immigrant workers and ethnic communities make to the economy of Europe are often reiterated. Such efforts could go a considerable distance towards xenophobic stirrings of an increasing proportion of the population, but it is still far from sufficient to transform the objective of full or nearly full integration into practice.

A significant comment comes from Lelio Lagorio of the Socialist Group, who firmly criticised the Council and the Commission for still being far too reluctant in this area:

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[12] O.J., No. 3-477, 19 April 1994, 'Immigration and Asylum Policy', M.M. Van den Brink (The Netherlands, Labour Party), Party of European Socialist Group. Further details regarding European parliamentarians are listed below in Appendix 1.

[13] This particular reference concerns the roughly contemporary deportation of Kurds to Turkey on the pretext that they had committed a criminal offence in Turkey where torture awaited them in spite of promises to the contrary. For instance a couple deported on 6 April 1994 were met by the police on their arrival in Istanbul and tortured for three days. It is worth noting that the attitude adopted by Germany has placed greater pressure on other present or future member states to accept Kurdish immigrants and refugees.

[14] O.J., No. 4-467, 20 September 1995, 'Immigration and Asylum', A. Gradin (Sweden), EC Commissioner for Immigration and Home and Legal Affairs.

> 'Even the Maastricht Treaty seems to have been written by Pontius Pilate on this point: it is right to establish the principle according to which Europe must not now build a wall to keep foreigners out, but organise itself better to enable Europeans and foreigners to live and live together. We are aware that there are many problems which arise because people are not prepared to face up to the many implications of a multi-racial society'[15].

It seems that this Communication, like many others before it, possesses a global approach that does not even exist for Community nationals. Their rights and obligations continue to depend on their status as citizens of the member states. At the very least, the same process on which the rights of community nationals are based should also apply to legal immigrants, which would no doubt affect their integration in the EU.

5.1.2 The *communitising* project and exclusion

In European political debates following the ratification of the Maastricht Treaty, the so-called *communitizing* project was introduced. This not only placed immigration policy under the jurisdiction of the European Court of Justice but it also gave member states less power in this matter[16]. Moreover, the *communitizing* project is concerned with 'the people's Europe', removed from the inter-governmental province or *cultural-national* sphere.

Importantly, the *communitizing* project sought to co-ordinate policies at the European level concerning Euro-citizenship on the one hand and immigration on the other. In other words, the project followed the logic that Europe would be able to deal successfully with the new challenges posed by immigration and asylum only if it adopted a consistent common strategy of inclusion and exclusion. The harmonisation of

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[15] O.J., No. 3-441, 8 January 1994, 'Status of the third-country nationals in the EU' Lelio Lagorio (Italy).
[16] This discussion has had its effect in the Amsterdam Treaty. See the preceding chapter for more clarification on the so-called 'Pillar structure' of the Maastricht Treaty.

the various national attitude towards immigrants that this would entail also leads to a definition of the category of 'them':

> 'As we move towards the goal of the free movement of persons we have to overcome the temptation to go it alone that we see re-emerging in the various countries of the Union, persuaded that they can form an enclave more impenetrable than their neighbour. We need a genuine culture of conversion'[17].

One of the issues reiterated in the debate was that Euro-citizenship will never be fully exercised as long as the problem of immigration is not tackled. This is because immigration not only challenges citizenship rights but emphasises them. The issue of immigration thus requires the same attention at the European level as efforts to arrive at a new definition of citizenship. Immigrants should be able to claim their rights at the European level, which would reduce or eliminate problems relating to naturalisation and changing nationality in cases in which dual citizenship is not allowed.

With regards to naturalisation, right-wing members of the EP have tried to dominate the debate on 'granting rights' by stating that third-country nationals are citizens who do not wish to become naturalised citizens of the Union:

> 'Immigrants specifically wish to retain their status as third-country nationals, and this is the reason why they cannot be accorded the right to vote without restriction. They cannot have dual nationality nor can they enjoy the same constitutional rights, the right to suitable accommodation. This would be a slap in the face for citizens of the Union'[18].

The evident discrimination used in these words was justified by the fact that third-country nationals did not wish to be completely identified with the Community or be fully integrated. The question, here, concerns the degree to which certain politicians can be so sure of what third-country nationals really desire since they never refer in these

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[17] O.J., No. 4-467, 20 September 1995, 'Immigration and Asylum', G. D'Andrea (Italy, Partito Popolare Italiano), European People's Party.

[18] O.J., No. 3-441, 8 January 1994, 'Status of third-country nationals in the EU', K. C. Dillen (Belgium, Flemish Bloc), Technical Group of the European Right.

debates to data that attest to immigrants' personal concerns. It seems that such attitudes shift the substantial essence of the problem. Moreover, the right-wing defence of the constitutional character of the Union is politically inconsistent with aversion towards Euro-citizenship among members of the same camp[19].

The process of social integration within the Union must rely on the establishment of a common legal status for EU citizens on the one hand and for third-country nationals on the other, but there can be no legal status for third-country nationals in the absence of a Community policy on them similar to the policy that exist for EU citizens. The creation of a common legal status for third-country nationals would substantiate the legal standing of those residing permanently and working legally in the Union.

5.1.3 The significance of public opinion for the political debate

The message conveyed to the public in this debate with respect to immigration and immigrants' rights can be considered in terms of its significance for promoting either social inclusion or exclusion. The message speaks volumes about the manner in which immigrants are considered in the political debate and the way in which their rights are conceptualised. For example, some political groups have referred to immigrants not just as transients, here only to work, but as people who have taken up residence, who wish to participate in the life of the Community, and who make an investment in their respective host society:

> 'You cannot send out a message that actually we do not want any foreigners. I am alluding to the measure for deporting fellow-citizens legally residing in the Community who give a night's lodging to an illegal

[19] See Chapter 4 above.

> immigrant, and to the great concern you then show about the increasing violence against foreigners'[20].

The denunciation of anyone that tends to place a permanent and systematic suspicion of guilt on every immigrant was explained in terms of a 'negative message'. What emerges from the political debate is that only citizens of the member states are considered in the process of democratic legitimisation through membership of the Euro-polity. This point is consistent with Arendt's strict division between the polity as the sphere of equality and society as that of discrimination (Arendt, 1958). Immigrants do not belong to the former and indirect discrimination against them can easily be rationalised in the latter. This difference was expressed in the debate in the support of Christian Democrats for third-country nationals resident in the Union to have the right to travel freely throughout. The Christian Democrats nevertheless sought to preserve differences mainly in the area of civil rights between citizens of member states and third-country nationals in the Community: 'We reject the proposal of according [legal immigrants] the same civil rights as citizens of the Union'[21]. Like citizenship, Euro-citizenship accomplishes exclusive functions by denying the principle of equality to non-EC citizens.

Although residence rights reduce the differences between citizens and non-citizens, they concern a different system of action. Residence rights do not empower individuals to 'express consent or dissent in a way that has an impact on collectively binding decisions' (Bauböck, 1994: 224). This has already been discussed in relation to national legislation in which the status of semi-citizenship can be partially inclusive but

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[20] O.J., No. 3-433, 14 July 1993, 'Free movement of persons and immigration' N. Mebrak Zaidi (France, Socialist Party), Party of European Socialist Group.
[21] O.J., No. 3-441, 8 January 1994, 'Status of third-Country Nationals in the EU', G. Jarzembowski (Germany, Christian Democratic Union), European People's Party.

does not allow for meaningful expressions of consent or dissent[22]. The proposal at the European parliamentary level was mainly to create a legal status of resident and to recognise the fact of their presence by issuing them with 'a resident's card that will allow them to move freely within European territory and have the opportunity to live and work here'[23]. This approach does not address questions of membership but only guarantees the allocation of functional rights. The option of citizenship should follow residence rights and immigrants should be free to decline (Carens, 1989).

Proposals advocating a policy of inclusion have nevertheless precipitated some extreme reactions. This is probably because residence rights do not require residents to show that they have in some way been integrated into the cultural practices of the society. In other words, these rights may be detached from any form of belonging to the host society. The development of a two-tier system of membership (citizen/resident) excludes all non-citizens from any of the special benefits of citizenship, that is, unless they take steps to be involved in the social life of the community as good citizens. As a consequence, the only suitable alternative to the model of citizenship is the discretionary model of naturalisation. A more drastic response came from some of the most extreme right-wing parliamentarians:

> 'we demand that there should not be new aids to immigration but that long-term unemployed foreigners be gradually returned to their countries of origin. That is neither inhumane nor xenophobic, as inevitably assumed by the left-wing extremists, but shows a responsible attitude to our citizens whom we represent'[24].

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[22] See chapter 2 above.

[23] O.J., No. 3-441, 8 January 1994, 'Status of third-country nationals in the EU', D. Tazdavit (France), Green European Party.

[24] O.J., No. 3-441, 8 January 1994, 'Status of third-country nationals in the EU', K. P. Köhler (Germany, The Republicans), Technical Group of the European Right.

In accordance with this view, other responses sought to manipulate public concern to gain support for rejecting any form of inclusion:

> 'Our concern must be primarily for the benefit of our people. This preference for our own nation, for putting our own people first has nothing to do with chauvinism, imperialism and marginalizing foreigners'[25].

Right-wing responses also accused those who encourage immigration of being promoters of unemployment, as if immigrants were the main cause of unemployment:

> 'those who wish to encourage further immigration are at the same time promoting mass unemployment in Europe. It is a significant slap in the face for national citizens who have themselves to fear for their jobs and are threatened by job cuts and unemployment'[26].

Although these examples are probably too extreme and represent more the far-right, they nevertheless correctly portray the European debate on immigration generally as focused almost exclusively on control measures. An approach of this kind risks addressing the 'symptoms' of the problem but not its causes. It also sway public opinion through arguments that appeal more to the emotions and to fears about the impact of immigration on employment opportunities, job security, and cultural identity. The transformation of these debates into law, whether partly or wholly, perpetuates and even strengthens their effect on public opinion. The adoption of restrictive legal measures on immigrants convinces large segments of the public to condone the underlying reasoning of these measures. In popular belief, if it is law it must be right.

5.2 The representation of immigrants' rights at national level: the case of the United Kingdom

The political debate on immigrants' rights at national level concerned the issue of non-EU citizens mainly in relation to voting rights and freedom from discrimination. These

[25] O.J., No. 3-441, 8 January 1994 'Status of Third Country Nationals in the EU', K. C. Dillen (Belgium, Flemish Bloc), Technical Group of the European Right.
[26] K.P.Köhler see above.

two issues were considered important components of Euro-citizenship. It was argued that Euro-citizenship could not be fully accomplished if it did not embody a real device for the elimination of discrimination throughout the Community. Moreover, it was voiced that the Maastricht Treaty did not deal with the problem of granting political rights to non-EU citizens at European level. 'Such people are very much second-class citizens and will remain so in the European Union envisaged by Maastricht. Should not the issue be dealt with, as it involves the civil rights of people throughout the world?'[27].

The discussion about voting rights in relation to non-EU citizens emphasised the difference between residence and citizenship. Residents are afforded limited local voting rights while citizens enjoy full national voting rights. Local voting rights have been defended or proposed 'with the argument that municipalities, in contrast with national parliaments, do not exercise legislative functions' (Bauböck, 1994:223). In this way both EU citizens living outside their country of origin and non-EU citizens are cut off from national consent in legislation and government. The only difference is that EU citizens can participate in European elections. The arrangement nevertheless results in 'second-rate' political participation and deliberation at national level for many EU citizens, and the complete exclusion of non-EU citizens from any relationship with the European and national polities.

Even at the national level, the distance of European institutions from the concerns of a large segment of the European population was expressed by the Left in terms of the inadequacy of the Treaty in dealing with immigrants' integration:

> 'Do not the Maastricht Treaty and the whole thrust of European thinking and legislation completely ignore the political rights of fifteen million people who live and work on the continent of Europe, many of whom are

[27] House of Commons, 1 February 1993, European Community (Amendment) Bill', J. Corbyn (Labour Party). Further details regarding UK parliamentarians are listed below in Appendix 2.

> refused nationality in their own countries? None of the legislation is addressed to them'[28].

The political discourse also emphasised that EU citizens living outside their country of origin and non-EU citizens were treated in the same way in relation to national elections. Those who take up long-standing residence in the UK and feel themselves to be deprived of the right to vote in general elections are nevertheless afforded the perfectly straightforward choice to apply for British naturalisation[29]. This solution is obviously not easy to realise in practice. The requirements for naturalisation are heavily biased against individuals whose choice is restricted to one between the country of origin and that of present residence[30]. In the end, the decision falls upon the state to grant admission rather than upon the applicant simply to choose a new membership. As Clarke and others have noted, 'a large degree of discretion lies with the naturalising authorities' (1998: 49).

Naturalisation remains, in the end, the only available means by which to achieve formal social and political integration. It is important to add, however, that the acquisition of citizenship by immigrants in their host countries does not automatically guarantee that they are liberated from any kind of discrimination (Clarke, *at al.*, 1998: 66). While naturalisation encourages integration, it does not necessarily secure it, and

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[28] House of Commons, 1 February 1993, 'European Community (Amendment) Bill', J. Corbyn (Labour Party).

[29] This can be generalised to all other European Union countries in which voting rights are still attached to formal citizenship (Bauböck, 1994). In the case of the UK, it becomes more relevant if one considers that residence rights offer any longer means for obtaining national (British) voting rights. This is discussed above in chapter 4.

[30] It needs to be emphasised that the policy of dual nationality does not depend only on the country of acceptance but also on the country of origin. Even if the country of acceptance permits dual nationality the country of origin might forbid the holding of another nationality alongside its own. A growing number of European states nevertheless now accept a policy that permits dual nationality. Such a policy was formally accepted in the Netherlands, Italy, and Switzerland in 1992. Dual nationality is also allowed in Belgium, France Greece, Ireland and Portugal. In Germany, dual citizenship is permitted when naturalisation occurs through marriage. In the remaining contries, renunciation of former citizenship is either compulsory or usual (Clarke, *et al.*, 1998: 50).

indeed the process of integration is very different from naturalisation. Even after a considerable degree of integration has been achieved, moreover, naturalised members of the community are still subject to forms of discrimination.

At present, citizenship serves as a device by which to identify those who should be allocated a package of entitlements, though without more detailed inquiry into whether a particular entitlement is required in a particular situation. Citizenship guarantees, among other things, both the right to vote and the right to enter and remain in the country. How can one dispense with the need for having such a status in the first place? There are two alternatives: The first involves separating the component parts of this package and determining the allocation of each entitlement according to its merits. The answer to the question of who should have the right to vote, in other words, might be different from that given to the question who should have the right to remain in the country. Another alternative involves grounding the right to vote on stable residency rather than on national citizenship[31]. By using the concept of equality as the grounds for distribution, we can dispense with the notion of citizenship, which as a legal device to determine the manner in which entitlements should be allocated, conflicts with a commitment to equality at both the national and European levels.

5.2.1 The politics of ethno-national exclusion in the UK

By focusing on the case of the United Kingdom it is possible to show the manner in which legal practices at the national level differ from political objectives that are emphasised in the parliamentary debate at the national and European levels. It emphasises the national politics of exclusion and inclusion in the United Kingdom

[31] Brewin suggests a similar solution but only in relation to European elections (1997: 224).

through the parliamentary debates that anticipated the introduction of the Asylum and Immigration Bill of 1996. This illustrates the ways in which immigrants are dealt with on the *cultural-national* level and in which the mechanisms of integration are often closed to immigrants within national borders.

The issues on residence and naturalisation seem to be less problematic than the matter of the right of entry into the host country. At the *cultural-national* level, citizens can influence political representations in politicians' response to and sometimes exploitation of their constituents' requests. As political representations are transformed into legislation they produce both legal effect on immigrants' integration and a social effect on public attitudes[32]. The Asylum and Immigration Bill of 1996[33] is a clear example of how the issue of integration was neglected in the main aims of the Government. Instead three most important objectives of the Bill were punitive in intent. The Bill strengthened the asylum procedure so that bogus claims and appeals could be dealt with more quickly, combated racketeering through stronger powers, new offences, and higher penalties, and reduced the economic incentives that attracted people to come to the United Kingdom in breach of the immigration laws.

This action was mainly justified by popular resentment towards those who abused the previous claimant procedures. The Home Secretary stated that the 'Bill was a firm commitment to maintaining a tolerant society in which the diverse cultures and backgrounds of those who are lawfully present in this country are fully respected'[34]. The terms 'tolerant' and 'lawful' in this passage are particularly revealing. A tolerant society depends on the 'lawful' status of those who reside in that society, but the central point

[32] This point has already been discussed in the preceding section.
[33] See chapter 3 above.
[34] House of Commons, 11 December 1995, vol. 268, col. 699, Michael Howard (Conservative Party).

of conflict in the debate on this Bill was the definition of a legal status for immigrants and asylum seekers. The commitment to maintain a tolerant society thus relies on the resolution of this conflict. In other words, the tightening of immigration control was considered indispensable and a necessary condition for a 'tolerant' society.

Clause 8 and 9 of the Asylum and Immigration Bill, concerning the right to work and the entitlement to housing, lay at the heart of the issue. The Government believed that the absence of controls acts constituted a strong incentive to people to come to the UK in order to work illegally. Clause 8 made it a criminal offence to employ a person who was not legally entitled to work in the United Kingdom, and Clause 9 placed similar restrictions on the entitlement to housing. With respect to the latter, the Government argued that 'it is unacceptable that people who are here illegally, or who have come here on the understanding that they will not rely on public funds, should have access to housing at the taxpayer's expense'[35].

It seems that the main aim of Clause 9 was to deny any housing entitlement both to those seeking asylum after entering Britain, and to those whose applications had received an initial refusal. Clause 8, moreover, sought to reduce incentives for immigration by placing restrictions on the right to work which carried clear overtones of discrimination against third country nationals:

> 'If people are not legitimate citizens of this country, it is not right that they should have jobs. We are therefore right to ask employers to check before accepting applicants'[36].

The problem is to understand what is meant by the expression 'legitimate citizens'. Are there cases where citizens are not legitimate? This expression, therefore, may imply that those who are legal and allowed to stay and work in the UK are automatically

[35] House of Commons 11 December 1995, vol. 268 col. 707, Michael Howard (Conservative Party).
[36] House of Commons, 11 December 1995, vol.268 col. 759, J.R. Carlisle (Conservative Party).

considered as nationals and consequently integrated. The right to work thus assumes an important connotation in the process of integration.

One of the main obstacles is a problem in defining immigrants. The new derogatory definition put forward at the time was so pervasive that it provided the power to remove, for example, child benefit from anyone who had been in the United Kingdom for perhaps as long as ten or twenty years, made Britain his/her home and paid his/her taxes like anyone else, but who did not have an EU or UK passport[37]. According to the provision, such people could be classified only as 'unsettled'. If immigrants declared themselves to be asylum seekers at their point of entry, there would be a strict inquiry into their application. On the other hand, if they stated that they were looking for a job and a better standard of living, there would be no possibility of entering. Incredibly, and for the first time, under this regulation, some people who had black or brown skin, who did not have a United Kingdom passport but who had made the UK their home were to be classified as 'immigrants'. Ministers were using this tactic as a means by which to withdraw their benefit. All of this stressed the need first of all for a clear definition of the category of 'immigrant' and secondly, to address the matter of discrimination towards those without EU or UK passports. The importance attached to national and European citizenship had made Europe and EU citizens a single point of reference in matters relating to immigration.

The impact of Clause 8 was extremely damaging to particular sections of the community. The law put the onus of immigration control on employers, who were required to identify people who entered illegally or overstayed or who were not entitled to work. This law, therefore, effectively encouraged employers to operate on a

[37] See Clause 10 of the Asylum and Immigration Bill which concerns the issue of child benefits.

presumption that all prospective immigrant employees were illegal unless they demonstrated the opposite.

At the parliamentary level, there were two general comments put forward by some left-wing MPs. Firstly, the indirect effect of this Bill clearly would have been to discriminate against one section of the population since employers were unduly encouraged to behave in a racist manner, even though they would otherwise have been in no way inclined towards racist behaviour. A perfectly rational choice for employers would be to avoid the additional paperwork entailed in the employment of not only an immigrant by anyone who might be construed as an immigrant:

> 'Employers will say "We are not going to be bothered with all this". The more than 1 million small employers whom the Government cannot even quantify, and the number of which they are guessing at because they do not even know those figures will say, " We are not going to do this". If they receive an application through the post, and the applicant involved has an easily discernible Asian name, the applicant will never be seen. Employers will not subject themselves to that' [38].

Another effect of the Bill would have been to encourage the British public to discriminate time after time: At national level law also creates a climate: it conditions public opinion'[39]. In other words, this legislation may have fostered a dangerous climate in terms of race and community relations. For example, when employers are given the responsibility to become, in effect, immigration policemen, it cannot help but have an impact on the community in which those employers operate. In addition, the opposition accused the Conservative government of pursuing a false cause:

> 'The language and the tone of Conservative Members explain why the Bill has been introduced. The problem is not illegal immigrants, the problem is not bogus asylum seekers. The problem is that the Government is 30 per cent behind in the opinion polls, in the last full Session before the general

[38] House of Commons, 11 December 1995, vol.268 col. 745, G.B. Kaufman (Labour Party).
[39] *Ibid.*, vol. 268 col. 746.

> election. They have run out of cards to play, so, as usual, the Tory party is playing the race card'[40].

The Bill on housing offered an even more disgraceful scenario. Under the social security legislation implicit in the Bill, people could be thrown out onto the streets by private landlords, who were already refusing to accept asylum seekers as tenants on the grounds that their applications might be refused and they would be unable to obtain housing benefit. A possible consequence of the legislation was an increase in the growing number of homeless people, which fostered fears among left-wing parliamentarians about the creation of a sub-culture of totally despised people. The Bill was seen as a further step towards 'public' prejudice: 'Right now we are creating groups of people with no apparent rights. In effect, we shall create a category of non-persons'[41].

The problem of unequal treatment under the social security proposals even involves class discrimination, favouring asylum seekers who have the means to support themselves while they proceed with their appeals over poorer claimants who will either be dependent on charity or else will have to drop their appeals and return to the countries from which they came, regardless of the consequences. These issues ultimately affect the whole of society, which will pay the price for the changes in social security legislation once they come into effect.

There was also interest in Parliament on whether the Asylum and Immigration Bill fulfilled international legal obligations. This was occasioned by concern that immigrants have virtually no voice in political debates, aside from a few advocates who speak on their behalf, and by the fact that international obligations can be claimed to

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[40] *Ibid.*, vol.268, col.747.

[41] House of Commons, 11 December 1995, vol. 268, col. 762 R. Cunningham (Scottish National Party).

defend immigrants' rights. Some left-wing parliamentarians believed it essential both to point out the contribution that many immigrants have made in the UK and to speak out for people for whom nobody else would speak. The advocacy of immigrants' rights was often coming from politicians who represented Black and Asian constituents with political rights. In protecting legal residents against those who portrayed them as potential bogus applicants for housing benefit, politicians also represented the interests of a larger group of immigrants and asylum seekers. It is easy to appreciate how the representation of minority constituents also benefited other immigrants in statements such as this: 'They are being talked about as though they cannot hear what we are saying, and as separate, different and inferior'[42].

The Government's reaction to these allegations suggested that the opposition was paying little attention to the real concerns of the British public. It is necessary to stress, however that British employers are part of the British 'public' and that the majority of them rejected the Bill though for reasons already noted above. The Government, moreover, was often accused of making an insult out of the term 'immigrant'. The opposition, by contrast, emphasised the view that immigrants help a culture to grow and change calling the Government position 'a mean-minded attitude [...] redolent of the narrow-minded provincialism that colours so much of what the Government is about'[43].

The idea that every immigrant is a problem or a threat certainly contributes nothing positive to race relations, but this is precisely the impression that this kind of regulation encourages in public opinion. The Government interpreted the opposition's

[42] House of Commons, 11 December 1995, vol. 268, col. 746, G.B.Kaufman (Labour Party).
[43] House of Commons, 11 December 1995, vol. 268 col. 762 R. Cunningham (Scottish National Party).

refusal to acknowledge a problem of abuse in the existing asylum system as an unwillingness to take firm action to deal with the difficulties in the system. The thrust of the opposition's argument, however, assailed Clause 8 as a threat to equal opportunity and an obstacle to overcoming racial discrimination. The media nevertheless observed that the Bill was not racist in the strictest sense since the discrimination that it entailed crossed racial lines: 'Howard's proposals are not racist as they did not only apply to ethnic minorities'[44].

The problem of immigration for economic reasons was also addressed in the parliamentary debates. Criticism against the Bill focused on its piecemeal approach to economic immigration, which may have made it more difficult for genuine refugees to enter the process first as illegal immigrants. Accordingly, they stressed the need to clarify the criteria for refusal. Which of the motives for entering the country were considered invalid? Since the vast majority of claims for asylum were not valid, most applicants must have had other motives. It was thus seen as logical that economic motives were a major factor. Economic refugees were regarded as people 'driven by greed' who wanted to share the good life in the UK and who used asylum procedures to attain that aim. This ignores the possibility that economic rights can also be considered human rights in terms of individual determination: 'To put people into a group and to say that those from a particular country are unlikely to have a genuine case is to ignore their right to individual determination'[45].

Objections to Government proposals centred on the so-called 'white list'[46], which enumerated the countries from which bogus claims for asylum were most likely

[44] Paul Goodman, Daily Telegraph, 26 October 1995.
[45] House of Lords, 14 March 1996, vol. 570 col. 975, Lord Lester of Herne Hill.
[46] The list was abolished in a 1998 White Paper entitled *Fairer, faster and firmer: a modern approach to*

to emanate. Countries were placed on the list if they generated a significant number of asylum applications, a very high proportion of applications from that country proved to be unfounded, and there was no serious risk of persecution. The first criterion alone was enough to provoke an indignant response since the number of cases generated by a country should be irrelevant. At the same time, no consideration at all was given to the human rights situation in countries generating a high number of asylum applications. In the Asylum and Immigration Bill, moreover, there was no clause that distinguished between genuine refugees and economic immigrants. The entire discourse about the distinction between political refugees and economic refugees is thus insignificant. To this may be added the fact that the term 'bogus' in reference to refugees has been used without discretionary criteria, for example in Government press releases: 'I have a news release dated 7th March 1996 which refers to the requirement to impose visa regulations on Kenyan nationals. The press release says: "The action has been taken to stem the increasing number of bogus asylum claims from Kenya nationals". [...] when one reads further down the press release it becomes quite clear that the increasing number is in fact very recent. In the first ten months of 1995, 400 Kenyans claimed asylum at ports. Since November a further 833 people have done so. None of those 833 people will have yet had their cases determined. So how is it possible to say that they are bogus claims? The claims have not been heard and probably will not be heard for some months'[47]. The increase in asylum applications from Kenyans in 1995 stems from the fact that the human rights situation in Kenya deteriorated notably precisely during this period. The Kenyan government launched a crackdown against human rights

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immigration and asylum. H.C. , c.4018.

[47] House of Lords, 14 March 1996, vol.570 vol.976, The Lord Bishop of Ripon.

activists, opposition politicians and internally displaced people leading to an increase in asylum claims from Kenya nationals in the UK[48]. Because the processing of asylum applications requires many months, it was impossible for the Government to have already made determinations about the motives and reasons that underlay the asylum claims from Kenya in 1995 by the time of the 1996 press release. It is even possible to argue that in the UK the debate on the presence of immigrants is centred more on 'race and ethnic relations' than on integration of immigrants (Melotti, 1997: 80).

5.2.2 'Fairer, Faster and Firmer': the new approach to immigration and Asylum in the United Kingdom.

The White Paper on immigration published in July 1998 deals mainly with immigrants' human rights[49]. The paper recommended placing limits on the discretionary power of public authorities to act in a way that is incompatible with the European Convention on human rights (1950). The Labour Government also committed itself to use an order-making power established in the Convention to enable an asylum seeker whose application has been refused to appeal also on the grounds that his removal from the UK would constitute a breach of the ECHR: 'This will ensure that measures to make our control firmer and faster do not compromise on fairness'[50]. The debate on the White Paper, again, was polarised between two extremes: those who opposed all immigration and those who opposed effective immigration control. According to the first approach, all asylum seekers were 'bogus', while the second approach considered almost all of them genuine.

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[48] Human Rights Watch 1995.
[49] The section title is taken from the title of the White Paper *Fairer, faster and firmer: a modern approach to immigration and asylum.* H.C., c.4018.
[50] *Ibid.*, chap 2.

The Government believed that the real issue consisted of running an asylum system which serves the British people's wish to support genuine refugees whilst deterring abusive claimants. To accomplish this goal, the Government played the card of 'mutual obligations' acknowledging its own obligation to protect genuine refugees by resolving applications quickly but also compelling applicants to recognise their obligations. These include telling the truth about their circumstances, obeying the law, keeping in regular contact with the authorities, and leaving the country if their application is ultimately rejected. Moreover, the 'integrated approach' was conceived within a framework of an integrated immigration control: 'Potential abuse and exploitation of the institution of asylum harms the genuine refugees as much as it threatens to undermine proper control on immigration'[51].

For the Government's part, ensuring the speedy resolution of applications for asylum entailed the reorganisation of the immigration, asylum and nationality processes as a whole. This required increased investment in the determination of cases to reduce both the decision backlog and the number of appeals waiting to be heard. It also required the consolidation of multiple appeal rights into a single appeal right and the strengthening the role of the Immigration Appeal Tribunal, and it involved the transfer of budget responsibility for asylum support to the Home Office. With these changes, the Government believed that it would not only fasten application process but also achieve both fairness and firmness. Among their objectives the Government intended to minimise the incentive to economic migration, particularly by minimising cash payments to asylum seekers.

[51] *Ibid.*, chap 8.

> 'At present economic migrants abuse the asylum system because its inefficiency allows them to remain in the UK for years. A faster system with more certain removal at the end of the process will significantly deter abuse'[52].

Although the new Asylum and Immigration measure is based on a different approach which commits the Labour Government to a fairer course of action, it still views all immigrants in terms of an under the arrangements for asylum seekers; and it considers all immigrants as potentially 'bogus' asylum claimants. The Labour opposition raised these objections to the policies of the Conservative Government two years earlier.

In addition, the White Paper encourages the acquisition of citizenship as a means for a better social integration of immigrants, though it is not clear how the Government intends to fulfil this goal:

> 'One measure of the integration of immigrants into British society is the ease with which they can acquire citizenship. Acquiring a new citizenship is an important event. For both the individual and the nation, it brings new rights, new responsibilities, and new opportunities. The government believes that encouraging citizenship will help to strengthen good race and community relations. Accordingly applications for citizenship should be dealt with more quickly'[53].

This approach mistakenly implies that integration will automatically follow from the formal acquisition of citizenship, which is to say from naturalisation.

5.2.3 The European example

The rationale underlying efforts to establish tighter controls over immigration in the United Kingdom encapsulates concerns about immigration that are common throughout Europe:

> 'The world changes and the truth is that other countries have so tightened up their legislation that we are now in danger of being overwhelmed by those

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[52] *Ibid.*,
[53] *Ibid.*, chap 2.16.

> who cannot meet the conditions of the other countries' immigration Acts. Hence it is more important if we look at our existing legislation to ensure that we are not being unfairly targeted by people who are not genuine asylum seekers but rather economic migrants. I am sure that the economic migrants are the real reason for the backlog of dealing with the genuine asylum seekers'[54].

The example of European neighbours was taken again in support of the Government view.

> 'Most of them have already introduced measures similar to the ones we are proposing. Germany and The Netherlands are examples of countries where stricter procedures since 1993 have been followed by substantial reductions of resources'[55].

The Government pointed out that resolution of the European Union, signed by the Home Secretary as a member of the Justice and Home Affairs Councils, gave the UK liberty to deal with asylum applications that were 'manifestly unfounded' or in which there was 'no serious risk of persecution' in any reasonable manner they saw fit[56]. In point of fact, the 'white list' referred to earlier was devised by the British Government not independently but according Steering Group 1 (Asylum and Immigration working groups)[57]. From 1985, the European Commission started to coordinate national policies on visas to 'complement the easing of internal frontier controls' (Cannan, 1996: 141). This led to the emergence of the Trevi Groups (K4 Committee) and the ad Hoc Group on Immigration. Many have argued that the establishment of these groups has turned immigration in Europe into an 'order issue associating black people, refugees and asylum seekers with drugs, crime and terrorism and disease' (Cannan, 1996: 141;

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[54] House of Lords, 14 March 1996, vol. 570 col. 1005, Baroness O' Cathain.

[55] House of Lords, 14 March 1996, vol 570, col 960, Baroness Blatch, The Minister of the State, Home Office.

[56] These resolutins are discussed immediately below.

[57] During the 1996 IGC, the Austrian Government proposed the abolition of steering groups and the merger of the K4 Committee with COREPER (Committee of Permanent Representatives/Council of Ministers) to push issues to the fore of the Justice and Home Affairs Council's agenda. This implies a stronger Intergovernmental approach.

Bunyan, 1991: 19). In 1993, the ad Hoc Group on Immigration obliged member states to detect and expel anyone who breaches immigration rules[58].

The immediate result of the Group's deliberations was the European Union Resolution on 'Manifestly Unfounded Applications for Asylum', and the EU Conclusion on 'Countries in which there is generally no serious risk of persecution'. The Resolution and Conclusion were signed by Kenneth Clarke as Home Secretary at the Justice and Home Affairs Council in London in December 1992. In the UK, as noted above, these measures were used to justify the tightening of immigration control, demonstrating that decisions taken at the European level were affecting the national immigration policies. Criticism was levelled at the Home Secretary for not being able to keep his promises:

> 'the truth is that despite their protestations to the contrary the Government have ceded their control of asylum policy to the European Union Council of Ministers. They have done so without any approval by Parliament'[59].

The European example was also employed to justify a measure adopted to deal with precisely with the problem of immigration considered as a European problem and 'one which cannot be confined only to our country'[60]. A crucial point is that a European problem as this was defined cannot be solved at the inter-governmental level in which agreements concern only restrictions and not more liberal measures as well Community benefits can be agreed. This lack of balance was very likely the reason behind objections to the secrecy with which any form of co-operation has been undertaken at the European level. These objections also had ramifications at the national level in the

[58] The Guardian 26 May 1993.
[59] House of Lords, 14 March 1996, vol. 570, col. 966, Lord McIntosh of Haringey.
[60] House of Lords, 14 March 1996, vol. 570, col. 989, Baroness Elles.

UK, since the Bill on Asylum and Immigration was based in part on European Resolutions, yet the way in which these resolutions were introduced in the Council of Ministers was never made clear.

Other Western European countries are moving in the same direction, which bears out the notion of a significant relationship between European resolutions on immigration control and the policies of individual member states[61]. For instance, stricter criteria for granting refugee status have caused a fall in the rate of acceptance in asylum applications across Europe. Between 1980 and 1990, the rate of acceptance fell from 65% to 10% in the EU as whole (Webber, 1991:15). As already noted, the UK 1962 Commonwealth Immigrants Act signalled the end of the special relationship between the UK and its former colonies, and the 1968 Act tightened controls concerning the granting of British citizenship. It now became much more difficult to acquire British citizenship and the 'the number of successful applications fell by 28% in 1992 to the lowest level for ten years' (Cannan, 1996: 143; Clarke, *et al.*, 1998: 55).

A deliberate convergence of policies is discernible through the 'entry' measures applied by each member state in dealing with immigration. In UK as in Italy and France, illegal 'entry' is discouraged more forcefully by the use of imprisonment as a deterrent. According to the Joint Council for the Welfare of Immigrants more than 10,000 people are imprisoned each year without trial, convicted under immigration laws (Cannan, 1996: 143; Ashford, 1993). Holding immigrants in detention centres or camps can constitute another deterrent[62]. Soysal nevertheless views converge positively,

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[61] In his comparative study, Melotti discerns a positive aspect of convergence in that European Union countries are now moving 'from their old reductive policies of assimilation, separation or uneven pluralism to a new multiculturalism model of integration' (1997: 93). He rightly adds, however, that a substantial discrepancy still exists between the formal definition of rights and their implementation.

[62] Usually the so-called detention centres are for asylum seekers whose applications have been rejected

insisting that it has been accompanied by improvements in the degree to which immigrants are integrated into the social system, thus giving immigrants a more secure position in society (1994:132). Deeper consideration of policies of 'entry' casts doubt on this approach, however, since policies are more oriented towards the logic of 'annual quotas', leaving the problems of social integration and second class citizenship unresolved, it is probably true, as Soysal argues, that formal citizenship has lost some of its function (1994: 132) but the substantive effect of citizenship towards models of semi-citizenship needs to be considered as well.

It is in the policy of convergence that the common action of exclusion and the protection of the Fortress Europe occur. It is also in this process that the definition of the category of 'us' and 'them' are defined. The category of 'them' can be defined outside the EU as the fully excluded and inside the EU as the partially integrated. Immigration measures enacted in member states have carried the restrictions put forward in EU resolutions without providing any safeguards or qualifications. As the case of the United Kingdom demonstrates, however, national interest remains always at the centre of any measure adopted through international or European arrangements. The 1998 White Paper draws on the Amsterdam Treaty in two respects. Firstly, it provides for co-operation in the development of minimum standards on the reception of asylum seekers: 'The Government will participate in the development of such co-operation if it is in the national interest to do so'[63]. Secondly, the United Kingdom obtained through the Amsterdam Treaty various rights to opt into co-operation in immigration and

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and are awaiting removal. Sometimes, however, these centres also hold asylum seekers whose applications are still being processed. In Britain, there has been recently sharp debate in parliament on this subject. The Conservative proposal to detain all asylum seekers while their applications were processed has been criticised by the Government as expensive and unlawful. *Blair plans to detain more illegal immigrants.* The Financial Times, 11/5/2000.

[63] See H.C., White Paper, c.4018. chap. 8.15.

asylum. 'To opt into such co-operation in a flexible way so as to enable us to preserve our particular approach where necessary while also participating in those areas of co-operation which we judge important'[64].

Conclusion

This chapter has dealt with common strategies of exclusion that define the inclusion practices, or in other words, with the definition of the category of 'them' through the political discourse on immigration. The Communitising project at the European Union level constitutes an important step in the co-ordination of citizenship and immigration discourses in that it brings Euro-citizenship more into line with immigration practices. The process involves the shaping of common strategies of exclusion to deal with the challenge posed by immigration. In the political debate, the issues of citizenship and Euro-citizenship have been discussed in terms of problems surrounding the integration and representation of immigrants. Naturalisation, which is to say the formal acquisition of citizenship, is presented as the only way through which immigrants can be integrated at the national and European Union levels, but is this true? If so, it confirms a strict link between nationality and citizenship, but if not, what is required is a redefinition of the concept of 'legality' in the context of the EU to embrace social, political and civil rights.

The formal process of integration relies upon citizenship practices while the integration and representations of immigrants in Europe which is at the best only partial, reveals the re-emergence of a dichotomy between society and the polity (Arendt, 1958). Non-EU citizens even if they are legally resident in an EU member state, are excluded from the democratic process of legitimisation because they are not

[64] *Ibid.*, chap. 2.11.

members of the polity. The category of 'them' is thus defined inside the EU as partial integration and outside the EU as total exclusion. Belonging at different levels and in different domains requires a 'theory of deep diversity' (Taylor, 1991: 75) to analyse the complex interplay of cultures (Werbner, 1997: 264). The categorisation of 'them' shapes the opposite category of 'us' in the search for a supra-national identity in Europe. As an identity that is itself marked by diversity, this new identity can no longer legitimise discrimination but should be partial, multiple, and fractured in order to embrace the politics of multiculturalism (Werbner, 1997: 265). Discrimination even against legally resident immigrants is nevertheless encouraged and institutionalised in laws that place constraints on citizens (for example in employment practices). At the same time, at the national level, naturalisation practices are politically and formally encouraged, which inevitably reinforces the validity of national citizenship.

While the nation-state has played a pivotal role in establishing and furthering the autonomy of social systems, it now becomes a source of conflict over the pre-eminence of attributed versus acquired membership. The resulting paradox is that supra-national institutions would seem to be the proper means by which to establish an inclusive universalism, but only the nation-state can still effectively guarantee the implementation of a universalist standard of inclusion. To address this issue, the principle of equality should be harmonised and the flexibility of member states to derogate from the principle of non-discrimination should be minimised (Closa, 1998: 181). Contrary to the argument put forward by Closa, however, a spill-over effect from Euro-citizenship on nationality laws is unlikely to occur for two main reasons. Firstly, these developments should be the purview of supra-national institutions rather than member states as Closa suggests (1998: 182). Secondly, the flexibility offered to

member states to opt in and opt out from community developments in the Third Pillar could prove to be disruptive. As Soysal suggests, moreover, 'a complex of legal rights and privileges may not dissolve discrimination and empirical inequalities' (1994: 132).

To make EU citizenship workable and equitable, both the redefinition of national citizenship and the harmonisation of naturalisation policies are beside the point. What would be desirable is the redefinition of 'legality' based on a principle of legal subjectivity at the European level instead of national or EU citizenship. In as much as Euro-citizenship is strictly linked to national citizenship, however, it is difficult to believe that the fundamental principles of the legitimisation of membership are already 'post-nationals' and based on universal subjectivity rather than nationality (Brubaker, 1992: 187)[65].

[65] Brubaker agrees with Soysal on this point (Soysal, 1991).

Chapter 6

Opinion Polls and dominant factors in the process of European self-definition

Introduction

This chapter focuses on the formation of a public sphere at the supra-national level and its importance in mediating the relationship between citizens and the wider European polity. As argued in the preceding chapters, the establishment of Euro-citizenship implies the acceptance of nationality as a fundamental prerequisite. This is part of a broader political process anchored to the belief that Euro-citizenship would encourage the development of European identity without eradicating national identity. This scenario *per se* presents national identity and Euro-citizenship as strongly connected. The central aim of this chapter is to investigate whether Euro-citizenship encourages the development of European identity and whether identity constitutes a determining factor in the process of supra-national values orientation. Ultimately, this chapter demonstrates that an absence of cultural homogeneity is not an insurmountable barrier to further supra-national integration.

The comparative approach focuses on the fundamental differences between British and Italian attitudes towards the European Union and Euro-citizenship. There are striking differences regarding specific political matters, but it is possible to observe common characteristics in these two countries. Variables such as post-materialism, age and education cut across the nation-state influencing the mobilisation of values towards a supra-national identity without undermining national heritage. The formation of a post-materialist orientation, in particular, will foster such a process. Those best able to cope with more than one sphere of identity, moreover, are those with greater 'cognitive mobilisation', but this does not necessarily imply a greater process of identification

with a supra-national entity. It will be shown that the manner in which the process of value mobilisation towards either 'attachment' to or 'identification' with a supra-national entity also tends to correlate with a more tolerant attitude towards foreigners. In this respect, the manner in which the change in the orientation of values affects the concept of identity in relation to the recognition of 'others' will be investigated.

6.1 The deficiency of a public sphere in Europe

Habermas differentiates public opinion from the public sphere. The former comes into existence when a 'reasoning public' is presupposed. The latter, instead, mediates between public opinion and the state guaranteeing the very functioning of the former (1974). This functional aspect of the public sphere is partially undermined within the process of the European integration through which new normative undertakings encourage individual autonomy. The private sphere is no longer exclusively controlled and guaranteed by the nation-state, leading to a substantial weakening of 'the reconciliation of private autonomy and public self-determination' (Closa,1998: 175). Closa argues that the development of an EU public sphere is a fundamental 'sociological prerequisite of democracy'. In this understanding, the realisation of a *coherent* public sphere in Europe 'can connect sociological reality with normative models'[1] (Closa, 1998: 172). If public opinion in the EU does not require a 'presupposed reasoning', as Habermas argues, then the formation of a new public

[1] Closa tries to establish the connection between supra-national democracy and European union citizenship. In this respect, he differentiates between a normative and a sociological aspect. The first is concerned with the question regarding whether there should be a supra-national democracy. 'A model of democracy in which people are constituted as self-defining entity' (1998: 172). The second is an empirical aspect that refers to the characterisation of functioning contemporary European democracies.

sphere ought to follow from a redefinition of the polarity between the ability of citizens to exercise control over the new polity and the capacity of the system to respond to public preferences (Dahl, 1994: 28). Yet, this is not just a simple bipolar relationship that occurs in the same space of time. The transfer of political responsibility from the state to supra-national bodies is part of a process in the making. As the functions of the nation-state diminish, the mediation between society and state changes in many areas of general interest. Even the central relationship between the public, political parties, and legislative bodies is affected by this transformation in functions. The main changes do not affect the public or the society but they affect both the state and the means through which the public relates to the state.

The consideration of European public opinion is becoming increasingly important to the functioning of European Union institutions. European surveys attempt to identify general trends and the probable causation behind people's attitudes. However, all this does not necessarily imply the existence of a functioning public sphere at European Union level. The crucial point here concerns the evaluation of the manner in which the process of mediation of citizens' interests occurs. This can be tested through 'net support' and the mobilisation of values towards the new polity. The results obtained by observing of these two processes may reveal important implications for the construction of a new idea of citizenship and identity.

Inglehart identified the new European political context as a 'remote political community' in which the relationship between citizens and European institutions requires a high level of 'cognitive mobilisation' for the generation of public support towards EU institutions. In a supra-national context, a higher level of mass

communications and rate of media exposure will engender a closer relationship between citizens and institutions. In this respect, education can increase individuals' capacity to interpret and develop a more subjective attitude towards general issues. Inglehart estimated that education is the strongest single predictor of European mobilisation, accounting for twice as much of the variance in attitudes expressed than as does nationality[2] (1970: 51-52).

However, the fact that European institutions become more familiar through 'cognitive mobilisation' does not inevitably lead to increased support. The British and the Danish have the least developed European identity, for example, but they are among the countries that show the highest rates of media exposure. This is because the content of communications has been less favourable in Britain and Denmark than in other countries[3]. The influence of governments on mass communications plays an important role. Governments bear a considerable responsibility for having nurtured dissenting opinions. There are several cases that exemplify the manner in which public 'cognitive mobilisation' can be negatively swayed by governmental attitudes (Spencer, 1995: 16-17).

Inglehart's hypothesis that the rising level of exposure to formal mass communication tends to favour integration at European and national level therefore depends primarily upon a Government's mediation in the national public sphere (1970: 46-47). As long as relevant issues that directly involve citizens' concerns such as immigration or employment are regulated at the national level, certain social dynamics

[2] 9 per cent versus 4.5 per cent.

[3] Eurobarometer: 40. European Commission. December 1993.

will be integrated only into a national network. This is certainly dysfunctional to the integration of social mobilisation in a supra-national network.

6.1.1 Measuring public opinion convergence at the cross-national level

As noted above, there are common issues in which European citizens are involved since they are beneficiaries of the same legal benefits. There are areas of the welfare state, on the other hand, which are unevenly developed across the European Union. Education, unemployment, and provisions for immigrants in particular are areas of uneven development. Our data show that respondents were divided concerning who should decide on certain areas of social policy[4]. The 'communitarian' approach of Italian respondents confirms Italy's positive attitude towards Europe and also reveals distrust towards the national government for the lack of an efficient and functional welfare state in the areas mentioned. Conversely, the British reaction is to maintain national control over issues regarding social benefits and social security. This attitude is probably the result of the fact that in those countries where a national social policy is seen as functioning more or less effectively, people are decisively more reluctant to make any change towards a 'communitarian' approach.

Contrasts between these two countries in their positive (Italy) and negative (United Kingdom) attitudes thus reflect the relationship between the public and the state in terms of trust and expectations. Table 1 illustrates that on issues such as unemployment, British respondents are firmly in favour of national decision-making.

[4] See Meehan when she quotes Richard Sinnot's research (1993:152). Sinnot's research reveals that a significant majorities of citizens in Member States simultaneously regard problems related to the social rights, such as unemployment and poverty, as having priority and as issues for which it is legitimate for Community institutions to act upon.

Italy, by contrast, places more trust in European Union institutions. With respect to immigration policy respondents are even more divided on which institution is more competent to deal with this problem. These data are consistent with the respective attitudes of these two countries regarding net support for Community membership.

Table.1 Common Policies (1994)

	Unemployment		**Immigration Policy**	
	UK	IT	UK	IT
Nat. Government	60%	47%	62%	24%
European Community	40	53	38	76
Total %	100%	100%	100%	100%
Valid cases	1285	1010	1252	984

Source: (ESRC Data Archive) My own elaboration of raw data from the Eurobarometer 42: First year of the new European Union November- December 1994.

The political and social issues of unemployment and immigration are about 'responsibility'. The question here is where the public receives its opinion from and whether that particular issue is perceived as a 'problem' in the nation in question. As a consequence, the decision concerning who is responsible will depend upon these circumstances. The lack of cultural homogeneity or cross-cultural differences (Reif, 1993: 150) in the European public attitude probably does not necessarily constitute an obstacle in the furtherance of the European project, but the lack of cultural homogeneity certainly is accentuated when citizens of two different countries experience their relationship with political institutions in a different manner.

Supra-national cleavages are often explained by adopting the simplistic assumption of the lack of cultural homogeneity, but this explanation typically fails to elaborate upon the manner in which a lack of cultural homogeneity in the European public opinion constitutes the main obstacle to a common European identity. Or, to consider this question in another way, to what degree would public convergence and similarity would be a necessary condition of a common identity? The major intellectual contributions concerning European unity and European identity are scarcely concerned about the problem of convergence and similarity within the European public sphere. Rather, given the fact that Europe is a *unitax multiplex*, the point of contact between culturally distinct national identities lies in their compatibility within the 'axiological framework' constituted by European citizenship (Closa, 1998: 179). This referent framework should not imply a culturally homogeneous society. This view is in line with Delanty, who remains sceptical about any political notion of Europe 'unless the idea of Europe can be linked to multi-culturalism and post-national citizenship' (Delanty, 1995: 159). He envisages in European citizenship the possibility of universal norms detached from a particularistic ethno-cultural idea of Europe. For Delanty, citizenship in Europe should not be conflated with the idea of an 'essentialist' Europe defined by the principle of nationality. This claim diverges from a greater political objective that conceives Euro-citizenship as essential in the process of European identity formation and consequently as a new ethno-cultural idea (Koslowski, 1994).

A crucial point, therefore, is not only to study differences and similarities in Europe, but also to find empirical indicators that explain particular orientations. To explain different attitudes in the United Kingdom and Italy, for instance, a multi-causal

approach has been applied. I consider three main independent variables as supra-national indicators of a multi-causal approach: education, age, and gender. The analysis shows that education and age are significantly related to variables such as 'European support typology', 'Euro-citizenship identification', and 'foreign presence'. A comparison of results from the cross-tabulations of chosen variables across both the UK and Italy reveals a striking consistency. The question here is why, if in view of this consistency these two countries still vary in their support to Europe? Part of the answer has been already given above. Moreover, the assumption that there is a consistency, in comparative terms, on the lines of "educated people support the EU more" does not imply that education is an indicator that would enhance support in both countries. Rather, this assumption must to be complemented by an explanation of the difference in attitude. It is useful, in other words, to analyse the manner in which the effect of this indicator varies not only in each country but also through each category of the variable selected to control the validity of our assumption.

Table 2 shows that 'positive' support for Europe increases with higher education levels in both the UK and Italy. It is possible to identify a significant relationship between these two variables both in Italy and in the UK as well as a consistency, in comparative terms, of their association coefficients (γ)[5]. On the other

[5] Gamma (γ) is a measure of association appropriate for ordinally measured variables. The numerical value of γ represents the degree of association. It shows the improvement in our ability to predict the order of pairs of cases on one variable from the order of pairs of cases on the other variable. γ may vary from +1.0 to -1.0. When γ is +1.0, order is the same on both variables for all united pairs (predict same order). A γ of -1.0 indicates that, for united pairs, the order on one variable is always the reverse of the order on the other variable (predict reverse order). A γ of zero or close to zero indicates that among all united pairs there are exactly as many pairs with reversed orders on the two variables, as there are pairs with the same orders. This would indicate no relationship between the two variables. Values intermediate between 0 and 1.0 indicate the degree to which guessing errors may be reduced by utilizing knowledge of the order on a second variable. By looking at Table 3, for example, it is

hand, Table 2a and 2b illustrate the limit to generalisations such as 'educated people support the EU more'. If we control this relationship by Materialist and Post-Materialist value orientation[6] it is possible to observe striking differences between the UK and Italy. In Italy, the relationship between education and attitude grows stronger for the category of Materialist while it becomes negligible for the category of Post-Materialist (subtable $\gamma = 0.03$). Materialists who are also higher educated are much more likely to support Europe than Materialist compatriots with a lower level of education. Among the Post-Materialists in the UK, there is a clear and strong relationship between these two variables, but in Italy among the same category the relationship is unaffected by education. This indicates that 'value orientation' is a valid indicator for studying differences across these two countries. The point is that attention needs to direct the constitution of those features leading the process of values mobilisation towards a supra-national setting.

possible to say that in the United Kingdom when predicting the order of pairs of cases on 'European Support Typology' we would make 28 per cent ($\gamma = 0.28$) fewer errors by taking 'Education' into account, as opposed to ignoring education. (Mueller, Schuessler, and Costner, 1970: 288-294).

[6] Materialist and Post-Materialist values are related to Inglehart's 'scarcity hypothesis'. The theory suggests that economic prosperity is conducive to the spread of Post-Materialist values, which refer to the quality of life, rather than Materialist considerations such as security and economic well-being (Inglehart and Abramson, 1970). The 'Value Orientation' variable has been defined by the 'Eurobarometer: 42' in line with Inglehart's theory. This ordinal variable has been coded in three values: 1- Materialist, 2 -Mixed and 3-Post-Materialist.

Table 2: Cross-Tabulation between Education and European Support Typology

	UK			IT		
	Low Educ.	Medium Educ.	High Educ.	Low Educ.	Medium Educ.	High Educ.
Negative	24%	15%	8%	4%	4%	2%
Ambivalent	45	51	30	41	24	24
Positive	31	34	62	55	72	74
Total %	100%	100%	100%	100%	100%	100%
Total Cases	223	800	326	362	233	460

Valid cases UK = 1349; γ: 0.28 p-value = 0.000

Valid cases IT = 1055; γ: 0.35 p-value = 0.000

Note My own elaboration of raw data from ESRC Data Archive: Entries are percentages. Source: Eurobarometer 42.

Table 2a: European Support Typology by Education controlling for value orientation (Materialist/Post-Materialist) UK.

UK	Materialist			Mixed			Post-Materialist		
SUPPORT	Education			Education			Education		
	Low	Medium	High	Low	Medium	High	Low	Medium	High
Negative	24%	15%	8%	24%	15%	8%	27%	16%	6%
Ambival.	47	52	36	43	53	34	47	35	20
Positive	29	33	56	33	32	58	26	49	74
Total %	100%	100%	100%	100%	100%	100%	100%	100%	100%
Valid Cases	288			875			186		
Subtable γ	**0.28**			**0.31**			**0.49**		
Overall γ	**0.28**								

Table 2b: European Support Typology by Education controlling for value orientation (Materialist-Post-Materialist) ITALY.

IT	Materialist			Mixed			Post-Materialist		
SUPPORT	Education			Education			Education		
	Low	Medium	High	Low	Medium	High	Low	Medium	High
Negative	5%	4%	3%	3%	5%	3%	3	-	-
Ambiv.	50	16	22	39	27	23	29	19	27
Positive	45	80	75	58	68	74	68	81	73
Total %	100%	100%	100%	100%	100%	100%	100%	100%	100%
Valid Cases	244			642			169		
Subtable γ	**0.46**			**0.24**			**0.03**		
Overall γ	**0.35**								

6.1.2 The definition of European identity between identification and acceptance

The importance of detaching citizenship from nationality at the European Union level is shared among many scholars (Meehan, 1993; Tassin, 1992; Closa,1998; Welsh, 1993; Preuss, 1995; Delanty, 1995). Authors differ in their individual approaches, but there are several common features. The failure of the nation-state to respond satisfactorily to the collective preferences of its citizens also implies that national citizenship can no longer define 'civil and political spheres of the national life' (Meehan, 1993: 146). As a consequence, the creation of a new 'public space' should also have a *room* for the compatibility of 'various identities besides our national identities'. Along these lines, Euro-citizenship constitutes the possibility of a public space to legitimise 'pluralism' and not an 'amalgamation of interests' (Tassin, 1992: 188). At the attitudinal level, the data reveal the rise of a process of mobilisation towards compatibility. At the same time, however, it is difficult to argue that the existence of a common legal framework creates a European public space on problems

such as unemployment and non-EU nationals. It is widely agreed that this is one of the major limits of Euro-citizenship (Meehan, 1993; Closa, 1998).

Until recently, integration was a process of institutional high politics, both removed from and of no concern to the ordinary citizen. For European citizens, this led to an unfortunate vision of a centralised administrative meso-state that took sovereignty and power on the basis of illegitimate economic rationality. Dahl (1989) argues that the one defining criterion for a polyarchy is the right of citizens to influence through organisation such decisions as affect them. From this we arrive at the need to legitimise democratic representation. The EU has certainly acquired state functions, but it has also failed to allow concurrent channels of participation and responsibility. This is what Smith defines as the 'European failure'. 'The European failure underlines the distance between the political level and the realities of divergent national identities, perceptions and interest within Europe' (Smith, 1992: 73). The question of democracy and representation is relevant to understand the implications that the passage from nation-states to a supra-national system have in terms of the gradual movement of *de facto* power towards the political apparatus of the EU.

Now that the political progress of 'Europe' is becoming a contentious issue, it is necessary to examine whether the lack of Euro-citizenship in terms of identification with a common political entity, does not fulfil the need to legitimise further European unity. In other words, as the notion of political identity is very close to the traditional notion of citizenship, one needs to ascertain whether Euro-citizenship is functional to the process of legitimisation. The question, therefore, concerns not only whether people

are interested in a new political identity, but also whether a new citizenship would bring about a corresponding change in perceptions of identity.

Eurobarometer surveys seem to define responses in terms of the 'feeling of belonging' and the 'feeling of benefit' from the Community[7]. Inglehart (1977) defines the former 'affective' and the latter 'utilitarian' support in response to the idea of European integration. Those who express a positive attitude towards the EU (attachment)[8] can belong to both categories of 'feelings'. It is worth mentioning that a positive 'attachment' towards Europe does not necessarily imply changes in people identification. I argue that when the level of 'attachment' to Europe is influenced by a high level of 'affective involvement', there is an 'identification' process. On the other hand, the level of attachment to Europe can be also influenced by a low level of 'affective involvement' that does not necessarily imply people identification. In fact, I identify this level of 'attachment' with the category of 'compatibility' between the two forms of identification, national and European. When the 'utilitarian orientation' determines the level of 'attachment', there is a process of 'acceptance' which does not involve people identification. It is worth mentioning that 'identification' and the mechanism of 'acceptance' are related to different lengths of time. The utilitarian

[7] The Eurobarometer defines the 'feeling of belonging' with the variable 'European Citizenship - Feeling' The question is: in the near future do you see yourself as: 1-Nationality only; 2-Nationality and European; 3-European and Nationality; 4- European only. I operationalise the second and third category in a single value which is called 'compatibility'. The 'feeling of benefit' or 'utilitarian orientation' refers to three main questions: A) Generally speaking do you think that (our country's) membership of the EU is 1-Good; 2- Bad Thing. B) Taking everything into consideration, would you say that (our country) has on balance benefited or not from being a member of the EU? 1- Benefited; 2- Not benefited. C) If you were told tomorrow that the EU had been scrapped, would you be very sorry about it, indifferent or very relieved? 1-Very sorry; 2- Indifferent; 3- Very relieved.

[8] The value of 'attachment' is identified with the variable of 'European Support Typology': 1-Negative; 2-Ambivalent; 3-Positive.

acceptance can be relatively rapid, whereas the affective involvement is more internalised and therefore slower.

Can Euro-citizenship, constitute a political means and a normative standpoint to reach unity and identity (affective attachment)? This is an important point to test in order to measure the extent to which it is possible to connect attitudinal reality with normative and political undertakings. A positive association between people's attitude towards 'Europe' and 'Euro-citizenship' cannot entirely answer this question. There are also other variables that need to be considered as factors influencing this process. I shall discuss two separate ways for dealing with this matter.

6.1.3 The 'affective' orientation

The general level of 'attachment' to Europe is fairly high with six out of ten Europeans feeling 'very or quite attached' to Europe. Italy is among the more attached at 70 per cent while the UK is among the less attached at only 43 per cent (Europinion no.9 September 1996). Is this level of attachment related to an 'affective' or 'utilitarian' orientation? Considering that the 'typology' of European attitudes is codified upon answers that refer to the 'utilitarian' orientation, the straight answer to this question would be that the level of attachment reflects only the latter. This information, however, does not inform us whether the 'affective' orientation is somewhat related to the general level of 'attachment'.

In Parliamentary discussions concerning citizenship policy, one of the arguments that has been emphasised is that the establishment of Euro-citizenship would encourage the development of European identity. Through the data analysis, it is

possible to discern whether the 'affective' orientation is a determining factor for positive attitudes towards the European Union and whether the 'feeling of belonging' to Europe might influence the process of 'attachment'.

Examining the data available on this matter, it has been possible to separate 'attachment' from 'identification'[9]. I expected to find a positive attitude towards Europe (attachment) associated with a higher feeling of being European (identification/affect). However, the results generally indicated that the level of European identity in Italy and the United Kingdom is consistently lower than their respective positive attitudes towards the EU. Tables 3 and 4 illustrate that although in Italy the attitude towards Europe is very positive (67 per cent Table 3), the identification with Euro-citizenship is very low (5 per cent Table 4). The same thing can be said for the United Kingdom. However, this pattern is not sufficient to argue that 'attachment' and 'affective orientation' are not related[10].

Table. 3 European Support Typology (Attachment)

	UK	IT
Negative	15%	3%
Ambivalent	45	30
Positive	40	67
Total %	100%	100%
Valid cases	1351	1055

Note: Entries are percentages.
Source: My own elaboration of raw data from Eurobarometer 42 Ibid.

[9] In Karlhenz Reif's analysis, for instance, attachment and identification are not treated separately. In fact, he discusses the issue of European identity and national identity mainly on the variable 'feeling attached to a place' (1993).

[10] Note that the evaluation of regional variations in the UK and Italy has not been pursued as the case-base became too small in individual cells.

Table. 4 The Attitude towards Euro-citizenship (Affective Orientation)

	United Kingdom	Italy
Nationality only	50%	26%
Compatibility	44	69
European only	6	5
Total %	100%	100%
Valid cases	1351	1055

Note: Entries are percentages. Source: Eurobarometer 42

Through this first analysis it is possible to argue that the 'ambivalent' attitude in the UK is dictated by a strong 'feeling of national identity (45 per cent Table 3 and 50 per cent Table 4). In Italy, most of the respondents do not seem to have strong national identification feelings, but they have a more positive attitude towards Europe (26 per cent Table 4 and 67 per cent Table 3). Table 4 shows a very low percentage within the category of 'European only' against a much higher percentage of those who see a European identity as being compatible with their national identity (compatibility). A probable explanation to this point is that people do not find it necessary to identify themselves as 'European only'. Conversely, 'compatibility' represents a more appropriate dimension for the preservation of national and cultural values within a new supra-national context. This would also explain the reason why in both countries the level of identification with Europe is lower than their respective positive attitudes towards Europe. In point of fact, the significant relationship between identification and attachment is mainly dictated by the category of 'compatibility'.

The cross-tabulation shows that these two variables are significantly related (Table. 5). This is shown by the γ coefficients for both countries, which indicate a

significant association (0.56 UK and 0.65 IT) between Euro-citizenship and attitudes towards Europe. The positive coefficients suggest that as the level of 'identification' increases, the level of 'attachment' should increase as well. Table 5 shows that the positive association effectively concerns two categories: 'compatibility' and 'European only'. In fact, 60 per cent of the British and 86 per cent of the Italians who have a positive attachment to Europe think of themselves as Europeans while 58 per cent of the people in Britain and 78 per cent in Italy think that the two forms of identification (i.e., National and European) are compatible. This is in line with Reif's finding that 62% of EU people interviewed in 1992 saw European identity as being compatible with national identity. Reif's analysis, however, is based on a different variable that measures the extent to which the European Union constitutes a 'loss of nationality' or it is 'compatible with national identity' (1993: 138-140). Though different, the variable used by Reif and that employed here are sufficiently alike to facilitate a direct comparison.

Table 5. Cross-tabulation between Euro-citizenship and European Support Typology 1994.

	UK			IT		
	National only	Comp.	Europ. only	National only	Comp.	Europ. Only
Negative	24%	5%	12%	9%	1%	-
Ambivalent	52	37	28	51	21	14
Positive	24	58	60	40	78	86
Total %	100%	100%	100%	100%	100%	100%
Valid cases	650	566	80	266	697	49

UK Valid cases = 1296 γ 0.56, p-value = 0.000
IT Valid cases = 1012 γ 0.65, p-value =0.000

What the table does not show is the distribution of respondents across other intervening conditions. The introduction of other variables facilitates an understanding of whether or not this relationship is genuine and what might cause differences between countries[11]. Each socio-demographic variable has different values. I have constructed partial tables that illustrate the original relationship in a more detailed form. By using partial relationships, it is possible to detect whether the effect of a third variable changes the strength of the relationship. A comparison of the γ coefficients in each subtable with the overall γ coefficient computed in Table 5 illustrates that none of the intervening variables changes considerably the strength of the relationship[12]. The changes in the subtable γ coefficients from the overall γ are not sufficiently great to invalidate the original relationship, but a few remarks will clarify some of the significant differences between the two countries.

In the first place, the relationship attenuates for the group of younger respondents in both countries. Among the younger groups the negative response in the category of 'Nationality Only' is insufficient to undermine the positive attachment to Europe. This is because younger respondents, particularly in the UK, deal better with the two levels of identification expressed by the category of 'Compatibility' (Tables. 5a.1, 5a.2). In the UK, the somewhat weaker relationship between 'European Support Typology' and 'Euro-citizenship' is caused by the especially weak relationship between the two variables among the category of respondents with a low level of

[11] The variables in question are age, education and gender. Age and Education are coded in the following manner: Low Age = 15-24; Medium Age = 25- 39; High Age = 40 and more. Low Education = O' level ; Medium Education = A level; Higher Education = University level.

[12] The 'Overall γ' is the γ coefficient calculated from a bivariate relationship. This expression is used to differentiate it from the 'subtable γ' or 'partial γ' obtained from the introduction of a control variable on the bivariate relationship.

education. In Italy, by contrast, the relationship grows stronger and is influenced by the category of respondents with medium level of education. (Tables. 5b.1, 5b.2). With respect to the effect of gender, the relationship is stronger among women in the UK and among men in Italy. (Tables.5c.1, 5c.2). These national differences are not so significant that they invalidate consistency/convergence across both countries, and it is still possible to argue that 'identification' is not a determining factor for positive attitude towards Europe (attachment).

Table 5a.1. European Support Typology by Euro-citizenship controlling for Age (percentages). UK

UK	Age Group 15-24			Age Group 25-39			Age Group 40 and more		
Attachment European Support Typology	**Affect** Euro-citizenship			**Affect** Euro-citizenship			**Affect** Euro-citizenship		
	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only
Negative	11%	1	-	22	4	4	29	6	24
Ambivalent	54	40	53	57	37	22	49	36	21
Positive	35	59	47	21	59	74	22	58	55
Total % Total Cases Subtable γ	100% 241 0.38	100%	100%	100% 344 0.65	100%	100%	100% 711 0.54	100%	100%
Overall γ	**0.56** (p-value 0.000)								

Table 5a.2. European Support Typology by Euro-citizenship controlling for Age (percentages). ITALY

ITALY	Age Group 15-24			Age Group 25-39			Age Group 40 and more		
Attachment European Support Typology	**Affect** Euro-citizenship			**Affect** Euro-citizenship			**Affect** Euro-citizenship		
	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only
Negative	13%	1%	-	5%	2%	-	10%	1%	-
Ambivalent	44	27	21	51	22	7	52	19	14
Positive	43	72	79	44	76	93	38	81	86
Total % Total Cases Subtable γ	100% **210** **0.49**	100%	100%	100% **258** **0.63**	100%	100%	100% **544** **0.72**	100%	100%
Overall γ	**0.65** (p-value 0.000)								

Table 5b.1. European Support Typology by Euro-citizenship controlling for Education (percentages). UK

UK	Educ Group Low			Educ Group Medium			Educ Group High		
Attachment European Support Typology	**Affect** Euro-citizenship			**Affect** Euro-citizenship			**Affect** Euro-citizenship		
	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only
Negative	28%	14%	21%	23%	5%	16%	21%	1%	-
Ambivalent	48	41	36	57	43	26	38	26	26
Positive	24	45	43	20	52	60	41	73	74
Total % Total Cases Subtable γ	100% 214 0.35	100%	100%	100% 767 0.55	100%	100%	100% 313 0.56	100%	100%
Overall γ	**0.56 (p-value 0.000)**								

Table 5b.2. Support by Euro-citizenship controlling for Education (percentages). ITALY

ITALY	Educ Group Low			Educ Group Medium			Educ Group High		
Attachment European Support Typology	**Affect** Euro-citizenship			**Affect** Euro-citizenship			**Affect** Euro-citizenship		
	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only	Nation Only	Comp	Europ only
Negative	8%	2%	-	13%	1%	-	9%	1%	-
Ambivalent	57	29	33	47	16	8	43	19	13
Positive	35	69	67	40	83	92	48	80	87
Total % Total Cases Subtable γ	100% 341 0.58	100%	100%	100% 227 0.74	100%	100%	100% 444 0.58	100%	100%
Overall γ	**0.65 (p-value 0.000)**								

Table 5c.1. Support by Euro-citizenship controlling for gender (percentages) UK.

UK	Gender Male			Gender Female		
Attachment	**Affect** Euro-citizenship			**Affect** Euro-citizenship		
European Support Typology	National only	Compatible	European only	National only	Compatible	European only
Negative	27%	6%	13%	22%	4%	11%
Ambivalent	42	32	23	59	42	37
Positive	31	62	64	19	54	52
Total % Total Cases Subtable γ Overall γ	100% 630 0.50 **0.56** (p-value 0.000)	100%	100%	100% 666 0.61	100%	100%

Table 5c.2. European Support Typology by Euro-citizenship controlling for gender (percentages) ITALY

ITALY	Gender Male			Gender Female		
Attachment	**Affect** Euro-citizenship			**Affect** Euro-citizenship		
European Support Typology	National only	Compatible	European only	National only	Compatible	European only
Negative	11%	1%	-	8%	1	-
Ambivalent	47	20	3	54	23	30
Positive	42	79	97	38	76	70
Total % Total Cases Subtable γ Overall γ	100% 484 0.70 **0.65** (p-value 0.000	100%	100%	100% 528 0.61	100%	100%

It is worth noting that a higher negative attachment to Europe does not correspond to a higher identification with 'Nationality only' as I had expected. In Italy, in particular, there is a greater discrepancy between negative and positive attachment. 40 per cent of those who identify with 'Nationality only' have a positive attachment towards Europe against only 9 per cent expressing a negative attachment. This reveals that national

identification is not a determining factor for influencing positive or negative attachment (Fig.1). Reif 's analysis on a similar point offers an explanation when he suggests that a stronger sense of belonging to the more 'immediate communities' does not imply a rejection of a European political community. In 1992, according to Reif 46 per cent of Europeans saw the European Union as a protection for their national identities and cultures, while only 30 per cent saw it as a threat (1993:138).

It is implausible to suppose that 'attachment' is influenced by Euro-citizenship (identification/affect) because it is not possible to establish that these two variables have a causal relationship. One can argue, however, that a substantial proportion in both countries are confident that the European Union can protect national cultural identities and their diversity. This is consistent with the 'politics of assurance' pursued by governments at the national and European levels[13]. We have seen that nationality does not influence a negative or a positive 'attachment' towards the European Union. Can we say the same thing with respect to Euro-citizenship? In other words, does nationality play an important role in the process of 'affective involvement' towards the EU?

It has been possible to make the variable of citizenship independent from that of nationality. People were asked if they were 'proud' or 'not proud' of their nationality (Eurobarometer: 42). Some theoretical approaches to the problem assume that 'national pride' and European feelings are unrelated (Duchesne and Frognier, 1995). Based on the data in Tables 6a and 6b, it is possible to argue that although 'national pride' tend to decrease as the values for European identification increase, the level of identification

[13] See Chapter 4 above.

with Europe is higher in both countries among those who are proud of their nationality than among those less proud (56 per cent against 44 per cent in the UK, and 64 per cent against 36 per cent in Italy). Again, the level of 'compatibility' is stronger among those who are proud of their nationality against those who are not.

Table 6a. Cross-tabulation between National Pride and Euro-citizenship.

UK	Nationality Only	Compatible	European Only
Proud	92%	86%	56%
Not Proud	8	14	44
Total %	100%	100%	100%
Valid Cases	631	540	78

UK Valid cases: 1249 γ 0.49, p-value = 0.000
Note: Entries are percentages.
Source: Eurobarometer: 42. My own elaboration of raw data from ESRC Data Archive.

Table 6b. Cross-tabulation between National Pride and Euro-Citizenship

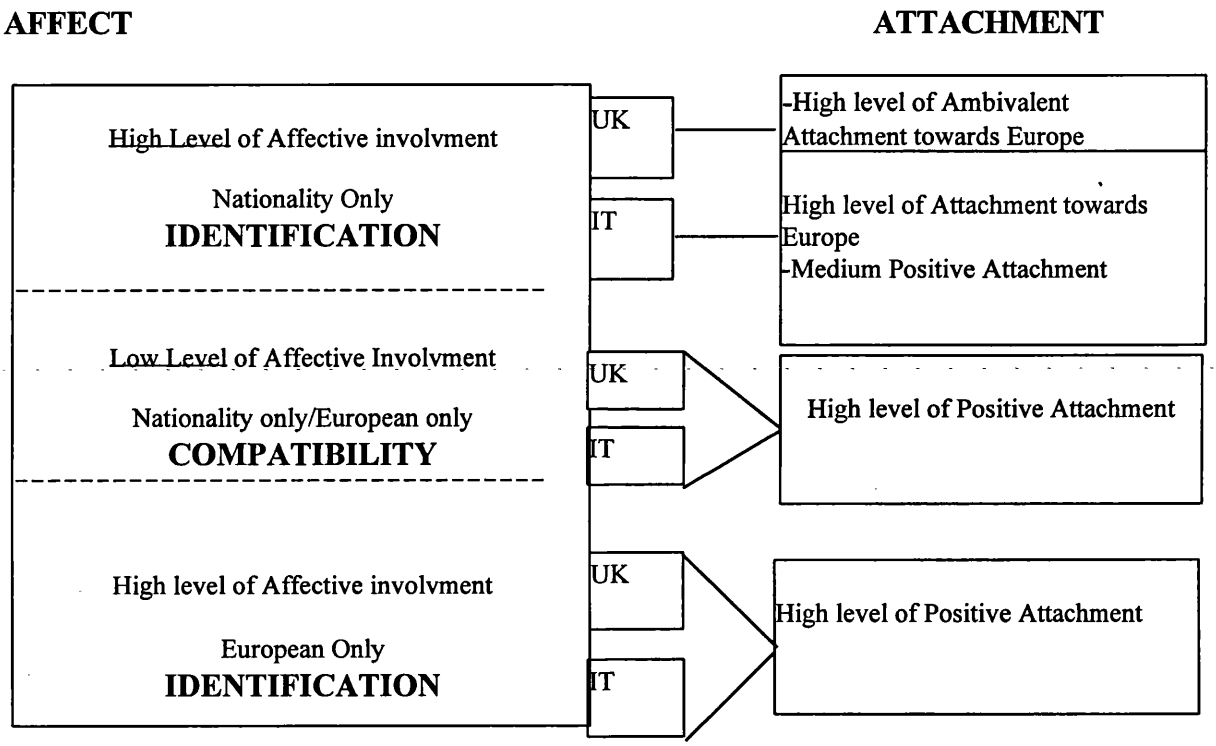
ITALY	Nationality Only	Compatible	European Only
Proud	86%	84%	64%
Not Proud	14	16	36
Total %	100%	100%	100%
Valid Cases	250	667	42

Italy Valid cases: 959 γ coefficient 0.20 Significance = 0.000
Note: Entries are percentages.
Source: Ibid.

It is therefore possible to argue that the European Union does not constitute a threat to national identity, and that the establishment of Euro-citizenship encourages the development of a dimension in which more levels of identities are possible. This, nevertheless implies a low level of 'affective involvement' with Europe. In other words, while Europe symbolises protection for nationality, Euro-citizenship does not represent a dimension with which people identify.

This leads to the search not for new patterns of identification but rather for a 'space' in which one can have more identities than nationalities (Meehan, 1993: 155). This is what Euro-citizenship should symbolise. As Preuss put it, 'an open symbolic space for social activities which finally will lead to a civil society' but beyond the symbolic boundaries set by nationality (Preuss, 1995: 280). This is also what Smith claims when he says that there is 'room for competing forces of identity in Western culture' (1992:56). The reconciliation of 'identity pluralism' with supra-nationalism nevertheless is still a challenging idea when a supra-national identity reinforces national identities rather than undercuts them. The European idea has in fact reinforced rather than undermined the ideology of nationality (Delanty, 1995: 8). Ignoring the politics of nationality in the European Union, therefore, would not be as misguided as Smith and others have argued (1986, 1992). This is because it is impossible to consider the EU in the romantic terms of a nation. The EU should be seen rather as a rational 'political and economic association' After all, we have seen that the contradictions between European identity and national identities can be minimised in the context of the latter.

Figure 1. The Affective orientation towards Attachment.



6.1.4 The 'utilitarian' orientation

As shown, the level of 'attachment' is not necessarily dictated by the feeling of belonging to a supra-national entity. This can also reflect the fact that respondents do not consider the question of Euro-citizenship as a matter of choice, which draws attention to the political controversy surrounding the possibility of opting out of Euro-citizenship[14]. The institutions of the EU, such as citizenship have largely been created independently of the expressed will of national populations, even though their benign acquiescence was instrumental in the project's success.

Subsequently, Euro-citizenship may symbolise a functional means to satisfy citizens' expectations of the European Union. This has little to do with the matter of identity and reveals an opposite tendency to the broader European political project that considers Euro-citizenship the main force to foster the process of European identity. The fact that Euro-citizenship and a positive attitude towards Europe are not linked in a causal relationship probably entails that the 'attachment' of being European depends more on 'utilitarian' support. This is in accordance with Inglehart when he argues that 'utilitarian' support relates to perceptions of concrete gains and losses through the Community (Inglehart, 1977).

The Tables above outline that Euro-citizenship after Maastricht has not yet developed relevant 'affective' orientations. This assertion, however, does not *per se* deny the development of a European identity. Rather, it confirms that the establishment of a new citizenship, based on nationality (Art. 8-8e TEU) as a fundamental criterion for access to social rights, should not be a substantive condition. The 'utilitarian'

[14] See Chapter 4 above.

orientation has been tested through questions on (1) benefits gained through one's own country membership to European Union; (2) positive and negative feelings of being a member of the EU; and (3) reactions to a hypothetical dissolution of the EU[15]. A close look at Tables 7a-c reveals a picture that broadly conforms to the 'utilitarian' theory discussed above. The series of frequencies show that the general orientation is positive even for the UK, which gives negative support for Europe. A quick look at the γ coefficients (Tables 8a-c) reveals that there is a much stronger association between 'utilitarian variables' and the general attitudes towards Europe in comparison with to the above-mentioned 'affective' correlation of citizenship with the attitude towards Europe (Table 5). The three socio-demographic variables considered (education, age, and gender) do not seem to affect this relationship, as the subtable γ coefficients computed reported the same values of the overall γ.

Table 7a. 'Utilitarian orientation'. Membership country benefit (1994)

	UK	IT
Benefited	53%	75%
Not benefited	47	25
Total%	100%	100%
Valid cases	1061	714

Note: Entries are percentages
Source: Eurobarometer 42. My own elaboration of raw data from ESRC Data Archive

[15] See footnote no. 4 above.

Table 7b. 'Utilitarian orientation'. Membership 'good or bad thing' (1994)

	UK	IT
Good thing	52%	78%
Bad thing	48	22
Total %	100%	100%
Valid cases	1061	714

Note: Entries are percentages
Source: Ibid.

Table 7c. 'Utilitarian orientation'. EU Dissolution regret (1994)

	UK	IT
Very sorry	28%	62%
Indifferent	48	34
Very relieved	24	4
Total %	100%	100%
Valid case	1061	714

Note: Entries are percentages.
Source: Ibid.

Table 8a. Cross-tabulation between 'Membership country benefit' and EU support typology (attachment).

	UK		IT	
	Not Benefit	Benefit	Not Benefit	Benefit
Negative	35%	2%	17%	-
Ambivalent	49	29	45	13
Positive	16	69	38	87
Total %	100%	100%	100%	100%
Valid Cases	519	579	191	547

Entries are percentages.
*UK Valid cases 1098, γ coefficient **0.80**, p-value =0.000*
*IT Valid cases 738, γ coefficient **0.81**, p-value = 0.000*
Source: Ibid.

Table 8b. Cross-tabulation between Membership 'good or bad thing' and EU support typology (attachment)

	UK		IT	
	Bad Thing	Good Thing	Bad Thing	Good Thing
Negative	78%	-	58%	-
Ambivalent	22	13	42	2
Positive	-	87	-	98
Total%	100%	100%	100%	100%
Valid Cases	259	614	57	683

Entries are percentages.

UK Valid cases 873, γ Coefficient 1 p-value=0.000

IT Valid cases 740, γ Coefficient 1 p-value = 0.000

Source: Ibid.

Table 8c. Cross-tabulation between EU Dissolution Regret and EU support typology (attachment).

	UK			IT		
	Very Relieved	Indifferent	Very Sorry	Very Relieved	Indifferent	Very Sorry
Negative	53%	5%	1%	66%	3%	-
Ambivalent	45	60	13	26%	58	10
Positive	2	35	86	8	39	90
Total %	100%	100%	100%	100%	100%	100%
Valid case	316	619	355	35	330	599

Entries are percentages.

UK Valid cases 1290 γ coefficient 0.90, p-value = 0.000

IT Valid cases 964 γ coefficient 0.88, p-value=0.000

Source: Ibid.

The correlation between 'utilitarian' orientation and support can be translated into causation, as Inglehart argues (1977), and this can be useful to detect broader trends. It would be imprecise to draw the same conclusions as far as the 'affective' orientation is concerned. This analysis, in which the EU is seen more as a 'rational' than an 'emotional' political and economic association, undermines the assumption that Euro-citizenship should encourage the development of a European identity. The lack of an 'emotional Europe', however, neither produces 'confusion' as Papcke argues (1992: 66), nor the need for a new interpretation of identity that fits modernity (1992: 70). Rather, there are parallel categorisations of identities in a context in which one does not exclude the other. Does Euro-citizenship foster more 'individual or collective identity'? Does it serve 'family culture' or 'economic and political unions'?[16] These questions probably reflect the main impasse of the European political project in establishing a rational Euro-citizenship that is not 'optional' or 'situational' within an 'economic and political union' rather than a 'family culture'.

6.2 'Cognitive mobilization' and the process of Europeanisation

Hoffmann (1966) and Inglehart (1970) hypothesise that nationality is the 'springboard' for European identity. This approach puts more emphasis on the role of existing nationalities as an essential starting point to develop Euro-citizenship. The opinion held by many contemporary political European elite claims that, over time, identity will

[16] This is a distinction made by Smith between 'collective' and 'individual' identity that consists of considering the former more pervasive and less subject to rapid changes, while the latter 'situational' or optional (1992: 59). On the other hand, he defines the 'political or economic unions' as a rationally constructed set of institutions and deliberated creations opposed to the 'families of culture' that come into being over long time-spans and are the product of particular historical circumstances, often unintentional (1992:71).

follow. The persistence of national identities therefore would not constitute a considerable barrier to the Euro-citizenship project but rather will foster its development (Duchesne and Frognier, 1995: 203). In this view, the internationalisation of the feeling of belonging is an extension of the same process at the national level. This is in line with both the political arguments that Euro-citizenship does not develop at the expense of nationality and with the data analysis suggesting a high level of tolerance towards 'compatibility'. This approach, however, is based on the following traditional model in which citizenship is attached to the concept of collective identity.

Community——— Citizenship ———Identity.

According to Preuss, when citizenship follows the formation of the community, citizenship is 'exclusive'. This is because membership in the Community is not a matter of choice. This is exactly the case in the European Community in its present form. On the contrary, in order to facilitate the access to the status of citizen, Preuss suggests that citizenship should anticipate the formation of a political community and be a matter of choice (1995a: 108). This model would eventually detach the concept of citizenship from the quest for individual and collective identity and hence legal subjectivity. It would be illustrated as:

Citizenship ——— Community——— Multiple Identities.

If Hoffman and Inglehart's approach is correct, then European identity will follow from the first specification. As a consequence, neither residence nor the capacity and the willingness to participate as an equal in an association of equals under common laws are sufficient condition of citizenship (Preuss, 1996: 129). It is a vain attempt,

therefore, to discuss European identity as long as the concept of European citizenship implies a form of membership in a community not as a matter of choice.

Deutsch provides a moderate slant on the European project claiming that identity only occurs through communication. Hence, he defines the notion of 'social mobilisation' (1961) from which Inglehart derives his notion of 'cognitive mobilisation'. The essence of community, for Deutsch, is the ability to 'communicate more effectively with members of one group than with outsiders' (Deutsch, 1966: 97). He claims that considerable barriers to effective communicative action in Europe prevent any real sense of community. In this view, a mutual compatibility of main values could create the basis for an amalgamated security community, in which values and habits of action could mark the differentiation between 'us' and 'them'. It would be interesting to analyse whether the communicative action becomes a primary tool for constructing spheres of 'compatibility' at the supra-national level.

Cognitive mobilisation is a necessary but not sufficient condition for the development of support for a European Community, in as much as one must become aware of it before one can develop a sense of commitment' (Inglehart, 1970: 47). It is in this respect that Inglehart asserts cognitive mobilisation and education as two important factors to understand the development of a supra-national political identity[17]. My findings (Tables 2a/2b) confirm this assertion. The Tables show that education is significantly related to 'European Support Typology' and that this relationship is still significant with the introduction of other intervening variables. For example, it has been possible to observe that a higher level of education corresponds to a more positive

[17] Papcke also stresses the importance of education in the process of identity formation in Europe (1992: 67).

attitude towards 'compatibility' across all age groups. This suggests that education is a formative factor embodying an awareness element in the process of social mobilisation.

The basic thrust of Inglehart's argument is that post-modern conceptions of identity are fluid, and the individuals best able to cope with more than one sphere of identity are those with greater 'cognitive mobility'. This is the reason why Inglehart regards formal education as an indicator of cognitive mobilisation. Through 'cognitive mobilisation' according to Inglehart, national and supra-national levels tend to function as a single cosmopolitan communication network rather than as separate competing spheres.

National citizens will be socialised as Europeans through their network of relations. According to this approach the development of a supra-national identity is possible only through the formation of supra-national institutions. This provides the rationale for the proposition that Euro-citizenship should foster supra-national identity. In the framework of this analysis, I assumed that the respondents who have greater 'cognitive mobility' are those who better identify themselves within the level of 'compatibility'.

Inglehart, in his consideration, understates two main problems: (1) the differing importance of the political sphere in the process of identification at the national and supra-national levels and (2) the risk of social divisiveness. In relation to the latter, there will be little difficulty in socialising those who are best able to cope with the fluidity of European and national identity, and who can take advantage of the opportunities offered by the flexibility of an integrated Europe. It will be more difficult, however, to socialise those who can only speak one language and who are wedded to national traditions. The present system carries with it the dominance of a European

cosmopolitan elite. This could cause a revival of the national politics that is already presently visible in many European states.

Consequently, any new conception of Euro-citizenship must also be applicable to those less able to cope with a European project that they perceive as out of reach and out of touch with the daily realities of their lives. A new conception of citizenship as recognition and communication with others through rights could probably help to solve this problem. It seems that no single factor dominates a conception of European identity, and as such there is no single solution to the dilemma of how to create one.

6.2.1 Supra-national values

Although the process of cognitive mobilisation does not guarantee a sufficient condition for the development of identification and support towards Europe, it increases the degree of integration in cosmopolitan networks. The integration process cannot occur without value mobilisation, and it is therefore important to identify the values that determine individual orientations in the transition from national to supra-national conditions. I shall consider here the classification of Materialist and Post-Materialist orientations.[18] From an analysis of the survey data, it is possible to draw some general characteristics that differentiate a Post-Materialist attitude from a Materialist one. The values shift from the rates of economic growth to the level of life satisfaction. Firstly, Post-Materialist societies enjoy lower rates of economic growth and higher levels of life satisfaction. Secondly, Post-Materialists are half as likely as Materialists are to describe themselves as very proud of their nationality. Finally,

[18] See above, n.2.

Materialists are almost three times as likely as Post-Materialists to support employment discrimination favouring the native born over foreigners, and six times as likely to say that they would not want to have foreigners as neighbours (Inglehart, 1997: 247-248).

Considering this classification, one should expect to find that the value orientation among those who support Europe should be Materialist for two reasons. In the first place, today's Europe is more oriented towards economic and commercial values. Secondly, in both Italy and the UK, Materialist orientations prevail over Post-Materialist ones (Table 9). The data for both countries nevertheless demonstrate that Post-Materialist values prevail over Materialist ones in supporting Europe. A shift from a Materialist to a Post-Materialist standpoint will imply that issues such as loss of national identity and immigration do not constitute a disturbing factor for people's life satisfaction.

The cross-tabulations in Tables 10a and 10b show that there is a significant relationship between these two variables. Those who express a compatibility between nationality and Euro-citizenship, moreover, are more oriented towards Post-Materialist values. This helps us to determine the degree to which one can translate 'support' into 'identification'. In other words, the 'affective' orientation that Post-Materialist values embody can test an 'affective' element in the desire for integration. Importantly, cognitive mobilisation towards Europe does not eliminate the effect of Post-Materialist values.

Table 9. Value Orientation (Materialist /Post-Materialist)

	UK	IT
Materialist	21%	23%
Mixed	65	61
Post-Materialist	14	16
Total %	100%	100%
Valid cases	1351	1055

Table 10a. Cross-tabulation between Value Orientation (Materialist/Post-Materialist) and Euro-citizenship.

	UK			IT		
	Materialist	Mixed	Post-Materialist	Materialist	Mixed	Post-Materialist
Nationality Only	63%	49%	34%	34%	27%	12%
Compatible	31	45	57	63	70	75
European Only	6	6	9	3	4	13
Total %	100%	100%	100%	100%	100%	100%
Valid cases	281	837	178	233	618	161

Valid cases UK =1296; γ 0.28 p-value = 0.000 Valid cases IT =1012; γ 0.33 p-value = 0.000

Note: My own elaboration of raw data from ESRC Data Archive: Entries are percentages. Source: Eurobarometer 42.

Table 10b. Cross-tabulations between Value Orientation (Materialist/Post-Materialist) and European Support Typology.

	UK			IT		
	Materialist	Mixed	Post-Materialist	Materialist	Mixed	Post-Materialist
Negative	16%	15%	12%	4%	3%	1%
Ambivalent	48	47	29	34	29	26
Positive	36	38	59	62	68	73
Total %	100%	100%	100%	100%	100%	100%
Valid cases	289	876	186	244	642	169

Valid cases UK = 1351 γ 0.17 p-value = 0.000

Valid cases IT = 1055 γ 0.15 p-value = 0.000

Note: Entries are percentages. Source: Ibid.

6.2.2 The impact of European identification on the perception of 'otherness'

As immigration has moved centre-stage providing much of the impetus for new political movements, another major area of inquiry concerns the manner in which the change in value orientation from a national to a supra-national context affects the concept of identity in relation to the recognition of 'others'. In a cosmopolitan network the classification of 'others' should not depend upon national divisions. Europeans differ among themselves as much as from non-Europeans with respect to language, territory, law, religion and political systems (Smith, 1992: 70).

If the process of European identification does not occur through the establishment of Euro-citizenship, can one say that the formation of a 'us' as Europeans is taking place through the definition of the category of a 'them'? As Delanty suggests, the European 'us' becomes focused on opposition to the 'other' rather than on a sense of belongingness and solidarity. Identification takes place, in other words, through the imposition of otherness in the formation of a binary typology of 'us' and 'them' (1995: 5).

Fuchs, *et al.* argue that migration flows are deemed essential to the construction of so-called 'Eurocentrism'. What emerges from their analysis is that the conceptualisation of 'outsiders' by European public opinion marks a general change in that the boundaries between 'us' and 'them' are not drawn between individual European countries but within countries between natives and immigrant foreigners. In this view, there are no obstacles for the formation of a European identity 'in so far as

there is no or little negative evaluation of foreigners from other European societies' (1995: 175).

This approach is limited as it concerns only the problem of negative and positive evaluation of 'otherness' among Europeans. In their analysis, moreover, Fuchs and his co-authors see 'Eurocentrism' as favouring the formation of a European identity. In my view, however, this would be rather dysfunctional towards the legitimisation of 'pluralism'.

The perception of human diversity varies considerably from one country to another. The process relies on two connected factors: (a) different sets of traditional values across countries; and (b) the association of traditional values with negative attitudes. The clear distinction that emerges is not so much a north-south division but rather a reflection of different traditions in terms of history and migration between countries with a long culture of emigration on the one hand, and those with considerable immigrant populations mainly from former colonies on the other.

In observing people's reactions towards 'others', it has been possible to differentiate between two separate practices according to nationality. The definition of immigrants is shaped in relation to these groups. Table 11 suggests that the association made by respondents clearly points to different perceptions of 'otherness'[19]. In countries with higher levels of immigration such as the United Kingdom, the idea of others relates chiefly to non-European populations. On the contrary, in Italy where

[19] The category of 'otherness' refers to the variable'Foreign Population-Quantity', which is based upon answers to the question: How do you feel about foreigners living in your country. The possible answer are: 1-Too Many; 2-A lot but not too many; 3- Not many. Eurobarometer: 42.

immigration is a very recent phenomenon, people identify European nationals as foreigners[20].

Although Italians consider non-Italian EU citizens as foreigners, their attitude towards immigration is positive. According to data illustrated in Table 12, 48 per cent of Italian respondents agree on the acceptance of immigrants from within the EU without restrictions. This is consistent with a more positive attitude towards Europe, among Italians, and with the fact that Italian reluctance towards immigrants in general is related more to 'race' than nationality. Intolerance in Italy indeed appears to be linked to the matter of 'race' (colour of the skin and religion). On the other hand, the British attitude is consistent both with their reluctance towards the European Union and their tolerance towards other races linked to a colonial past. In other words, reluctance towards immigrants in the UK is rooted more in nationality and culture.

[20] On this point, Fuchs *et al.* argue that the more foreigners of a certain nationality live in a country, the greater is the probability that they will be perceived as 'others'.

Table 11. When you hear about people of another nationality, whom do you think of?

(Spontaneous answers)	UK	IT
. Southern Europeans	3	2
. Eastern Europeans	2	8
. Other Europeans	13	25
. North Africans	1	20
. Africans	7	16
. Asians - Far East	44	4
. Asians - Middle East	1	1
. Other Asians	9	1
. Turks	-	-
. North Americans	5	20
. Central Americans	10	0
. Latin Americans	-	1
. Oceaneans	1	-
. All foreigners, non-nationals	4	0
. Immigrants, refugees	0	0
. Other	1	-
. Nobody in particular	7	4

Table12. Attitude towards immigrants from other EU countries. (1993)

	UK	IT
Accept without restriction	29%	48%
Accept with restriction	53	42
Not be accepted	18	10
Total %	100%	100%
Valid cases	1322	987

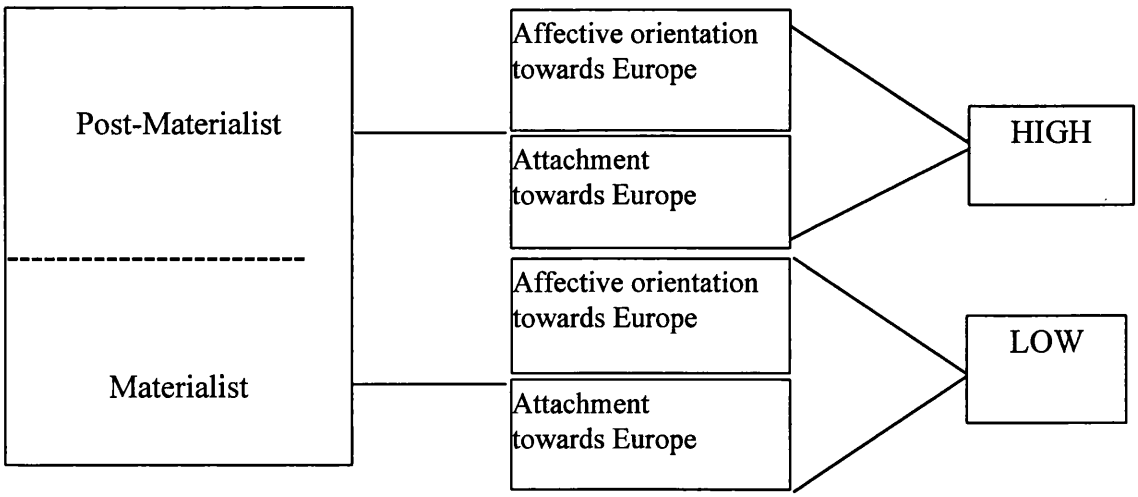
Source: My own elaboration of raw data from Euro-Barometer 39: European Community Policies and Family Life, March - April 1993.

The analysis has been extended to ascertain whether the process of changing the orientation of values is limited to the rationality of the European Union or whether it involves a process of value internationalisation. In this respect, anti-foreigner views are considered in relation to the increasing predominance of Post-Materialist value-orientations. If nationality is so fluid and does not constitute a major obstacle to

cognitive mobilisation, then it would be reasonable to expect that the process is also valid for those who do not share a given sense of national identity.

The data suggest that (a) respondents who have Post-Materialist orientations also tend to be more tolerant towards foreigners (Table 13); and that (b) those who identify with Europe are also more open towards 'others'. Table 14, again, shows that the acceptance of both forms of identification facilitate a positive attitude towards foreigners. In both Italy and the UK, those who accept a compatibility between the two forms of identification are expected to be more tolerant of foreigners perhaps constituting an indirect impact of Euro-citizenship on the perception of 'otherness'. This category of people represents those with greater 'cognitive mobility'. Consequently, issues such as the loss of national identity and immigration should not constitute a disturbing factor for their 'life satisfaction'. Figure 2 highlights common features in public attitudes with reference to value orientation.

Figure 2. Value Orientation and Public Attitudes in UK and Italy



Tables 14a and 14b show that the relationship between 'Euro-citizenship' and 'attitude towards foreigners' grows stronger in both countries for the category of Post-Materialist than for the category of Materialist, but in Italy the relationship becomes negligible for the category of Materialist (Table 14b. Subtable γ 0.03). Figure 3 summarises the major differences between these two countries. The United Kingdom shows a stronger causal relationship between those who identify with Europe and tolerance towards foreigners. In Italy, on the other hand the level of tolerance is very moderate and does not rely on identification with Europe. This restates the results illustrated in Table 14.

Again, it is unlikely that a consideration of socio-demographic variables would invalidate the consistency, in comparative terms, of attitudes across these two nation-states. There is a lack of homogeneity, which obviously causes different perceptions of problems and institutional changes that renders the reality of a new Europe more difficult to grasp. It is too generic, however, to refer simply to culture. If a new form of identification does not influence people in their attitudes towards foreigners, for instance, people will tend to react in accordance with governments' decisions. The measure of tolerance, therefore, needs to be weighed in relation to government action towards socio-structural problems of integration.

Neither Euro-citizenship nor the effect of the new geo-political context on the definition of the category of non-citizens facilitates the formation of a new identity. The new 'community' to which we are referring is an 'economic and political union' far from what Smith calls the 'European families of culture'(1992: 70-71)[21]. The formation

[21] With 'families of culture', Smith refers to the Wittgensteinian concepts of 'family resemblances' and of the 'language game'. Smith believes that 'the sum total of all Europe's states and communities

of European identity therefore relies perhaps on the degree of common purposes in political decisions, which are not easy to achieve because of 'the need for European governments to respond to their national public opinion and the failure of Europeans to agree on a common policy' (Smith, 1992: 73).

Table 13. Cross-Tabulation between Value Orientation (Materialist/Post-Materialist) and attitude towards foreigners.

	UK			IT		
	Materialist	Mixed	Post-Materialist	Materialist	Mixed	Post-Materialist
Too many	47%	38%	20%	60%	51%	32%
A lot but not too many	31	39	50	33	43	55
Not many	22	23	30	7	6	13
Total %	100%	100%	100%	100%	100%	100%
Valid Cases	275	826	177	238	620	162

UK valid cases = 1278 γ 0.20 p-value = 0.000 Italy valid cases = 1020 γ 0.27 p-value 0.000
Notes: Entries are percentages Sources: Eurobarometer: 42. Ibid.

Table 14. Cross-Tabulation between Attitude Towards Foreigners and Euro-citizenship (Affect).

	UK			IT		
	Nationality only	Compatible	European only	Nationality only	Compatible	European only
Too many	52%	24%	27%	64%	44%	32%
A lot but not too many	32	45	37	31	48	53
Not many	16	31	36	5	8	15
Total %	100%	100%	100%	100%	100%	100%
Valid Cases	616	547	74	259	674	47

UK Valid cases 1237 γ 0.41 p-value = 0.011

IT Valid cases 980 γ 0.35 p-value = 0.001

Notes: Entries are percentages Sources: Eurobarometer: 42. Ibid.

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has a historically revealed gamut of overlapping and boundary-transcending political traditions and cultural heritages, which together make up what we may call the European experience and the 'European families of cultures' (1992: 71).

Figure 3. Value Orientation and the Level of Tolerance Towards Foreigners

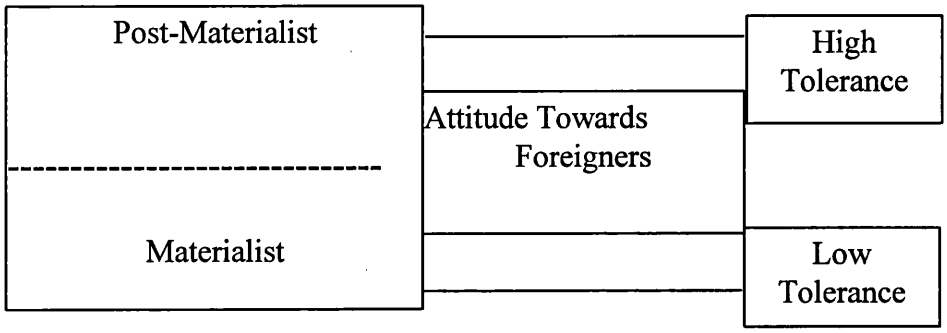


Table 14a. Attitude Towards Foreigners by Euro-citizenship controlling for Value Orientation (Materialist/Post-Materialist), UK

UK	MATERIALIST			MIXED			POST-MATERIALIST		
Attitude Foreigner	Affect Euro-citizenship			Affect Euro-citizenship			AFFECT Euro-citizenship		
	Nation. Only	Comp	Europ. Only	Nation. Only	Comp	Europ. Only	Nation. Only	Comp	Europ. Only
Too many	55%	36%	29%	52%	25%	36%	41%	9%	7%
A lot but not too many	29	33	29	31	46	38	48	54	40
Not many	16	31	41	17	29	26	11	37	53
Total %	100%	100%	100%	100%	100%	100%	100%	100%	100%
Valid Cases	**268**			**799**			**170**		
Subtable γ	**0.36**			**0.36**			**0.61**		
Overall γ	**0.41**								

Tab 14b. Attitude Towards Foreigners by Euro-citizenship controlling for Value Orientation (Materialist/Post-Materialist), Italy.

IT	MATERIALIST			MIXED			POST-MATERIALIST		
Attitude Foreigners	Affect Euro-citizenship			Affect Euro-citizenship			Affect Euro-citizenship		
	Nation. Only	Comp	Europ. Only	Nation. Only	Comp	Europ. Only	Nation. Only	Comp	Europ. Only
Too many	60%	56%	83%	65%	46%	38%	75%	29%	10%
A lot but not too many	35	36	17	30	47	52	20	60	65
Not many	5	8	-	5	7	10	5	11	25
Total %	100%	100%	100%	100%	100%	100%	100%	100%	100%
Valid Cases	**227**			**598**			**155**		
Subtable γ	**0.03**			**0.33**			**0.62**		
Overall γ	**0.35**								

Figure 3a. Value orientation (Materialist) and level of tolerance towards foreigners by Euro-citizenship.

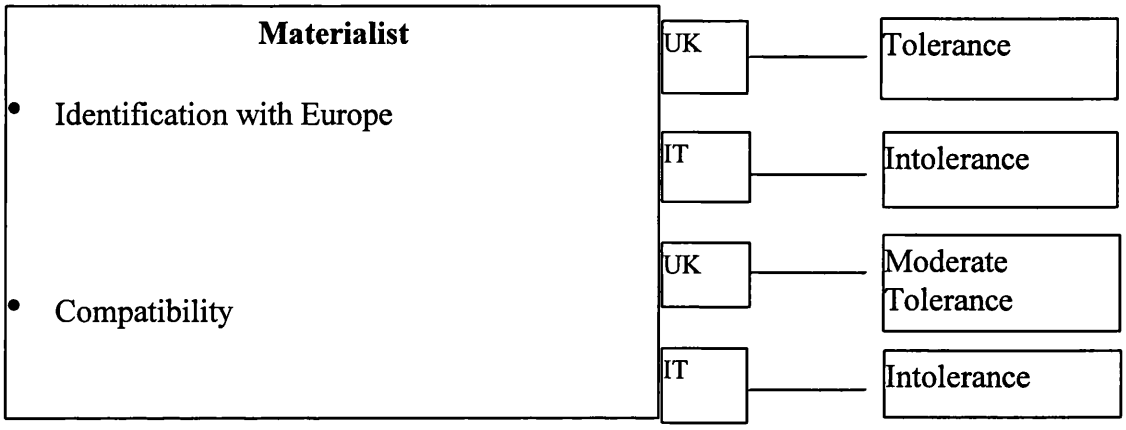
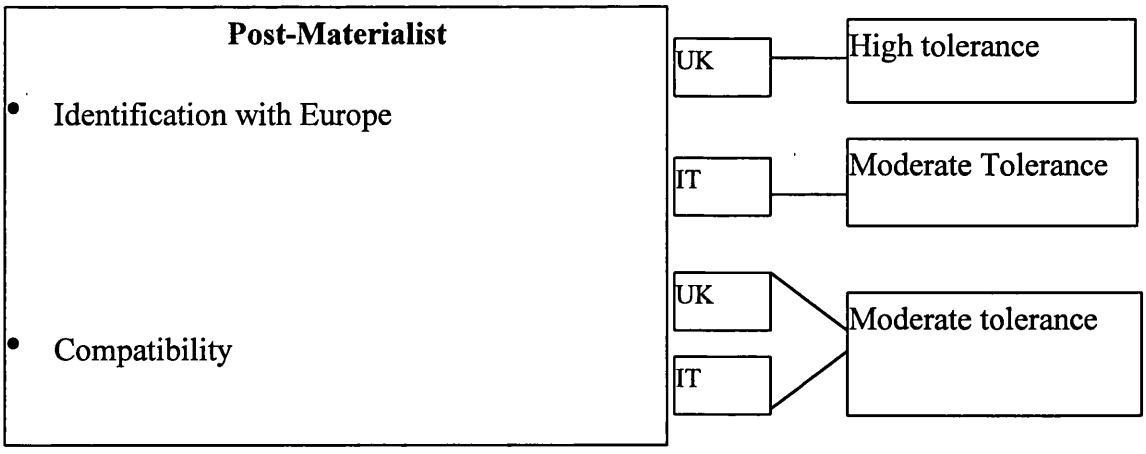


Figure 3b. Value orientation (Post-Materialist) and the level of tolerance towards foreigners by Euro-citizenship.



To sum up the major results of this analysis, it is possible to outline three main points. First, Euro-citizenship does not influence the level of attachment to the Euro-polity. Secondly, the symbolic function of citizenship does not facilitate the process of

identification. Finally, if one considers Euro-citizenship as a means of mobilisation of values, it also needs to be measured in relation to new values orientation.

Conclusion

If this is the era of 'post-westphalian state citizenship' (Linklater, 1996), then the European citizen is not a citizen of a traditional nation-state. In this supra-national environment, common values are de-traditionalised (Giddens, 1997) and the role of the state is being subverted. As a consequence, the control of social, political, and economic problems must supersede the politics of the traditional state to facilitate the process of identification with the new political entity. This is Euro-citizenship's major failure, as it is unable to become the mediator of the change in value orientation from a national to a supra-national context.

The dilemma concerning the existence of a European public sphere that mediates the relationship between citizens and the new institutional order is not dominated by a single factor. It has been shown that nationality is not functional to a process of 'affective' orientation towards Europe. Rather, the mobilisation of values from a national to a supra-national context is guided by common factors such as Post-Materialist values. It is not appropriate to argue that education, age, and gender affect the definition of supra-national cleavages. In comparative terms there are still significant differences across age, education, and gender at the national level, but they do not greatly affect common features between countries.

It is difficult to determine whether the ultimate realisation of a supra-national context would generate affective orientations. In my view, this does not constitute the main problem as far as individual attitudes are concerned. There is not a desire of

'belonging' but rather a higher level of individualism that is translated into a more direct participation in resolving practical issues. Further democratisation will be a particularly important component in the process. Hoping that differences between the Italians and the British will simply evaporate over time is one thing. Hoping that differences between the Italians and the Kurds will do likewise is another. The European Union must find a way to unite its new polity in a pluralistic process of democracy appropriate not to the national state but to the new global environment. There are major problems with this process. Despite discussion of the EU as an emergent state, it fails most criteria of statehood. It is, therefore, imperative to find a way of drawing individuals into a supra-national sphere of 'legality' in order to make them aware not of a new identity but rather of progressive changes in the sphere of their new societal relationships.

Chapter 7

The significance of supra-national legal conditions for the determination of social rights

Introduction

This chapter illustrates the manner in which the means of citizenship, at the supra-national level have been re-prioritised from political to social rights. In the process of integration social rights become more functional than political rights though mainly with respect to EU citizens and within the Euro-citizenship framework. This process has opened up some possibilities for non-EU nationals, but only at national level. This chapter further shows that there has been a shift from instrumental economic rights to more fundamental rights for all EU nationals and even for some non-EU nationals. In this, the ECJ has played a crucial role. The extension of rights for EU citizens and their explanation through a supra-national regime, has done little for third-country nationals, even though the supra-national level, theoretically, is better able than the national level to devise policies on immigration that accommodate them in a way that is both effective and constructive. Finally, the chapter concludes that social rights are still an important component of citizenship in general and Euro-citizenship in particular. Access to social rights at the European level is functional to the delineation of the categories of 'us' and 'them' in that social rights for non-EU nationals do not transcend national borders.

7.1 The rationale for supra-national undertakings in the social sphere

During the political processes that led to the establishment of Euro-citizenship, it has been possible to discern three main lines of arguments. The first one concerned the problem of creating a feeling of belonging among citizens of the member states that would contribute to the creation of a Union identity. The second line of argument focused on the need to facilitate the movement of citizen labour within the EU, and the

third dealt with the problem of providing citizens with a greater access to participation both in socio-economic and political terms[1].

At the supra-national level, a great deal of attention was paid to ensuring that the new political entity did not simply become an area or organisation geared towards the creation of wealth, but also that citizens of the member states would be able to benefit from its formation. Ministers emphasised the right to employment throughout the Union for EU citizens as one of the first objectives of social policy. The final version of the Maastricht Treaty indeed guaranteed the rights of free movement and residence not only for employees but also for their families. With the establishment of Euro-citizenship and the delineation of additional citizenship rights, social rights became more detached from the conventional procedures for granting citizenship rights at the national level with regard to non-citizens/nationals. The same point cannot be made for the supra-national level in which conversely social rights are strictly anchored to the practice of Euro-citizenship. Soysal, observing that social rights were the first rights granted to immigrants workers at the EU level, argued that the formal conceptualisation of supra-national citizenship rights undermines Marshall's hypothesis that political rights precede the formation of social rights. Instead, Soysal argues that political rights become part of the agenda much later (1994: 131).

As noted above, standards of nationality based on definition of citizenship at the national level were adequate at a time when people tended more to reside and work within their own respective national contexts. This explains the emphasis on a political rather than a socio-cultural definition of citizenship. The supra-national context creates

[1] These discussions took place at the Paris Summit in 1973, the Fontainebleau Summit in 1984, and the Inter-governmental Conference in Rome in 1990. See Bull. EC Supplement 7, 1985. See also chapter 2 above.

the opposite scenario, however, in which the old standards of nationality have become inadequate and the notion of 'place' is introduced as a new component to identify the area over which rights attached to the new citizenship extend[2]. This new perspective can be considered as a step towards a place-oriented definition of citizenship, which implies positive consequences also concerning third-country nationals[3]. The emergent demands for expanding citizenship rights based on residence rather than nationality open the way for the regulation of immigrants' rights also in accordance with a criterion of residence and not nationality (Welsh, 1993; Preuss, 1996).

The alternative to a citizenship based on residence, the denizen or semi-citizenship models to which Hammar and Brubaker have referred, are merely a minor deviation from the norms of classical membership that only slightly alter citizenship features (Hammar, 1989; Brubaker, 1986, 1990)[4]. Changes in membership models at the national level, moreover, do not always correspond to changes in functional services such as state welfare systems which still operate under the assumption of closure (Heisler, 1990; Layton-Henry, 1990; d'Oliviera, 1984). Soysal has been critical of views such as these, however, arguing that they remain anchored within the logic of a territorial citizenship without recognising 'the changing relationship between the individual, the nation-state and world order' (Soysal, 1994: 139).

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[2] COM (93), 702 final, 21 December 1993.

[3] The concept of a place-oriented citizenship is comparable with that of 'status-path' suggested by Preuss (1996: 135) and 'domicile' proposed by Kostakopoulou (1998), which are discussed above in the introduction of the thesis.

[4] In addition, see chapter 2 above.

7.1.1 The significance of residence in determining social rights

With the advent of Euro-citizenship, people have become directly involved in a supra-national scenario for the first time. Social rights such as the right to work, the right of abode, and the right to education for European citizens, are inclusive and undermine the exclusive effects of any other member state's national citizenship. The problem here is to determine whether or not Euro-citizenship has been established on substantive grounds involving those who usually reside and work within the Community in addition to citizens of member states.

Theoretically, the notion of a common citizenship at the supra-national level should reinforce the social and political cohesion among the states and peoples involved, but it should also weaken the relationship between citizenship and nationality. The gradual passage to the supra-national level has a distinct functional character. During the first phase of its establishment, the concept of a common citizenship was attached mainly to economic activities and therefore limited in scope. At this stage, the right to reside was still limited to nationals of member states engaging in economic activities. The concept of 'worker' assumed an autonomous meaning and full social and economic rights were granted to migrant workers at the supra-national level. The political dimension of the new supra-national regime, by contrast, is emphasised for the first time only with the Maastricht Treaty, which attached to Euro-citizenship a political function with respect to the sub-national and supra-national level. This was the consequence of efforts to introduce political rights through reciprocal arrangements that extended most aspects of national treatment to nationals of other member states.

It is important to establish whether or not, and in which manner, legal practices at supra-national level affects the allocation of social rights at the national level. I argue

that supra-national legal practices indeed broaden the factors in determining the eligibility for social rights, though only in relation to the revised concept of citizenship and thus only for EU citizens. The importance of social rights as an element of citizenship even at the supra-national level lends weight to Marshall's argument that social rights are bound to citizenship rights (1950). The continuing importance of social rights as components of citizenship suggests that the right to reside by itself is insufficient to confer access to full citizenship rights. This impedes the detachment of ethno-cultural aspects of citizenship, in a word nationality, from the means of citizenship, which is to say civil, political and social rights. The need to distinguish the system in which the distribution of rights occurs, whether national or supra-national, reinforces the link between citizenship and rights and particularly citizenship and social rights.

Marshall's argument, however, retains some of its significance at the national level since not all rights presuppose citizenship. Certain social rights are sometimes made available to non-citizens at the discretion of the political system in response to a perceived need for social equality and integration, political legitimisation and public order (Zolo, 1992). Barbalet has thrown into question the theoretical coherence of Marshall's classification of rights, recommending that they be treated not as rights but as 'social services' (1988)[5]. This is owing to difficulties in the formalisation of procedures and processes designed to facilitate the performance of these rights or services. In Europe, however, formalisation occurs at the supra-national level, which establishes a normative dimension to social rights across the European Union. This

[5] Barbalet does not accept the idea that social rights are universal because they must be analysed in conjunction with social services.

maintains the link between social rights and citizenship, but it also recognises the supra-national nature of social rights.

The mechanism of detachment would put an end to the great apartheid that excludes the majority of the human race from enjoying social rights. This would involve the transformation of two rights presently reserved only to citizens of member states at the supra-national level, the right of residence and free movement, into rights to which all legal subjects have equal access. It is indeed possible to observe a progressive effort to grant residence rights to non-citizens at the national level, but the effort by no means weakens citizenship's exclusive functions. The following section shows, however, that residence rights are a crucial determinant of social rights for non-EU citizens only within the confines of the nation-state, even though social rights have become the most important feature of Euro-citizenship.

The concept of residence is shaped by national regulations and therefore is not consistent throughout the member states of the EU. In a federal state such as the USA, by contrast, citizenship depends upon residence to the point that an individual may change his/her state of residence without effecting any change of nationality[6]. In this

[6] In the USA, when a citizen changes his or her state of residence, it is possible to observe the following changes in relation to citizenship's means: (1) political rights at the federal level remain the same, but local rights change in accordance with the practices prevailing in the state and country of residence; (2) Social rights likewise change only in so far as concerns state rights; (3) Citizenship does not change. The social and political rights thus depend not only on citizenship but also on the palce of residence, and to this extent, nationality and citizenship are detached. In the EU, which is a confederation, the changes that occur in the means of citizenship when EU citizens their place of residence are as follows: (1) barring any change in nationality, EU political rights and national political rights remain the same, but local rights change in accordance with the district, town or council of residence. EU political rights do not change wherever you go. Local rights change with respect to district, town or council. Importantly national rights do not change unless you change your nationality; (2) social rights depend entirely on the state of residence, though access to some social rights require the recipient to be a national in the state of residence; (3) citizenship normally remains unchanged, though an individual residing in a country other than the country of nationality may change citizenship and naturalise in the country of residence to have access to all citizenship rights. In the case of the EU citizenship and nationality are linked and citizenship rights depend primarly on the nationality that a person holds.

case the free movement of persons is a consequence of US citizenship rather than the basis for it. Within the EU framework, by contrast, the enjoyment of certain rights and privileges depends on the person holding the citizenship or nationality of a member state (Closa, 1992).

The decree that 'every person holding the nationality of a member state'[7] becomes a citizen of the Union raises problems for those states where there is no strict correlation between nationals and those among the nationals entitled to qualify for Community rights. As already noted above, the United Kingdom made a declaration defining the persons who qualify as their nationals for Community purposes[8]. Once an individual is considered as a national for all Community purposes, his or her right of residence is no longer at the discretion of the national state. Several cases have nevertheless been presented to the European Court of Justice that demonstrate the failure of member states to fulfil the obligation to treat nationals of other member states in the same way as they treat their own nationals[9].

Although residence rights replace some citizenship functions within the EU, this does not imply that community rights are linked to residence rather than nationality, even if it does create a new opportunity structure for non-nationals at the national level. A residence permit is essential for non-EU citizens to receive welfare benefits along with some degree of political rights but they entitle their holders to no such benefits or

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[7] Article 8a(1) of the Maastricht Treaty.

[8] Residents of Crown possessions, such as the Channel Islands and the Isle of Man, do not count as community nationals (Baldwin-Edwards, 1991; Brubaker, 1989). See also chapter 2 above.

[9] See case C-24/97, concerning an action brought by the European Commission against Germany under Article 169 of the EC Treaty. By treating nationals of other member states differently than its own in terms of the degree of fault and the scale of fines in comparable infringements of the obligation to hold a valid identity document, the Commission claimed that Germany failed to observe Community law. The Commission cited Articles 48,52, and 59 of the EC Treaty, Article 4(1) of Directive 68/360 on the abolition of restrictions on movement and residence within the Community for workers holding EU citizenship and their families, and Article 4(1) of Council Directive 73/148 EEC. See also case C-265/88, par.14.

rights at the supra-national level. For instance European directive 73/148[10] extended workers' rights to spouses of workers who are nationals of a member state and to any of their children under 21 years of age irrespective of the nationality of the spouses and children in question. Under this directive the benefits and rights attached to the residence permit is valid only in the territory of the member state in which the permit was granted.

The residence permit also carries other rights such as the right to education, although, paradoxically, many children will receive a European education without being allowed to move freely within Europe since they are not citizens of a member state[11]. This example, however, concerns a specific condition that grants rights to immigrants who are married to a national of a member state, which is, as we have seen above, one of the ways in which immigrant may be admitted into an EU country. As long as benefits and rights at the national level are attached to the residence permit, any supra-national form of 'residentship' remains unattainable for non-EU citizens. This merely underlines the fact that access to full social rights at the supra-national level is afforded only to citizens of member states. Concerns about access to rights for third-country nationals at the supra-national level thus far consisted of revealing, through secondary legislation such as regulations and directives, the limitations of expanding the national sphere in the distribution of social rights to non-citizens. Regulations and Directives are important means for understanding the process of control and protection of EU citizens rights through a supra-national entity such as the European Court of Justice, and they facilitate the effective introduction of the Treaty's articles into the

[10] Council Regulation on abolition of restrictions on movement and residence within the community.
[11] Council Regulation 1612/68.

national context. Regulations have direct effects and they can be invoked by individuals in national courts (Meehan, 1993; Steiner, 1988; Usher, 1981), while Directives need to be implemented through national legislation. In other words, Council Directives require member states to bring their own laws into compliance with the provisions of the Directive within a prescribed period[12].

7.1.2 Workers and the European social dimension

In the development of a supra-national social sphere, as already mentioned above, social rights are mainly related to workers, representing the social dimension of an economic market (Wedderburn, 1990). In this process, social rights are granted to citizens as workers rather than as citizens *per se*. The Council of Europe's famous Social Charter[13] accords the greatest importance to social rights designed to protect a citizen's right to employment, to organise and bargain collectively, to safe and sanitary working conditions, and to seek employment in other member states. The Social Charter also protects welfare rights such as the right to health care, education and, to social and security assistance for all workers, or citizen-workers as they are subsequently designated.

The inclusion of working rights in the Social Charter 'Europeanises'[14] a national right, but the process of 'Europeanisation' also involves a significant limitation of social

[12] For instance, the Kingdom of Belgium failed to comply with the Directive 94/80 EC laying down detailed arrangements for exercising the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in any member state.

[13] In December 1989, 11 Heads of State or Government (all but the UK) adopted the Social Charter. The Charter is formally called the 'Community Charter of the Fundamental Rights of Workers' and was accepted originally by 11 of at that time 12 Member States. The preamble affirms that 'the same importance must be attached to the social aspect as to the economic aspects' of the single market. The Chapter itself has no binding force: it s a declaration of intent and amounts to a set of principles and standards that were implemented by the Commission through the setting-up of an action programme.

[14] This term is used by Roche (1992: 216).

rights for workers who are not citizens of a member state, since the workers' rights are linked to Euro-citizenship rights. Jacques Delors as President of the Commission in 1985, invigorated efforts towards integration by stressing the need to establish a link between Euro-citizenship and the right to work and attendant rights[15].

The shift of focus from 'workers' to 'citizens' entailed by Delors' statement strengthens the importance of nationality. Residence, in fact, is not a crucial determinant of access to workers' rights for nationals of member states, who by virtue of their nationality already enjoy access to social rights. Nationality in a member state confers the right to work anywhere in the EU, which in turn automatically entails the right to reside. Local and EU political rights depend, in part, on residence rights. The choice of nationality rather than residence as the criterion for Euro-citizenship and access to workers rights can be seen to be a political manoeuvre designed to limit free movement only to nationals of member states (O' Leary, 1992). Council Regulation 1612/68 indeed states that:

> 'any national of a member state, shall, irrespective of his place of residence, have the right to take up an activity as an employed person (...) with the same priority as nationals of that state'[16].

Freedom of movement for workers within the Community thus applies only to workers who are nationals of a member state. It is therefore a more restrictive application in the sense that it specifies more clearly to whom these rights pertain than Article 48 of the Treaty of Rome (1957) which refers instead to workers as 'persons' and not as nationals[17]. It was nevertheless widely acknowledged that free movement rights were

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[15] Bull. EC. Supplement 1, 1985, 'The Thrust of Commission Policy'.

[16] Article 1, Regulation 1612/68. Article 1 deals mainly with assistance for migrant workers and families.

[17] Article 48 of the EC Treaty provides for the following: '(1) Freedom for workers shall be secured within the Community [...]. (2) Such freedom of movement shall entail the abolition of any

limited since it was inconceivable to grant immigration privileges to workers from all over the world.

The advantage given to nationals of member states both to move freely throughout the Union and to receive access to social rights throughout the EU was established on the abolition of any discrimination within the Union based on nationality. Discrimination persists, however, since the principle does not apply to workers in EU member states who are not nationals of member states. The only exception is made for the families of workers who are EU citizens even if the family members themselves are not nationals of a member state[18]. The contradiction is that neither Article 5 nor Article 7 of Regulation 1612/68 explicitly specifies that the term 'nationality' refers to the nationality of a member state. Article 5 states that 'non-national applicants should be offered the same assistance in seeking employment as that which is on offer to a state's own nationals' while Article 7 states that 'workers shall enjoy the same advantages as national workers'. To avoid any misinterpretation the ECJ redefined the meaning of 'social advantage':

> [...] it is settled law that this concept embraces all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals[19].

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discrimination based on nationality between workers of the member states as regards employment, remuneration and other conditions of work and employment. (3) It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of member states for this purpose; (c) to stay in a member state for the purpose of employment in accordance with the provisions governing the employment of Nationals of that State laid down by law, regulation or administrative action; (c) to remain in the territory of a member state ater having been employed in that State subject to conditions [...] to be drawn by the Commision. (4) The provision of this Article shall not apply to employment in the public service'. Article 48 was implemented by EC Council Regulation 1612/68 and section 2 (1) of the European Communities Act of 1972.

[18] Case C-3/90.

[19] Case C-85/96 par. 25.

It is nevertheless possible to state in general, that workers have benefited from the interpretation of 'social advantage' put forward by the European Court of Justice. According to the Court, for example, 'maintenance awards' constitute a 'social advantage' that should not be applied discriminatorily to legal migrant workers or their dependants. Issues surrounding the extension of benefits are complicated by distinctions between workers' rights and families' rights, in cases in which the family in question includes a foreign spouse and or children of a national of an EU member state. Meehan has drawn attention, for instance, to a 1984 case in which an Hungarian national who was the son of an Italian worker in Belgium was able to claim benefits 'for young people unemployed after completing studies' (Meehan, 1993: 98)[20]. Another important case involved the residence rights of a third-country national married to a Community worker. Even though the plaintiff, one Mrs Diatta, had separated from her husband, the Court ruled that Mrs Diatta retained her right of residence, but the ruling also carried the implication that divorce in the absence of naturalisation, would terminate the right of residence for dependent third-country spouses of nationals of a member state. If put into practice, however, such an implication would ignore the right of any third-country spouse to family unity, under the principle of family reunification, at least in cases in which children are involved (Meehan, 1993: 99)[21].

Cases such as these demonstrate the importance of residence rights for third-country nationals in as much as access to social rights for non-EU citizens hinges entirely upon residence. (Arnull, 1989). The denial of social rights on the grounds of residence can be considered as indirect discrimination against a worker (Arnull,

[20] Case C-94/84.
[21] Case C- 267/83.

1989:180; Meehan, 1993: 131). This illustrates a self-referential mechanism in which the implementation of Treaty provisions through Regulations and Directives depends upon the criteria for nationality employed by each member state. It also illustrates the extent to which the individual worker has become the focus not only of Community economic rights but also of social and human rights (Evans, 1991). In this framework, citizenship rights at the supra-national level should be determined neither by the criteria for nationality at the level of the member states nor merely by the extent of the transposition of Community law into national law. Euro-citizenship should also aspire to a universal validity through the recognition of fundamental rights (Vincenzi, 1995).

7.2 Supra-national aims and the impasse of nationality

Soysal identifies 'working' rights exclusively as economic rights, and she regards the legal status that they confer to non-citizens more valuable than formal citizenship status. She argues that economic rather than political rights were the first rights granted to immigrant workers in European host countries. According to Soysal, this process occurs mainly under the principle of human rights, which implies a universal aspect that undermines the boundaries of the nation-state. This approach attempts to discover elements of universal validity within supra-national practices and to detach social rights from nationality (Soysal, 1994: 127). It is indeed at the workplace and through membership in trade unions that immigrants have enjoyed a stronger legal status and more equal rights of representation. The main problem that arises from this approach concerns the value of legality. In other words, does legality have a universal application? A response to the question would perhaps be oriented towards the redefinition of the concept of legality.

It is true that the proliferation of trans-national arrangements often engenders measures that address the rights of immigrants in the name of human rights, but it is also true that the courts are full of cases in which governments have not respected such measures. To maintain that the recognition of immigrants as a legal category merely entails granting to immigrants the right of appeal is perhaps a little reductive. Soysal nevertheless argues that one of the ways in which international instruments affect policies on immigrants at the level of the nation state is 'through the construction of migrants as a legal category', and the ability to claim legal protection is one step in that direction (Soysal, 1994: 149).

The fact that there has been an extension of social rights for immigrants by no means implies equal status[22]. As already shown above, specific conditions need to be fulfilled to achieve any semblance of equality. To consider the problem from a different perspective, it is possible to argue that the constraints imposed by human rights conditions through international and supra-national agreements force governments to adopt a more restrictive attitude. Specific requirements are established for access to work at the supra-national level, but they are still dictated by criteria for nationality and national citizenship. Even though economic rights are considered primary at the supra-national level, these rights ultimately hinge upon national citizenship. It is the erosion of the substantive function of citizenship and not its theoretical form that needs to be discussed. As long as citizenship and nationality remain strongly connected to serve supra-national aims, the substantive form of the distribution of rights among various groups will be uneven and

[22] Layton-Henry noted that the extension of rights to guest-workers and the removal of obstacles to equal status have occurred gradually (1990).

discriminatory. This is in line with Joppke's view of Soysal as one of the 'post-national membership advocates' (Joppke, 1998). According to Soysal, the condition of quasi-citizenship or denizenship may be considered as a new form of membership in which formal citizenship and participation in the political community are not essential. The processes of globalisation indeed appear to be moving towards this informal model of membership. Joppke criticises this model stating that, *inter alia* 'non-citizenship is tolerable in the *interim* but not in principle' (1998: 29). The reasoning behind this position lies in the consideration of the lack of a supra-national polity in which rights are granted on bases other than nationality leaving national citizenship as the only alternative criterion. In short, Joppke's position discourages any view of European citizenship as a 'post-national form of membership'.

To substantiate this point one can examine the extent of an immigrant's integration at the supra-national level, which provides a highly significant indicator of just how far integration has actually proceeded. With the introduction of a Council Resolution in 1974 there was the possibility for a 'wide-ranging migration policy' (Geddes, 2000: 55). This was a Social Action Programme that envisaged a migrant charter covering equality of treatment in areas such as living and working conditions, the granting of civil and political rights, the control of illegal immigration, and the co-ordination of immigration policies (Handoll, 1995: 352). Although the Commission's intention was to include in this programme immigrants who were not nationals of an EC member state, the Council did not agree on this extensive understanding of the term 'migrant' and focused instead on EC migrants and their dependants. The Social Action Programme, however, had some spillover to

dependants of legally resident third country nationals and those covered by Association Agreements (Geddes, 2000: 157).

In general the supra-national decisions concerning immigrants' rights are typically expressed in Resolutions and Declarations that have no legal effect but are nevertheless considered as official communications adopted by the European Parliament. This is why immigrants' internal mobility and social rights are usually discussed as an issue separate from the implementation of social rights regarding European citizens. In 1985, a Council Resolution reaffirmed the jurisdiction of member states in matters relating to the rights of entry, residence, and employment for immigrant workers. It established a prior communication and consultation procedure regarding national policies in these areas. In the event, this resolution has had little impact on the attitudes of the various member states towards immigrants[23]

Immigrants and foreign workers in Europe have always been considered as passive subjects. National governments' policies of family reunification provided for a fairly stable 'family affair' without thinking about the consequences in terms of education, work, and social security. At the local level, political integration involved immigrants in decision-making in the communities where they resided by establishing local Consultative Communal Commissions for Immigrants (CCCI). The 1975 European Summit Paris, for example, produced a statement emphasising the important transitional role that consultative organs could play in both the reduction of anti-immigrant discrimination and the advancement of the immigrants' political integration (Wihtol de Wenden, 1978: 33). This summit also produced the Trevi Group and the Ad Hoc Group on Immigration, which have most directly

[23] Official Journal No. C.186, 1985, Guidelines for a community policy on migration.

tackled immigration issues in the EU. These groups have encouraged host societies to allow their foreign populations to lead an active associational life, asking the Commission to lobby governments to grant subsidies to associations of foreigners on an equal basis with those granted to their own citizens, although support for these measures has been more in terms of empty rhetoric than implementation. The exclusion of those from outside the European Community is perhaps less pronounced in the Recommendations of the two groups than in the concept of European citizenship or in the Commission's report on the integration of immigrants, but the practical effect is little different (Costa-Lascoux, 1989). It is evident that the exclusive process in which the European legal and political space has evolved reflects the EU's appeal to national governments to co-ordinate their policies, but this process does not necessarily entail equal rights for all.

7.2.1 Exceptional measures of membership

Another special condition by which social rights can be granted to non-EU nationals was established through bilateral agreements that introduced co-operation with Algeria[24], Morocco[25] and Tunisia[26]. These Council Regulations provided, *inter alia*, that workers holding the nationality of one of these countries and any members of their families living with them should enjoy the same treatment in field of social rights as nationals of the member states in which they are employed. Under these arrangements the rights of non-EU nationals to entry, residence, employment, social security benefits, education, and other social advantages are based either on their familial ties with EU

[24] Council Regulation 2210/78. See Articles 39-40.
[25] Council Regulation 2211/78. See Articles 40-41.
[26] Council Regulation 2212/78. See Articles 39-40.

nationals, already noted above, or on their status as nationals of a country with which the Community has concluded an international agreement. It is important to stress that such rights are granted only to those who are already holders of an original right. The social rights accorded to these non-EU nationals therefore can be defined as derived rights which are contingent upon nationality. These rights include the right to remain permanently in the host state, the right to education on the same conditions as the nationals of that state, the right to take up work in that state, and the right to benefits under the social security system of that state. This is yet another instance in which residence rights alone are not sufficient to confer access to citizenship rights and that special treatment is accorded only on grounds of nationality.

The Demiral case illustrates the manner in which the attitude of the Court in matters related to immigration varies widely depending on the country of origin. Mrs Demiral, a Turkish national, entered the Federal Republic of Germany to join her husband, who had the same nationality and who had been living and working in Germany since entering that country in 1979. She was ordered to leave the country because her husband did not fulfil conditions peculiar to Germany for family reunification in the case of nationals of non-member countries[27]. The Court ruled that Turkish nationals enjoyed no special social rights in the European Union because the existing agreement between Turkey and the Union, the Turkish-EC Association Agreement, was strictly economic (Meehan, 1993: 99)[28]. Moreover, residence conditions for third-country nationals in Germany were tightened between 1982 and

[27] Demiral v Stadt Schwäbish Gmüd, case C-12/86.
[28] O. J. No. C. 113/2, 1973; O.J. No. C. 113/8, 1973.

1984 by raising the period during which they were required to reside continuously and lawfully on German territory from three to eight years (Baldwin-Edwards, 1992: 215).

The Association Agreement with Turkey was concluded under Article 48 of the EC Treaty, which refers to workers mainly as 'persons' than nationals. Other measures regarding Turkish workers who are already integrated in the labour force of a member state prohibit any further restrictions on the conditions governing access to employment[29]. Despite these stipulations, Germany still did not confer social rights on individual such as the spouse and minor children of a Turkish worker established in the Community. The European Court of Justice indeed supported the German decision in declaring that the Agreement was neither unconditional nor sufficient for the purpose (Alexander, 1992).

Another important Regulation[30] enumerates the third countries whose nationals must be in possession of a visa to enter the European Union zone through the territory of a member states. The meaning of 'visa' here refers to an authorisation given by a member state for entry into its territory with a view of an intended stay of no more than three months. This measure, which was designed to harmonise visa policy, has still not satisfied its intended goal because the conditions for issuing visas to the nationals of the third countries in question remain very unclear. Moreover, each member state has the discretionary power to determine the visa requirement for nationals of third countries that are not on the common list as well as for stateless persons and recognised refugees[31]. Any effort to harmonise visa policy among the member states should also

[29] See Decision No. C. 1/80 of the Council of Ministers.
[30] Council Regulation, 2317/95.
[31] Council Regulation, 2317/95, Article 2.

take into account third countries not on the common list and excluded categories of persons.

Instead of harmonising visa policy, however, this Regulation gives more power to member states to reject third-country immigrants on the grounds of common list requirements, and it lays the foundation for the unequal and discriminatory treatment of those who are not on the common list. Supra-national legislation emphasises the importance of work permits in order to obtain residence rights, though in practice the receipt of such rights by non-nationals is more closely linked to their familial or special status. The opportunities open to third-country immigrants in the EU are determined by legislative agreements that give the impression of establishing common conditions throughout the Union, but they continue instead to perpetuate the process of exclusion at the national level. The efforts to harmonise the policies of member states relating to third-country nationals thus constitutes no significant departure from national immigration laws.

7.3 Public services: some contradictions

Public services and social security are the two main institutions that exist to serve social rights. Through the discussion on public service, this section illustrates the ways in which social rights and economic rights are related to public services, which are still determined by national law. One can discern two inter-related aspects of public services, the first concerning the provision of public services, which is based on access to work and thus symbolises economic rights. The other aspect concerns the receipt of public services and represents social rights. It is important to stress that the first aspect

dominates the second in that it is possible to achieve social rights only through economic rights.

This would not constitute a problem if public services were not regulated by national criteria. Although the principle of exclusion of non-nationals from public service posts is accepted in all member states, it is applied differently in each of them. This often places immigrants from non-EU countries and immigrants from other EU in the same position, which leads to a lack of uniformity in the application of provisions for the free movement of workers among the member states. Article 48(4) of the EC Treaty stipulates that freedom of movement for workers does not apply to employment in the 'public service'[32]. In other words, the Treaties exempt employment in public institutions from the principle that prohibits discrimination on the grounds of nationality[33]. The 'exception' attached to the public service is designated as an exception precisely because it would otherwise constitute a discriminatory measure. In the O' Boyle and Plunkett cases[34], it was ruled that since Article 48(4) was a derogation from the principle of freedom of movement for workers expressed elsewhere in Article 48, it must be constructed restrictively[35]. In other words, the pertinent clause required a precise justification for treating a particular post as a public service post. The onus fell on each member state to justify the derogation from the right enshrined in Article 48. In the affidavit presented on behalf of the member state in question in these two cases claimed that the posts advertised were considered public service posts because they

[32] See also Article 55 EEC, regarding activities 'connected even occasionally with the exercise of official authority'.
[33] See Article 48 (4) EC Treaty.
[34] See chapter 2 above.
[35] See O'Boyle and other applications for judicial review, *Northern Ireland Judgments Bulletin*, 1998, pp. 242-255; O'Boyle and Plunkett (Applications for Judicial review) Court of Appeal CARC 2763, Judgment by Carswell LCJ.

'demanded an exceptional allegiance to the state'. In dealing with such cases, the ECJ has to establish whether or not the 'exception' mentioned in Article 48(4) applies. The ECJ has ruled that nationals of other member states cannot be excluded from teaching and research posts simply because such occupations are classified as 'public service' posts. Further more the Court has found that most of the posts disputed in such cases fall outside the exception specified in the Article 48 (4)[36].

It is also worth noting that recent changes in the provision of public services has tended to transform the connection between citizenship and the provision of public services. These changes have resulted in the transfer of responsibility from the state itself to a newly created set of intermediaries between the state and the citizen, mainly private actors. Therefore the general connection between citizenship and the provision of public services is made through these intermediate institutions. These changes concern mainly the bodies that provide public services rather than the individuals receiving them.

Member states nevertheless continue to exercise exclusive control in many important areas of social policy though the ECJ has refused to apply the public service exception in the fields of education, health, scientific research, and operational services in local government. The dichotomy between a residence criterion, which grants legal residents access to most forms of employment, and the nationality criterion, which protects some public service posts, reinforces the nation-states' autonomy in areas of

[36] For cases in which the posts in question were deemed by the Court as not responsible for safeguarding the interests of the state see the European Commission v France, case 307/84, 1987, which classified nurses as public servants; Lawrie-Blum v Land Baden-Württemberg case 66/85, concerning teachers; European Commission v Italy, case 225/85, 1987, concerning researchers of the Consiglio Nazionale delle Ricerche (CNR). All of these cases are cited by Meehan (1993). See also Handol (1988).

social policy, which Euro-citizenship is supposed to undermine. This also undermines the supra-national ascendancy on social rights.

7.3.1 Social security rights: a probable route for Euro-citizenship

In connection with public services, there are also social security rules that are mainly designed to eliminate discrimination based on nationality for workers who move across the Community. One of these is a Regulation that governs the application of social security schemes to workers and their relatives moving within the Community[37]. It deals with the co-ordination of different national social security benefits and excludes the right of 'overlapping benefits'[38] (Meehan,1993: 86). Furthermore, the present exclusion of third-country nationals from the scope of EC rules on the free movement of persons also leads to a certain number of inconsistencies.

The analysis of social security rights involves three main considerations, all of which support my argument. Firstly, social security rights are elements of citizenship rights because they create a legal status and a model of reciprocity between rights and obligations even for non-EU citizens. This concurs with Marshall's claim that social rights are an element of citizenship (1950). Secondly, these provisions do not contribute to the realisation of equality in a national context between EU citizens and legally resident non-EU citizens. This aspect, on the other hand, undermines Marshall's thesis that citizenship in general involves an equality of membership status and an ability to participate in a society. Finally, for EU citizens residence is not a necessary condition

[37] Council Regulation 1408/71, and updeted in O. J. No. C . 325/1, 1992.
[38] See C-244/97: Rijksdienst voor Pensioenen v Gerdina Lustig; and Case C-146/93: McLachlan v CNAVTS.

for receiving social security rights. This supports the notion that nationality is a fundamental criterion for the allocation of citizenship rights.

Regulation 1408/71, cited above forbids discrimination on grounds of nationality and provides for the aggregation of periods of insurance, residence, and employment for social security purposes. The Regulation applies to workers who are nationals of a member state and to members of their families, even if the latter are third-country nationals. It also benefits the surviving family members of a deceased third-country national who had worked in a member state, provided that the members of that family are nationals of a member state. After the death of the worker, these persons will be protected to the same degree as they would if the deceased worker had been a national of a member state. This appears to be quite a sensible rule in itself. Its own limits, however, together with the limit of the system in general, could lead to some peculiar situations. First, not only do those third-country workers have to die for their families to benefit fully from their work, but their families will benefit from their work in a way in which the workers themselves could never have benefited. For example, third-country workers themselves are not able to benefit from the clause in the Regulation that permits EU citizens to request an aggregation of periods of insurance to obtain old-age benefits. In the case of a worker's permanent incapacity to work, neither the relatives of the third-country worker nor the worker him/herself is protected by the Regulation. The family thus is legally protected only if the worker dies, but otherwise is not. The application of the nationality criterion to the protection of relatives of the worker following his or her death is no less disturbing. The protection of a national of a member state who is the spouse of a third-country worker contrasts sharply with that of a spouse who is a national of a third-country in that the latter cannot benefit from the

Regulation. The children of a third-country worker are in the same situation. Children may benefit from the work of their deceased father or mother but only as long as the children themselves are nationals of a member state, while third-country nationals are eligible for no benefits, simply on the basis of their nationality. This rule is both unfair to the persons concerned and unjustified in the context of current European integration constituting a clear case of not only differential treatment, but also discrimination.

Access to insurance-based benefits depends on the contributions or status of the working members of the family. In these cases, the ECJ has struck down residence conditions for the receipt of benefits by EU citizens. In the case of an Italian worker in Germany whose wife and family were in Italy, for example, the ECJ confirmed that a worker's benefits for an absent family should not be suspended if the family were ineligible for benefits in the country of residence (Steiner, 1985)[39]. This indicates that residence is not a fundamental condition for members of a workers' family to receive benefits if they are also nationals of a member state.

Another interesting case deals with a worker's change of nationality. This problem arose in Belbouab v Bundesknappschaft, in which the plaintiff had been employed as a miner, first in France and then in Germany. He had been a French national at birth, but he had acquired Algerian nationality in 1962 when Algeria became independent. The defendant's social security institution argued that because he was no longer a Community national when he claimed the benefit concerned, Regulation 1408/71 did not apply. This argument was dismissed by the ECJ, which ruled that the clause requiring a worker to be a national of a member state referred to the time of the employment, of the payment of the contribution relating to the insurance periods, and of

[39] See also Case C-153/84: Ferraioli v Deutsche Bundespost.

the acquisition of the corresponding rights. It would follow, conversely, that a worker would not be covered by the ruling if he or she became a national of a member state only after acquiring the right to the benefit in question. This further indicates that the nationality criterion encourages and often requires different treatment for individuals under similar circumstances.

The right to social security is expressly limited within the scope of Article 59 of the EC Treaty[40], which places restrictions on the provision of services to nationals of member states. There are nevertheless circumstances in which social security can be extended to nationals of third-countries who provide services within the Community. It is useful to consider the case of SEC v EVE[41] in which the plaintiffs were two companies based in France that had carried out various work in Luxembourg. The authorities in Luxembourg required the companies to pay social security contributions in respect of their employees who worked in Luxembourg and who were third-country nationals even though the same persons were compulsorily insured in France. What is more, the Luxembourg contributions did not entitle the workers concerned to any social security benefits. By the same token, no contributions were required in Luxembourg with respect to those workers who were nationals of a member state. The ECJ nevertheless held that to require the companies to pay any contribution for third-country nationals contravened Articles 59 and 60 of the EC Treaty. In so doing, the ECJ dismissed the argument that the ability to prohibit third-country nationals from even working in its territory also entitled the Luxembourg authorities to allow them to work

[40] The Article as follows states: 'Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of member states who are established in a State of the Community other than that of the person for whom the service is intended.'
[41] Case 62-63/81.

there, subject to conditions of this kind. The ECJ ruled that a member state's power to control the employment of nationals from a non-member country may not be used in order to impose a discriminatory burden on an undertaking from another member state enjoying the freedom under Article 59 of the Treaty to provide services. It must be stressed that the right at issue in this case is that of the company which could indirectly guarantee social security rights of third-country nationals.

These cases suggest that the expansion of social rights beyond the purview of national governments has an effect on national citizenship if for no other reason than it throws into question popular notions of citizenship. From the third-country nationals perspective the expansion of social rights perhaps improves their circumstances but the road ahead is still an obstacle course.

Conclusion

This chapter has emphasised the significance of social rights in the redefinition of citizenship's function at the supra-national level. Social rights have assumed priority over political rights at the supra-national level as they are more amenable to expansion in both scope and content. Social rights could conceivably constitute the condition upon which Euro-citizenship relies, but the persistent defence of nationality impedes the independent operation of social and economic rights afforded on bases other than nationality. In this manner, social rights cannot yet be considered as the defining principle of community membership. The substantial functions of citizenship are not challenged by the limited protection that supra-national institutions extend to those who have a legal status different from citizens. In this respect 'residentship' is merely a condition of social citizenship without entailing a new status.

Although it may be too ambitious to suggest that Euro-citizenship should be made available to all conferred on third-country nationals lawfully resident in the EU, it is perhaps more reasonable to reformulate the concept of legality within the EU. The formulation of the category of Union subject rather than Union citizen would enable social rights to be detached from citizenship while providing more equitable access to social rights at both national and EU levels for all legal resident in the EU. This would entail two main things (1) the detachment between nationality and citizenship rights at EU level and (2) depriving citizenship of its regulative functions of exclusion and inclusion. In this way, citizenship and nationality would continue to be linked at the national level, but citizenship would assume a more ethno-cultural specification, and Union subjecthood would be applicable at both the national and European level. The common criterion in conferring a EU subjecthood could be a qualified period of residence in the same way as residence periods are required for the acquisition of the nationality of a member state, but without the obligation of being naturalised. This step would not only bring to fruition the re-prioritisation of the means of citizenship but could sign the beginning of a process in which even political rights can carry a less symbolic meaning for national sovereignty.

Conclusions

There can be no doubt that the ongoing development of the EU has led to the creation of additional citizenship rights and to a reformulation of immigration policies at the national level. This thesis has gone beyond this point to ascertain the impact of Euro-citizenship within the legal, political, and social spheres of the member states at both the national and EU levels. This thesis supports the idea that the establishment of Euro-citizenship in particular and the process of European integration in general normatively create a new opportunity structure in terms of a new configuration of resources, new supra-national institutional arrangements, and most importantly social mobilisation (Usher, 1981; Meehan, 1997; Nentwich, 1998; Wiener, 1998). In my analysis, however, the meaning of opportunity structure refers mainly to a process that re-prioritises what I defined in the introduction as citizenship's means. This entails not only the analysis of citizens' involvement and participation in the new polity but also the study of the re-prioritisation of social rights over political rights. Social rights are guaranteed at the post-national level to citizens of member states and they are transferable, embodying the sense of free movement. Political rights, by contrast, are not transferable as far as general or national elections are concerned. This means that they do not embody the sense of free movement. In normative terms, therefore, social rights are prioritised over political rights to serve the principle of free movement within the EU. This opportunity structure develops within an EU social dimension which normatively stresses inclusion but on analysis is revealed to exclude those who do not belong to the new polity.

Chapter 3 has shown that free movement rights fulfill the necessity of a firmer control of external frontiers in the context of the expansion of the 'inner circle'. This may be explained by the fact that European integration, as Geddes argues, 'reinforces the connection between nationality and rights' (Geddes, 2000: 168). In addition, and more specifically, I argue that the establishment of Euro-citizenship reinforces the ideology of nationality. Even though access within the EU to national welfare systems beyond that of one's own national state can arise as a consequence of 'legal status' (legal residence), the possession of the nationality of a member state is the key that opens the door for access to social entitlements associated with free movement within the EU (Geddes, 2000: 155). Nationality serves as the primary criterion to determine eligibility for Euro-citizenship, and citizenship practices at the national level are therefore central in the formulation of immigration policies.

If normative processes guarantee new additional rights and more 'transferable' entitlements, the analytical outcome is that the link between citizenship and nationality is reinforced. This is in line with Closa (1995) and Brubaker (1992), when they argue that the link between nationality and citizenship is the outcome of 'legal systems' and 'state interests'. Though a differentiation between nationality and citizenship would be more desirable (Closa, 1995; Preuss, 1995a, Weiler, 1996; Meehan, 1993), my argument criticises the practical achievements of the new arrangements precisely in this regard. What is been suggested, instead, is the reformulation of the concept of 'legality' within the EU in order to detach citizenship's means from nationality. The establishment of a supra-national citizenship in Europe thus creates a paradox. On the one hand, Euro-citizenship entails the need to detach the means of citizenship from nationality or national

citizenship, while on the other hand it strengthens the relationship between citizenship and nationality. The fact that certain rights in Europe are now guaranteed by supra-national rather than national institutions means that the same rights can be detached from the status of national citizenship and this is the point at which a redefinition of legal status in the E U becomes essential. Chapter 1 has shown the manner in which, throughout history, the function of citizenship has evolved in response to the changing needs and circumstances of society. During the period that witnessed the blossoming of the nation-state, citizenship functioned to forge a political identity for a people, thereby creating an inherent link between citizenship and nationality. It has been argued, however, that this reflects a more communitarian and republican understanding of citizenship (Preuss, 1995a; Closa, 1998). It is within this context that citizenship assumes exclusive and inclusive functions. The thesis has emphasised the fact that the passage to a supra-national context, the so-called fourth model of citizenship, does not involve an evolution of citizenship in response to the changing needs and circumstances of the society. This is to say that citizenship does not evolve in response to the problem of mass immigration within the EU. The problem of third-country nationals, in fact, has been explored as one of the dimensions in which European citizenship risks a continuation of traditional, exclusionary aspects of citizenship (Meehan, 1997: 77). The supra-national citizenship that followed the formation of the EU perpetuates these exclusive and inclusive functions in a broader geo-political context, even though it lays the foundation for a more inclusive opportunity structure among the member states.

Through a comparative approach, chapter 2 illustrated the ways in which the normative idea of citizenship in its national understanding is translated into practice

in regard to immigration policies (Brubaker, 1992). In line with many scholars, this thesis agrees that the establishment of Euro-citizenship makes the link between citizenship and immigration topical. This can be seen in the debate on granting rights to legal subjects who are not citizens. (Marshall and Bottomore, 1992; Mann, 1993; Brubaker, 1989; Delanty, 1995; Kostakopoulou, 1998). As national citizenship is reinforced through the establishment of Euro-citizenship, it functions towards the establishment of new national immigration policies, which in turn serve as a legitimate means for the exclusion of those who do not belong to the Euro-polity. The increasing immigration pressure within the EU intensifies the need to define the citizens of the new polity. On this point, the thesis shows the manner in which immigration policies become the filter through which the definition of EU citizens occurs. Along with Kostakopoulou, it is possible to argue that 'immigration shapes the boundaries and content of citizenship' (1998: 167). Though restrictions and changes in immigration laws do not correspond to changes in national citizenship in terms of convergence (Brubaker, 1992: 179), chapter 2 has shown the extent of the impact of Euro-citizenship on two different models of European nation-states. In the UK, where the link between citizenship and nationality has never been very strong, it is now more profound. In Italy, by contrast, there is now a stronger relationship between citizenship and immigration. From opposite poles, in other words, the formerly diverse approaches of the UK and Italy towards citizenship are becoming increasingly similar. This is the result of what I call a common process of homogenisation in which citizenship, nationality, and immigration have become both stronger and more consistent across national lines within the EU, yet each remaining separate concepts.

Chapter 3 delineated the legal practices at the EU level that give rise to and strengthen a typology of 'us' and 'them' (Delanty, 1995; Garcia, 1993; Mouffe, 1992; Weiler, 1996b). I have argued that the rationale of this typology underlies the common process of homogenisation. Immigration is perceived as a threat for the communitarian ideal of unity that challenges the coherence of the two categories of 'us' and 'them'. It has been shown that there are legal obstacles to the formulation of a new concept of 'legality'. The concept of 'legal status' is defined still at the national level according to citizenship requirements and thus is not detached from nationality and citizenship. This leads to a differentiated categorisation of individuals which hinges upon citizenship status. In the EU, such a categorisation leads to discrimination against legal residents who are nationals of a third country. I have suggested that one of the possible remedies to this problem is the detachment of legal status in the EU from nationality. This is not to say that citizenship should also be detached from nationality at the national level as long as citizenship and nationality at this level refer mainly to cultural and ethnic characteristics. At the supra-national level, however, it is important to make access to most rights independent of citizenship and nationality, and to afford such access on an equal basis to all legal subjects including both third country nationals and nationals of the member states. The definition of legality, in other words, should be established at EU level based on the criterion of residence rather than nationality (Preuss, 1996; Welsh, 1993; Kostakopoulou, 1998). Although some normative undertakings at the EU level embody the opportunity for such outcomes (Soysal, 1994), in analytical terms these developments are going to be difficult, as Euro-citizenship, like national citizenship, has become regulative in terms of its inclusive and exclusive functions.

There is no doubt that the EU creates a sphere of opportunity within which it would be possible to achieve the expansion of rights in terms of 'subject' matter rather than nationality. The legal undertakings of the ECJ with respect to the protection of fundamental and human rights constitutes an important example of the ways in which the legal status of individuals living within a supra-national context need to be detached from their ethno-cultural characteristics. Efforts of this kind obviously encounter resistance from member states.

Chapters 4 and 5 have shown the manner in which the political discourse on Euro-citizenship and immigration reflects precisely this kind of resistance. Instead of drawing attention to the new opportunities created by Euro-citizenship in particular and by European integration in general, supporters have sought to assure doubters that Euro-citizenship in no way constitutes a challenge to national sovereignty and national identity. They have also focused on the internalisation of notions of Europe into each nation's own identity construction to foster a sense that other member states and their citizens belong to the category of 'us' and not to the category of 'them'. The function of Euro-citizenship is thus increasingly to legitimise the new order and to internalise notions of Europe into the identity of each member state.

Chapter 4 in particular has covered the major problems associated with this process. The establishment of Euro-citizenship does little to create a closer relationship between citizens and the Euro-polity, which results in a lack of legitimacy for the EU and its institutions. The thesis agrees with those who argue that the new political order does not derive its legitimacy from Euro-citizenship and that the Euro-polity is mainly a regulatory order (Delanty, 1998: 353; Majone, 1996). Normatively, Euro-citizenship has 'the ability to enhance functional logic of

regulatory flows' (Delanty, 1998: 354), in which priority is given not to the citizen *per se* but to the citizen as *homo economicus* (Liebfried and Pierson, 1995). The political discourse that favours the current vision of Euro-citizenship substantiates this argument. The 'politics of assurance' that characterises this discourse seeks to achieve public consent by securing solutions to common problems through the 'market'. Analytically, parliamentary debate pays little attention to either the development of individuals' rights or the process of transformation in the priority of citizenship's means. The priority given to social and economic rights such as employment is often reiterated at the political level, but this does not necessarily imply that access to social and economic rights can yet be considered as a defining principle of Community membership.

In chapter 5, the political discourse on immigration makes it clear that the internalisation of notions of Europe occurs also by shaping common strategies of exclusion. It has been argued that the introduction of Euro-citizenship has given member states a more homogeneous definition of the status of non-citizens and the formation of the typology of 'them'. This is what Weiler defines the exclusionary ethos of Euro-citizenship, which concerns the redefinition of the polity in such a way that the 'us' would become European and the 'them' non-European (1996: 112). It is in this process that citizenship and nationality conflate. One of the most important points to come out of the debates on immigration is that problems surrounding the integration and representation of immigrants cannot be solved without introducing the issue of citizenship. It is precisely on this point that citizenship, nationality, and immigration are inherently linked. This substantiates my argument that the rationale for the typology of 'us' and 'them' underlines the common process of homogenisation. The categorisation

of 'them' shapes the opposite category of 'us' in the search for a supra-national identity in Europe. Rather than creating a multi-cultural society, however, this new identity threatens to legitimise discrimination. Legal and political undertakings that restrict the activities of lawfully resident non-citizens, and place constraints on the behavior of citizens towards non-citizens indirectly encourage intolerance against third-country nationals.

Chapter 6 considered the relationship between normative undertakings and social reality through an empirical analysis of public attitudes. This has provided a means by which to consider the value that a supra-national citizenship represents for the public as revealed by the Eurobarometer. What has emerged is that citizens are detached from any mechanism of identification in the new polity. This is consistent across the comparative analysis between Italy and UK, and it shows that orientations either for or against the EU are not related to a high/low level of identification with the EU. In other words, a positive attitude towards the EU does not correspond to a high level of identification with the EU. The analysis of social reality confirms that Euro-citizenship as a normative undertaking does not represent a threat for national identity. This is consistent with the argument that the establishment of Euro-citizenship reinforces nationality. Moreover, the 'acceptance' of Euro-citizenship, which in my analysis is revealed by a 'low level of affective involvement', does not imply identification with the EU. European identity and Euro-citizenship are not related. This not only reveals the inadequacy of Euro-citizenship to function as a means by which to facilitate identification with Europe, but also contrasts with the major aim behind normative and political undertakings. Euro-citizenship, therefore, is not even a 'normative necessity' in that it contributes little towards the creation of

public self-determination (Dahl, 1994; Habermas, 1995; Closa 1998). Importantly, the analysis of social reality reveals that Euro-citizenship is not a means by which Europe can define its identity 'as a white bourgeois nationalism' (Delanty, 1995: 162). As already stated at the beginning of the thesis, the problem is not so much that Euro-citizenship *per se* is unable to create reconciliation between private autonomy and public self-determination (Closa, 1998). On the contrary, the entire process of public self-determination should be detached from the effort to create a European identity. This would shift the focus of normative and institutional undertakings towards residence rather than nationality (Welsh: 1993) or towards 'legal subjectivity' rather than citizenship.

The high degree of 'compatibility' between nationality and Euro-citizenship as well as the fact that access to most social rights for EU citizens is guaranteed through supra-national institutions suggest that nationality can be detached from citizenship rights to refer more to ethno-cultural characteristics. In this way, the redefinition of 'legal status' in the EU can be based on residence rather than nationality while nationality and citizenship can remain interchangeable at the national level.

The fact that the transition from a national to a supra-national context is guided by common values such as Post-Materialism and that it is also characterised by a greater degree of tolerance for foreigners suggests that the new citizenship or EU subjecthood should become the mediator of these changes in value orientation. All this requires analogous legal and political undertakings that go in the same direction, which would involve an effective policy of inclusionary universalism that finds a new way to unite the new Euro-polity in a pluralistic process of democracy.

By contrast, Euro-citizenship thus far has been a normative answer to the challenge that immigration represents for the ideas that states have about their own national identities. This new regulative function of exclusion challenges the EU's democratic values (Layton-Henry, 1990: 108). This means that a new supra-national citizenship ought to be more inclusive, but any system that distinguishes between those who do and do not belong also winds up being exclusive. In the end, a perfectly inclusive system does not exist, but the issue here is really one of degree. If the reformulation of the concept of legality within the EU were based on the principle of residence rather than nationality this would certainly constitute a step in the direction of a more inclusive system. The challenge that lies ahead is to devise the means by which to provide some measure of access to social rights throughout the EU for legally resident non-EU citizens. The task at hand is the construction of a more inclusive framework that will permit both the EU citizens and its legally resident non-EU citizens to reap the benefits of the supra-national state. There is no doubt that a greater consideration of public attitudes would enable governments to promote a more inclusive regime through normatively created supra-national institutions.

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Appendix 1

Members of the European Parliament 1993-1996

Brok, Elmar (Germany, EPP/CDU)

Journalist. Vice-chair Judge Union Deutschland 1973-81; vice-chair and chair European Young Christian Democrats and Conservatives 1977-81. MEP 1980: Member Social Affairs Committee 1989-91, Development and Co-operation Committee 1989-91, Women's Rights Committee 1989 - and Institutional Affairs Committee 1993; member USA Delegation 1984; EPP spokesman Temporary Committee on German Unification 1990; substitute Czech and Slovak Republics Delegation 1993. Particular policy interests: social and foreign policy.
Date of birth: 14 May 1946.

Casini, Carlo (Italy, EPP/DC)

Lawyer; magistrate, assistant public prosecutor, appeal court judge; writer; member Italian parliament. MEP 1984: Member Legal Affairs and Citizens' Rights Committee 1994; Chair 1994; substitute Development and Co-operation Committee 1989-92, 1994 and Human Rights Sub-committee 1992; vice-chair ACP-EEC Joint Assembly 1989-92; member South America Delegation 1992-94 and Bulgaria and Romania Delegation 1994. Date of birth: 4 March 1994.

Crevinho, Joao (Portugal, S/PS Vice-president)

Civil engineer; member Portuguese parliament 1979-83, 1985-89: Minister for Industry and Technology; national secretary Portuguese Socialist Party (PS). MEP 1989: vice-president EP 1989: member Economic and Monetary Affairs and Industrial Policy Committee 1989-92, substitute 1992; member Political Affairs/ Foreign Affairs and Security Committee 1992; substitute 1989-92; member budgetary Control Committee 1992; member Japan Delegation 1991; substitute ASEAN and Republic of Korea Delegation 1992. Date of birth: 19 September 1936.

D'Andrea, Giampaolo (Italy, EPP/PPI)

University lecturer; regional councillor. Member Italian Parliament MEP 1994: member Civil Liberties and Internal Affairs Committee 1994- and Rules of Procedure, the Verification of Credentials and Immunities Committee 1994; substitute Regional Policy Committee 1994- and Institutional Affairs Committee 1994; Member United States Delegation 1994. Date of birth: 18 July 1949.

Dillen, Karel Cornelia Constantijn (Belgium, ER/VL Blok)

Member Belgian parliament for Antwerp 1978-87; senator 1987-89. MEP for Flanders 1989: member Political Affairs/Foreign Affairs and Security Committee 1989-and Petitions Committee 1989-92, substitute 1992; substitute Culture, Youth, Education, Medial and Sport Committee 1989-92, member 1992; substitute security and Disarmament Sub-committee 1989-92; member Bulgaria and Romania Delegation 1989-92 and EC-Austria Joint Parliamentary Committee Delegation 1993; substitute Switzerland Delegation 1992. Particular interest: culture, education. Date of birth 16 October 1925.

Fayot, Ben (Luxembourg, S/POSL)

Member Luxembourg parliament 1984-89; Chair Luxembourg Socialist Party 1985. MEP 1989: Member Political Affairs Committee 1989-90; Vice-chair Culture, Youth, Education Media and Sport Committee 1990; substitute Social Affairs, Employment and Working
Environment Committee 1989; member Gulf States Delegation 1989-92. Particular policy interests: social policy, research, education. Date of birth: 25 June 1937.

Flynn, Padraig (Ireland, EC Commissioner)

Member for Employment and Social Affairs Relations with ECOSOC immigration and Internal and Legal Affairs. Member of Irish Parliament 1977-93; minister of state Department for Trade and Power 1980-81. Minister for the Gaeltacht 1982 for trade, Commerce and Tourism 1982, for the Environment 1987-91, for justice 1992. Political Party Fianna Fáil (FF).

Gil-Robles, José Maria (Spain, EPP/PP, Chairman Institutional Affairs Committee)

Lawyer; professor, Madrid University. MEP: vice-chair EPP Group 1990; member Culture, Youth, Education, Media and Sport Committee 1989-90, substitute 1990-92; member Petitions Committee 1989-93 and Rules of Procedure, Verification of Credentials and Immunities Committee 1990, substitute 1989-90; member Social Affairs, Employment and Working Environment Committee 1992; chair Institutional Affairs Committee 1993; member EEC - Turkey Joint Parliamentary Committee Delegation 1989 - and Albania, Bulgaria and Romania Delegation 1990-92; vice-chair EC-Finland Joint Parliamentary Committee Delegation 1992.

González Márquez, Felipe (Spain, President)

Labour Lawyer; provincial and national office (Partido Socilista Obrero Español) 1965- , secretary-general 1974-; vice-president Socialist International. Member Spanish Parliament (Cortes) for Madrid 1977-: President 1982 - Political party: Spanish Socialist Workers'
Party (PSOE). Date of birth: 5 March 1942.

Gradin, Anita (Sweden, European Commissioner for Immigration and Home and Legal Affairs)

Social worker; journalist 1950-63; Social Welfare Planning Committee 1963-67; Cabinet Office 1967-68; women's and district party posts; member Swedish parliament (Riksdag) 1968-92; Minister for Immigration and Equality, Ministry of Labour 1982-86, for Foreign Trade Ministry of Foreign Affairs 1986-91; ambassador to Austria, Slovenia, IAEA and UN, Vienna 1992-95. European Commission: commissioner for immigration and home and legal affairs, relations with ombudsman, financial control and anti-fraud measures 1995. Date of Birth: 12 August 1933.

Green Pauline (United Kingdom, PSE/Lab Co-op), Chairwoman Party of European Socialists Group.

Assistant parliamentary secretary Co-operative Union with special responsibility for European affairs 1984-89. MEP for London North 1989-:Chair PES Group 1994-; member Environment, Public Health and Consumer Protection Committee 1989-94 and Legal Affairs and Citizens' Rights Committee 1994-; substitute Agriculture, Fisheries and Rural Development Committee 1989- and Women's Rights Committee 1989-94; member Cyprus Delegation/EC/EU- Cyprus Joint Parliamentary Committee Delegation 1992-94. Particular policy interests: food consumer affairs, Cyprus, ethnic minority interests, co-operative affairs. Date of birth 8 December 1948.

Grund, Joanna-Christina (Germany, NA/IND)

University teaching and journalism in Austria and Hungary 1974-89. MEP 1989: member Legal Affairs and Citizens' Rights Committee 1989 - and Women's Rights Committee 1989-; substitute External Economic Relations Committee 1989; member Sweden, Finland, Iceland and Nordic Council Delegation 1989 and Finland/EC-Finland Joint Parliamentary Committee Delegation 1992. Particular policy interests: German and Foreign policy. Date of Birth 17 July 1934.

Hänsch, Klaus (Germany, PSE/SPD)

Editor 1969-70; ministerial press spokesman 1970-76; ministerial technical adviser 1976-79; lecturer Dunisburg University 1976. MEP 1979: vice-chair Socialist Group; member Political Affairs/ Foreign Affairs and Security Committee 1979, vice-chair 1984-87; member Institutional Affairs Committee; chair USA Delegation 1987-89, substitute 1992; member Finland Delegation/EC-Finland Joint Parliamentary Committee Delegation 1992.
Date of birth: 15 December 1938.

Herzog, Philippe Albert Robert (France, EUL/PCF)

Economic professor Paris University X 1969; member political bureau French Communist Party (PCF) 1979. MEP 1989: member Economic and Monetary Affairs and Industrial Policy Committee 1989-92, substitute 1992; member Environment, Public Health and Consumer Protection Committee 1992-94; substitute Development and Co-operation Committee 1989-92 and Institutional Affairs Committee 1992-94. Vice-chair USA Delegation 1989-92; member Maghreb Countries and Arab Maghreb Union Delegation 1992-94 and Japan Delegation 1994. Date of birth: 6 March 1940.

Jarzembowski, Georg (Germany, EEP/CDU)

Lawyer 1975-78; judge 1978-79; member Hamburg city parliament 1979-91. MEP 1991: member Development and Co-operation Committee 1991; substitute Transport and Tourism Committee 1991-92, member 1992; member Civil Liberties and Internal Affairs Committee 1992- and South Asia and SAARC Delegation 1992; substitute Australia and New Zealand Delegation 1992. Date of birth: 3 February 1947.

Köler, Klaus-Peter (Germany, ER/Rep)

Police officer 1964-68; Federal Criminal Police Office 1989; municipal and district government 1989; MEP 1989: -Member Environment, Public Health and Consumer Protection Committee 1992-; Substitute Budgets Committee 1989; Rules of Procedure, Verification of Credentials and Immunities Committee 1989-92 and Social Affairs, Employment and Working Environment Committee 1992; Member Israel Delegation and China Delegation 1992. Particular interests: Internal Security and environment. Date of birth: 18 June 1943.

Lagorio, Lelio (Italy, PSE/PSI)

Lawyer; university professor; journalist. Mayor of Florence 1965; president regional government of Tuscany 1970-78; member Italian parliament 1979: Minister of Defence 1980-83, of Tourism and Culture 1983-86; chair Socialist Group Italian Parliament 1986-87; chair Defence Committee Italian Parliament; member Executive Committee Italian Socialist Party 1989. MEP 1989: vice-chair Socialist Group 1989; Member Energy, Research and Technology Committee 1989-90, Agriculture, Fisheries and Rural Development Committee 1989-90, Budgetary Control Committee 1990-92 and Rules of Procedure, the Verification of Credentials and Immunities Committee 1992; substitute Budgets Committee 1989; member Iceland Delegation 1992; substitute EC-Cyprus Joint Parliamentary Committee Delegation 1992. Particular interests: defence, foreign affairs, history. Date of birth 9 November 1925.

Marques Mendes, Antonio (Portugal, LDR/PSD)

Lawyer;municipal government; member Portuguese parliament 1976-79, 1983-87, vice-president 1985-87. MEP 1987: member Budgets Committee 1990- and Social Affairs, Employment and the Working Environment Committee 1987-92, substitute 1992;substitute Legal Affairs and Citizens' Rights Committee 1987-90 and Civil Liberties and Internal Affairs Committee 1992; member Central America and Mexico Delegation 1989. Particular interests: social and legal affairs. Date of birth: 30 March 1934.

Mebrak-Zaïdi, Nora (France, S/PS)

Student. MEP 1989-: member Legal Affairs and Citizens' Rights Committee 1989- and Culture, Youth, Education, Media and Sport Committee 1989-92, substitute Women's Rights Committee 1989-; member Maghreb Delegation 1989-92, substitute 1992; member Maghreb Delegation 1989; member of commission of enquire into the rise of racism and xenophobia in Europe.

Oomen-Ruijtn, Ria G. H. C. (Netherlands, EPP/CDA)

MEP 1981: vice-chair EPP; member Environment, Public Health and Consumer Protection Committee 1989; substitute Social Affairs Employment and Working Environment Committee 1989, Development and Co-operation Committee 1989-90 and Women's Rights Committee 1989; member Central America and Mexico Delegation 1989-90, 1992; substitute Central America and Mexico Delegation 1992. Date of birth: 6 September 1950.

Pasty, Jean-Claude (France, EDA/RPR) Chairman European Democratic Alliance Group

Civil servant; director French Ministry of Agriculture; member French parliament (Assemblée Nationale) for Creuse 1978-81; regional government 1986-. MEP 1984-: vice-chair EDA Group 1989-94,chair 1994-; member Budgetary Control Committee 1989- and Social Affairs and Employment Committee 1994; member of Canada Delegation 1984-87, 1989-92. Particular interests: agriculture.

Santer, Jacques (Luxembourg, President of European Commission)

Lawyer. Parti Chrétien-Social (Christian Social Party): general secretary 1972-74, chair 1974-82. Secretary of State for Cultural and Social Affairs 1972-74; member Luxembourg parliament for centre electoral district 1974-79; MEP 1975-79: vice-president European Parliament 1975-77. President EC Council of Ministers of Finance and Social Affairs 1980. President of the Government, Minister of State, of Finance 1984-1989. President of the European Council of Heads of State and Government 1985. Governor World Bank 1984-89; Governor International Monetary Fund 1989-95; Governor European Bank for Reconstruction and Development 1989-95. Prime minister, Minister of the State, of treasury, of Cultural Affairs 1989-95; President European Council of Heads of State and Government 1991; President European Commission 1995. Date of birth: 18 May 1937.

Tazdaït, Dijda (France, Green/Verts)

Television Producer. MEP 1989: member Legal Affairs and Citizens' Rights Committee 1989-92, Development and Co-operation Committee 1992- and Women's Rights Committee 1992, substitute 1989-92, substitute Social Affairs, Employment and Working Environment Committee 1989-92 and Civil Liberties and Internal Affairs Committee 1992; vice-chair Maghreb Delegation 1989. Date of birth: 8 April 1957.

Tsatsos, Dimitrios (Greece, PES/Pasok)

University professor. Member Greek parliament: minister. MEP 1994: member Institutional Affairs Committee 1994; substitute Legal Affairs and Citizens' Rights Committee 1994- and Rules of Procedure, the Verification of Credentials and Immunities Committee 1994; member EU-Hungary Joint Parliamentary Committee Delegation 1994. Date of birth: 5 May 1933.

Van den Brink, Mathilde M (The Netherlands, PSE/PvdA)

Teacher 1974-80; Mayor Gieten 1980-86; Chair National Council for Youth Policy 1986-89; Deputy director-general Welfare, Culture and Public Health state department 1989. MEP 1989: -vice-chair Political Affairs/Foreign Affairs and Security Committee 1989-92, substitute 1992-; Member Legal Affairs and Citizens' Rights Committee 1989-90, substitute 1990-92; substitute Women's Rights Committee 1989-92; Member Civil Liberties and Internal Affairs Committee 1992; substitute Security and Disarmament Sub-Committee 1992; member Central America and Mexico Delegation 1989-90; Member Maghreb Countries and Arab Maghreb Union Delegation 1992; substitute EC-Turkey Joint Parliamentary Committee Delegation 1992. Particular interests: policy affairs, law, youth, women's rights, social affairs. Date of birth: 4 February 1941.

Van Outrive, Lode JC (Belgium PSE/SP)

Lawyer; sociologist; administration of justice professor Louvain University. MEP 1989: member Legal Affairs and Citizens' Rights Committee 1989-92 and Civil Liberties and Internal Affairs Committee 1992; substitute Social Affairs, Employment and Working Environment Committee 1989; member Central America and Mexico Delegation 1992. Particular policy interests: free movement of people; information and participation of workers. Date of birth: 18 January 1932.

Appendix 2

Members of the British Parliament 1993-1996

House of Lords

Blatch (Life Baroness, UK), Emily May Blatch

Women's Royal Air Force, Air Traffic Control 1955-59, Air Traffic Control (Civilian) 1959-63; Leader of Cambridgeshire County Council 1981-85. Member Peterborough Development Corporation 1984-88. Member of the European Economic and Social Committee 1986-87. FRSA 1985. Rotarian Paul Harris Fellow 1992 Parliamentary Under-Secretary of State, Department of Environment 1990-91; Minister of State (Heritage) 1991-92; Minister of State, Department of Education 1992-94; Minister of State, Home Office 1994. A Conservative. Special interests: Local Government, Education, Anglo-American Relations.

McIntosh of Haringey (Life Baron, UK), Andrew Robert McIntosh

President Market Research Society 1995; Chairman Fabian Society 190-81; Chairman Association for Neighbourhood Councils 1974-80; Leader of the Opposition 1980-81; House of Lords: Opposition Spokesman on Education and Science 1985-87, on the Environment 1987-92, and Home Affairs 1992; Deputy Leader of the Opposition 1992. Labour.

Elles (Life Baroness, UK), Diana Louie Elles

Barrister-at-Law, Lincoln's Inn, 1956. International Chairman European Union of Women 1973-79. UK delegate to European Parliament 1973-75. Chairman Conservative Party International Office 1973-78. UN Special Rapporteur on Human Rights 1975-79. Opposition Spokesman in House of Lords 1975-79. Council Member Royal Institute of International Affairs, 1977-86. Vice President European Parliament 1982-87. Member of House of Lords European Communities Select Committee 1989-94; Member, Ad Hoc Sub-Committee on 1996 Inter-Governmental Conference 1995; Chairman Sub-Committee on Law and Institutions 1992 Trustee, Caldecott Community 1990. Hon. Bencher, Lincoln's Inn 1993. A Conservative.

Lester of Herne Hill (life Baron, UK), Anthony Paul Lester

Special Adviser to Home Secretary 1974-76; Special Adviser to Standing Advisory Commission on Human Rights 1975-77; Hon. Visiting Professor, University College London 1983; Former Member, Court of Governors, London School of Economics and Political Science; President of Interights 1983-94; A recorder of the Crown Court 1987; Trustee of Runnymede Trust 1991; Trustee of Charter 88; Vice-Chairman International Law Association Committee on Human Rights; Member, American Law Institute 1985; Governor: British Institute of Human Rights; Board of Governors James Allen's Girls' School 1987-93. Author of 'Justice in the American South' 1964; Shawcross and Beaumont on Air Law 1964 (co-editor); Race and Law, 1972 (jointly); contributor of other legal publications. A liberal Democrat.

O'Cathain (Life Baroness, UK), Detta O'Cathain

Member of Council of Industrial Society 1986-92; Formerly Member of Design Council and Engineering Council; Past President of Agricultural Section of the British Association for the Advancement of Science; Fellow, Royal Society of Arts 1986; Fellow, Chartered Institute of Marketing 1987. Commander of Royal Norwegian Order 1993; Commander of the Order of the Lion of Finland 1994. A conservative.

House of Commons

Blair, Anthony Charles Lynton (Labour, Prime Minister since 1997)

Practising barrister specialising in trade union and industrial law. Opposition Front Bench Spokesman on Treasury and Economic Affairs 1984-87; Trade and Industry 1987-88; Energy 1988-89; Employment 1989-92; Home Affairs (Shadow Home Secretary) 1992. Member for Sedgefield since June 1983.

Carlisle, John Russell (Conservative)

British South Africa Group 1983-87. Governor of Sports Aid Foundation (Eastern Region). Former Vice-Pres. Federation of Conservative Students. Member Select Cttee on Agriculture 1985-88. Member of Baltic Exchange 1991. President Bedfordshire County Cricket Club.

Clarke, the Rt Hon. Kenneth (Conservative)

Lord Commissioner of the treasury 1974. Opposition Spokesman on Social Services 1979-80. Parl. Under-Sec. of State at Dept. of Transport 1980-82. Minister of Health 1982-85. PC 1983. Paymaster General and Employment Minister 1985-88. Chancellor of the Duchy of Lancaster (Minister of Trade and Industry) 1987-88. Secretary of State for Health 1988-90. Secretary of state for Education and Science 1990-92. Secretary for the Home Department 1992.

Cunningham Roseanna (SNP)

SNP Research Department 1977-79; solicitor, Dumbarton District Council 1983-86 and Glasgow District Council 1986-89. A former SNP branch and constituency office holder; a member of the party national executive and a spokeswoman on the Environment. 1996. Special interests: Constitutional, Land.

Corbyn, Jeremy (Labour)

Chairman of Community Development 1975-78, Public Works 1978-79 and Planning 1980-81 of Haringey Borough Council. Former full-time organiser for National Union of Public Employees. Also worked for Tailor and Garment workers and AUEW. NUPE sponsored MP. Member, Select Cttee on Social Security 1991-92. Special interests: Campaigning for socialism in the community and against racism.

Fraser, John Denis (Labour)

Opposition spokesman on Home Affairs 1972-74. Parl. Under-Sec. of State, Dept of Employment 1974-76. Minister of State, Dept of Prices and Consumer Protection 1976-79. Opposition Front Bench Spokesman on Trade, Prices and Consumer Protection 1979-83; on Housing 1983-84; on the Environment 1984-87; On Legal Affairs 1987. Special Interests: Housing, Inner City, Race Relations, Consumer Affairs.

Gould, Bryan Charles (Labour)

Opposition Front Bench Spokesman on Trade and Industry 1985-86. Labour Party Campaign Co-ordinator 1986-87. Dep. Shadow Chief Secretary 1986-88; Shadow Secretary of the State for Trade and Industry 1988-89; Shadow Secretary of State for the Environment 1989-92; Shadow Secretary of State for National heritage 1992. Contender for Labour Party leadership 1992. Author of: Monetarism or prosperity? Socialism and Freedom; A charter for the Disabled; A future for Socialism.

Howard, the Rt Hon. Michael (Majority)

Minister for Local Government 1987-88. Minister for Water and Planning 1988-89. Minister for Housing and Planning 1989-90. Secretary of State for Employment 1990-92. Secretary of State for the Environment 1992-93. Secretary of State for the Home Department 1993.

Kaufman, the Rt Hon. Gerald Bernard (Labour)

Opposition Front Bench Spokesman on the Environment 1979-80; Principal Spokesman 1980-83. Shadow Home Secretary 1983-87. Shadow Foreign Secretary 1987-92. Chairman Select Ctte on National Heritage 1992. Member Liaison Committee 1992. Member of Labour Party National Executive 1991-92.

Lawrence, Sir Ivan

Member Council of 'Justice'. Formerly Vice-Pres. Federation of Conservative Students Chairman Cons. Past. Home Affairs Committee. Former Member House of Commons Foreign Affairs Select Committee. Chairman Cons. Parl. Legal Committee for Release of Soviet Jewry. Vice-Chairman European Inter-Parliamentary Conference for Soviet Jewry. Formerly Member Exec. 1992. Member, Liason Committee 1992.

MacLennan, Robert Adam Ross (Liberal Democrat)

Opposition Front Bench Spokesman on Foreign and Commonwealth Affairs 1980-81. Resigned the Labour Party and joined the Social Democrats, 1981. SDP Spokesman on Agriculture, Fisheries and Food 1981-87; on Home and Legal Affairs 1983-87; Northern Ireland 1983-87; and jointly on Scotland 1982-87. Alliance Spokesman on Agriculture and Fisheries and Food, 1987. Leader of the SDP 1987-88; Lib. Dem. Spokesman on Home Affairs, Broadcasting and the Arts 1988; Member Public Accounts Committee.

Marlow, Anthony Rivers (Conservative)

Fellow of the Industry and Parliament Trust. Formerly Sec. Conservative Trade and Industry Committee. Formerly Sec. Conservative Employment Committee. Formerly Sec. Conservative. Defence Committee. Member of Select Committee on European Legislation. Vice Chairman All Party UK Palestine Group. Sec. All Party UK Czech Group.

Rowe, Andrew John Bernard (Conservative)

Principal, Scottish Office 1962-67. Lecturer Edinburgh University 1967-74. Consultant to Voluntary Service Unit 1973-74. Dir Community Affairs, Cons. Central Office 1975-79. Editor of 'Small Business', and Consultant in Government Affairs 1979-83. Member Swann Committee 1979-84. Formerly Chairman Parl. Panel on Personal Social Services. Trustee, Community Service Volunteers. Member Speaker's Commission on Active Citizenship. Member, Select Committee on: Employment 1983-1990, Health 1991-92. Formerly member, UK delegation to Council of Europe. PPS to Richard Needham, MP Minister of State, Dept of Trade and Industry 1992. Author of: 'Democracy Renewed'; 'Somewhere to Start'; and other pamphlets.

Wilkinson, John Arbuthnot Du Cane (Conservative)

Delegate to Council of Europe and WEU 1979-90. Chairman Anglo/Asian Cons. Society 1979-82 Chairman European Freedom Council 1982-90. Chairman Horn of Africa Council 1984-88. PPS to Sec. of State for Defence 1981-82. Vice-Chairman Cons. Defence Committee 1983-85 and 1990. Member of Select Committee on Defence 1987-90. Has written and lectured extensively in fields of Defence and Foreign Affairs. Publication (jointly) 'The uncertain Ally, 1982; 'British Defence: A Blueprint for Reform' 1987.