# Recombinant Citizenship

Rainer Bauböck

# Institut für Höhere Studien (IHS), Wien
# Institute for Advanced Studies, Vienna

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Institut für Höhere Studien
Stumpergasse 56, A -1060 Wien
Fax: +43-1-599 91-171

Rainer Bauböck
Phone: +43-1-599 91-176
e-mail: bauboeck@ihs.ac.at

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**Peter Biegelbauer**

# Abstract

Europe has become a laboratory for recombining elements of citizenship. The paper suggests a matrix of citizenship dimensions (membership, rights and practices) and conceptions (liberal, republican and communitarian). The second part discusses three challenges to a monistic view of citizenship as a homogenous status and exclusive link between individuals and a singular political community. First, international migration leads to overlapping multiple citizenship through the proliferation of dual nationality but also "denizenship" rights for foreign residents. Second, claims for territorial autonomy by national minorities have resulted in the devolution of unitary states, creating thereby a nested multilevel citizenship that is also emerging in a different way in the European Union itself. Third, cultural rights of citizenship have been increasingly differentiated according to group membership in response to demands by cultural minorities for protection from discrimination, for special exemptions from general obligations of citizenship, or for public resources and recognition.

# Zusammenfassung

Europa ist ein Laboratorium für die Rekombination unterschiedlicher Aspekte von *citizenship*. Der Text schlägt als analytischen Raster drei Dimensionen (Mitgliedschaft, Rechte und Praktiken) und drei Konzeptionen (liberale, republikanische und kommunitäre) von citizenship vor. Im zweiten Abschnitt werden drei Herausforderungen für eine monistische Auffassung von Staatsbürgerschaft als homogener Status und exklusive Bindung zwischen Individuum und einer einzigen politischen Gemeinschaft diskutiert. Internationale Migrationen schaffen überlappende multiple Bürgerschaften, die sich in doppelter Staatsangehörigkeit und "Wohnbürgerrechten" niedergelassener AusländerInnen manifestieren. Die Forderungen nationaler Minderheiten nach territorialer Autonomie führen zu einer Föderalisierung zentralistischer Staaten, wodurch eine ineinander verschachtelte Mehrebenen-Bürgerschaft geschaffen wird, wie sie in anderer Weise auch in der Europäischen Union entsteht. Kulturelle Bürgerrechte werden entlang von Gruppenzugehörigkeiten differenziert, indem kulturellen Minderheiten Schutz vor Diskriminierung, besondere Ausnahmen von allgemeinen Bürgerpflichten oder öffentliche Ressourcen und Anerkennung zugestanden wird.

# Contents

What does it mean to be a citizen in Europe? Imagine a Kurdish immigrant who has been naturalized in France keeping, as most do, his Turkish passport. Using his right of free movement as a EU citizen he has recently settled in Germany. He can now vote there in local and European Parliament elections. He may also participate in general elections in France and Turkey if he cares to travel there to cast his vote. He is a citizen of two nation-states, of a municipality in another state and of a supranational union, and may yet feel to be a foreigner whose strongest political affiliation is with a stateless Kurdish nation that cannot offer him citizenship.

In the wake of T.H. Marshall's famous lectures of 1949 (Marshall 1965) most accounts of citizenship since World War II have focused on the evolution of legal rights and duties. Some have emphasized the widening circles of inclusion that have turned former slaves, workers, women or minor children into citizens. Many have cautioned that the equality of legal status and individual rights is not enough to overcome the effects of social exclusion. Yet until a few years ago, the allocation of citizenship between various political communities did not come up as a theoretical question. A citizen was assumed to be a member of a nation-state and of one nation-state only[1] and each state had the sovereign right to control the gates of admission for new members. Today, no theory of citizenship can afford to ignore the bewildering complexities of multiple and ambiguous memberships illustrated in the case I have outlined above.

In Europe three interrelated developments undermine the correspondence between state borders and boundaries of citizenship. First, immigration from non-European origins: While control over territorial entry is increasingly shifted towards European levels, resident immigrants have gained access to rights that were formerly regarded as privileges of national citizens.[2] Second, European Union citizenship: Its supranational conception of rights is still tied to legal nationality and cultural identities of the member-states, excluding thereby immigrants from third countries. Third, movements for national self-determination: The break-up of the Soviet Union, of Czechoslovakia and Yugoslavia has multiplied the units of citizenship and at the same time generated massive exclusion or expulsion of populations stranded on the wrong side of a new national border, while devolution in Spain, Belgium and the UK moves previously unitary states towards an asymmetric federalism[3] and multinational citizenship.

Citizenship in today's Europe is no longer a homogeneous status and set of rights that defines a singular affiliation to a polity. Memberships overlap and rights are increasingly differentiated. But that does not mean that citizenship has lost importance in a globalizing society or that its core principles can no longer be spelled out and applied. Citizenship is rather like recombinant

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1    See Brubaker (1989:4).
2    See Hammar (1990), Layton-Henry (1990), Bauböck (1994), Soysal (1994), Jacobsen (1996)
3    The term was coined by Charles Tarlton who defined symmetric federalism as "the extent to which component states share in the conditions and thereby the concerns more or less common to the federal system as a whole" (Tarlton 1965:861).

DNA – it consists of a few easily identifiable elements that can be rearranged to generate a great variety of forms of political life. Europe has become a laboratory for cutting the different strands of citizenship and recombining them in novel, and sometimes disturbing, ways. The first part of this paper is concerned with conceptual differentiation and looks at recombinations of citizenship in political theory; the second part examines differentiated structures of citizenship that emerge from transnational migration and ethno-national conflict and deviate from a traditional model of membership in sovereign, closed and homogeneous political communities. My conclusion is that only a pluralistic understanding of citizenship can adequately reflect the growing fluidity and multiplicity of political, social and cultural ties, which relate individuals to various political communities.

# 1. Thin and thick conceptions of citizenship

Let us start with a preliminary and somewhat makeshift definition of citizenship as a status of equal and full membership in a polity and briefly explore the key elements of this definition. First, it uses the term 'polity' rather than 'state' or 'society'. From an external perspective, the state can be seen as the basic unit of the international political system, while from an internal one it is an ensemble of institutions exercising political authority in a certain territory. A polity is the population permanently subjected to this authority when seen as a political community. In contrast with the notion of civil society the concept of polity implies a discourse of political legitimation and a formal structure of membership. Political authority must at least claim to be in the common interest of those who are subjected to it. And the polity is understood as an intergenerational community whose members share in benefits and burdens which derive from living under a common political authority.[4]

However, according to the definition, not any kind of membership in any kind of polity can be properly called citizenship. Citizenship requires equal and full membership and both qualifications combined presuppose a *democratic* political community, at least as a regulatory ideal.[5] First, citizens are *equal* as members of the polity however unequal they may be in other social spheres. And, second, citizenship is *full* membership when it is linked to the notion of popular sovereignty. Political authority is not merely exercised on behalf of the citizens, but they are understood to collectively rule themselves by mandating all such authority. Full membership implies therefore *comprehensive* powers as well as an *inclusive* definition of the

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4   See Bauböck (1998) for a more extensive discussion of the difference between polity, society and cultural community.

5   Democracy serves as a regulatory ideal for citizenship in three different ways: first, in non-democratic regimes where individuals are citizens merely in the narrow sense of legal nationality but otherwise subjects exposed to arbitrary exercises of power – in such regimes individuals may nevertheless engage in citizenship practices of resistance for which democracy serves as an ideal; second, in transitions to democracy when the political institutions that sustain citizenship rights are being built; and, third, in established liberal democracies as a corrective against the monopolization of politics by a professional elite.

set of persons who are members of the polity. Let me give two counterexamples: Multiple votes for members of specific groups would make citizenship *unequal*, while a denial of the franchise for certain groups creates *partial* citizens. J.S. Mill's endorsement of multiple votes for educated élites would have created unequal political citizenship (Mill 1972:306-14).[6] Minor children, inmates of prisons or psychiatric hospitals and foreign residents are residual categories of partial citizens in contemporary western democracies.

These examples already show that the major benefit of citizenship lies in the rights that come along with membership. Rights are not an accidental side-effect, but a constitutive dimension of citizenship. The standards of equality and full membership can only be defined with regard to a comprehensive bundle of rights shared by all citizens. And these rights are not merely moral entitlements but are necessarily specified within a system of laws. As Jürgen Habermas has explained, the basic rights of liberal democratic citizenship are those that citizens must mutually grant each other if they wish to regulate their coexistence by means of positive law (Habermas 1992:151-165).

If membership and rights are two dimensions of citizenship, a third one is to regard citizenship as a practice. Sustaining citizenship requires some activity on the part of citizens. Imagining oneself as a member of a political community will have to be supported by practices of "good citizenship" ranging from narrowly political behaviour such as participating in elections to the ordinary virtues of civility in everyday life. While the institutions of liberal states do not necessarily depend on citizenship practices, the polity as an democratic community disintegrates when few citizens care to vote, when only tiny minorities engage in debates, associations or movements about issues of common interest, when laws regulating taxes or employment are routinely ignored, or when there is a general lack of trust in public encounters between anonymous individuals of different religious creeds, ethnic origins or phenotypes. Obviously, in a liberal democracy practising good citizenship is not an individual precondition for being a member and enjoying rights.[7] However, a certain level of habitual citizenship practices will be necessary in order to support the imagination of a shared political community and to empower individuals through the system of legal rights.

A comprehensive theory of citizenship has to address all three dimensions, but different conceptions emphasize and interpret them differently. One way to represent this conceptual field is to distinguish between thin conceptions, which regard citizenship as a strictly legal relation, and thick ones, which emphasize the aspect of community. Table 1 outlines how various thin and thick conceptions define citizenship along the three dimensions.

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6    It is interesting to note that the norm of equality applies only to the individual right to vote, not to the aggregate effects of representation which are often highly unequal in federal systems. For example, a Senator from California represents about 60 times as many voters as one from Wyoming. See Stepan (1999:26) for a an index of inequality of representation in the territorial chambers of twelve federal states.

7    See Lister (1997:41).

**Table 1: Conceptions and dimensions of citizenship**

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

**Membership**

At the thinnest end of the spectrum membership boils down to the notion of 'nationality' as it is used in international law. In this sense, nationality has nothing to do with being a member of a nation understood as a political and cultural community, but simply signifies a legal status that links individuals to states.[8] Formulated within a framework of legal positivism this concept does also not carry explicit normative connotations. The relation is understood to be an empty one

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8    The same term 'nationality' can refer to a thin legal or to a thick cultural conception of membership, which is a source of considerable confusion in the literature.

that can be filled with various kinds of rights or obligations but does not conceptually presuppose any of those traditionally associated with citizenship.[9] What it does presuppose are sovereign states that effectively exercise political authority not only in a territory, but also over a population who are the addressees of their laws. The basic relation is therefore one of subjection of individuals to states and of mutual recognition between states. Citizenship in this narrowest sense links individuals to states rather than to political communities and it does not distinguish between authoritarian and democratic regimes.

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

Table 1 identifies civic republicanism as an intermediate conception. Republicanism is a broader and much older tradition than nationalism and reaches back via Rousseau to Machiavelli, the ancient Roman republic and, in certain interpretations, to Aristotle's theory of the polity (Aristotle 1981).[10] It differs from nationalism in its emphasis on the political rather than cultural nature of membership. Contemporary civic republicans often contrast citizenship with national identity. The former signifies a collective identity of free members in a self-governing polity sharing a common future, whereas the latter is regarded as an unreflective and ascriptive membership in a community of shared culture and origin (Viroli 1995). For civic republicans, citizenship must be *strong* (Barber 1984) rather than *thick*. It is a bond strong enough to unite the members of a polity who are thoroughly divided by their private interests. But this cloth is woven from universalistic principles and shows no particular ethnic patterns.

**Rights and obligations**

If we take the legal status of nationality as our starting point, the thickness of conceptions increases not only as we move towards the right column in table 1 but also as we move down the rows and add the dimensions of rights and practices to our theory. Although the content of rights of citizenship may be seen as indeterminate in legal positivist approaches, it is hardly

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9    See, for example, de Groot (1989:13).
10    See Viroli (1995:117) for an attempt to draw a line between the ethnic particularism of Athenian democracy and the more universalistic thrust of Roman republicanism.

possible to deny that the very idea of the rule of law must address the citizen as a bearer of what the legal scholar Georg Jellinek called subjective public rights (1892). Hannah Arendt defended a corresponding view of citizenship as "the right to have rights" (Arendt 1967:296). She thought that being a citizen of a particular polity is a fundamental precondition even for the enjoyment of supposedly universal human rights. During the postwar period this 'paradox of human rights' has been resolved at the conceptual level, although certainly not yet in political practice, by including a right *to* citizenship in an expanding catalogue of human rights.[11]

The specific rights *of* citizenship can be usefully distinguished along the well-known triad of civil, political and social rights developed by T.H.Marshall and half a century before in quite similar terms by Jellinek. Yet if we want to link citizenship as a bundle of rights to its external aspect as a legal status of persons in international law, there is another relevant distinction which has found much less attention in the theory. Citizenship rights may be external in the sense of being enjoyed also by those who live outside their state of nationality, or internal because they depend on residing in the territory. On the one hand, citizens travelling or living permanently abroad enjoy a number of rights that retain their link with the state whose passport they carry.[12] On the other hand, it is also obvious that internal citizens enjoy a much more comprehensive set of rights than both citizens outside the territory and foreigners in the territory. Some of these internal rights have over time become tied to residence or employment rather than to the formal status of citizenship so that foreign immigrants can now also enjoy them. Tomas Hammar has introduced the term 'denizenship' to characterize the legal position of long-term foreign residents, which since 1945 has gradually approached that of citizens in a number of Western democracies (Hammar 1990).[13] A thin conception of citizenship as a bundle of legal rights can therefore reach beyond the narrow framework of 'nationality'. The status of citizenship generates rights outside the sphere of territorial sovereignty, and rights have expanded beyond the formal status within this sphere.

Thin conceptions of citizenship differ from thick ones in regarding rights as prior to obligations. The fundamental reason for the priority of rights is that every political order is coercive (Larmore 1996:137-8, 220). Individuals can only rationally consent to being subjected to an authority that may legitimately coerce them if this order not only respects their freedom and rights but is

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

12    The most important among these is the right to return to this state without being subjected to immigration restrictions. The other fundamental external right is that to diplomatic protection. However, many states go far beyond this minimum by also granting their citizens an absentee ballot or the right to pass on their citizenship to their children born abroad. External citizenship also involves rights under international law towards the state of residence. Foreign citizens are, in some aspects, even privileged compared to internal citizens. The property and liberties of the former are to a lesser extent exposed to the jurisdiction of their state of residence and diplomatic protection itself is a significant exemption from the general rule of territorial sovereignty (Goodin 1988).

13    Soysal (1994) interprets this as a recasting of (national) rights of citizens as (human) rights of persons. In my view, this development signifies neither a limit (Soysal 1994) nor a decline (Jacobson 1996) of citizenship, but rather a widening range of inclusion that still refers to particular ties of residence or origin.

necessary to maintain them in the first place. The basic obligation of citizenship to obey the law is therefore conditional upon the rights provided by the same legal order. As T.H. Marshall pointed out, other moral duties "to live the life of a good citizen, giving such services as one can to promote the welfare of the community" are rather vague "because the community is so large that the obligation appears remote and unreal" (Marshall 1965:129). This asymmetry characterizes not only the liberal legitimation of political authority but also the bundle of legal rights and obligations of citizenship in liberal democracies. There is "a changing balance between rights and duties. Rights have been multiplied, and they are precise" (ibid.:129). But the core legal obligations are few — paying taxes, compulsory education and military service — and they are not *equal* obligations for *all* citizens in the same way as basic rights are. In order to become universal, rights such as the franchise had first to be disconnected from the unequal obligations of taxpaying or conscription.

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

Civic republicanism appears to occupy again a middle ground with regard to the proper balance between rights and obligations. At the heart of the republican vision are rights that are *simultaneously* obligations for their bearers.[14] And while enjoying civil rights make individuals members of a civil society, only those rights that go along with obligations make them members of a self-governing polity. Core rights that fall into this category are those of public education, political participation, resistance against oppression and military service in the defence of the republic. These republican rights are at the same time moral duties and where citizens fail to perform them states can legitimately turn them into legally enforceable obligations. All states do so with regard to education requirements, but they may also extend the scope of rights as obligations by drafting soldiers or by obligatory voting.

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14 This contrasts with the liberal emphasis on rights like freedom of association and the protection of property, which impose corresponding obligations of non-interference on other citizens and on the state.

**Practices and virtues**

The communitarian and republican emphasis on obligations promotes the active citizen and leads quite naturally to the idea of citizenship as a practice rather than a mere legal status of bearers of rights. This brings us finally to the last row in table 1. Of course, all rights of citizenship create ranges of action protected by the law. However, while thin liberal citizenship protects autonomous practices of citizens who pursue their own private goals, it does not necessarily generate practices of *citizenship*. The liberal regime of rights merely allows for active citizenship but cannot directly bring it about. If civil and political rights are formulated as negative liberties, this means that refraining from a protected action is just as legitimate as performing it. Citizens are free to form voluntary associations or to vote, but do not have to engage in these practices. Social rights are different because they involve positive benefits rather than non-interference.[15] However, here the emphasis is on the agency of providing institutions rather than of citizens, whose role is generally that of recipients rather than of agents. In a purely rights-based conception, citizenship may then remain a merely passive status. From some perspectives this is not to be deplored. In a Schumpeterian theory of democracy, it is safer to leave the business of governing to competent élites and to reduce the involvement of citizens to a periodic opportunity to deselect bad leaders (Schumpeter 1950). Likewise, for libertarians extending citizenship beyond negative liberties entails a dual danger of empowering the state to encroach on individual freedom (e.g. by levying taxes for redistributive social rights) and of empowering tyrannical majorities (e.g. through plebiscitarian forms of political participation).

For thicker conceptions, the egotistic individual who uses his or her liberties only in order to pursue private interests and the passive citizen who does not care to form and defend a political opinion or to cast a vote are not full members of the polity. In their view, the polity is not only sustained by a mode of legitimation which emphasizes mutual obligations, but also by practices in which citizens must engage so that the imagined political community becomes a real experience in their daily lives. In this regard the idea of citizenship as a practice goes beyond the moral discourse about political obligations.[16] A political community that lives up to the standards of communitarian or republican expectations is one where citizens do not have to be reminded of their obligations but identify their private interest with the common good and habitually engage in public practices of good citizenship. Civic virtues do not present themselves as legal obligations, i.e. commandments issued by an external authority. Their habitual character distinguishes them also from the imperative nature of moral duties that are

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15   The distinction between negative and positive rights is often misleading or overdrawn (Sen 1984). Protecting civil rights requires not merely non-interference by the state, but also the protection against interference by others and therefore a police force; the franchise cannot be exercised without the public provision of voter registers, ballots and voting booths.

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

personally experienced as the call of an internal conscience defending a higher moral standpoint detached from individual interests.

When nationalists write about the virtues of citizens they emphasize the readiness to kill or die in battle for the survival or the expansion of the community. However, the virtues of citizenship are only at rare occasions heroic ones which involve sacrificing one's property, social status or even one's life for the sake of the polity. These are called for when the community is threatened by enemies from outside or by authoritarian power from inside. In the former case conscription is anyway enforced as a legal obligations. The major and constant danger in liberal democracy is slackness in citizenship practices. Education is not enough to acquire the civic virtues that are required against this danger and their rhetorical invocation is not sufficient to sustain them. What is needed is constant practices that make good citizenship a widespread habit (van Gunsteren 1998). In a certain sense, these citizenship practices can be learned only 'on the job.' This leaves open the question of which kinds of public policies and institutional reforms could foster civic virtues without unduly constraining the rights and liberties of citizenship.[17]

There are three different ways of looking at the controversies between thin libertarian and thick communitarian conceptions of citizenship. One is to regard them as irreconcilable opposites. We would then have to choose between either the left row or the right row of table 1. The second option is to see them as endpoints of a continuum. Positions somewhere between the extremes, such as liberal republican ones, are then not necessarily messy compromises but could be coherent and intellectually appealing. I would, however, opt for a third and deliberately eclectic strategy that allows for various recombinations of the dimensions and conceptions. We choose one position as a starting point rather than as a complete conception and expand it gradually as we find it necessary to include the concerns addressed by apparently rival theories. In this way we could chart a path through the conceptual maze of citizenship. Unless we already have a clear target before our eyes we will need a sort of compass for this venture. The norms of equal and full membership, which I have suggested initially as defining principles of citizenship, could serve as such a guideline.

Starting from thick conceptions of citizenship carries not only the danger of producing a sterile contrast between idealized assumptions about political community, on the one hand, and 'degenerate' citizenship in actually existing liberal democracies, on the other hand. It will also blind us to some of the most important challenges for citizenship in contemporary societies, which have to do with the allocation of membership and rights. Thick conceptions generally take the dimensions of membership and rights for granted and see the central task in enriching them with obligations and practices. Their view of the polity is an internal one that presupposes clearly defined external boundaries, full inclusion and equal rights as given features of

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17    "While citizenship theorists bemoan the excessive focus given to rights, they seem reluctant to propose any policies that could be seen as restricting those rights" (Kymlicka and Norman 1994:368-9).

democratic nation-states. However, as I have pointed out in the introduction, none of these achievements is really so obvious and unchallenged. Starting from a thin conception of membership as a legal status will allow us to draw a more complex and more realistic picture of contemporary citizenship conflicts than can usually be found in republican and communitarian accounts.

# 2. Differentiated memberships

I will argue in this section, first, that principles guiding the allocation of citizens to states in the international state system pursue contradictory aims and produce unintended results. Second, I want to show that, far from being already sufficiently respected in existing policies of allocating citizenship, liberal democratic norms would demand quite radical reforms. Third, I suggest that citizenship theories have also tended to ignore the contestation of territorial boundaries between and within states by nationalist movements. My conclusion is that the outcome of applying these norms to the present state system is a structure of vertical and horizontal multiplicity of membership which requires a corresponding differentiation of citizenship rights.

### The allocation of nationality

Legal theory generally considers states as a unity of three elements: territory, population and political authority. Political authority is then, on the one hand, grounded in *territorial* sovereignty, which turns every person present in this territory into an addressee of the laws, while the idea of *popular* sovereignty, on the other hand, refers to a set of persons who are defined as members of the polity rather than as residents in the territory. Before the introduction of universal adult franchise, the difference between both sets of populations was marked by gender, class and racist barriers. Although such markers of identity still serve in many ways to exclude groups from equal access and participation, legal equality has been largely achieved along these dimensions. This leaves the status of resident foreign citizens as the major remaining instance of formal exclusion. Their subjection to territorial sovereignty without representation in the making of laws is a deviation from the basic norms of democratic legitimation of political authority. At the same time, their continuing external citizenship in the polity of origin is a limitation on the territorial sovereignty of their state of residence. Migration produces a double incongruity between territorial and popular sovereignty. Internally, the polity does not include every permanent resident person and externally it extends into the territory of other states. Congruity would imply that the order of membership in polities matches the allocation of territories to states. In the contemporary world each point on the land mass of the globe belongs at any given point in time to one state and to one state only. A matching order of membership would have the same boundaries as state territories and be similarly complete and discrete so that there is neither statelessness nor multiple nationality.

The simplest way to resolve this contradiction would be a continuous reallocation of citizenship which automatically naturalizes every resident and denaturalizes every emigrant after a certain time.[18] The deviations generated by migration would then be only temporary and could thus be reconciled with maintaining a general norm of congruity. However, this solution clashes again with a second set of principles pertaining to liberal democratic rights and to the scope of state sovereignty. It violates, first, the idea that legitimate political authority can only be exercised over persons whose membership is voluntary. Because of the coercive nature and the pervasive impact of political decisions for the life of individuals, the criteria for voluntary membership in a polity differ from those of voluntary associations in civil society.[19] Membership is normally acquired without consent at birth and liberal states cannot exclude their members like a club. The two remaining tests for voluntary affiliation to a democratic polity are that no adult foreigner can be naturalized without her consent and that emigrants must be allowed to voluntarily renounce their citizenship of origin. Automatic naturalization or denaturalization would violate these requirements of consent.[20]

This solution would also contradict a principle enshrined in international law according to which it is for each state to determine under its own law who are its nationals.[21] Such a right of 'self-determination' in the allocation of citizenship has been a traditional core aspect of sovereignty jealously guarded by states against attempts to impose effective constraints in international law or to move towards international harmonization of the rules for loss and acquisition of citizenship.[22] The paradoxes of this situation are highlighted in the European context, where access to the common status of EU citizenship is regulated by the 15 different nationality laws of the member states. Although there is some European *convergence* in this area that results from shared democratic standards and similar conditions concerning permanent immigration (Weil 1999),[23] so far the institutions of the EU have not dared to *harmonize* the nationality laws of their member states.

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18  Alternatively, one might suggest a universal rule of ius soli for the transmission of citizenship between generations. However, this solution fails for two reasons. First, the problems of incongruity cannot be regarded as merely temporary if they put a whole generation of migrants in an irregular position and, second, those who obtain a citizenship by ius soli will end up in the same irregular status once they leave their country of birth.

19  See Bauböck (1994:160-177) for a discussion of the difference between voluntary membership in a polity and other types of association.

20  These constraints are of rather recent origin. Nationality laws in 19th century Europe often gave states wide powers to denaturalize their citizens or to refuse voluntary expatriation. Some states also naturalized foreigners without their consent. The author of a recent book argues that – provided that multiple nationality is tolerated – automatic naturalization could be reintroduced as a way of guaranteeing the inclusion of foreign residents (Rubio-Marín 2000).

21  The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 1930, Art. 1.

22  In its Nottebohm decision of 1955 the International Court of Justice constrained an arbitrary handing out of citizenship by requiring some effective link between citizens and states (see Bar Yakoov 1961).

23  Although all continental European laws are primarily based on ius sanguinis, most immigration countries provide now for facilitated, optional or automatic naturalization for those born in their territory or with parents themselves born in the territory. Many laws have made it easier for naturalization candidates to retain their previous nationality. Finally, waiting periods and other requirements for discretionary naturalization tend to be

Liberal democracies differ in their rules for naturalization and, more importantly, also in their rules for the transmission of citizenship to new generations. Efforts to adopt binding rules for avoiding the irregularities of statelessness and multiple nationality have so far been rather unsuccessful.[24] The problem is deeper than just a lack of coordination. Most states whose governments still regard dual citizenship as undesirable systematically contribute to its proliferation. Those which pass on their citizenship by *ius sanguinis* thereby produce dual citizenship for the offspring of mixed marriages as well as for all children of their emigrants in *ius soli* states. And countries which adopt *ius soli* for births in their territory, such as the US or Canada, at the same time use a principle of descent for attributing their citizenship to children born to their emigrants living elsewhere.

## The inclusion of migrants

Our initial definition of citizenship as full and equal membership in a liberal democratic polity suggests alternative principles for the allocation of nationality. The first step in such an argument is to interpret full membership as referring not only to a comprehensive range of rights, but also to a comprehensive inclusion of persons. The question is then how to determine the range of persons to be included. As our discussion has just shown, republican and nationalist ambitions to create non-overlapping sets of membership are self-defeating. If all polities have the sovereign power to determine their own boundaries they cannot be prevented from naturalizing another state's citizens and cannot be forced to release or denaturalize their emigrants when these acquire another nationality. And if membership is determined by descent or cultural belonging, migration will inevitably generate mixed cases. The alternative is to apply the principles for the allocation of *rights* also to the admission to, and exit from, the legal *status*. A right *to* citizenship should then be inclusive and optional in the same way as the rights *of* citizenship. Such an individual right to citizenship would have several components: A first element is strong protection against statelessness resulting from denaturalization, from cases where neither *ius soli* nor *ius sanguinis* apply at birth[25] and from exclusionary initial definitions of citizenship in newly formed states.[26] A second element is an individual right to the citizenship of the country where one has been born or has been resident for several years.[27] A third feature would allow individuals to retain their external citizenship after

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reduced. There are, however, still significant exceptions to each of these trends. The recent reform of German nationality has joined the first and third trends, while sounding a retreat on the second one. Among EU members, Austria, Luxemburg and Greece have remained exceptionally restrictive in their nationality laws.

24    The 1963 Council of Europe Convention on the Reduction of Cases of Multiple Nationality has been recently replaced by a 1997 European Convention on Nationality that is much more permissive in this regard. This new convention also addresses the problem of statelessness, which has reemerged on a massive scale as a result of the break-up of the Soviet Union and Yugoslavia.

25    E.g. children found in the territory after birth whose parents' citizenship cannot be determined.

26    After gaining independence Estonia and Latvia adopted nationality laws that imposed long waiting periods and harsh admission requirements on their Russian minorities. See Brubaker (1992).

27    For a defence of this right see Carens (1989).

emigration but also to renounce it if they so wish upon acquiring the new citizenship of their state of residence.[28]

These interpretations of full inclusion do not balance the concerns of democratic legitimacy and state sovereignty in a symmetrical way but clearly side with the former against the latter. Including the resident population in the polity is more important than the dubious state privilege of controlling admission to its membership.[29] And the democratic principle with regard to the determination of membership is not to let a majority decide who ought to be accepted as a citizen, but to admit all those who are already subjected to political decisions by virtue of their permanent residence in the territory. Furthermore, the rights of emigrants to maintain their ties to societies of origin are more important than concerns about diminished territorial sovereignty or about conflicting loyalties among dual citizens. Yet the minimal criteria of voluntary membership have to be respected, too, and this implies an individual option not to adopt the citizenship of one's state of residence. Migrants may have many different reasons not to naturalize. Some fear the loss of external citizenship rights in their countries of origin or react to ethnic discrimination by turning their nationality into a symbol of collective identity and pride. Privileged migrants (such as EU citizens in other member states of the Union) mostly feel that naturalization would only marginally improve their position. As a result, citizenship as a legal status cannot be made fully inclusive in liberal democracies exposed to transnational migration. This is, however, no serious limitation because the range of inclusion ought to refer primarily to citizenship rights rather than to nationality as a status. The answer to the deficit is to extend rights of citizenship to permanent residents foreigners. Suppose these 'denizens' enjoy all basic liberties and social rights of citizens as well as the local vote and other avenues of political representation. Under such conditions the national franchise and access to high public offices could remain tied to the formal status without a serious problem for democratic legitimacy. Foreign residents could choose to obtain these core rights of political citizenship by naturalizing. Moreover, immigrants would then no longer naturalize in order to escape legal discrimination to which they are exposed as aliens. Removing this instrumental incentive may lower application rates but will also create conditions under which naturalization can be motivated by a wish to fully belong to the polity and by a commitment to participate in its political affairs, i.e. the sort of reasons communitarian and republican conceptions of thick citizenship are keen to promote.[30]

While this suggests how a conception that starts from legal membership and liberal rights can take into account concerns about citizenship obligations and practices, it is obvious that these should not serve as a pretext for exclusion. In strong republican versions of citizenship, the

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28   These principles leave considerable space for variations in implementation. They do not require, for example, automatic ius soli for the first generation of immigrant origin born in the territory.

29   This does not imply that states are equally constrained in controlling admission to their territories. See Bauböck (1994: chapter 13), Bader (1997).

30   See Bauböck (1994:102-115).

very act of emigrating (unless it is motivated by political oppression) has been regarded as an illoyalty by which citizens put themselves outside the political community. Nationalist conceptions have insisted on an indissoluble bond of allegiance, which can neither be voluntarily renounced after emigration nor voluntarily acquired after immigration. In contrast with both these approaches, a liberal one has to make the rules of citizenship compatible with migratory practices. In this view, migration is not an obstacle, but a test case for the voluntary character of membership in a liberal polity. It puts individuals in a position where they confront a positive choice of affiliation that most native born citizens never have to face. Providing the adequate options for this essential choice while securing a maximally inclusive polity are the two goals which together require a transnational differentiation of citizenship.

Prima facie, the outcome of such full inclusion of migrants seems to violate the other core norm of equality. Instead of one single status that is the same for all members we get a variety of relations of individuals to the polity: External and internal citizens, transient migrants and denizens,[31] citizens with one and with more than one nationality would differ in a number of ways in terms of their rights and their membership status. It could seem that this differentiation reintroduces a structure of inequality which had been overcome when class and gender distinctions between passive and active citizenship were abolished. Yet this worry confuses equality with homogeneity.[32] As Ronald Dworkin (1977), Charles Larmore (1996) and other theorists have pointed out, the basic norm for liberal democracy is equal respect, not equal treatment. Identity of legal status is one instance of equal treatment and can be overridden by concerns of equal respect for individuals who are differently positioned. Under conditions of transnational mobility, equal respect for natives and migrants means recognizing the specific bonds of the latter to societies of origin as well as destination. And this can only be done by differentiating both formal membership and rights.

Since World War II liberal democracies have to some extent followed this path. However, apart from rare exceptions they have not explicitly embraced the underlying normative principles. Contrary to the by now irreversible *formal* inclusion of groups previously excluded on the basis of class, gender, religion or race, the inclusion of migrants remains precarious. Western democracies have clung to a conception of sovereignty which allows for tightening the admission to citizenship as well as for depriving resident foreigners of rights already granted to

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31   Not all kinds of human mobility generate claims to an extensive range of citizenship rights in the country of present abode. While tourists and traveling professionals or business people do need access to basic civil rights, they will remain legitimately excluded from the political franchise and many social rights. It is their prolonged residence, which turns them into members of society and exposes them to the long-term effects of political decisions, that gives immigrants a claim to more extensive citizenship.

32   This false dichotomy has been criticized in feminist theory as well as in theories of multiculturalism. For recent statements see Lister (1997: 91-100) or Parekh (1998).

them. In the 1990s we have witnessed a wave of such exclusionary policies even in traditional societies of immigration, such as the US, Australia or France.[33]

## The allocation of territory

A second major difficulty for mainstream theories of citizenship, which take the membership dimension for granted, emerges from ethnic and national diversity within democratic polities. The most radical challenge is raised by nationalist movements for secession or unification like those in Québec or in Northern Ireland. Liberal theorists have advocated two contrary principles of how to deal with such claims for revising the territorial borders of existing states. One school defends the view that secession is only justified if a state explicitly discriminates against an ethnic group and thus seriously fails to treat all its citizens equally,[34] while the other camp suggests that democratic legitimacy requires not only an individual right to emigrate, but also the right of collective exit by secession for any regional majority.[35] These two opposed liberal theories of legitimate secession derived from injustice or from choice confront a nationalist approach, which attributes a right to form an independent states to entities with a claim to nationhood and regards secession as an ultimate but legitimate way of transforming multinational states into nation-states.[36]

This is a complex debate which I cannot even attempt to summarize here.[37] The parallel with the challenge of migration is that there are situations in which groups of individuals who live within the territory of a state conceive of themselves as members of a distinct political community different from the polity of their state of residence, and often are also regarded by national majorities as less than full members. The difference is that migration involves the question to which extent individuals can choose and combine different forms of membership and bundles of citizenship rights offered by existing states, while secession raises the question whether groups can choose the shape of the state to which they want to belong. I believe that a choice-based approach to secession is not acceptable because it would fatally undermine the stability of political association which is a precondition for the protective as well as the liberating effects of democratic citizenship.[38] The nationalist interpretation of self-determination has much the same effect by creating an incentive for breaking up multinational

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33    The 1996 Welfare Reform Act in the US deprived resident citizens of benefits in most federal cash assistance programmes; in 1996 the Australian government increased waiting periods for welfare benefits to two years for new immigrants; in 1993 France abolished the automatic acquisition of nationality at majority by persons born in France of immigrant parents. The US reform has been partially reversed and the French reform has been fully reversed since.

34    Buchanan (1991), Habermas (1996:163-171), Chwaszcza (1997).

35    Beran (1984) Gauthier (1994), Wellman (1995), Pogge (1997).

36    Raz and Margalit (1990), Miller (1995, chapter 4). For more recent contributions to the secession debate see Lehning (1998) and Moore (1998).

37    For a more extensive discussion see Bauböck (1999).

38    This caveat substantiates my earlier objections against a contractual conception of the polity that regards it as a purely voluntary association.

states. Given the large and potentially ever-increasing number of would-be nations a principle of self-determination that is no longer constrained by present concerns for the territorial integrity of existing states is a recipe for the proliferation of violent conflict. Moreover, the argument first advanced by John Stuart Mill and recently restated by David Miller that "free institutions are next to impossible in a country made up of different nationalities" (Mill 1972:392, Miller 1995:98) has lost much of its plausibility in view of powerful tendencies towards growing ethnic, religious and national diversity even within relatively homogeneous liberal democracies.

However, the position that existing borders should never be challenged as long as all citizens enjoy full and equal individual membership is also hard to accept. It rests on a republican dogma of unique and homogeneous membership that does not allow for federal arrangements in which regional units with a distinct cultural character are perceived as autonomous political communities within the larger polity.[39] Actual political conflicts about secession nearly always emerge from such a federation between previously or potentially autonomous communities. And the grievances upon which secessionists build their case are not necessarily about individual discrimination, but often about a violation of federal arrangements that grant minorities self-government in their territories and special representation in the institutions of the larger state. This explains why secessionist conflicts have not only emerged in oppressive regimes but also in liberal democracies. The proper answer to these challenges is not to transform all such multinational federations into homogeneous nation-states. This could only be achieved by oppressive means. The only alternative for liberal democracies is to negotiate fair terms of federation that allow minorities partial self-government but at the same time involve them in the collective decisions of the larger polity and thereby commit them also towards a common future of that state.[40] Such a federalist approach allows therefore, once more, to develop the dimensions of obligations and practices of citizenship without defining the larger polity as their exclusive focus. Minority members may well develop dual loyalties which need not contradict each other as long as the terms of federation are fair.[41]

This response implicitly relies on the premise that a collective desire for self-government which has been asserted over several generations should be taken as a sufficient indicator for the existence of a political community, but not as a sufficient reason to claim independent statehood. While a morally plausible challenge to existing borders has to provide evidence of severe collective grievances, the liberal paradigm of choice ought to prevail in recognizing the

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39    In the US-American tradition, republicanism embraces regional federalism because it allows for smaller-scale self-government and as part of the system of checks and balances. But it vehemently opposes the idea of multinational federation, which articulates the distinct national identities of various parts of the federation. In Europe, Germany and Austria are regional federal states, whereas Belgium, Switzerland and Spain approach a multinational model.
40    For a more extensive statement of this argument see Bauböck (2000).
41    The Italian-Austrian settlement of the ethnic conflict in South Tyrol, the transformation of postfrancist Spain into an estado de las autonomías and the recent devolution in Scotland and Wales can be mentioned as by and large successful European examples.

self-definition of groups as political communities. For national minorities, just as for migrants, full inclusion and equal membership cannot be achieved short of taking into account their special ties to different political communities. In the case of minorities, a basic reason for this is that the public culture of every liberal democracy is deeply immersed in particular traditions. This is most obviously true for linguistic identities. Unless minorities enjoy special representation and partial autonomy they will be disadvantaged in a public sphere dominated by cultural majorities (Kymlicka 1989, chapter 9). For a theory of citizenship, the consequence is that the misguided ideal of homogeneity ought to be abandoned in favour of acknowledging two kinds of multiplicity of membership: horizontal multiplicity that emerges from migration, and vertical multiplicity that results from recognizing the inclusion of distinct political communities in the wider polity.

## Conclusions

This line of thought can be continued in two different directions: one by extending the idea of federation from the subnational level to supranational and even global levels, and the other one by supplementing the theory of national minority rights with those of ethnic, cultural and religious groups who cannot reasonable claim territorial autonomy. The foremost example for how supranational federation can lead to a new kind of citizenship is, of course, the European Union. In this case a federation driven by a desire for lasting peace and common interests in economic integration has developed into a project of becoming a supranational polity without aspiring for the full sovereignty of a traditional federal state. Union citizenship was formally introduced in the Maastricht Treaty in order to symbolically claim democratic legitimacy for this project. Yet, as I have argued above, it is still a highly ambiguous construction both in terms of the allocation of membership and because of the meager bundle of rights associated with being a citizen of the Union.[42]

The other extension of the theory would take up the debate about multiculturalism.[43] This controversy illustrates how a former focus on the diversity of interests in the economy and civil society has been gradually replaced by a new emphasis on the diversity of collective identities, with a growing fear that these undermine the cohesive force of common citizenship in the polity. One way to link this debate to citizenship theory is to ask whether cultural rights should be added as a separate dimension to the Marshallian triad of civil, political and economic ones.

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42   On the latter point see Shaw (1997).

43   The idea of differentiated citizenship was first introduced by Iris Young in a defence of special representation for culturally or economically oppressed groups (Young 1989). Kymlicka and Norman (1994) have applied it to the accommodation of cultural and national identities. More recently Lister (1997) has argued for 'differentiated universalism' as a general approach to citizenship.

Another key theme is whether and how group-differentiated and collective rights are compatible with a framework of equal individual citizenship.[44]

The following diagram illustrates the three structures of differentiated membership that result from multinational federalism, transnational migration and multicultural citizenship. Federalism creates a vertically nested multiple membership so that each citizen is a member of both a self-governing subunit and the wider federation. Transnational migration creates horizontally overlapping multiple membership, most visibly in the case of formal dual citizenship, but also by extending citizenship rights to permanent resident foreigners and to emigrants outside the territory. Multicultural citizenship, finally, introduces group differentiated rights into a shared framework of equal citizenship by recognizing particular collective identities related to gender, sexual orientation, religion, racial discrimination or ethnic background.

**Diagram 1: Three structures of differentiated citizenship**



| federal multiple citizenship vertically nested | transnational multiple citizenship horizontally overlapping | multicultural citizenship group differentiated |
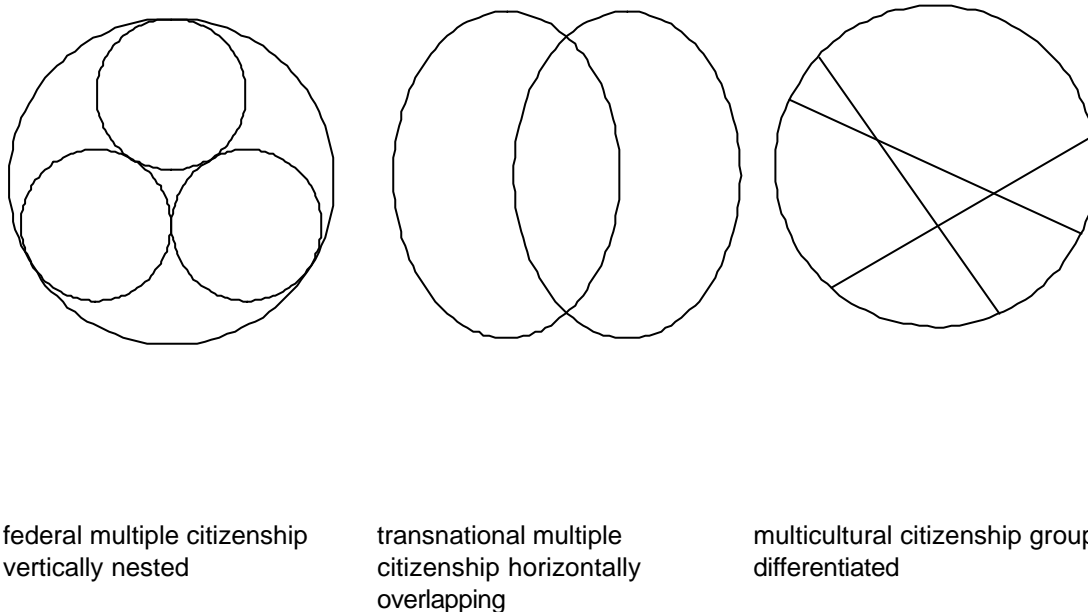
Both supranational federation and cultural diversity are difficult questions for citizenship theory, which I cannot try to answer in this brief sketch. Yet even raising them as problems illustrates the inadequacy of approaches that rely on an idealized image of homogeneous polities. In contemporary liberal democracies, diversity is no longer confined to the realm of civil society, but infects the polity itself. Citizenship provides a link between social integration and political

44    See the excellent collection edited by Kymlicka and Shapiro (1997).

legitimacy that necessarily reflects this diversity in its rules for determining membership and in its specification of rights and obligations. I have tried to outline a perspective that is sensitive to this political spill-over effect of social change. If I ought to suggest a label for it I would call it 'liberal pluralism'. It differs not only from republican, communitarian and nationalist conceptions, which build upon a thick conception of citizenship that is no longer adequate for complex modern societies, but also from traditional liberal conceptions, which have paid little attention to the contested boundaries of political community in Western democracies. Yet liberal pluralistic citizenship is not a completely novel and alternative perspective. It uses the established dimensions and conceptions of citizenship, rearranging and recombining them in response to persistent or new forms of exclusion.

Citizenship has always an exclusionary side.[45] It needs territorial borders as well as boundaries of membership. But large-scale migration and multiple collective identities transform some external boundaries into internal ones. European societies are increasingly exposed to both kinds of changes and their conception of citizenship ought to respond to this fact.

45    See Bader (1997).

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