

Thick, Thin and Thinner Patriotisms: Is This All There Is?

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Abstract—The ‘reinvention’ of nationhood in theory and the reform of British naturalization rules in praxis have been unable to address satisfactorily the issue of unjust exclusion and to make naturalization law and citizenship more compatible with democratic ideals. This has much to do with the fact that the discourse of new patriotism and the reconfiguration of national citizenship have inbuilt limits. In examining the ‘new’ discourse of patriotism in its various shades, I argue that it is inconsistent and unpersuasive. Neither the rehabilitation of civic nationalism under ‘republican patriotism’, nor ‘constitutional patriotism’, nor ‘rooted patriotism’ succeed in transforming the nationality model of citizenship in order to render it more compatible with contemporary developments and with cultural pluralism. Similarly, the three models of citizenship developed by the literature, namely, postnational, transnational and multicultural citizenship remain rooted within the civic nationalist trajectory. Instead of arguing for the liberalization of naturalization requirements and the ensuing pluralization of citizenship, I put forward an argument as to how the nationality model of citizenship might be transcended by developing a model of civic registration. By contrasting this model with the Labour Government’s reforms in the fields of naturalization and citizenship, I argue that the *Nationality, Immigration and Asylum Act 2002* places too much emphasis on social cohesion, thereby overlooking that a sense of belonging to community develops with inclusion in society and politics rather than as a result of citizenship ceremonies and language proficiency tests.

In 1988 Balibar noted that the struggle for citizenship ‘must begin again on new ground and with new objectives’.¹ Echoing Balibar’s call, scholars not only commenced a search for new forms of citizenship beyond the nation state, but also sought to rethink and adapt the ‘old’ nationality model of citizenship. A positive result of this exercise has been the disclosure of the fuzzy boundaries between ethnic and civic understandings of nationhood. Ethnic and civic understandings of citizenship are thus no longer set apart; instead, they are situated on a continuum, whereby it is possible to oscillate between the ‘ethnic’ and ‘civic’ poles and to stop at intermediate positions. Over the last few years, one notices in the academic literature a great deal of shifting back and forth in the civic pole. This is

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¹ E. Balibar, ‘Propositions on Citizenship’ (1998) 98 *Ethics* 723–30, 729.

manifested by attempts to develop thicker, thick, thin and thinner versions of civic nationalism, depending on the degree of emphasis accorded to ethnicity, culture, political loyalty and commitment to liberal democratic values.²

Despite its appeal, the 'swinging pendulum' metaphor does have limitations. First, it conceals the fusion between ethnic, cultural and civic elements in the crafting of national identities in modern states. Second, it overlooks the fact that civic formations can easily be quasi ethnic under certain circumstances. Third, and more importantly, it discourages scholars from going beyond the (civic) national frame of reference and from contemplating alternative institutional designs.

This is by no means surprising. It is difficult to break away from traditional assumptions about political membership and community and to forgo the cosy feelings of belonging together in a political community having its own will and the power to shape its own destiny, however irrational, unreal or undesirable these might be. Indeed, any attempt to break away from nationalist narrative is often criticized on the grounds that it would guarantee no stability, undermine the sense of a common identity and be accompanied by low levels of trust.³ For this reason, scholars who view patriotism and loyalty to institutions embodying principles that transcend cultural particularity as the perfect substitute for nationalism find it difficult to convince critics. On this account, nationalism is recuperated in terms of a thin civic nationalism and national obligations become intelligible in terms of political obligations. But is this all there is? Arguably, if we believe that politics is not merely about the maintenance of the boundaries of collectivities and of settled understandings of membership, but also about questioning settled understandings and overcoming these boundaries, particularly if these inflict injuries and reduce the life chances of human beings, then we must explore alternative political arrangements that facilitate the inclusion of, and the venturing forth towards, the other. Such an exploration is the main aim of this article.

In what follows, I critically examine the 'new' discourse of patriotism in its various shades, and argue that it is inconsistent and unpersuasive. Neither the rehabilitation of civic nationalism under 'republican patriotism', nor 'constitutional patriotism', nor 'rooted patriotism' succeed in transforming the national-ity model of citizenship in order to render it more compatible with contemporary

² This is also reflected in policy debates and law in the UK. Developing 'a sense of shared civic identity or common values' that could unite the diverse communities in Britain underpinned the Home Secretary's vision of 'integration with diversity'; White Paper, 'Secure Borders, Safe Haven'; Home Office, 2002, Cm 5387, HMSO. The Nationality, Immigration and Asylum Bill (119-EN 53/1, 12 April 2002), which culminated in the Act 2002, introduced a thicker, communitarian understanding of national identity in law.

³ As the Home Secretary, D. Blunkett, stated in the White Paper 'Secure Borders, Safe Haven', 'having a clear, workable and robust nationality and asylum system is the prerequisite to building the security and trust that is needed, Home Office, *ibid*, Foreword. To this end, the Government added 'sufficient knowledge of English' and 'sufficient knowledge about life in the UK' to the existing requirements of naturalization through marriage. To the existing requirements for general naturalization, the 2002 Act has added the condition of 'sufficient knowledge about life in the UK' and regulations designed to determine whether applicants do meet the linguistic requirement, such as the production of language certificates and attendance of language classes. In addition, the 2002 Act provided for the taking of a modernized citizenship oath and a new citizenship pledge at citizenship ceremonies.

developments and with cultural pluralism (Section 2). I then discuss three models of citizenship developed by the literature: postnational, transnational and multicultural citizenship (section 3). While the models differ in their specificities, they nonetheless share a common aim; namely, to reconstruct the nation by pluralizing it, making it more flexible, and to reconfigure national citizenship. Notwithstanding their important insights, however, all three accounts overlook the possibility that the reconfiguration of national citizenship may have built-in limits. I use the institution of naturalization in order to make my point (section 4). Instead of arguing for the liberalization of naturalization requirements and the ensuing pluralization of citizenship, I offer some tentative suggestions as to how it might be possible to go beyond the nationality model of citizenship by developing an alternative to naturalization. Possible objections to my argument are considered in Section 5.

1. *Shades of Togetherness: Thick, Thin and Thinner Patriotisms*

Patriotism has a highly variegated nature. Two variants of it are prominent in the literature; namely, the 'old' discourse of 'patriotism as nationalism' and the 'new' discourse of 'patriotism as anti-nationalism'. Whereas old patriotism shows the affinity of patriotism with nationalism, new patriotism seeks to disentangle patriotism from nationalism and to articulate a credible alternative to it. This is done by stressing the importance of political loyalty to a democratic polity and citizens' commitment to the common principles underpinning liberal democratic cultures. In brief, whereas old patriotism 'politicizes the ethnic', new patriotism seeks to 'de-ethnicize the political'. I will not examine the merits and demerits of old patriotism here. Others have done this successfully. Instead, I will focus on the second variant of patriotism.

This variant too comes in three shades; namely, what I call rooted patriotism, constitutional patriotism and republican patriotism. The former finds expression in Viroli's 'love of patria'. Republican patriotism entails allegiance to a community of shared political territory, of historically situated institutions and values grown out of historical processes. Constitutional patriotism is associated with Habermas' influential account, which praises individuals' identifications with a political culture embodying universal political principles. Finally, Mason's republican patriotism has been defined as love of central political institutions and practices.⁴ My main argument in this section is that all three shades of new patriotism put weight on historical institutions and particularistic cultures and thus represent shades of civic nationalism.

Despite the connotations of transcendence entailed by the prefix 'post' in notions such as post-conventional identity and post-national citizenship, Habermas'

⁴ Mason differentiates his position from Viroli and Habermas' accounts; A. Mason, 'Political Community, Liberal Nationalism, and the Ethics of Assimilation' (1999) 109 *Ethics* 261–86, 280–1.

constitutional patriotism does not represent an attack on the nation-state. Nor does it imply the transcendence of the national frame of reference. In its original formulation, constitutional patriotism grounded Germany's collective identity in universal normative principles and procedures that realize the 'unlimited communication community',⁵ thereby eschewing ethnocentric commonalities.⁶ In his later work, Habermas 'thickened' somewhat this conception, since constitutional patriotism was defined as attachment to 'the political order and the principles of the Basic Law', that is, to universal principles as they have been mediated by the institutions and the culture of a particular, ethical community.⁷ This shift of meaning is significant for two main reasons. First, it signals that Habermas' emphasis on a 'postconventional' or 'postnational' identity⁸ implies a political identity centred upon and grown out of a historically specific political culture. Second, it reveals that Habermas' intention is not to supersede, but to 'tame' or 'civilize' the national frame of reference.

Habermas' point of departure is a normative and empirical analysis of the achievements and the limitations of the nation-state and nationalism. According to Habermas, an important achievement of the nation-state has been its capacity to tackle quite successfully the problems of legitimation and integration that arose from the demise of the old feudal order. Nationhood created bonds of mutual solidarity among former strangers and motivated the extension of democratic citizenship.⁹ But the coupling of the state and the nation has given rise to many contradictions and dangerous ambivalences: 'the tension between the universalism of an egalitarian legal community and the particularism of a community united by historical destiny is built into the very concept of the national state. This tension remains harmless as long as a cosmopolitan understanding of the nation of citizens is accorded priority over an ethnocentric interpretation of the nation'.¹⁰ Hence, 'republicanism must learn to stand on its own feet'.¹¹ This can be achieved by proclaiming loyalty to the liberal democratic principles of the

⁵ I will not discuss Habermas' emphasis on rational argumentation. On this, and on the criticism that Habermas denies the validity of other forms of communication, see, I.M. Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000); *Intersecting Voices: Dilemmas of Gender, Political Philosophy and Policy* (Princeton: Princeton University Press, 1997); A.R. Oquendo, 'Deliberative Democracy in Habermas and Nino' (2002) 22 *OJLS* 2 189–226. It is true that Habermas presumes that participants in the dialogue are autonomous and self-transparent individuals with fixed identities. For a critique, see N. McAfee, *Habermas, Kristeva and Citizenship* (Ithaca NY: Cornell University Press, 2000).

⁶ See P. Markell, 'Constitutional Patriotism' (2000) 28 *Political Theory* 38–63, 41–43; C.S. Meier, *The Unmasterable Past: History, Holocaust, and German National Identity* (Cambridge, MA: Harvard University Press, 1988); J. Torpey, 'Introduction: Habermas and the Historians' (Spring-Summer 1988) 44 *New German Critique* 5–24.

⁷ J. Habermas, 'Historical Consciousness and Post-Traditional Identity' in S. W. Nichol森 (ed.), *The New Conservatism* (Boston MA: MIT Press, 1989) 257; 'Struggles for Recognition in Constitutional States' (1993) 1 *European Journal of Philosophy* 2 128–54; 'The European Nation-State' (1996) 9 *Ratio Juris* 2 125–37.

⁸ On the post-conventional identity, see J. Habermas, *The Theory of Communicative Action*, Vol. 2: *Lifeworld and System: A Critique of Functionalist Reason*, trans. Thomas McCarthy (Boston: Beacon Press, 1987) 153–97. On the post-national identity, see 'Citizenship and National Identity: Some Reflections on the Future of Europe', 12 *Praxis International* 1–19.

⁹ J. Habermas, *The Inclusion of the Other* (Cambridge MA: MIT Press, 1998) 105–55.

¹⁰ *Ibid* at 115.

¹¹ *Ibid* at 117.

constitution and to a shared political culture, which ‘must be uncoupled from the level of subcultures and their prepolitical identities’.¹²

Constitutional patriotism can tame the growth of nationalist passions, by subjugating and ‘civilising’ inherited particularistic loyalties. As such, it represents a perfect candidate to take up ‘the place originally occupied by nationalism’.¹³ By giving primacy to political belonging, Habermas leaves nationality in the background. After all, according to Habermas, overcoming the nation-state does not imply its abolition, but its transformation in light of new developments.¹⁴ Such a transformation was necessary in the Federal Republic of Germany given its troubled past and the resurgence of ethnic chauvinism in the wake of German reunification.

Notwithstanding its fruitful insights, Habermas’ endeavour to disentangle political belonging from the pre-political community of history, language and culture is, at best, unconvincing and, at worst, self-defeating.¹⁵ Habermas concedes that political principles have to be interpreted on the basis of the ethical-political self-understanding of the citizens and the political culture of the country.¹⁶ By situating these principles within the horizon of the history of the nation, that is, of a prepolitical community with its own cultural horizon of shared memories and historical experiences,¹⁷ Habermas recuperates nationalism under a civic mode.¹⁸ The centre of gravity is shifted from the particularism of culture, history and tradition to liberal political values, but this shift does not cast doubt on either statal democracy or its national dimensions.¹⁹

Whereas critics on the left pinpoint Habermas’ failure to articulate a genuinely postnational concept of citizenship and a conception of the public sphere that is not ‘contaminated’ by ethnicity,²⁰ more conservative critics criticize Habermas for being insufficiently attuned to the importance of culture in politics.²¹ Arguably, although the existence of political ties uniting individuals and groups in a common

¹² J. Habermas, ‘The European Nation-State: On the Past and Future of Sovereignty and Citizenship’, 10 *Public Culture* 2, 397–416, 408.

¹³ *Ibid* at 408.

¹⁴ Habermas, above n 8 at 124–7.

¹⁵ Bader has remarked that political institutions and practices cannot be entirely separated from their wider cultural background; V. Bader, ‘The Cultural Conditions of Transnational Citizenship: on the Interpenetration of Political and Ethnic Cultures’ (1997) 25 *Political Theory* 6, 771–813, 778–89.

¹⁶ Habermas, above n 8 at 228.

¹⁷ See B. Yack, ‘The Myth of the Civic Nation’ (1996) 10 *Critical Review* 2 193–211; *The Inclusion of the Other*, above n 8 at 144.

¹⁸ Markell has made a similar point, even though he does not reach the same conclusion: ‘the universal principles toward which constitutional patriotism is supposed to direct our affect are not self-sufficient, but both depend on and are threatened by a supplement of particularity that enables them to become objects of passionate identification’; above n 5 at 40.

¹⁹ See T. Kostakopoulou, *Citizenship, Identity and Immigration in the European Union: Between Past and Future* (Manchester: Manchester University Press, 2001). According to Markell, this is essentially a strategy of ‘redirection of political attachment and affect toward safe and proper objects’; above n 5 at 51.

²⁰ I chose this term because Habermas himself views constitutional patriotism as the ‘critical filter’ that screens out the irrational and undesirable aspects of nationalism whilst allowing its benign elements, such as national pride and collective self-esteem to pass; ‘Apologetic Tendencies’, in S.W. Nichol森 (ed.), *The New Conservatism* (Cambridge MA, MIT Press, 1989).

²¹ D. Miller, *On Nationality* (Oxford: Oxford University Press, 1995); M. Canovan, *Nationhood and Political Theory* (Cheltenham: Edward Elgar, 1996); C. Laborde ‘From Constitutional to Civic Patriotism’ (2002) 32 *British Journal of Political Science* 591–612.

venture may be a necessary condition for the existence of a political community, it is by no means sufficient. Indeed, it has been observed that without either an emotional bond and the affective identity provided by nationality or, alternatively, a thin national identity which motivates citizens to feel that particular institutions are somehow 'theirs', in a meaningful sense,²² and makes them feel that they belong to a 'self-determining political community',²³ communities are vulnerable to fragmentation.²⁴

Habermas would not hesitate to respond here that a liberal democratic culture and universal principles can furnish 'the ties that bind', if and only if they guarantee the enjoyment of social and cultural rights. It is very important that citizens are 'able to experience the fair value of their rights in the form of social security and the reciprocal recognition of different cultural forms of life'.²⁵ Irrespective of the weight given to this claim, however, this line of reasoning, essentially, calls for the development of a more 'rooted' patriotism.

Viroli's 'love of patria', that is, love of country, is a good example. Patriotic loyalty to the republic entails the sacrifice of self-interest for the liberty of the country and a willingness to commit oneself to unknown others.²⁶ Patriotic loyalty is thus rich in motivational resources for a deep commitment to the polity and for citizenship practice. More importantly, it appears to be compatible with universalist commitments and cultural diversity. Viroli traces the legacy of 'true' or 'right sort of' patriotism²⁷ in the Italian city-republics in the 14th century, and sketches the decline, revival and flourishing of republican patriotism in the late 16th, 17th and 18th centuries respectively. Although in late 18th and 19th centuries patriotism became 'nationalized' and the ideal of cultural unity and ethnic identity displaced civic and political liberty, the experience of Italian anti-Fascist resistance revived true patriotic discourse. Drawing on this discourse, and by eschewing the distinction between an open-minded universalism and narrow-minded ethnocentrism,²⁸ Viroli argues that 'the patriotism of liberty' (civic patriotism) can address the challenges of cultural pluralism and globalization. Viroli thus reclaims the language of patriotism for the democratic left.

Notwithstanding Viroli's noble aspiration to find the perfect 'antidote' to nationalism; namely, a form of 'patriotism without nationalism',²⁹ that can

²² Laborde, *ibid* at 601.

²³ The term is borrowed from J. Habermas, 'Citizenship and National Identity', Appendix II to *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge MA: MIT Press, 1996) 496.

²⁴ D. Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000); R. Baubock, 'Citizenship and National Identities in the European Union' (1997) *Harvard Jean Monnet Working Paper*, 4/97; M. Canovan, 'Patriotism is Not Enough' (2000) 30 *British Journal of Political Science* 413–32.

²⁵ Above n 11 at 409.

²⁶ M. Viroli, *For Love of Country: An Essay on Patriotism and Nationalism* (Oxford: Clarendon, 1995) 40.

²⁷ *Ibid*.

²⁸ Viroli sought to 'confront nationalism on its own terms', *ibid* at 19–20.

²⁹ Compare here Kristeva's work on *Nations without Nationalism* (transl. by Leon S. Roudiez) (New York: Columbia University Press, 1993). Kristeva draws on Montesquieu and defines the nation as a heterogeneous and dynamic public within which l'étranger will feel at home (57). For a critical reflection on Kristeva's work, see N. McAfee, *Habermas, Kristeva and Citizenship* (Ithaca NY: Cornell University Press, 2000) 102 et seq.

command popular loyalty and induce war-time self-sacrifice without replicating the exclusive character of particularistic commitments, his patriotism of liberty fails to convince for several reasons. First, Viroli conceals the militaristic character of classical patriotism and the exclusionary character of patriotic loyalty and pride.³⁰ Second, Viroli overlooks that political values can be as effective markers of group identity and as exclusionary as ethnic allegiances. In such cases, patriotic pride can easily undercut multicultural respect.³¹ Third, whereas liberating patriotism from the grip of nationalism and rendering it compatible with respect for individual rights and for cultural diversity is a welcome initiative, the latter could be viewed as a rhetorical and political strategy designed to rehabilitate nationalism.³² This is because it is very difficult to disentangle civic from ethnic understandings of nationhood since cultural, ethnic and political elements have been blended together in various ways. One may recall here that Renan's daily plebiscite relies on 'the rich legacy of memories', which presuppose the existence of a prepolitical cultural community.³³ In practice too, all states have made formal belonging to the polity dependent of some form of political cum cultural conformity, and have blended the *ius soli* and *ius sanguinis* principles in citizenship and naturalization laws.³⁴

It is noteworthy that Viroli's account does not depart from the ideal of the 'rootedness' of individuals in their homeland, which underpins nationalistic narratives of all shades and forms. Viroli's patriots are autochthones (natives): they belong to the community they have 'inherited'. In this respect, attachment to the polity is not a mere function of their interest, for their roots run deeper than self-interest. Linking love of country with personal identification with the country's institutions that reflect political principles and conjure particular histories and memories entails the risk that all those who cannot or do not identify with the historical processes that gave birth to political institutions may be excluded. This makes 'love of patria' indistinguishable from civic nationhood. This leads me to conclude that Viroli's 'patriotism as civic nationalism'³⁵ does not only end up subverting the primacy of the political that Viroli himself set out to establish, but

³⁰ Owing to the particularistic demands of patriotism, MacIntyre has observed that 'good soldiers may not be good liberals'; 'Is Patriotism a Virtue?' (Lawrence: The E. H. Lindley Memorial Lecture, University of Kansas, 1984) 17.

³¹ J. Cohen, *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon, 1996) 14.

³² Canovan, above n 23 at 415. Compare here Paul Gombert's reply to Stephen Nathanson's attempt to formulate a third alternative between chauvinistic patriotism and unpatriotic universalism; S. Nathanson, 'In Defence of Moderate Patriotism' (1989) *Ethics* 99 535–52; P. Gombert, 'Patriotism is Like Racism' (October 1990) 101 *Ethics*, 144–50.

³³ See Y. Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993); N. McCormick, 'Liberalism, Nationalism and the Post-Sovereign State' (1996) 44 *Political Studies* 553–67.

³⁴ See P. Weil, 'Access to Citizenship: A Comparison of twenty-five Nationality Laws' in A. Aleinikoff and D. Klausmeyer (eds), *Citizenship Today: Global Perspectives and Practices* (Washington DC: Carnegie Endowment for International Peace/Brookings Institution, 2001) 17–35.

³⁵ On other variants of patriotism, such as natural or land patriotism, created patriotism and convened patriotism, see J. Schaar, 'The case for patriotism' in Schaar, *Legitimacy in the Modern State* (New Brunswick, N.J.: Transaction Books, 1981) 285–311.

it also represents a thicker shade of togetherness than Habermas' constitutional patriotism.³⁶

In opposition to rooted and constitutional patriotisms, Mason advocates a conception of 'republican' patriotism. 'Republican' patriotism is centred upon a sense of 'belonging to the polity'.³⁷ A person has a sense of 'belonging to the polity, if and only if she identifies with most of its major institutions and feels at home in them'. 'Identification with most of its major institutions' entails the citizens' perception of them as valuable, conducive to their flourishing and reflective of their concerns.³⁸ 'Feeling at home in them' refers to the ability of the citizens to find their way around institutions and to experience participation in them as natural.

Although the latter two subjective requirements appear to be vague and abstract, Mason is convinced that they represent an alternative to ethnonationalist or cultural-nationalist notions of national identity, that is, to a conception of national identity founded on the alleged commonalities of shared myths, common history, shared cultural heritage and ethnic pedigree. According to Mason, 'belonging to the polity' is different from a 'sense of belonging together', that is, the citizens' belief that there must be some special reason why they should associate together, which might be provided by the belief that they share a history, religion, ethnicity, mother tongue, culture or conception of the good.³⁹ As Mason has put it, 'a liberal polity can be viable even if citizens lack a sense of belonging together, so long as they have a sense of belonging to it'.⁴⁰

In Mason's dualistic schema of belonging together/belonging to the polity, one easily discerns the replication of the distinction between ethnocultural and civic understandings of national identity. Indeed, Mason looks for the empirical substantiation of 'the sense of belonging to a polity' in the politics of national identification in USA, Belgium and Switzerland. All three countries have been shaped by a 'future-oriented' approach to nation-building, which puts emphasis on a 'shared destiny', on common institutions and shared political values. It is true to say that Mason does not deny the existence of a sense of belonging together in these countries. But he views this as being parasitic on a sense of belonging to a

³⁶ As Bader has noted, "if one chooses the 'thin' political version of patriotism, one may ask Viroli himself whether this can still be called 'love of country'. There may be patriotism without nationalism, but there is no patriotism without patria, which most of the time includes a lot of ethnonational values"; V. Bader, 'For Love of Country' (June 1999) 27 *Political Theory* 379–97 at 385.

³⁷ A. Mason, *Community, Solidarity and Belonging: Levels of Community and their Normative Significance* (Cambridge: Cambridge University Press, 2000); 'Political Community, Liberal Nationalism and the Ethics of Assimilation' (1999) 109 *Ethics* 261–86. In this essay Mason notes 'a sense of belonging to a polity can provide the basis for patriotism understood simply as the love of its central institutions and practices' (ibid 278). In his 'Special Obligations to Compatriots', Mason states that 'the interpretation of citizenship required in order to underpin the special obligations to fellow citizens with which I have been concerned is, broadly speaking, a republican one'; (1997) 107 *Ethics* 427–47 at 444.

³⁸ Mason, 'Political Community' ibid at 272.

³⁹ Ibid, at 263.

⁴⁰ Ibid, at 273.

polity.⁴¹ By distinguishing ‘belonging to the polity’ from ethnocentric understandings of national identity, Mason overlooks the fact that US nation-building is a prime exemplar of a civic nationalist narrative which, in the absence of an ethnocultural pedigree, did not hesitate to invent one. In the process of the founding the American nation, the assumed homogeneity of the American people became entangled with exclusionary racialist concerns when the first naturalization laws were debated in the 1790s.⁴²

Arguably, there is no need to embark upon a historical analysis in order to show that civic nationalist narratives are easily susceptible to ethno-cultural interpretations. In all civic nations (including USA, Belgium and Switzerland), ‘belonging to a polity’ has been developed and sustained by constructing a ‘sense of belonging together’. In addition, both types of identity can lead to exclusion, as they draw on a generalized belief that ‘others are not of the same community’. Given that ‘distrust and fear of persons from different cultural backgrounds often finds expression in language emphasizing a conflict of values’,⁴³ both ‘belonging to the polity’ and ‘belonging together’ can legitimize exclusion by culture-baiting ethnic minorities as ‘others’ threatening to corrode the character of the polity. Moreover, the distinction is quite artificial, since most polities are in reality characterized by both elements, irrespective of whether they are the product of a future-oriented and political approach to nation-building or of a past-oriented, ethno-cultural approach centred on ‘organic’ senses of belonging. Furthermore, both senses of ‘belonging to the polity’ and ‘belonging together’ evolve and are subject to periodic ‘thickening’ or ‘thinning’.⁴⁴

But why does Mason insist on a sharp differentiation between the two? This might be due to the classificatory scheme that Mason adopts; namely the differentiation among ethnic nationalism (based on descent), civic nationalism (based on a shared national culture), civic republicanism (based on a shared political territory, institutions and history) and the neo-Kantian appeal to shared political institutions (constitutional patriotism). By branding Miller’s theoretical perspective (which is Mason’s main target) as ‘civic nationalism’,⁴⁵ Mason overlooks the possibility that both civic republicanism and neo-Kantian perspectives might represent variants of civic nationalism.⁴⁶

⁴¹ Mason denies that there exists a shared American national identity: ‘But in the American case, it is hard to see what shared principles, commitments, or norms could provide the content of a distinctive American national identity. American institutions, public practices, and ceremonies are distinctive, but does that really reflect distinctive principles or norms which govern how citizens are to conduct their lives together? The alternative is to say that Americans share an identity in the sense that they identify with these institutions, practices, and ceremonies, but this does not mean that they share a distinctive public culture in Miller’s sense, nor indeed that they believe that they share one’; *ibid* at 274–5.

⁴² P. Schuck and R. Smith, *Citizenship Without Consent. Illegal Aliens in the American Polity* (New Haven: Yale University Press, 1985) 51.

⁴³ K. Karst, *Belonging to America* (New Haven: Columbia University Press, 1989) 29.

⁴⁴ Compare N. Glazer, *We Are All Multiculturalists Now* (Cambridge, MA: Harvard University Press, 1997).

⁴⁵ See Mason (1999); (2000), above n 37.

⁴⁶ *Ibid*.

Another possible explanation might be that Mason's aim to articulate a normative approach to political belonging which does justice to contemporary pluralism is wedded with and modelled upon already existing (national) communities and their pre-arranged boundaries. This hypothesis is supported by the following three considerations. First, in examining how the legal and political culture of the state can cultivate a sense of belonging to the polity, Mason does not go beyond articulated axioms of consociational democracy, that is, effective representation of the groups within the polity's major decision making institutions and the grant of autonomy or 'self-determination' 'as they want and can be feasibly given'.⁴⁷ Second, Mason overlooks the fact that his notion of 'belonging to the polity', defined as 'identification with the most of the polity's major institutions' and 'a feeling of being at home in them', is tension ridden. Since institutions embody culturally specific interpretations of values, principles and norms,⁴⁸ it is likely that people entertaining interpretations which are different from those crystallized in major institutions will not 'feel at home in them'. Third, Mason's implicit reliance on presuppositions tied up with national statism can be seen in his distinction between citizenship⁴⁹ and residency. As Mason has noted, 'the moral notion of citizenship I have outlined would explain why citizenship, as opposed to merely residing together in the same territory, has intrinsic value. Mere long-term residents do not possess the same political rights as citizens and do not have the same status. Although resident non-citizens may influence public affairs, they are not part of the collective which makes law and policy and do not have the same opportunities as citizens in relation to these matters. The state may have special obligations to its residents, and long-term residents may have special obligations toward each other, but if so, I suggest that these obligations will be justified by other means, for example, by the idea of the fulfilment of them is necessary for equal well being or for protecting the vulnerable. Special obligations of this sort are unlikely to be justified by the value of residing together in the same territory, for at best, this has instrumental value'.⁵⁰ This distinction sits uncomfortably with the ideal of political participation underpinning the republican notion of citizenship that Mason espouses. For, if democracy is defined as equal participation in ruling and being ruled, then the exclusion of long-term residents from the making or influencing the making of decisions that affect them creates problems for democratic theory. Such exclusion can only be justified on the basis of prepolitical considerations and ultimately on 'senses of belonging together', which Mason himself renounces.

In light of the foregoing discussion, it may be concluded that the three variants of new patriotism examined above constitute neither alternative approaches to

⁴⁷ Mason (1999) 282–4; Mason (2000), ch 5.

⁴⁸ Mason (1999), above n 37 at 291.

⁴⁹ Citizenship obligates citizens to participate fully in public life and to give priority to the needs of fellow citizens; Mason (1997), above n 37 at 442–3.

⁵⁰ *Ibid* at 443.

nationalism nor effective devices in taming nationalism. They seek to assert the primacy of the political over the cultural by pushing ethnoculturalism in the background, but they fail to dislodge citizenship from the confines of the national. As a consequence, cultural commonality resurfaces either by providing the medium for relating abstract universalist principles to a specific populus and the lens through which the former are interpreted (constitutional patriotism), or in the form of the history of the patria (rooted patriotism), or in the form of already formed and bounded demoi of collective self-determination (republican patriotism).

In all three accounts, citizenship is wedded to the nation, and cannot function without the thick, thin, or thinner, mutual sentiments of commonality and civic national belonging. But if patriotism without nationalism cannot do the trick of reconfiguring national citizenship because it turns out to be as much an oxymoron⁵¹ as the idea of 'nations without nationalism', is there an alternative? It seems to me that there exist two possibilities here. First, the option of transforming the nationality model of citizenship and reinventing the meaning of national identity. This could be achieved by pluralizing the nation and imbuing it with openness and flexibility. Second, the more controversial option of superseding the framework of nationality and dislodging citizenship from the confines of the national. I explore both options in the remainder of the paper.

2. *New Forms of Citizenship?*

Since patriotism in its various shades is premised on thicker, thick and thinner notions of civic nationalism, the strategy of redefining the nation and national citizenship may be a more promising alternative. The intellectual search for new forms of citizenship, which would replace the old model of singular membership in the national community,⁵² has yielded three conceptions of citizenship; namely, postnational membership, transnational citizenship and multicultural citizenship.

Before examining these conceptions, it is important to note that doubts have been expressed about both the desirability of such a search and the feasibility of the suggested alternatives. Those who cling to the national-statist tradition of citizenship, for example, argue that citizenship's 'outer edges' are likely to remain coterminous with those of the national state.⁵³ As a consequence, alternative possibilities are seen either weak, or unstable, or utopian or dystopian. Such a perspective, however, overlooks the mutations of citizenship over time and its shifting boundaries. In this respect, neither citizenship's embeddedness

⁵¹ I borrow this expression from N. Xenos, 'Civic Nationalism: Oxymoron' (Spring 1996) 10 *Critical Review* 2 213–31.

⁵² See D. Held, *Democracy and the Global Order* (Cambridge: Polity Press, 1996) Y. Soysal, *Limits of Citizenship: Migrants and Post-national Citizenship in Europe* (Chicago: Chicago University Press, 1994).

⁵³ W. Kymlicka, 'Citizenship in an era of globalisation' in I. Shapiro and C. Hacker-Gordon (eds), *Democracy's Edges* (Cambridge: Cambridge University Press, 1999) 12.

in specific contexts nor its entanglement with territorial nation-states provide convincing reasons for freezing citizenship's mutation and evolution. Citizenship can be used in order to rethink the past, to transform the present and to open up new sociopolitical practices that can best realize the promise of equal participation in the polity. After all, citizenship is not merely about rights (what you get), participation and duties (what you owe) and a sense of belonging (what you feel), but is also about the way in which people express their opposition to crystallized conceptions about all the above.

Advocates of postnational forms of citizenship argue that the nationality model of citizenship has been superseded by a new type of membership based on deterritorialized notions of persons' rights. The codification and elaboration of human rights principles have led to the dilution of the 'natural dichotomy' between citizens and aliens, thereby leading to the decline of national citizenship.⁵⁴ This is evidenced by the fact that migrants residing in a state, which is not 'their own', are now being incorporated into a wide range of rights and privileges which were originally reserved only for nationals, particularly those relating to socio-economic membership. Soysal elucidates the disruption of the affinity between national community and rights enjoyment, and the extension of civic participation beyond the bounds of national spaces.⁵⁵ Hence, the parameters of citizenship and claims making have been altered,⁵⁶ as attested by forms of 'post-national membership',⁵⁷ such as the membership of long-term resident migrants in Europe, the increasing acceptance of dual citizenship, the institutionalization of European Union citizenship,⁵⁸ and regional/local citizenship, which is characterized by collective rights in the culturally autonomous regions of Europe.⁵⁹

Transnational citizenship highlights the fact that international migration and the ensuing interactions between receiving and sending countries result in the creation of mobile societies beyond the borders of territorial states without dissolving these borders.⁶⁰ Whereas national citizenship has been underpinned by a sedentary ideal, transnational citizenship captures the reality of human mobility and settlement, of multiple belonging and the uprootedness created by processes of transnationalization. The formation of deterritorialized communities beyond state borders does not only create overlapping loyalties and negotiated attachments to different polities, but also affects the host society and its institutions.

⁵⁴ Soysal, above n 51; D. Jacobson, *Rights Across Borders* (Baltimore: John Hopkins University Press, 1996).

⁵⁵ Y. Soysal, 'Changing Parameters of Citizenship and Claims-making: Organised Islam in European public spheres' (1997) 26 *Theory and Society* 509–27.

⁵⁶ *Ibid*; Soysal (1994) above n 52.

⁵⁷ In her earlier work Soysal makes a distinction between postnational membership and national citizenship. In her 1997 essay on 'Changing Parameters of Citizenship', the instances of postnational membership are designated as forms of post-national citizenship.

⁵⁸ On the post-national promise of European Union citizenship see also, T. Kostakopoulou, 'Towards a Theory of Constructive Citizenship in Europe' (1996) 4 *Journal of Political Philosophy* 337–58; 'Nested 'Old' and 'New' Citizenships in the EU: Bringing Forth the Complexity' (1999) 3 *Columbia Journal of European Law* 389–413; D. Tambini, 'Post-national Citizenship' (2001) 24 *Ethnic and Racial Studies* 195–217.

⁵⁹ Soysal (1997) above n 55 at 512.

⁶⁰ R. Baubock, *Transnational Citizenship* (Aldershot: Elgar, 1994).

Citizenship is particularly exposed to these developments and to pressures for reform, given its reliance on national closure, both in the sense of limited access from outside and internal cultural homogenization.⁶¹ But closure and the 'exclusion of immigrants from basic citizen rights jeopardize basic democratic achievements'.⁶² Conversely, if the structure of citizenship became dynamically adjusted and migrants were included in the polity, then external boundaries would become more relaxed.

Multicultural citizenship, on the other hand, entails the aspiration that socio-political institutions and structures become more attentive to, and reflective of, the claims made by minority constituencies for inclusion and cultural recognition.⁶³ Parekh correctly notes that 'no society is static, and its very survival requires that it should constantly redefine its identity and modify its values—including those that are central to it'.⁶⁴ Arguably, a plural (liberal) national identity could nurture a sense of common belonging, premised on a shared political culture, which 'even though it cannot be culturally neutral it should have the power to evoke deep historical memories while including minorities within it'.⁶⁵

Far from being a homogenous menu of settled options and choices and monolithic wholes, cultures are complex, contradictory, and subject to ongoing negotiation and revision. Indeed, the very existence of various cultures and various ways of life signals not only the diversity of humanity, but also the value of diversity. Diversity facilitates critical reflections on one's own culture and provides an opportunity to gain a deeper appreciation of its merits and its limitations. For this reason, Parekh urges liberals to go beyond the ideal of toleration and to find ways of entering a dialogue with other cultures. Intercultural communication or dialogic multiculturalism institutionalizes an open-minded dialogue that involves minorities in decisions that affect them and a politics of compromise among cultural communities that provide equally defensible forms of life.⁶⁶ By so doing, it turns cultural collisions into opportunities for an open dialogue between majority and minority communities, by imposing on both parties (i.e., majority and minority communities) the obligation to justify the disapproval of minority practices or to defend the latter on the basis of both the operative public values and the minority's cherished values and ways of life.⁶⁷ Intercultural dialogue may thus lead either to the justification of those

⁶¹ R. Baubock, *Immigration and the Boundaries of Citizenship* (Warwick: Centre for Research in Ethnic Relations, 1992) 7.

⁶² *Ibid* at 59.

⁶³ B. Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (London: Palgrave, 2000).

⁶⁴ B. Parekh, 'Minority Practices and Principles of Toleration' (1996) *International Migration Review* 251–84 at 256.

⁶⁵ *Ibid*, 255.

⁶⁶ *Ibid*.

⁶⁷ Parekh applies this to several 'controversial' practices, such as female circumcision, polygamy, Muslim and Jewish methods for slaughtering animals, arranged marriages, marriages within prohibited degrees of relationship and so on.

practices that may be seen objectionable from the majority's point of view, or to the condemnation of those cultural practices that contravene the public operative values of a polity.⁶⁸

Although all three conceptions of citizenship are insightful and important, they are, nevertheless, underpinned by a model of citizenship that is wedded to the nation-state. Advocates of post-national citizenship correctly note that the legal discourse on human rights has permeated national legal orders, thereby leading to an intensification of legal pluralism and to the emergence of deterritorialized rights. However, the state remains the body that is rightfully and legitimately charged with upholding human rights. More importantly, since human rights are the outgrowth of commitments made by states, states are keen to hold on to their prerogative of defining the scope and the content of the rights granted to resident aliens. It should also be pointed out that while international law has helped the plight of migrants, it has never called into question the nationality principle as a criterion for distributing community membership nor indeed the state's sovereign power in this area.⁶⁹ In sum, it is debatable whether post-national forms of citizenship have either fundamentally called into question national citizenship or made it less national.

Similarly, transnational citizenship neither repudiates national conceptions of citizenship nor has it denied the relevance of borders and nation-states. Baubock pays attention to non-state networks and communities formed beyond the state and recognizes the existence of multiple belonging and overlapping loyalties. But this does not necessarily imply that citizenship ceases to be a national enterprise. Baubock takes the nationality model of citizenship as a premise and articulates a more liberal and reformed version of it. Transnational citizenship is thus seen to enrich the liberal democratic model of national citizenship by being more inclusive, by accommodating dual citizenship and genuine denizenship, by respecting the right to family unity and by affirming humanitarian obligations to refugees. However, it does not go beyond national citizenship.

On the other hand, multicultural citizenship is sensitive to the differentiated character of plural publics that are characterized by the incessant traffic of people back and forth. It aims at pluralizing the nation and making ethnic migrant communities an integral part of a changing nation.⁷⁰ But it does not interrupt liberal nationalism. Parekh's dialogical multiculturalism is modelled upon and presupposes an already existing liberal culture, its institutional infrastructure and its

⁶⁸ The latter represent the values that the 'society considers to be essential to its survival and self-conception that it imposes them on all its members by embodying them in its constitutional structure and its system of law' and are embodied in the civic relations between its members; B. Parekh, 'Cultural Pluralism and the Limits of Diversity' (1995) 20 *Alternatives* 431–57, 436; 'Minority Practices and Principles of Toleration' above n 63 at 260.

⁶⁹ Bosniak has observed that 'the fact that aliens enjoy civic and cultural rights does not mean that their formal or nominal legal status vis-a-vis the political community in which they reside has changed'; L. Bosniak, 'Citizenship Denationalised' (2000) 7 *Indiana Journal of Global Legal Studies* 2 447–509, 461–2.

⁷⁰ Parekh, *Rethinking Multiculturalism*, above n 63 at 14.

national underpinnings.⁷¹ This is exemplified by Parekh's discussion of operative public values and of the obligations that migrants have towards the host society. Parekh argues that operative public values can trump rival ideas and values. Indeed, if intercultural dialogue leads to an impasse, or if an urgent decision is needed, then the values of the wider society should prevail because: i) they are woven into its institutions and practices, form part of the lived social reality, and cannot be changed without causing considerable moral and social disorientation; ii) while a society has an obligation to accommodate the immigrants' way of life, it has no obligation to do so at the cost of its own, especially when it is both able to make out a reasonably good case for its values and remains unconvinced by the minority's defence of the disputed practice; iii) 'immigrants are new to the wider society's way of life, they need to appreciate that its nature and inner workings are likely to elude them and that in doubtful matters they should therefore defer to its judgement'.⁷² Because migrants need the wider society's goodwill and support to overcome the resentment and hostility their presence tends to provoke, they are more likely to secure these, if, after making their point, they gracefully accept its decision'.⁷³ According to Parekh, a migrant has obligations to the host society, such as the duty to respect the way of life to which he has been admitted, to familiarize himself with its language, values, culture and mode of public discourse, to realize that since he does not fully understand its nature and mode of working, he should be modest in his demands, and to appreciate that as a newcomer he is likely to be resented or found threatening and should therefore do all he can to win over the trust and goodwill of the wider community.⁷⁴

In light of the foregoing discussion, it may be concluded that in all three accounts citizenship remains a national affair. Cultural diversity and the incorporation of newcomers and settlers of various origins is achieved by modernizing national citizenship, that is to say, by introducing changes at the fringes, thereby leaving the core of national citizenship intact. Two important implications flow from this. First, because citizenship remains national in scope, it is exposed to cyclical and periodic variables that could easily prejudice the long-term viability of reforms. History teaches us that periods of incremental expansion of migrants' rights tend to be followed by a more cautious system of management and regulation, which may equally involve a reversal of policy, a contraction of

⁷¹ Dossa has criticized Parekh for 'casually glossing the blatant political/cultural/economic inequalities in the majority-minority relations in liberal-capitalist nations in favour of the established elites'; S. Dossa, 'Liberal Imperialism? Natives, Muslims, and Others' (October 2002) 30 *Political Theory* 5 738-45 at 741. See also Modood's reservations about Parekh's conception of national identity in T. Modood, 'Their Liberalism and our Multiculturalism?' (2001) 3 *British Journal of Politics and International Relations* 2 245-58, 249.

⁷² Parekh, 'Cultural Pluralism and the Limits of Diversity', above n 68 at 442.

⁷³ *Ibid.*

⁷⁴ *Ibid.*, 434. Compare, here, the Home Secretary's statement "it is possible to square the circle. It is a 'two-way street' requiring commitment and action from the host community, asylum seekers and long-term migrants alike. We have fundamental moral obligations, which we will always honour. We must uphold basic human rights, tackling racism and prejudice which people still face too often. At the same time, those coming into our country have duties that they need to understand and which facilitate their acceptance and integration", Home Office, 2002, Foreword, above n 2.

rights, and a revival of nationalist and restrictionist rhetoric. It is likely that any project of pluralization and reinvention of national identity, along the lines suggested by the three models, will be short-lived. Second, all three accounts foreclose real institutional change and the transition from the nationality model of citizenship to new institutional designs.

3. *Naturalization and Its Alternative*

In this section I discuss the possibility of transcending the nationality model of citizenship by focusing on naturalization. In building my argument, I compare and contrast the option of transforming national citizenship by liberalizing naturalization requirements with an alternative institutional design, which I term 'civic registration'. The choice of naturalization owes much to the fact that this institution appears to be self-evident in both theory and practice. In the domain of theory, neither the three shades of patriotism examined in section 2 nor the new forms of citizenship I discussed in section 3 have called naturalization into question. In practice, too, the nation-state has not only made naturalization the cornerstone of national citizenship, but it has also placed a value on naturalization itself. This owes much to naturalization's transformative capacities.

According to Article 1 of the Harvard Draft of the Convention on Nationality, naturalization is the process by which a state confers its nationality upon a natural person after birth.⁷⁵ Naturalization is thus a privilege⁷⁶ to be given to a person that has been transformed from an alien guest to a citizen and is thus invested with the rights and privileges pertaining to indigenous subjects. Naturalization essentially represents a 'rite of passage', since it turns 'disloyal' and 'untrustworthy' strangers into formal members of the political community.⁷⁷ Accordingly, naturalization bears family resemblances to both secondary socialization and religious conversion. Indeed, if one views nationalism as a civic religion,⁷⁸ then the affinity between admission to a community of faith and admission to the national community is clear. Admission to communities of faith is reserved for the initiated and the converted, that is, for those who have familiarized themselves with the holy books and the sacred traditions, and have trained their spirit. Ceremonies and rituals symbolically confirm a neophyte's inclusion. Similarly, border-crossers and settlers must pass a membership test.⁷⁹ They must share the identity of the community and commit themselves to taking part in the fulfilment of its earthly providential purpose, whatever this might be. In the past, settlers had to assimilate to the dominant culture; they had to think

⁷⁵ Draft of Convention on Nationality (1929) 23 *American Journal of International Law* 21.

⁷⁶ Compare *US v Macintosh*, 283 US 605, 75 L ed. 1302, 51 S Ct 570.

⁷⁷ T. Hammar, *Democracy and the Nation-State* (Aldershot: Avebury, 1990).

⁷⁸ B. Anderson, *Imagined Communities* (London: Verso, 1991); L. Greenfeld, 'The Modern Religion' (1996) 10 *Critical Review* 2 161–91.

⁷⁹ Many have commented on the functional equivalence of religion and nationalism; see, for example, Anderson and Greenfeld, above n 78.

and act like a national. Even though the expectation of assimilation to national identity and culture has not faded away, most states now require, at least officially, that applicants are committed to the nation's public values, observe national laws and are willing to join the social system as whole by working diligently to learn about the history and political institutions.⁸⁰ Such expectations often carry personal costs for naturalization applicants, who may have to renounce ties with the home country in order to gain citizenship in the host state.⁸¹

Naturalization is thus a nationalizing practice. Through the naturalization 'filter', the national community allegedly ensures its cultural survival, that is, the preservation of its character, its rules of belonging and the strong communal ties. At the same time, naturalization recreates, re-enacts and sustains the national character of the community. Naturalization laws are seen to sustain a strong sense of national identity and to revitalise the values of loyalty and of individual sacrifice for the common good. By so doing, they enhance the symbolic significance of citizenship. This explains why possible relaxation of naturalization requirements is criticized for leading to the devaluation of citizenship.⁸² As Legomsky has observed, 'both the nature and the value of the citizenship bond might depend also on the way in which citizenship is acquired. One who acquires citizenship through naturalization might value the resulting status as a hard-earned reward for the time and effort invested in studying the English language, American history and civics'.⁸³ Similarly, the changes in the acquisition of citizenship in the UK, which have been introduced by the 2002 Nationality, Immigration and Asylum Act, have been justified on the basis that they give meaning and value to the acquisition of British nationality by ending the previous 'mail order' approach.⁸⁴

Naturalization thus has more to do with 'identification' and the old logic of 'assimilation', than with citizenization,⁸⁵ that is, the transformation of settlers into full participants in democratic governance. It is true to say that some states have been more jealous than others in setting out strict criteria for admission.

⁸⁰ This is what Justice Rehnquist stated dissenting in *Sugarman v Dougall*, 413 U.S. 634 at 661 and 658.

⁸¹ This does not imply that their original ethnic identification will fade away. In reality, ethnic identities become stronger in reaction to the context of reception and treatment. On the process of reactive formation of ethnic identities, see N. Glazer, 'Ethnic Groups in America' in Berger et al (eds), *Freedom and Control in Modern Society* (New York: Van Nostrand, 1954).

⁸² P. Schuck argues that American citizenship has been devalued because it is relatively easy to acquire, the rights and disabilities associated with it differ a little with those attached to the status of permanent residency, it is hard to lose once acquired and that those eligible for naturalization seem unenthusiastic about applying for it; 'Membership in a Liberal Polity: The Devaluation of American Citizenship' (1989) 3 *Geo. Immigration Law Journal* 1, 13.

⁸³ S. H. Legomsky, 'Why Citizenship?' (1994) 35 *Virginia Journal of International Law* 279–300, 292.

⁸⁴ The Joint Council for the Welfare of Immigrants has argued that such changes 'intended to instil Jacobin-style patriotic values will simply deter people from applying for citizenship without undermining their commitment to maintaining their lives in the UK. If this happens there will be no net gain for citizenship, but rather a sharper polarisation between those who have been awarded the citizens' badge of honour, and those who have abstained from the process'; JCWI's Initial Response to the White Paper (2002), <http://www.jcwi.org.uk/whitepaper/jcwiresponse.html>.

⁸⁵ The term is borrowed from J. Tully, 'The Unfreedom of the Moderns in Comparison to the Ideals of Constitutional Democracy' (2002) 65 *Modern Law Review* (2) 204–28. The discussion here draws on 'Why Naturalisation?' (2003) 4 *Perspectives on European Politics and Society* 1, 85–115.

Much depends on their political culture and on the style in which national communities are imagined.⁸⁶ However, it is equally true that in all states political belonging has been conditioned on conformity, and we must not forget that almost everywhere ideology, exclusionary beliefs and racism have played a central role in the construction of modern citizenries and the formation of national identities.⁸⁷ Although many believe that the nexus between civic nations and majority culture can be effectively disrupted by appeals to the political principles underpinning liberal democratic states, the foregoing discussion has shown the difficulty in disentangling naturalization from nationalizing impulses even in territorial nations. This owes much to the fact that civic nationalism is underpinned by, and propagates, a conception of culture as an atomised thing with mutually limiting boundaries.⁸⁸ Cultures are therefore seen as endangered species that must be defended—and not as changeable, renegotiated and reconstructed creations shaped by external influences, internal reflections, struggles and collisions. Since cultural survival,—and not cultural development and change, is taken to be both a norm and an expectation, lawfully admitted newcomers of any nationality can only become ‘true naturals’, if and when they give their allegiance to the values animating communal life.

Because naturalization is a symbol of nationhood and a medium for the integration of the political community, any attempt to squeeze the ethnic element out of it, by confining, for example, naturalization requirements to a simple residency qualification is bound to generate reactions.⁸⁹ Ethnonationalists would oppose such a reform on the grounds that it undermines the cultural identity of the community and the shared conception of national purpose underpinning it.⁹⁰ On the other hand, civic nationalists would argue that a de-ethnicized system of naturalization would be insufficient in ensuring the integration of the community, since it is bound to render its identity diffused. In other words, a ‘de-ethnicized’ naturalization law is very likely to be perceived to be an oxymoron.⁹¹

This does not mean that we should not aspire to ‘naturalization without nationalism’ as far as possible.⁹² Baubock, for instance, has put forward an

⁸⁶ Anderson, *Imagined Communities*, above n 78 at 6.

⁸⁷ See B. Turner, ‘National Identities and Cosmopolitan Virtues: Citizenship in a Global Age’ in F. Dallmayer and J. M. Rosales (eds) *Beyond Nationalism? Sovereignty and Citizenship* (Lanham, Maryland: Lexington Books, 2001) 199–219, 199–200.

⁸⁸ Compare here the relational, adaptable and dynamic conception of culture postulated by post-structuralists and cosmopolitans alike. See also J. K. Cowan et al. (eds), *Culture and Rights* (Cambridge: Cambridge University Press, 2001); ‘V. Bader, ‘Culture and Identity’ (2001) 1 *Ethnicities* 2 251–85; G. Baumann, ‘Culture and Collectivity: Constructivism as the methodology of choice: A reply to Veit Bader’ (2001) 1 *Ethnicities* 2 274–82.

⁸⁹ Habermas’ constitutional patriotism would tolerate dual citizenship, and demand a residence requirement and allegiance to the constitution. The latter would be manifested in the absence of criminal convictions, basic knowledge of the constitution and society, and the ceremonial oath of allegiance.

⁹⁰ Compare J.S. Mill [1843], ‘A System of Logic’ in J.M. Robson (ed.), *Collected Works of J. S. Mill*, Vol. VIII (Toronto: University of Toronto Press, 1974).

⁹¹ N. Glazer has observed that there is nothing multicultural in US naturalization law, which requires the applicants to swear an oath of allegiance to their new country; see n 44 above.

⁹² W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon, 1995); *Politics in the Vernacular* (Oxford: Clarendon, 2001) Part III on Misunderstanding Nationalism.

argument for making optional naturalization an entitlement, thereby reducing the discretionary power of the authorities of the host state.⁹³ In contrast to Baubock's optional naturalization,⁹⁴ Rubio Marin has defended the policy of granting automatic and unconditional grant of national citizenship to resident migrants.⁹⁵ Both accounts suggest that it is possible to 'thin out' naturalization law and policy, thereby making it more open and inclusive.

Notwithstanding their refreshing insights, both accounts tend to assume the 'thinning out' naturalization; they do not demonstrate it. Given the weight of its past and the importance of naturalization for national citizenship, it is plausible to argue that even a 'thinner' naturalization will continue to be rooted in and be configured by ethnicity, thereby making any claim to inclusivity either spurious or temporary. Since naturalization logically entails the idea of transforming the 'alien' into a natural subject, it is bound to bring into play a cultural core, however shadowy this might be, against which newcomers will be measured, perceived and assigned a status and a place within the national territory. It is doubtful whether naturalization could be disentangled from the idea of a national 'we' in collective possession of the land and the polity⁹⁶ and the hierarchical relations and exclusions that they entail. Although Baubock and Rubio Marin's attempts to keep nationality relevant, but at the same time to make it as inclusive as possible,⁹⁷ are praiseworthy, one wonders whether their proposed strategies may be only ephemerally corrective and imperfect solutions to the challenges of political inclusion and difference. After all, they do not challenge the foundations on which national citizenship is based and overlook the fact that the distinction between 'exclusive' nationality and 'more inclusive' nationality is often not a qualitative one, but one of degree.⁹⁸

'Thin' naturalization can easily thicken over time. Politicians interested in re-election might be tempted to introduce additional and stricter requirements, thereby capitalizing on popular fears about 'cultural survival' and 'unassimilable aliens'. By so doing, they could generate a renewed interest in constitution of ethnic identity and in the community's rich repertoire of historical memories. Such a re-ethnicization of naturalization has occurred in most states, owing to a variety of political imperatives. Rogers Smith has observed, for example, that each period of significant reform and liberalization of citizenship law in the US has been followed by a period of reaction and inegalitarianism.⁹⁹

⁹³ Baubock, above n 60 at 73–114.

⁹⁴ According to Baubock, 'we may speak of optional naturalisation as an individual right of resident aliens if a reasonably short period of legal residence is a sufficient condition for applying, if the new citizenship can be acquired by individual declaration or if the authorities have little discretion in rejecting applications'; R. Baubock, 'Citizenship and National Identities in the European Union' (1997) *Harvard Jean Monnet Paper* No. 4/97.

⁹⁵ R. Rubio-Marín, *Immigration as a Democratic Challenge* (Cambridge: Cambridge University Press, 2000).

⁹⁶ Canovan, above n 24.

⁹⁷ I do not wish to obfuscate differences within the two perspectives by focusing on their commonalities.

⁹⁸ I disagree with B. Barber who contends that 'the question is not what to do with patriotism and nationalism, but how to render them safe'; 'Constitutional Faith' in J. Cohen, *For Love of Country*, above n 31 at 36.

⁹⁹ R. Smith, *Civic Ideals: Conflicting Visions of Citizenship in US History* (New Haven: Yale University Press, 1997).

But let us suppose that naturalization were pronounced a relic of the past; that is, an outmoded institution and an institutional anomaly in contemporary plural states. Suppose further that it were possible to move beyond the nationality model of citizenship by replacing naturalization with a system of civic registration. Civic registration would place the centre of gravity on enhancing democracy by promoting civic engagement and participation among co-venturers, irrespective of their nationality—as opposed to among co-nationals. By so doing, it would make the national frame of reference weigh less heavily on central political institutions, including citizenship. The crucial question, however, is what kind of requirements would automatic civic registration entail in practice and how could these be normatively justified?

Naturalization ordinarily includes requirements, such as residency requirements, allegiance to the Crown or the Parliament or the Constitution, participation in citizenship ceremonies, a good character test, self-sufficiency, the absence of a criminal record, ideological requirements, demonstration of adequate knowledge about the host society, linguistic skills, attendance of language and citizenship classes, and renunciation of the nationality of origin. All these naturalization requirements can be understood and justified on the basis of three models; namely, the libertarian, republican and communitarian models. Although these models do not actually exist in a pure form in contemporary states, they nevertheless serve to illustrate where the centre of gravity of the various naturalization laws lies and how this relates to existing nationality traditions and distinctive political cultures.

The libertarian model is premised on the calculation of the relevant costs and benefits associated with the admission of applicants into full membership. Naturalization constitutes a 'sieve' filtering out population movement, and retaining the more qualified and skilled applicants. Accordingly, it posits relatively easy naturalization conditions, such as residency and proof that the applicant possesses the necessary skills, knowledge and experience required for meeting the needs of the host society. The republican model, on the other hand, views polities as communities of values sustained by a notion of civic duties and by active engagement in the political life of the community. Applicants for citizenship need to embrace the civic republican ideal of commitment to the pursuit of public good, without necessarily abandoning their particular ethnic identifications and cultural commitments. In other words, aspiring citizens must be patriots, rather than 'ethnics'. Naturalization applicants thus need to swear an oath of allegiance to the constitution, to fulfil residency requirements, to have certain ideological beliefs, to display a good command of the constitutional history and the language of the host state and most probably, albeit not necessarily, to renounce all foreign allegiances. Finally, the communitarian model emphasizes the maintenance of the community's distinctive identity, as it has been traditionally defined by the majority community. Accordingly, applicants may have to meet rather strict conditions and may have to 'assimilate' into the majority

culture. Assimilation may be justified on several grounds. First, it may be argued that communities are essentially communities of trust and people are motivated to assist those who they feel belong or can belong to the community. In addition to this motivational argument, one might prefer to draw on cultural arguments about the constitutive role of culture in generating loyalties and sustaining social relationships. Others might prefer to put forward an institutional argument in order to justify naturalization. Finally, 'thick' naturalization may also be justified on intuitive grounds: people intuitively think that the national community resembles a club with predefined membership, which in turn, implies special obligations, including the obligation of sharing and cherishing the common culture. Irrespective of the various justifications on offer, however, the crux of the point is that the communitarian model entails strict residence requirements, an unconditional display of loyalty to the state, which should override other loyalties, language skills, knowledge of the society and its history, good character provisions and citizenship ceremonies.

The civic registration model would converge with the above-mentioned models on the basis of only two requirements; namely, residency and absence of criminal record. But it would also diverge with the models on the basis of the terms and conditions attached with these two requirements. As regards the former requirement, it would posit low residence requirements. This owes much to the fact that residence generates entitlements, owing to the participation of people in a web of social interactions and the sense of 'rootedness' associated with home ownership, business ownership, employment, participation in civil associations, family ties and schooling. De facto social membership and partial de jure membership in the social and civil spheres make resident non-nationals stakeholders in the running and the future of the community, thereby strengthening their claims for political inclusion. Such claims cannot be successfully resisted by appeals to democracy. Democracy requires inclusion¹⁰⁰; that is, the equal participation of all those affected by governmental policies in policy formulation and implementation. This means that the civic registration approach would posit low residence requirements, ranging from two to three years.¹⁰¹

It may be objected here that one should not become a citizen by simply inhabiting a place.¹⁰² After all, communities are bound together by a shared set of norms, values and cultural practices that give meaning to individual life projects.

¹⁰⁰ See R. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1999); C.S. Nino, *The Foundations of Deliberative Democracy*, O. Fiss (ed.) (New Haven: Yale University Press, 1996) 1333.

¹⁰¹ It is noteworthy here that the Act of 26 March 1790 provided for two years' residence in the US for the naturalization of a free white person. Subsequent acts raised the length of residence to five and fourteen years respectively; Acts of 29 January 1795 and 18 June 1798. In addition, Article 39, para. 3, of the Bolivian Constitution of 23 November, 1945 (as amended on September 20, 1947 and November 26, 1947) required two years' residence for the acquisition of Bolivian nationality. 'The required period of residence is reduced to one year with regard to a person who has a Bolivian spouse or children or immovable property, or operates a railway or transport undertaking, or is a school teacher, or is an immigrant under government contract'; N. Bar-Yaacov, *Dual Nationality* (London: Steven and Sons, 1961).

¹⁰² D. Miller, 'The Left, the Nation-State, and European Citizenship' (Summer 1998) *Dissent* 47–51; D. Schnapper, 'The European Debate on Citizenship' (1997) 126 *Daedalus* 3 199–222.

Residents must share these commitments, if they wish to become citizens. From a communitarian perspective too, only prolonged residence can provide sufficient guarantees that an individual shares the national identity of the polity. Such arguments reveal the extent to which democracy has been configured by nationality in so far as they are underpinned by the assumption that democracy needs ‘nationals’ more than it needs democrats, that is, participants in democratic self-government. According to Van Gustern the only condition for democratic function is that there is a willingness to live according to democratic rules and regulations.¹⁰³ Nino has also stated that ‘the polity should include as full citizens all those whose interests are at stake in conflict and may be affected by the solution adopted through the democratic process.’¹⁰⁴ Accordingly, democracy suffers if there is a divergence between formal citizenship and informal membership which results in long periods of residence and citizenship without suffrage. Similarly, it is a deficit of democracy if majoritarianism becomes a vehicle for the domination of minority groups by a cultural majority and for hardening existing lines of privilege.

As regards the second requirement of absence of criminal record, one may observe that this exists in most, if not all, naturalization laws. In many countries, absence of criminal record serves to show that the aspiring citizen has a good moral character. In Australia and France, however, absence of criminal record and good character represent distinctive requirements. Arguably, the requirement of ‘good character’ is an abstract and vague concept, and, as such, it can be interpreted in many ways. Historically, the test of ‘good character’ succeeded religious tests in naturalization laws. The British naturalization laws of 1740 and 1761 contained religious tests and the 1740 law, in particular, prohibited the naturalization of Catholics. The first US naturalization law of 1790 replaced the religious test with a test of good character as a prerequisite for US citizenship.¹⁰⁵ In Portugal, naturalization applicants must be ‘morally and civilly fit’, whereas in Sweden they must lead a respectable life manifested in the payment of taxes and maintenance.

Although the requirement of ‘absence of criminal record’ is less indeterminate than the ‘good character’ test, much depends on how strictly it is interpreted.¹⁰⁶ In Austria, for instance, naturalization is declined if an applicant has had a prison sentence of three months. Whereas relatively minor offences and past convictions can be used to exclude people from citizenship under the republican and communitarian models, under the civic registration approach an applicant would be refused citizenship if (s)he represented a genuine and sufficiently

¹⁰³ H. Van Gunsteren, ‘Admission to Citizenship’ (1988) 98 *Ethics* 731–41.

¹⁰⁴ Nino, above n 100.

¹⁰⁵ R. Ueda, ‘Naturalisation and Citizenship’ in S. Thernstorm (ed.) *Harvard Encyclopaedia of American Ethnic Groups* (Cambridge: Cambridge University Press, 1980) 734–48.

¹⁰⁶ See, for example, the Anti-Terrorism and Effective Death Penalty Act of 1996, 18 U.S.C. para. 1 and seq. and the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009-546 (1984) adopted by the American Congress in 1996.

serious threat to the requirements of public policy. Previous criminal convictions would constitute grounds for refusal only in so far as they indicated clearly a propensity to re-offend or represented punishment for abhorrent offences, including war crimes and participation in organizations carrying out violations of human rights. In other words, the crucial consideration would be if an aspiring citizen constitutes an actual and serious threat to the interests of the community.

Settlers meeting the requirements of residency and of absence of serious criminal convictions would thus be entitled to citizenship under the civic registration model. Naturalization could be either optional, or mixed, that is, optional after two years of residence and automatic after five years of residence. Those wishing to 'opt-out' from automatic citizenship could always repudiate it via a declaration.¹⁰⁷ It is certainly the case that the civic registration approach would require the reflexive transformation of existing national conceptions of group membership and a post-conventional understanding of citizenship in contemporary plural and globalized states. But it would also make democratic theory 'go postnational'. In the subsequent section, I substantiate this by considering possible objections to my argument.

4. *Objections*

As the foregoing discussion challenges the very ideational foundations of national citizenship, it is bound to generate strong objections. These may relate to either the civic registration approach or my general line of argumentation. Three specific and three more general criticisms may be raised, as follows.

Objection 1: The civic registration model takes the concerns of host communities too lightly. States cannot admit 'resident aliens' into full membership, if the latter do not declare their allegiance to constitution or the state, and do not give formal and public expression to their willingness to obey the laws, to share the civic values of the polity and to further the common good. Naturalization oaths and citizenship ceremonies reflect these concerns.

It is worth noting here that the roots of naturalization oaths lie in medieval Europe, in the bond of 'fealty' owed by the vassals to the feudal lord and by the lords to the king.¹⁰⁸ The obligation of fidelity and service owed to the lord was manifested in a public act, known as homage, and in the taking of an oath. In the ceremony of homage, the inferior pledged to follow and obey his superior lord, while the lord promised to cede property and jurisdictional liberty to the vassal.

¹⁰⁷ In the 1980s in France in the wake of restrictionist immigration measures, the argument that automatic citizenship would deprive second generation migrants of their consent was used in order to reform the law and to make the acquisition of citizenship by second generation migrants conditional upon a formal declaration of their wish to become French; R. Shor, *Historie de l'immigration en France* (Paris: Armand Colin, 1996) 280. The nationality reform materialized in 1993.

¹⁰⁸ R. Smith has noted the links between naturalization law draws and feudal conceptions of subjecthood, which do not cohere with the liberal understanding of citizenship. Naturalization is premised on the assumption that 'it is natural to be subject to the ruler under whom one is born and that it is so natural that one is subject to that ruler for life'; *Civic Ideals: Conflicting Visions of Citizenship in US History* (New Haven: Yale University Press, 1997) 13.

In the hierarchical feudal pyramid, everyone born in the King's 'ligeance' owed permanent and personal allegiance to the King.¹⁰⁹ Alien subjects from friendly countries owed 'local' allegiance to the King so long as they remained within its 'ligeance'. According to 16th century jurists, allegiance was grounded on the law of nature. As the Court stated in the Calvin's case (1608), 'as the literatures or strings do knit together the joints of all parts of the body, so doth ligeance join together the sovereign and all his subjects ... ligeance and obedience of the subject to the sovereign is due by the law of nature; ergo it cannot be altered'.¹¹⁰

Although the formation of the modern state changed the hierarchical network of interconnections between greater and lesser lords and the personal, almost clientalistic, relationship of trust and loyalty between superiors and inferiors, it did not alter the obligations of dutiful respect, obedience and service pertaining to this bond. The people continued to be perceived as liege men/women (*homo ligeus*), vassals sworn to the service of their superior lord and loyal subjects who would not hesitate to accept governmental dictates on the basis of national identification and trust. Equally, foreigners wishing to be subjects of a state's jurisdiction had to declare their allegiance in the form of special appeals to the King and of allegiance to the Crown.

Notwithstanding the medieval roots of naturalization oaths and ceremonies, one has to reflect seriously on their functionality in contemporary plural and globalized environments. It is true that both permanent and transient residents unreservedly and voluntarily undertake the obligation to abide by the laws of the host country. To make an obligation, that is freely undertaken by almost everyone, a condition for admission to citizenship seems superfluous, unless, of course, public expression of one's respect for the law of the land serves other non-functional purposes and is thus invested with symbolic significance.

The recently introduced citizenship pledge and new citizenship oath that those who wish to become British citizens have to swear at citizenship ceremonies is a good example of this. Under the old section 42 of the British Nationality Act 1981, an oath of allegiance had to be sworn by all those who sought British citizenship, unless they came from a country that already had an allegiance to the Queen.¹¹¹ Under paragraph 2 Schedule 1, the new citizenship oath will retain the wording of the existing oath of allegiance and a new citizenship pledge has been introduced; 'I will give my loyalty to the UK and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfil my duties and obligations as a British citizen'. Although the Government has stated that the above mentioned reforms reflect commitment to citizenship, cohesion and community, it is doubtful whether a public declaration of personal attachment to the polity enhances greatly the commitment made by

¹⁰⁹ J.W. Salmond, 'Citizenship and Allegiance' (1902) 18 *Law Quarterly Review* 48–50.

¹¹⁰ *Calvin's Case* (1608) 7 Co Rep 1a Jnk 306; 77 ER 377, 282. See also Keechang Kim, *Aliens in Medieval Law* (Cambridge: Cambridge University Press, 2000) 142.

¹¹¹ The wording of the oath is: 'I, [name], swear by Almighty God that, on becoming a British citizen, I will be faithful and bear true allegiance to her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to the Law'; schedule 5, British Nationality Act 1981.

naturalized citizens. As the Refugee Council has observed, 'We believe that what makes people feel and act like citizens is the respect they are accorded by society. As stated earlier, how people are treated is far more important than anything they may be taught through citizenship classes. This obviously goes much further than swearing an oath of allegiance or attending a ceremony'.¹¹²

Further, permanent residents are not necessarily less committed and less public-spirited. Nor can it be argued that they lack the required long-term view.¹¹³ In the UK, citizens who obtained citizenship via simple certificate of naturalization issued by the Home Office cannot possibly be regarded less committed than those who have taken part in the new citizenship ceremonies that have been introduced by the *Nationality, Immigration and Asylum Act 2002*. In addition, people's identities remain divided, irrespective of their legal status,¹¹⁴ and this is not necessarily regrettable. What follows from all this is that naturalization oaths and citizenship ceremonies are an incident of nationality, and are thus invested with symbolic significance. They serve to accentuate the 'nationalness' of citizenship. Through them the 'nation' reaffirms its existence as a community of ideas, culture, meaningful ties, memories and hopes,¹¹⁵ and momentarily attains its (illusionary) unity and a glimpse of its transcendental nature. The performative act of the oath in a public ceremony, the 'declaration of true faith and allegiance' to the country thus instantiates the national spirit of a community unified in a celebration of civic virtue and national pride. But if political belonging is to be uncoupled from nationalism, then we must rethink the appropriateness of oaths and ceremonies in our era.

Objection 2: The civic registration model does not address the needs of aspiring citizens by omitting requirements, such as acquisition of knowledge about the host society, familiarity with its forms of life, and knowledge of its institutions and collective history. Education in history, civic culture and the organizing principles of the host society are designed to facilitate the integration of applicants into the fabric of society and the employment market, and to promote citizenship capacity.

What is the level of knowledge about the host society that is required for one's pursuit of an economic activity as an employed or self-employed person, for the payment of taxes at local and national levels, and for social interaction? In addition, do existing naturalization tests accurately detect the possession of

¹¹² Refugee Council's response to the White Paper, paragraphs 2.19-2.21; http://www.refugeecouncil.org.uk/infocentre/asylumpropos/cons_response/contents.htm.

¹¹³ N. Bar-Yaacov informs us that during the debate relating to the 1952 Nationality Law in the Knesseth, Israel, it was suggested that applicants for naturalization should formally express their intention to settle in Israel via a declaration. But the President of the Committee on the Nationality Law refuted this proposal, arguing that such an intention could be proved by certain facts, such as the establishment of a business, employment, arrangements made for lodging and so on: Divrei Haknessth, Vol. 11 p. 1698 (March 25, 1952) cited in Bar-Yaacov, *Dual Nationality* (London: Steven and Sons Limited, 1961) 250.

¹¹⁴ J. Carens, 'Why Naturalisation Should be Easy: A Response to Noah Pickus' in N.M.J. Pickus (ed.), *Immigration and Citizenship in the Twenty-First Century* (Boulder: Rowman and Littlefield, 1998) 141-8.

¹¹⁵ C. Withol de Wenden, 'Citizenship and Nationality in France' in R. Baubock (ed.), *From Aliens to Citizens* (Aldershot: Avebury, 1998) 85-6.

such a level of knowledge? These questions prompt us to disentangle the functional from the ideological dimensions of the requirements of 'knowledge of the host society' and 'education in its collective history'. As regards ideology, there is hardly any doubt that such requirements can be convincingly justified on liberal nationalist grounds. Miller has argued that 'the prospective citizen must be capable and willing to be a member of this particular historical community, its past and future, its forms of life and institutions within which its members think and act. In a community that values autonomy and judgement, this is obviously not a requirement of pure conformity. But it is a requirement of knowledge of the language and culture and of acknowledgement of those institutions that foster the reproduction of citizens who are capable of autonomous and responsible judgement'.¹¹⁶ Tamir has also observed that 'a state that views itself as a community is justified in offering citizenship only to those committed to respect its common values, collective history and shared aspirations for a prosperous future'.¹¹⁷ However, such arguments reflect more the perceptions of national statist communities and nationalizing impulses than the needs of aspiring citizens. If anything, they are premised on the belief that 'resident aliens' must learn and appreciate the traditions and values of the majority community, and must earn their membership by showing commitment and working hard in order to familiarize themselves with the constitutional history and the nation's traditions.

In reality, however, naturalization 'demands nothing more than a rudimentary level of knowledge'.¹¹⁸ In this respect, it cannot be argued that non-naturalized residents are less knowledgeable about the host society and thus less 'integrated' than naturalized citizens. But could it be argued that naturalized citizens are more likely to participate in politics and to make sound political judgements precisely because they have attended citizenship classes?

The Government believes that citizenship classes play a crucial role in 'integrating migrants to Britain' and enabling them to participate in society and politics. By inserting Paragraph 1(1)(ca) to the British Nationality Act 1981, Clause 1(1) has added the requirement for an applicant for naturalization to demonstrate 'sufficient knowledge about life in the UK'. Clause 1(2) enables the Secretary of State to make regulations to determine whether a person has sufficient knowledge of life in the UK, and whether a person has sufficient knowledge of the English language. But does active citizenship and fostering a sense of belonging to the community depend on what applicants are taught?

Carens has expressed serious reservations about such a line of reasoning on the grounds that 'the knowledge required for wise political judgement is complex, multifaceted and often intuitive. It is not something that can be captured by simple test. In addition, we know that formal tests of this kind always have

¹¹⁶ Miller, *On Nationality*, above n 21 at 130.

¹¹⁷ Tamir, above n 33 at 129.

¹¹⁸ See Carens, above n 114.

built-in biases that inappropriately favour some class or cultural backgrounds over others, even if that is not intended'.¹¹⁹ In addition, the argument that knowledge of the host society and its collective history fosters citizen participation and enhances sound political judgement rests on the subjective and flawed assumption that foreign nationals are, invariably, ignorant and incapable of exercising wise political judgements, even though their exposure to a different history, political system and civic culture at home equips them to make comparative political judgements and more mature reflections on the institutions and traditions of the host society. It also sidesteps the fact that, owing to globalization, most newcomers already know something about the host country. Having said that, it is nevertheless true to say that naturalization itself is generally considered to be an enlightening opportunity.¹²⁰ But this perception overlooks the fact that the market is a site of political education and that labour force participation imparts skills and experiences that are politically relevant for citizen activity. In addition, reading newspapers of the host and home countries and books, watching television, participating in discussions with co-ethnics and nationals, and, generally speaking, participating in reflexive social co-operation in daily life are more effective media for the acquisition of knowledge about the country and its political culture than naturalization itself.

Objection 3: The absence of a provision concerning linguistic competence in the civic registration model is deeply problematic. From a republican point of view, it undermines political participation, since a common language is necessary for democratic deliberation, and hampers the integration of migrants into common public institutions. From a communitarian perspective, not requiring migrants to learn the official language before becoming citizens begs vital questions about the state and its national identity, and may lead to the fragmentation of the political community.

Undoubtedly, competence in the language of the host society enhances participation in society and public life: people are more willing to engage in public discourse about political matters, to criticize the performance of those in office and to defend their interests by providing generalizable reasons.¹²¹ However, this does not mean that lack of linguistic competence either significantly undermines political participation or renders it impossible. Empirical evidence drawn from historical migrations and settlements reveals that newcomers with no (or very basic) knowledge of the host language have contributed effectively in the public life, in the workplace and society. And, by speaking and writing in their home language, many have been active and concerned members of the community. It is interesting to note that there is no general requirement that people who wish to settle in the UK

¹¹⁹ *Ibid* at 142.

¹²⁰ K. Knapp, 'The Rhetoric of Exclusion: The Art of Drawing a Line Between Aliens and Citizens' (1996) 10 *Geo. Immigration Law Journal* 401–40.

¹²¹ On the virtue of public reasonableness, see S. Macedo, *Liberal Virtues: Citizenship, Virtue and Community* (Oxford: Clarendon Press, 1990).

must be able to speak English.¹²² Similarly, in Austria the Foreigners Act did not establish a legal obligation to learn German for those who wish to settle in Austria.

Although the civic republican ideal of face to face communication in the Agora, has its appeal, it is important to recognize that modern polities contain multiple, crosscutting and overlapping public spheres,¹²³ and that migrant participation in any of these spheres (i.e., local politics, neighbourhood organizations, voluntary sector, workplace politics) would suffice.¹²⁴ In addition, opportunities for democratic participation in society and economy should not be underestimated.¹²⁵ Nor can it be argued that discourse about matters of public policy conducted in another language ceases to be public. Linguistic competence may increase 'voice', that is, claims making, but it would be incorrect to argue that lack of fluency in the official language automatically creates an informational disadvantage, thereby deadening political participation. For, as argued above, the sources of political information are multiple, variable and, quite often, multilingual.

This leads me to argue that if the hallmark of the good citizen is his/her public spiritedness and the capacity for critical reflections on society and its problems, then these qualities surely cannot be reserved for those who have the ability to engage in face-to-face communications and to act as nationals. Instead, they must apply to all those who care about the community, interact with one another, thereby creating a common life, and share a sense of responsibility for the present state and the future prospects of the community, because they recognize that their own future is inextricably linked with the welfare of the community, irrespective of the language that they speak.

I do not wish to deny the fact that fluency in the host language increases employment opportunities and facilitates social incorporation. Migrants themselves are acutely aware of this. But this seems to me to be a good reason for making tuition in the host language available to all residents, regardless of their legal status or their intentions with regard to citizenship. In Australia, for instance, free tuition in English was provided as part of the range of settlement services and migration programmes prior to the 1970s. Having said this, one must bear in mind the importance of retaining the link between language acquisition and the nature of an employment post. European Union law confirms this by stipulating that mobility of labour in the European internal market cannot be restricted via the imposition of language tests, unless such tests are required by the nature of the post.¹²⁶ This is because linguistic tests often serve

¹²² However, there was a language requirement for a person who wished to become British citizen (Schedule 1, Paragraph 1(1)(c) of the British Nationality Act 1981). Under the Nationality, Immigration and Asylum Act 2002, the language requirement also applies to those who apply for naturalization as spouses of a British citizen or a British Overseas Territories citizen.

¹²³ N. Frazer, 'A Rejoinder to Iris Young' (1997) *New Left Review* 126–9.

¹²⁴ See A. Abizadeh, 'Does Liberal Democracy Presuppose a Cultural Nation?' (2002) 96 *American Political Science Review* 3 502–4.

¹²⁵ M. Warren, 'What can Democratic Participation Mean Today?' (October 2002) 30 *Political Theory*.

¹²⁶ Article 3(1) of European Council Regulation 1612/68 on Free Movement of Workers (OJ Special Edition, 475 [1968] L 257/2). See also Case 379/87 *Groener v Minister for Education* [1989] ECR 3967, [1990] 1 CMLR 401.

as a means of direct discrimination and exclusion by denying Community nationals equal access to employment.

It is true that the communitarian model regards linguistic competence as both an obligation of citizenship and a sign of allegiance to the nation's (monolingual) identity. Prior to the 1980s, linguistic and cultural assimilation was perceived to be a legitimate state objective, since the ideal of national homogeneity required linguistic homogeneity.¹²⁷ In countries where monolingualism has been the hallmark of national identity, such as the USA, 'the acquisition of non-accented English and the dropping of foreign languages represent the litmus test of Americanisation'.¹²⁸ Speaking the home language was seen as both unpatriotic and a sign of intellectual inferiority. One should not forget that in the early 20th century, scientists sought to demonstrate the 'alleged' link between lower intelligence and lack of fluency in English. Fortunately, beliefs have changed. Despite the official acceptance of multiculturalism in the USA, Europe and elsewhere, however, multilingualism is still seen to threaten nationhood. Notably, in 1997 the US Commission on Immigration Reform stated that 'the nation is strengthened when those who live in it communicate effectively with each other in English, even as many persons retain or acquire the ability to communicate in other languages'.¹²⁹ Liberal nationalists, such as Miller and Tamir, agree with this argument. In their opinion, without a common language there can be single unified public.¹³⁰ But the ideal of a single unified public has been called into question, and the imposition of the official language can undermine social unity. People develop a sense of belonging to the same community if they are respected for who they are and for the contributions they make, and are given a voice and a stake in the polity. If they are not treated with respect, then the imposition of linguistic tests as part of naturalization will do very little in connecting people and enhancing solidarity. What such requirements are likely to promote is reactive ethnicity.¹³¹ In concluding this section, it may be observed that the arguments examined above reveal the host communities' deep anxieties about cultural difference and the fragility of 'integration'. Most societies have harboured a persistent fear of migrants and widespread beliefs that societies will somehow disintegrate if newcomers and settlers do not speak the host language at home and in the public life and do not know the history and the nation's traditions. Such fears are appeased when aspiring members are seen to 'make the choice' to conform to the majority community's (partial) notion of national identity. But this conceals that what makes people

¹²⁷ W. Kymlicka, *Politics in the Vernacular* (Oxford: Clarendon, 2001) 1.

¹²⁸ A. Portes and R. Rumbaut, *Immigrant America* (Berkeley: University of California Press, 1996) 194, 196.

¹²⁹ US Commission on Immigration Reform, *Becoming an American* (1997), 7.

¹³⁰ Miller, above n 102 at 47–51.

¹³¹ People respond to the discrimination and hostility of the host society by drawing a protective boundary around the group and perceiving themselves as belonging elsewhere. On reactive ethnicity, see Alejandro Portes, 'Conclusion: Towards a New World' (1999) 22 *Ethnic and Racial Studies* 2 465.

feel and act like citizens is the respect they are accorded by host community—and not their fluency in the language of the community.

*Objection 4: Any grand redesign of naturalization laws, along the lines suggested above, is both pointless and counterproductive, given that in liberal democratic states we notice ‘a trend toward de-ethnicization’.*¹³²

In response to the argument concerning a trend toward de-ethnicization in liberal states,¹³³ it may be noted that scholars tend to underestimate the constitutive character of naturalization for nationhood and collective identity. Given the strong link between naturalization and nationalization, it is plausible to argue that liberalization of naturalization policy in time *t* can be subject to reversal in time *t*+1. The reconfiguration of British national discourse about citizenship and nationality prompted by the Labour Government’s White Paper ‘Secure Border Safe Haven’ (8 February 2002) and the *Nationality, Immigration and Asylum Bill* (12 April 2002) which culminated in the *Nationality, Immigration and Asylum Act* 2002 is a good case in point. As already argued, the Act has ‘thickened’ British naturalization policy by modernizing the current oath of allegiance, introducing a citizenship pledge, which is modelled on the Canadian oath, and citizenship ceremonies. The 2002 Act has also added the requirement for an applicant for citizenship to demonstrate ‘sufficient knowledge about life in the United Kingdom and extended the existing language requirement to the spouses of a British citizen or a British Overseas Citizen. In the Labour Government’s construction of ‘belonging to Britain’, the perspective of the individual migrant is absent. Nor has the Government considered the everyday experiences of non-belonging and discrimination that shape one’s attitude to citizenship.¹³⁴ After all, as argued above, people are likely to develop a sense of attachment to the community only if they feel that it includes them. In this respect, it is wise to resist the temptation exerted by linear, evolutionary accounts of citizenship and to embrace analyses that are more sensitive to the complexity, paradoxes and the differentiated results of reconstructed, essentialist national discourses.

Objection 5: The foregoing discussion is insufficiently attuned to the importance of national culture in politics.

Critics may argue that both my general argument (sections 2 and 3 above) and the proposed civic registration approach underestimate the importance of national cultures and identities. After all, individuals are embedded in national cultures and their well-being, however this might be conceived of, is tied up with the flourishing of these cultures. Given the importance of cultural membership for either enhancing individual freedom or autonomy (Margalit and Raz, Kymlicka),

¹³² C. Joppke, ‘Multicultural Citizenship: A Critique’ (2001) *XLII Arch. Europ. Sociologie* 2 431–47 at 437.

¹³³ Joppke grounds this on the liberalization in requirements for naturalization and the provision of the right to citizenship to second and third generation migrants; *ibid.* See also R. Hansen and P. Weil, *Towards a European Nationality. Citizenship, Immigration and Nationality Law in the EU* (London: Palgrave, 2001).

¹³⁴ A. Ong, ‘Cultural Citizenship as Subject-Making’ (1996) *37 Current Anthropology* 5 737–62.

or fostering relations of trust and social solidarity (Miller), or satisfying the human quest for secure belonging and mutual attachment (Tamir) or identity recognition (Taylor), promoting 'integration in a societal culture centred on a common language and social institutions' is a legitimate goal of the state.¹³⁵ This line of criticism underpins liberal nationalist perspectives or, what Kymlicka calls, forms of 'liberal culturalism'.¹³⁶ Owing to space limitations, I shall not examine all liberal culturalist accounts here. Instead, I will respond to objection 5 by focusing on two points that underpin both the general instrumental defence of nationality and specific justifications of nationality.¹³⁷

First, it seems to me that liberal nationalist perspectives exhibit a circular reasoning whereby the explanandum is always defined, understood in relation to and sustained by the explanans. Liberal nationalist scholars' point of departure is that nationhood has symbolic and political weight,—which is probably the by-product of the ideological strength of the national-statist paradigm, and this premise runs throughout their argumentation. In other words, they presuppose what they seek to explain; namely, the priority, primacy and significance of nationhood. For instance, according to liberal nationalists, the value of national culture lies in the instrumental value of cultural membership for either making various options available and meaningful to us, thereby instantiating norms of freedom or autonomy (Kymlicka), or generating feelings of belonging and fostering mutual attachments (Tamir) or promoting relations of social solidarity and mutual trust required for redistribution (Miller). All this makes perfect sense if one takes the nation-state paradigm as the starting point, and believes that 'liberal democracy works best within national political units' and that 'nations provide the most valuable cultural context'. But if one searches for a convincing explanation for all the above, then it is not clear: a) why national qua cultural membership should have a monopoly in realizing these values and goals. Liberal nationalists could object here that they do not believe that only national qua cultural belonging can promote the above mentioned liberal values and goals (a1). Rather, they believe that national culture provides the best or the most effective context for securing all the above (a2). However, by arguing either a1 or both a1 and a2, liberal nationalists would have to concede that a shared national culture is not the key explanatory variable; b) why the realization of these liberal values and goals requires institutionalized cultural membership as opposed to social membership and participation in reflexive practices of social co-operation among co-venturers which include, but are not limited to, co-nationals; and c) even if we accept, for a moment, the liberal nationalist connection between cultural membership and the achievement of liberal goals, scholars

¹³⁵ Kymlicka, above n 127 at 25, 26, 30.

¹³⁶ *Ibid* at 39–48.

¹³⁷ For an account that attributes an intrinsic value to nationality, see M. Moore's work (Oxford: Oxford University Press, 2001). Moore confers moral value on national membership and on the past and future existence of the nation. The latter is conceived of as a moral community tied together by bonds of trust and solidarity.

have not adequately demonstrated why cultural membership must necessarily take the form of national membership. Scholars simply assume that the nation provides the most valuable cultural context¹³⁸ and by so doing often rely on ‘a culture-concept that best suits their political theory’.¹³⁹ Kymlicka himself does not conceal the presuppositions of his argument, since he argues that that liberal goals, such as freedom or autonomy and equality are achieved in a liberalized societal culture or nation.¹⁴⁰ According to Kymlicka, societal culture is valuable because it constitutes the context that makes choices meaningful to us. However, Kymlicka provides no explanation as to why the national context should offer individuals the most meaningful life options, and why it should be privileged over other contexts, sources and narratives in all contexts and at all times.

The circular reasoning underpinning liberal nationalism can also be seen in the strategy of ‘making a virtue out of the necessity of nations’.¹⁴¹ The latter is grounded in the belief that nations are necessary because they exist, have been successful and resilient. Most human beings regard themselves as members of the nation and are thus willing to make the sacrifices commanded by their national identification. It is immaterial whether national identities have real or shallow foundations; they may have been built on myths and symbolisms, invented traditions, or even false beliefs about the origins and history of a people and its culture. What is important, however, is that beliefs are powerful enough to resonate among the population and to foster a sense of mutual attachment.¹⁴² But the strategy of making a virtue out of the necessity of nations entails a circular reasoning whereby the fact and the reasons for it somehow converge:

F 1: Nations exist since most people in the world regard themselves as members of a nation and feel that membership is an essential part of their identity¹⁴³;

F 2: National identities provide the affective resources, the fellow-feeling that inspires people’s loyalty and prompts them to make the sacrifices that distributive justice requires.

The necessity of nations is virtuous since:

V 1: Co-nationals are bound together in a community of transcendence and permanence that carries the dead, the living and those yet to be born forward into a limitless future, thereby turning chance into destiny;

V 2: Nations provide the intense experiences of solidarity and nurture the relations of mutual trust required for the realisation of social justice and democratic politics.

¹³⁸ P. Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000) 109.

¹³⁹ See D. Scott, ‘Culture in Political Theory’ (2003) 31 *Political Theory* 1 92–115 at 97.

¹⁴⁰ Notably, Kymlicka’s notion of societal culture is the mirror image of national culture; *Multicultural Citizenship*, 18, 76, 80; *Politics in the Vernacular*, above n 127 at 216.

¹⁴¹ Tamir, above n 33 at ch 7.

¹⁴² According to Tamir, although beliefs are false it is not irrational to believe in them, if these have an important functionality.

¹⁴³ According to Miller, above n 21 at 10; and Tamir, above n 33 at 73, nations are a real and enduring feature of the world and of our identities. A. Smith shares this view; *National Identity* (Harmondsworth: Penguin, 1991).

Evidently, foundation (F1 and F2) and justification (V1 and V2) converge, since V1 and V2 that purport to justify F1 and F2 are themselves part of F1 and F2. In principle what appears to justify nationality, is the outcome of and is sustained by nationality in practice. National culture is both the starting and reference points, and the privileged status of nationhood is not in itself in question.

Second, liberal nationalist accounts are characterized by an idealized vision of ‘societal culture’ or ‘shared national culture’, which is oddly ahistorical. These accounts tend to sidestep the historical process of nation-building (along with its injustices and racist exclusions), the politics of national identity, the resilient power of ‘whiteness’ and the transformation of national cultures and identities owing to the struggle, contestations and sacrifices made by racial and ethnic minority groups. By so doing, they give a partial and flawed account of national communities and their cultures by assuming that they are internally uniform, separate, bounded, coherent and relatively static. This may correspond to the ideological demands of our era, but it overlooks the fact that empirical reality is more complex, contradictory and messy. Indeed, liberal nationalism cannot operate within a decontextualized historical vacuum, for the ‘success’ of liberal nationalist projects in most countries depended on the earlier deployment of repressive measures and the coercive power of the state against minority communities. As Gerstle has argued, liberal nationalist concerns about liberty and equality in 1930–1960 in the USA were made possible by the repressive measures of the 1910s and the 1920s against Germans, new migrants, Asians and political radicals.¹⁴⁴

Objection 6: Given the legislative measures introduced in the aftermath of September 11, 2001 and the heightened concern about security, the framework proposed in this article is unlikely to be empirically feasible as well as appealing to the average voter.

While security threats should not be taken lightly, it is important to remember that the goals of security policy and naturalization policy are different. And although many would defend the merits of striking a proper balance between them, policy objectives in these areas should not be mixed or conflated. Naturalization policy should not be used either as a means of increasing security or as a reaction to perceived risks about security threats, immigration restrictions and nativist fears. In turn, devising effective policy tools to deal with suspected terrorist attacks should not be used to reinforce the discriminatory legacy of naturalization policy by increasing restrictions on naturalization.

In addition, it may be argued that my framework does not take into account the wishes and the expressed preferences of the average voter. In the current climate of suspicion and anti-Arab/Muslim rhetoric, people will probably react negatively to the suggestions I have outlined. It seems to me that this argument overlooks the fact that it is not the average voter, but politicians, and to a secondary extent the

¹⁴⁴ G. Gerstle, ‘Liberty, Coercion and the Making of Americans’ (1997) *The Journal of American History* 524–58.

media, that control the debate and the prevalent discourse about citizenship and nationality. In the same way that liberal reforms made in citizenship and naturalization laws in the last fifty years cannot be attributed to a change in the preferences and attitudes of ordinary people, it would be a mistake to regard voters' preferences as an insurmountable political obstacle. After all, the 'nation' is in the long run what the government makes it to be.

Given that the transformations of the 'nation' in praxis and the 'reinvention' of nationhood in theory have not managed to address satisfactorily the issue of unjust exclusion and to make naturalization policy and citizenship more compatible with democratic ideals, it is perhaps, time to acknowledge that both the discourse of new patriotism (section 2) and the reconfiguration of national citizenship (section 3) have built-in limits. This is because they represent configurations within limits, that is, the limits imposed by the nationality model of citizenship. Hence, any attempt to modernize citizenship by excising the monolithic contours of the traditional national-statist logic may have to consider the unthinkable, that is, the transcendence of the national frame of reference. The foregoing discussion represents a step towards this direction.