

Towards a Theory of Constructive Citizenship in Europe*

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I. THE SEARCH FOR A THEORY OF CITIZENSHIP

The search for a theory of citizenship in the last decade or so has been intimately linked with the search for 'post-national' arrangements. That is to say, for a political framework beyond the nation-state which could be better suited to processes of 'globalization' as well as to challenges encountered from below.¹ Increasing social differentiation and fragmentation have challenged the institutional setting of the nation-state within which citizenship emerged, making the conventional idea of citizenship as membership in an undifferentiated collectivity unsuited to contemporary plural societies. At the turn of the decade, the search for a politics beyond the sovereign nation-state sounded as an exciting and promising challenge, as the end of the Cold War and the internalization of socio-economic life was seen to produce 'more weakening of nation-state divisions than at any period in the historical development of nation-states'.² But it soon became apparent that the inexorable move towards globalism has been accompanied by the 'return of the nation' and the resurgence of primordialist conceptions of ethnicity. In several Western European countries, the resurgence of ethnocultural narratives of national identities is reflected in the institutionalization of exclusionary citizenship laws and very restrictive immigration and asylum policies.³ But exclusionary conceptions of citizenship and ethnic

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¹On globalization, see Michael Featherstone, *Global Culture: Nationalism, Globalization and Modernity* (London: Sage, 1990) and Stuart Hall and Maritain Jacques, *New Times* (London: Lawrence & Wishart, 1989). On social differentiation, see Bryan S. Turner, 'Contemporary problems in the theory of citizenship', *Citizenship and Social Theory*, ed. B. S. Turner (London: Sage, 1993), pp. 1-18 at pp. 1, 15-16; Maurice Roche, *Rethinking Citizenship* (Cambridge: Polity Press, 1992).

²Michael Mann, 'Empires without ends', *The Rise and the Decline of the Nation-State*, ed. M. Mann (Oxford: Blackwell, 1990), p. 11. See also David Held, 'The decline of the nation-state', *New Times*, ed. Hall and Jacques, p. 204 and Eric Hobsbawm, *Nations and Nationalism* (Cambridge: Cambridge University Press, 1990), p. 181.

³The need for a new political 'settlement' has been further highlighted by various factors, such as: (a) the detention of undocumented immigrants. The Spanish Ombudsman has recommended that custody is considered to be an exceptional measure and the persons affected are not to be kept in prisons; Spain, Foreign Detainees Decree 1992 (February 25) *European Current Law Year Book* 1992, p. 57;

(b) policies of speedy expulsion of 'unwanted' asylum seekers;

(c) the rise in right-wing extremism in Western Europe and the formation of racist parties winning percentages of the vote on an anti-immigration platform; see Glyn Ford, *Fascist Europe; the Rise of Racism and Xenophobia* (London: Pluto Press, 1992); and

(d) intense outbursts of xenophobia and, with it, increased racial violence.

outbidding tend to be 'a consequence of institutional failure rather than a cause of it'.⁴ Situated at this juncture, the present article seeks to articulate a political response to the politics of 'nativism' and 'exclusion' in Europe by developing an inclusive framework of citizenship beyond the nation-state which is respectful of 'difference'.

Contemporary theorists have been paying increasing attention to the inadequacy of conventional narratives which link citizenship with cultural conformity and alienage with disloyalty.⁵ Clearly, this literature has been indispensable and useful in disclosing the hegemony of the particularistic framework of the nation over the allegedly universalistic ideal of citizenship, but it nonetheless fails to suggest an alternative way of thinking about citizenship. True, developments in the European Union have brought forth the possibility of membership in various overlapping and strategically interacting political communities on supranational, national and subnational levels and have unleashed the potential for rethinking citizenship, community and identity. However, the dynamics of European Union citizenship have not been fully and properly explored.⁶ At another level, the assertive mobilization of the migrant population in Europe—the so-called movements of 'new citizenship'⁷—and the rise in Right-wing extremism make the articulation of an alternative framework for citizenship more pressing than ever.

Believing that citizenship is not only still a worthwhile project but, in fact, the only project that could address the problem of unjust exclusion, the present article seeks to outline a theoretical framework for citizenship beyond the nation-state, drawing on developments in the field of European Union citizenship.⁸ Section II discusses the failings and inadequacies of the nationality model of citizenship, thus pinpointing the problems that have to be tackled by an alternative citizenship paradigm. The latter will gain fuller exposition in section III, which develops a set of seven propositions on which constructive citizenship in Europe can be founded.

II. WHY CONSTRUCTIVE CITIZENSHIP?

Any attempt to move beyond the nationality model of citizenship must start from the premise that the latter is neither an 'objective reality' nor a 'natural necessity'.

⁴Adam Przeworski et al., *Sustainable Democracy* (Cambridge: Cambridge University Press, 1995), p. 21.

⁵Maxim Silverman, *Deconstructing the Nation: Immigration, Racism and Citizenship in Modern France* (London: Routledge, 1992); Paul Gilroy, *There Ain't No Black in the Union Jack: The Cultural Politics of Race and Nation* (London: Hutchinson, 1987); Floya Anthias and Nira Yuval-Davis, *Racialized Boundaries: Race, Nation, Gender, Colour and Class and the Anti-racist Struggle* (London: Routledge, 1992).

⁶The current exclusive scope and restrictive content of the Union citizenship (1992) has led many theorists to dismiss it as a symbolic plaything without substantive content. See Jessurin d' Oliveira's contribution to the volume *Europe After Maastricht: An Ever Closer Union?*, ed. R. Dehousse (Munich: Verlag C. H. Beck, 1994).

⁷Compare Maxim Silverman, 'Citizenship and the nation-state in France', and Catherine Withol de Wenden, 'Immigration policy and the issue of nationality', *Ethnic and Racial Studies*, 14 (1991), 333–49 at p. 341 and 319–32 at p. 330, respectively.

⁸I do not share Turner's view that a new discourse on human rights might replace the debate about citizenship; Bryan, S. Turner, 'Outline of a theory of human rights', *Citizenship and Social Policy*, ed. B. S. Turner (London: Sage, 1993), pp. 162–87 at p. 187.

Constructive citizenship is predicated on the historicity of the nationality model of citizenship⁹—and, thus, on the possibility of its reformability. Since citizenship has always been the juridico-political expression of what it means to belong to a community, forms of citizenship are bound to change in response to changing conceptions of membership and evolving definitions of community. For example, the traditional definition of citizenship as the relationship between the individual and the state appears ill-suited to the idea of multiple citizenship, that is, the possibility of belonging to multiple overlapping and strategically interacting communities formed at various levels—a possibility revealed by developments in the European Union.¹⁰ In addition, this definition overlooks the fact that individuals are no longer the sole subjects of rights. Notably, the idea of collective rights is gaining recognition, be it in the form of minority rights, people's rights or demands for the recognition of group rights.¹¹ Moreover, by treating citizenship as a unitary and unified membership category, the above definition neglects the way citizenship is differentiated according to race, ethnic, class, gender and so on.¹²

Another commonly held assumption is that citizenship should be confined to individuals who are nationals of the state or willing to 'be like nationals' by undergoing a process of naturalization. This makes the right to have rights (that is, citizenship) a monopoly of co-nationals. But the aligning of the boundaries of the demos with the boundaries of the nation or ethnos puts minority nationalities, ethnic groups and migrant communities in a precarious state. Their members are often deprived of proper civic standing and respectful participation in the polity. Ethnic migrants in several Western European countries, for example, are denied *de jure* recognition of their *de facto* membership in the polity—denied recognition of the fact that they have made that territory the hub of their interest and their family ties, pay taxes, make multifarious contributions and participate in a whole web of social interactions which generate expectations. The most striking and problematic implication of hegemony of nationality over citizenship is that the latter's personal scope varies in accordance with how inclusive or exclusive the definition of the nation is. People's rights depend virtually on the whims and prejudices of possibly transient majorities who decide what the meaning and terms of membership are. Ethnonationalist narratives of the nation, for example, which appeal to blood loyalty, common ethnic origin and homogeneous culture,

⁹See Tommas Hammar, *Democracy and the Nation-State* (Aldershot: Avebury, 1990), pp. 48–9. For a historical account of the development of the nationality model of citizenship in France, see Reinhard Bendix, *Nation-Building and Citizenship* (New York: Wiley, 1964).

¹⁰Union citizenship supplements do not replace national citizenship. On multiple citizenship, see Elizabeth Meehan, *Citizenship and the European Community* (London: Sage, 1993), p. 185 and Veit Bader, 'Citizenship and exclusion: radical democracy, community, and justice; or, what is wrong with communitarianism?', *Political Theory*, 23 (1995), 211–46 at p. 212.

¹¹Compare the UN Declaration on Minority Rights of December 1992 with The African Charter on Human and People's Rights. See further section III below.

¹²T. H. Marshall, *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1949), p. 84 has been criticized along these lines by Anthias and Yuval-Davis, *Racialized Boundaries*, p. 30.

are very likely to exclude migrant and ethnic communities from citizenship rights. 'Gastarbeiters' are excluded from membership in the German polity, and even third generation migrant children born in Germany have no automatic right to German citizenship.¹³ Restrictive naturalization laws aimed at preserving the alleged homogeneity of the Kulturnation complete the process of the institutionalized exclusion of approximately four million immigrants, and official discourse and policy has ideologically construed immigration as 'the foreigner problem'.¹⁴

The French republican model of citizenship, on the other hand, allows the universalism of the Etat-Nation (one founded on the Enlightenment tradition, equal rights and civic bonds) to be hegemonized by the cultural centralism of the French conception of the nation.¹⁵ So admission of non-European migrants to the French society is conditioned on assimilation to the French culture. But assimilation requires the renouncing of migrants' particularistic ethnic and cultural identity in order to become 'good Frenchmen'. It is noteworthy here that prior to 1993 (the reform of the Right to Nationality Act) the children of migrants born in France acquired French citizenship. However, this has not been a sufficient guarantee for a first class citizen status, given that France officially acknowledges no national minorities and, since the 1960s, has ideologically construed immigration as a 'problem' and/or a 'threat' to social cohesion.¹⁶ In response, the second generation of Franco-Maghrebis have renounced the assimilationist project of the French model of citizenship and demanded a more participatory and resident-based conception of citizenship which affirms their 'right to be different'.¹⁷ This 'crisis' of the definition of French citizenship has sparked a lively debate on the relationship between nationality, rights and citizenship in the French multicultural society.¹⁸ Even whilst that debate proceeds, however, the French government has introduced two pieces of pre-emptive legislation:

- (i) the *Reforme du Code de la Nationalité* (20 July 1993) which removes the automatic acquisition of French nationality at age 18 by the children of immigrants; and

¹³Article 116 of the Basic Law (Grundgesetz) confines citizenship to the 'Deutsches Volk', that is, to those of German blood. See Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, Mass.: Harvard University Press, 1992), p. 177.

¹⁴Migrants in the FRG have always been considered temporary guests. Their status until April 1990 was regulated by *Ausländergesetz* (Foreigners' Law) and not immigration law; Nora Rathzel 'Germany: one race, one nation', *Race and Class*, 32 (1991), 31-48.

¹⁵See Maxim Silverman, *Deconstructing the Nation: Immigration, Racism and Citizenship in Modern France* (London: Routledge, 1992); Etienne Balibar, 'Propositions on citizenship', *Ethics*, 98 (1988), 723-30.

¹⁶On the 'seuil de tolérance' (threshold of tolerance)—the theory that administrative officials invoke in order to refuse to provide housing or schooling for migrant children in the municipality when a quota or threshold of immigrants has been reached in a town or a suburb—see Silverman, 'Citizenship and the nation-state in France', pp. 333-49.

¹⁷Withol de Wenden, 'Immigration policy and nationality', at p. 331.

¹⁸The debate has been sparked by the headscarf affair as well as by Front National's (FN) racist ethnocultural narrative of French national identity. The FN reacts to the alleged 'Islamization' of France by advocating the repatriation of immigrants.

- (ii) Loi sur les Contrôles d'Identité (5 August 1993) which permits police to stop people at random to check their papers and allows customs controls within 20km of all airports, railway stations and posts.¹⁹

If domestication of nationalism in France has resulted in the succumbing of the state to the nation, in the British civic-territorial state the official commitment to pluralism has always involved inequality and hierarchization—the hegemony of the white 'Anglomorph' majority over the 'Celtic Fringe' and black settlers.²⁰ Differences are tolerated only in so far as they do not challenge the hegemony of the 'Anglo-Saxon majority'. British nationality and citizenship have been closely bound up with the history of the British Empire and the belief in the 'superiority', the 'higher civilization standards', of the Anglo-Saxons. Conceptions of citizenship vary in accordance with the contracting boundaries of the British nationality. Prior to 1962 there existed an inclusive conception of citizenship based on loyalty to the British monarch. As a result, both native Britons and colonial subjects were British subjects. The 1962 Commonwealth Immigrants Act ended the open door policy for former British colonial subjects. The concept of patriality, introduced by the 1971 Immigration Act, subsequently restricted entry to those with an ancestral connection with the UK, thereby excluding non-white commonwealth citizens. The 1981 Nationality Act narrowed even more the definition of British nationality by confining *ius soli* to children born in the UK who had a parent who was either a British citizen or 'settled' in the terms of the Act.²¹

Given the failure of the nationality model of citizenship to deal appropriately with cultural pluralism, race and immigration, the task of constructive citizenship is to invent an alternative strategy for dealing with difference. This, as I argue below, is founded on the 'affirmation' of differences, the 'respectful symbiosis' of different communities—not on assimilation, integration, exclusion, or expulsion of differences. Obliteration of differences has been the main goal of models of citizenship, such as the French, which seek to assimilate culturally diverse people into the dominant national culture and values. The integrative responses to difference, such as the British, accept and tolerate difference in so far as it is confined in the private realm. In so far as the public realm is concerned, ethnic

¹⁹The French government also proposed to forbid any immigrant expelled from France to return for at least a year; to deprive students from the right to family reunification; and that mayors would have the power to refuse to marry persons they believed were intent on a marriage of convenience in order to get French citizenship for one of the partners. These proposals, incorporated into the Loi relative à la Maîtrise des Migrations et Conditions d'Entrée, d'Accueil et de Séjour des Etrangers en France, however, were blocked by the Conseil Constitutionnel (Friday, 13, August 1993).

²⁰Michael Hechter, *Internal Colonialism: The Celtic Fringe in British National Development* (London: Routledge & Kegan Paul, 1975); Gilroy, 'There Ain't No Black in the Union Jack'.

²¹The Act introduced three new classes of citizenship (i.e., 'British' citizens, 'British Dependent Territories' citizens and 'British Overseas Citizens') based on immigration status, thereby limiting the right to abode in the UK to British citizens. The 1988 Immigration Act removed the only statutory right to family unity in British law. Subsequent immigration policies (i.e., 1987 Carriers Liability Act) reaffirm the differential power dimension between the hegemonic majority and migrant communities.

communities are required to embrace the nation's ideals; they are required to identify with the common culture of citizenship, as it has been defined by the national community. Among the main features of the British-style integrationist model are unequal pluralism and arrested development of differences, whereas exclusion of difference has been the strategy favoured by the German model of citizenship. 'Expulsion' of the Other, under the guise of cultural differentialism, is a central theme of Right-wing discourses which trigger European racism.²² On this mode, immigrants have to be repatriated, not because they are inferior (biological racism), but because they are culturally 'other' and thus an alleged threat to the perceived ethnic and spiritual homogeneity of the national collectivity.

Developments in the field of European Union citizenship have opened up new possibilities for the theory and practice of citizenship, but have also shown that citizenship remains the 'last bastion of national state sovereignty'.²³ Possibilities for redesigning citizenship are opened by the institutionalization of multiple citizenship, the pluralization and dispersion of political allegiances to political associations formed at different levels and by new collective and individual actors being able to participate directly in new centres of decision-making. All this undermines the legitimacy of the nation-state as the basic form of political community. But these possibilities remain, at present, frustrated due to the imposition of a quasi-national model of citizenship onto the European level. Union citizenship has been conditioned on municipal nationality—and not on residence (Article 8 (1) of the Treaty on European Union). Despite objections by the European Parliament, millions of third-country nationals, who have been lawful and long-standing residents in the territories of the Union, are deprived of the benefits of Union citizenship due to exclusionary nationality laws and restrictive citizenship laws in the Member states.²⁴

The logic of exclusion at the heart of the European project has been reinforced by the current consensus on restrictive immigration policies which has been forged via the intergovernmental pattern of co-operation on immigration and asylum matters. The intergovernmental approach to immigration in the EU and the policies that have resulted from it have been criticized for their lack of democratic legitimacy and for creating a 'Fortress Europe' in secret, and with little democratic debate, aiming at excluding Third World immigrants and refugees.²⁵

²²Étienne Balibar, 'Es gibt keinen staat in Europa: racism and politics in Europe today', *New Left Review*, 186 (1991). On racism as cultural differentialism, see Pierre-André Taguieff, 'From race to culture: the New Right's view of European identity', *Telos*, 98-9 (1994), 99-125 and Étienne Balibar and Immanuel Wallerstein, *Race, Class, Nation: Ambiguous Identities* (London: Verso, 1991).

²³See Brubaker, *Citizenship and Nationhood*, p. 180.

²⁴See O.J. 1989 C 69. See also the European Parliament's Resolution on Union citizenship (O.J. 183, 15/7/91). The Resolution proposed the extension of freedom of movement and political activity to all legal residents.

²⁵See David O'Keeffe, 'The emergence of a European immigration policy', *European Law Review*, 20, 1 (1995), 20-36. On 'Fortress Europe', see Tony Bunyan 'Towards an Authoritarian European State', *Race and Class*, 32, 3 (1991), 19-24.

Against these daunting prospects and the profound risks entailed by the superimposition of the language of the nation-state onto the supranational institution of Union citizenship, I now proceed to suggest a new framework of citizenship beyond the nation-state. This is inspired by what I believe to be the radical potential of Union citizenship. My intention, however, is not to present a case study of Union citizenship, but to use Union citizenship as a catalyst for new ways of thinking about citizenship, and as a surface on which these alternative possibilities can be more concretely inscribed.

III. CONSTRUCTIVE CITIZENSHIP IN EUROPE: AN ARGUMENT

My discussion of constructive citizenship as a paradigm of citizenship beyond the nation-state takes the form of an unfolding set of propositions, as follows.

Proposition 1: A theory of citizenship need not depend either on some essentialist conception of individual identity or a foundationalist conception of community. It needs to acknowledge the fact that citizens have multiple identifications, to open up space for 'communities of concern and engagement', and to consider a new paradigm of citizenship based on domicile.

In the realm of political philosophy, the liberal/communitarian debate juxtaposes the liberal conception of citizenship as juridical 'status' against the republican conception of citizenship as 'practice', as active engagement with common affairs and shared responsibility for the identity and continuity of the community.²⁶ But 'status' and 'practice' should not be treated as irreconcilable alternatives, for without active participation status can neither be secured nor guaranteed. In the same vein, practice when it is not accompanied by equal status becomes precarious and runs the risk of being licence for exclusion.

Despite disagreements over the meaning and content of citizenship, both parties in the debate take the nationality model of citizenship for granted. They fail to problematize the issue of social membership that strikes at the heart of multicultural politics and to reflect critically on the historical construction of exclusions in national states. It is perhaps this oversight that has led feminist and anti-subordination perspectives to argue that the 'problem' of citizenship today is not so much a matter of striking a balance between the individual and the community (the politics of the Right and the politics of the Good) as, instead, a

²⁶See Adrian Oldfield, 'Citizenship: An Unnatural Practice', *Political Quarterly*, 61 (1990), 177-87; Will Kymlicka, *Contemporary Political Philosophy* (Oxford: Clarendon Press, 1990); Stephen Mulhall and Adam Swift, *Liberals and Communitarians* (Oxford: Blackwell, 1992). Communitarians are inspired by Aristotle's compelling vision of public life as well as his conception of the citizen as one who has a share in both ruling and being ruled; see Alasdair MacIntyre, *After Virtue* (London: Duckworth, 1981). Deontological liberalism, on the other hand, gives priority to the Right, that is, the creation of a legal framework within which individuals as sovereign and morally autonomous beings are able to pursue their chosen form of life.

matter of questioning and deconstructing the constructed sense of the self and of the community underlying these politics.²⁷

Deontological liberalism exemplifies the modernist tendency to ground social reality and human subjectivity on a secure identity, on an essential, constituent subject. Sandel's criticism of Rawls's theory, for example, is that it is underpinned by a metaphysical conception of the subject as an essential, unified and coherent entity which is constitutive and not constituted by society, a conception in which individuals are logically and morally prior to society.²⁸ Although Rawls would not have much difficulty in conceding at least part of this criticism²⁹—in fact Rawls now prefers to use the term citizens instead of persons³⁰—he still assumes that the societal context is unified and homogeneous (a national society) and that citizens are 'degendered', 'disembodied', 'deraced'.³¹

Communitarians, on the other hand, emphasize the embeddedness of individuals. They tend to cling to the idea of ascriptive communities ('the nation/family/neighbourhood complex') and, thus, to view membership as a matter of 'thick' communal attachments. They argue against the 'ethosless ethos' of liberal societies.³² In locating the remedy in the comforting familiarity of the 'nation/family/neighbourhood' complex, however, communitarians threaten to subjugate the individual to a Hegelian overarching community which commands absolute obedience, and they reinforce the misconception that identities are unitary, fixed and signal inflexible commitments (an essentialist conception of identity). As a result, communitarians tend to affirm the nation-state's monopoly on the terms of political identity and thus to narrow the scope for communal allegiances beyond national borders.³³

In contrast to the failure of both deontological liberalism and communitarianism to provide an adequate conception of political identity and

²⁷ For feminist perspectives see: Carole Pateman, *The Problem of Political Obligation: A Critique of Liberal Theory* (Berkeley: University of California Press, 1979); Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic, 1989); Iris Marion Young, *Justice and the Politics of Difference* (Princeton, N.J.: Princeton University Press, 1990); Carol Gilligan, *In a Different Voice: Psychological Theory and Moral Development* (Cambridge, Mass.: Harvard University Press, 1982). For anti-subordination perspectives see: Gilroy, *There Ain't No Black in the Union Jack*; Patricia J. Williams, *The Alchemy of Race and Rights* (Cambridge, Mass.: Harvard University Press, 1991).

²⁸ Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), pp. 150–79. For John Rawls's response see 'Justice as fairness: political not metaphysical', *Philosophy and Public Affairs*, 14 (1985), 515–72 and *Political Liberalism* (New York: Columbia University Press, 1993), p. 28.

²⁹ This is because both the deliberation of the parties in the original position and the way they regard themselves (i.e., as free and equal citizens) is informed by some basic intuitive ideas which are largely derived from the public culture of a democratic polity; John Rawls, *A Theory of Justice* (Cambridge Mass.: Harvard University Press, 1971), pp. 48–51.

³⁰ Rawls, *Political Liberalism*.

³¹ In *Political Liberalism*, p. xxviii, Rawls has acknowledged that race, ethnicity and gender 'may seem issues of an altogether different character calling for different principles of justice, which the Theory does not discuss'. See also Susan Moller Okin, 'Political liberalism, justice and gender', *Ethics*, 105 (1994), 23–43.

³² Ronald Beiner, *What's The Matter With Liberalism* (Berkeley: University of California Press, 1992), pp. 20–8.

³³ Michael Walzer, *Spheres of Justice* (New York: Basic, 1973). For a recent attempt to redress the communitarian failure to address in an adequate way issues of race, ethnicity and gender and other forms of exclusion in contemporary societies, see Charles Taylor, *Multiculturalism and 'the Politics of Recognition'*, ed. Amy Gutmann (Princeton N.J.: Princeton University Press, 1992).

community, anti-essentialist critiques of subjectivity have broken up the sovereign, essential self postulated by modernity. The 'decentring the subject' has not only shed light on the complexity and ambiguity that surrounds the construction of identities. It has also revealed that individuals may have multiple identities as a result of their movement in and out of various subject positions.³⁴

The European Union has given a historically unprecedented expression to this pluralization of attachments and multiplication of identifications, in spite of the veneer of nationalism. It has shown that citizens' identifications, interests and concerns are no longer exclusively tied to the national level but extend both upwards (the supranational level) and downwards (the sub-national level). Citizens are also eager to use opportunities offered on one level in order to force a recognition of their suppressed identities or to accelerate constitutional changes on another. This process, in effect, compromises nation-states' ability to monopolize the terms of collective identity. In so doing, it questions the appropriateness of traditional nationalistic narratives which link between citizenship and cultural conformity. European Union law bestows Community nationals not only with the rights of free movement, residence and establishment in the territories of the Union but also with electoral rights (in local and European elections) in the Member state of their residence.

The unfastening of the link between citizenship and cultural conformity, albeit its narrow application (that is, only to Community nationals), shows that the nation-state can no longer be propounded as the primary and overarching locus of identification. It is, instead, only one of the communities, imagined or not, to which individuals happen to belong.³⁵ This 'decentring of the nation-state' cannot but destabilize the traditional nation-state narrative which propounds ethnic or cultural heterogeneity as a 'problem' and multiple identification as an 'unhealthy choice'.

The task of citizenship theory is to articulate another narrative which welcomes the complexity and pluralism of contemporary societies as well as the contingency and ambiguity of our era, without inappropriately retreating into the nostalgia for 'a politics of place' or to the romanticism of 'embeddedness' in 'natural' communities. As an alternative conception of community which respects the Other, I suggest the notion of 'community of concern and engagement'. In this conception of community, all its corporate and individual members—associated by virtue of their differences from one another—share a concern over the nature and the future of the polity and are engaged in collectively shaping that future. Such a conception could be empirically implemented by institutionalizing a model of citizenship founded on domicile, not on nationality. If Union citizenship, as an

³⁴Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy* (London: Verso, 1986).

³⁵For hybrid and other members of ethnic communities or minority nationalities (i.e., Black British, Muslim British, Welsh British, Scottish British) multiple identification has long been a fact.

original form of citizenship, were conditioned on domicile, third country nationals would not be deprived of the rights and the protection that EU law affords to Union citizens. Domicile could easily be propounded as a Community law concept, thereby ensuring uniformity and fairness in the interpretation of the personal scope of Union citizenship throughout the Union.

A paradigm of citizenship based on domicile could also lay the foundations for an inclusive European identity and for the formation of a 'heterogeneous', democratic European public.³⁶ In such a public, individuals can participate as individual citizens and members of communities or groups which have equal status in the public sphere—they can take action both as citizens and as black citizens, or gay citizens, or old age pensioner citizens. This will free the European demos from the grip of nationality, without at the same time postulating an abstract, undifferentiated collectivity.³⁷

The European Union could potentially form the basis for the creation of heterogeneous demos, a community of 'concern and engagement'. This is not merely because it has been built upon an affirmation of Europe's deep diversity. It is also due to the fact that what unites the various political units is neither some shared conception of Europe's destiny nor a cohesive identity in a communitarian sense. 'Europe' does not need to be filled with Eurocentric myths in order to act as an integrating device. Nor is a common national identity and retrospective narratives of common origins and shared heritages required for identity-building in the EU. There exist subversive memories of suffering, of colonialism, of wars, conflicts and exclusions as well as symbols of resistance and freedom which could enhance identification with the European project and generate a determination to improve existing arrangements. What binds the various constituent units together in a Union is their commitment to the future of the Union, in the sense of working together towards creating 'an ever closer union among the peoples of Europe' while preserving and respecting the distinctive identities of its members.³⁸ In this process there is neither consensus nor indeed certainty about the juridico-political shape of the outcome. There is only an active concern and a willingness on behalf of its units to participate in the collective shaping of this process by designing appropriate institutions. This participation is not confined to one privileged site, one unified public, as it was previously the level of the state. Instead, it takes the form of a complex and multifaceted interrelationship of individuals, groups or

³⁶Iris Marion Young, *Justice and the Politics of Difference* and 'Polity and group difference: a critique of the ideal of universal citizenship', *Ethics*, 99 (1989), 250–74 at pp. 252–8.

³⁷It may be objected here that official recognition of particularistic identities could be a divisive basis for political identity. But such a claim appears unconvincing, as it essentializes 'difference'; that is, it assumes that members of different groups have nothing in common, whilst, in reality, they share similar concerns, similar expectations and have mutual worries.

³⁸See clause F.1 of the TEU. See also Article 128 which pronounces the Union's obligation to contribute to the flowering of the cultures of Member States, while respecting their national and regional identity.

even regions with multiple, overlapping and strategically interacting political communities formed on various levels.³⁹

In negotiations over European institutions, for instance, actors bring their own particular agendas, their own wishes and viewpoints about the future of European integration. But there is a common interest in improving things, a shared concern about a better future for the European polity, and this opens up a critical space for debate and negotiations on how, with what speed, and to what effect structures can be improved. Understandably, draft agendas on this often fail to coincide and often even go in opposite directions. But through a process of negotiation, debate, persuasion in which power (that is, the threat of veto) is involved, compromises are made, draft agendas become rearticulated and modified, final results are reached which are accepted by all as much as they remain contested. Via the process of gradual trial and error, further steps towards greater integration are made, and the federal option for Europe is kept moving. The outcome can hardly be considered as a resolution of the opposing views or the result of finding a common neutral ground. Differences remain. But the subsequent process of implementation reveals which of them are based simply on doctrinaire attitudes and which are driven by a genuine concern for improvement and better arrangements. Such a conception of community allows for disagreements and conflicts. It also shows that a community can be created among those who have very different views about its nature and its future.

Proposition 2: Citizenship theory should focus on the issue of social membership and problematize the politics of 'belonging' and 'exclusion'. In this respect, constructive citizenship: i) needs to rethink the meaning of membership in contemporary plural societies and the European Union; ii) need not ignore the reality of structures of inequality by an appeal to universalism; iii) nor should it rely on the communitarian fiction of a supposedly frictionless and homogeneous society.

Since the personal scope of citizenship ultimately depends on the particular understanding of political membership, citizenship theory has to devise an adequate conception of the source and justification of membership. Neither the principle of ascription nor the liberal principle of consent are attractive candidates for understanding membership. Ascription, by emphasizing 'thick' communal attachments, leads to exclusion and domination, while the Lockean principle of

³⁹I am indebted to the anonymous referee of the *Journal of Political Philosophy* for the comment on multiple publics.

consent models contractual communities on 'natural' (in the sense of national) communities.⁴⁰ Consent hardly disallows exclusion, for communities may always decide to withhold consent to an individual's membership.⁴¹

Habermas' idea of communicative rationality aspires to disentangle membership in a political community from ascriptive identities.⁴² Habermas proposes the separation of *demos* (Gesellschaft) from *ethnos* (Gemeinschaft) in the EU, by distinguishing between a common supranational political culture in the European Union from the 'particularistic claims to integrity of given forms of life'. Habermas seems to adhere to the idea of a consensual community of shared political values. But by emphasizing a post-national constitutional patriotism based on a common supranationally shared political culture of the Union, however, Habermas assumes a community among the members of the Union, instead of showing how one can be established.⁴³ These supranationally shared principles do not form the subject of public debate and criticism—'new citizens are expected to readily engage in the political culture of their new home'.⁴⁴

Instead of making community the precondition for democracy and justice, constructive citizenship makes concern for justice and the willingness to participate in the collective shaping of the future of the European polity the basis for constructing a community in the European Union. As such, it fosters the creation of a heterogeneous European public which 'neither threatens to assimilate nor to essentialize difference' and of an inclusive European identity. Constructive citizenship takes difference seriously, not merely because it appreciates its enriching and revitalizing effect on social life, but because it recognizes that 'heterotis' (that is, difference) and not 'omoiotis' (that is, identity) is the basis for social relations. Difference is required on epistemological grounds, for there can be no identity unless differences have played their crucial role. But valuing difference is also consonant with commitment to the principles of equal moral worth of individuals and treatment with equal dignity—principles that are incompatible with exclusion and disrespectful belonging.

On an institutional level, constructive citizenship implies the disentanglement of Union citizenship from municipal nationality and the expansion of its personal scope to third-country nationals. It also requires more democracy, transparency and subsidiarity (see proposition 4 below) in the decision-

⁴⁰Peter Schuck and Rogers Smith, *Citizenship without Consent: Illegal Aliens in the American Polity* (New Haven, Conn.: Yale University Press, 1985), p. 32.

⁴¹Although at the cost of violating liberalism's other commitment to the equal moral worth of all individuals.

⁴²Jürgen Habermas, 'Citizenship and national identity: some reflections on the future of Europe', *Praxis International*, 12 (1992), 1–19.

⁴³See Judith Squires, 'Discussing deliberative democracy: democracy and difference', *Radical Philosophy*, 65 (1993), 61–2.

⁴⁴Habermas, 'Citizenship and national identity', at p. 17, notes that 'political acculturation is demanded of them' since the 'democratic right of self-determination includes, of course, the right to preserve one's own political culture'. This shows that Habermas makes a single political culture as the locus for determining what is just.

making processes of the institutions of the Union and a commitment to assist the expression and development of individual identities, cultures and traditions. It also prompts a rethinking of the current immigration arrangements and the intergovernmental path of co-operation on immigration and asylum matters. This may be the starting point for the formation of a justiciable, more democratic Union immigration policy which observes international human rights standards. But denationalizing/deracializing Union citizenship requires also the forging of a juridico-political culture of anti-discrimination (that is, anti-racist, anti-sexist) in order to give effect to citizenship rights.

Such a culture of anti-discrimination can be inclusive and empowering if it entails a commitment to remove the structures of inequality that lie behind the polity's formal adherence to universalist principles. Both feminist and anti-subordination perspectives have demonstrated the illusion of gender and race equality by exposing the domination and inequality that pertain to the private gendered sphere and by focusing on the reality of oppression and the concrete experiences of Black people accordingly.⁴⁵ In response to the 'degendered' and 'raceless' paradigm of universal citizenship, Young has proposed a conception of differentiated citizenship which affirms the Other and provides 'institutionalized means for the explicit recognition and representation of oppressed groups'.⁴⁶ The latter consist of guaranteed representation in political bodies, public funds for advocacy groups and veto rights over specific policies that affect the group directly, as well as group differentiated policies such as language rights for Hispanics, reproductive rights for women, cultural rights for ethnic communities and so on.

Differentiated citizenship has been criticized by many as contradicting the orthodox conception of citizenship, which sees it as a matter of isonomia (that is, legal equality) and equity (that is, those who are similarly situated be similarly treated). Critics argue that differentiated citizenship inappropriately discriminates among 'similarly situated people' on the basis of irrelevant differences.⁴⁷ However, it is doubtful whether differences which are irrelevant from a moral point of view are really irrelevant in the socio-political field. If they were really

⁴⁵ In their attempt to go beyond the politics of the Right, however, certain feminist theorists have attempted a dialectical synthesis of the Right/Good dichotomy by invoking a higher ideal of community which domesticated all oppositionality (communitarian universalism). An example of this has been the feminist idealization of both motherhood and relations of intimacy, transparency and spontaneity. By sketching an ideal of frictionless communities, such narratives misconceive society as a totality (i.e., as a unified and non-contradictory entity), and posit an essentialist conception of womanhood. See e.g. Jean Bethke Elshtain, 'Antigone's daughters', *Democracy*, 2 (#2) (1982), 46-59; Sara Ruddick, 'Maternal thinking', *Feminist Studies*, 6, (1980), 342-67.

⁴⁶ Young, 'Polity and Group Difference', pp.257-8, and *Justice and the Politics of Difference*, pp.237-8.

⁴⁷ See Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989); Barry Hindess, 'Multiculturalism and Citizenship', *Multicultural Citizens: The Philosophy and Politics of Identity*, ed. C. Kukathas (St. Leonards, NSW: Centre for Independent Studies); David Miller, 'Citizenship and Pluralism', *Political Studies*, 43 (1995), 432-50 at pp.446-7.

irrelevant, then the race-blind and sex-blind politics of equal citizenship would have reduced discrimination and inequality. Since this has not been the case, as social statistics demonstrate, it is reasonable to conclude that society systematically disadvantages groups on the basis of their allegedly irrelevant differences. So taking equality seriously seems to require difference-conscious strategies aiming at empowering disadvantaged groups. Critics worry about the danger of separatism allegedly entailed by group-conscious policies, or the spread of 'mutual mistrust and conflict'.⁴⁸ But differentiated citizenship, being essentially a 'quest for inclusion', seeks not to undermine community but to restore the sense of community, which is being damaged by the perpetuation of inequality and discrimination.⁴⁹

The differentiated means employed to combat inequality and promote justice in the European Union could be:

- (i) group rights (a tier of special rights supplementing the general tier of rights applicable to all);
- (ii) regional rights of increasing opportunities for self-governance (see proposition 4 below); and
- (iii) structural rights aimed at tackling the various facets of economic inequality, thereby ensuring that membership in the community is not denuded of meaning as a result of abject poverty (see proposition 5 below).

The Committee of the Regions (1992) and the Migrants' Forum could be seen as the first steps towards voicing regions' or migrant communities' analyses of how EU policies affect them, what their aspirations are and what other development programmes and policy proposals might better serve them. Article 2(4) of Directive 76/207, which provides for equal treatment of men and women in the context of employment, leaves room for 'measures to promote equal opportunities for men and women, in particular by removing existing inequalities which affect women's opportunities in certain restricted areas'.⁵⁰ Credit should be given to the Court of Justice for enhancing the rights of pregnant and birthing mothers. Furthermore, the Commission, backed by the European Parliament, has introduced positive Action Programmes aiming at, among other things, eliminating sex discrimination beyond the workplace and promoting equal opportunity for women. A crucial feature of these programmes is the acknowledgement that women's educational and employment opportunities are closely linked to the sharing of family responsibilities.

⁴⁸Chandran Kukathas, 'Multiculturalism and the Idea of an Australian Identity', *Multicultural Citizens*, ed. Kukathas, p. 156.

⁴⁹Young, 'Polity and Group Difference', p. 251.

⁵⁰However, much depends on the scope that the European Court of Justice will give to Art. 2(4). Articles 2(2) and 2(3) have been given the narrowest scope and have been invoked to the detriment of women. In *Kalanke*, the ECJ struck down a rule adopted by a German firm which gave women priority over men (Case C-450/93, *Kalanke v. Freie Hansestadt Bremen*, October 17, 1995).

Proposition 3: *Constructive citizenship must reinvent a language of rights.*

Since rights are important for inclusion and respectful participation in the polity, constructive citizenship needs to provide an adequate philosophical justification of rights. Understanding the philosophical credentials of rights is not only important for political theory but also for rights practice. For one can only adequately defend rights by providing arguments that are grounded on a coherent and rigorous rights theory.⁵¹

The liberal tradition gives priority to rights as individual entitlements, but liberals seem to speak about rights as though they have been conferred by Nature or by Providence upon individuals.⁵² By viewing rights as metaphysical attributes or moral properties of human beings, liberals seem simply to assume the existence of rights instead of establishing it. When it is necessary to support their claims with an adequate philosophical justification of rights, liberals fail.

In the same vein, communitarians have failed to develop a sophisticated account of rights. Either they commit the Benthamite fallacy of condemning rights as ghostly-like articulations;⁵³ or they reduce the normative language of rights to pure conventionalism, by grounding them on the concrete norms of existing communities.

A new way of thinking about rights is thus needed—one which relies on the normative language of rights without giving them a foundational status. A convincing language of rights has to reconcile rights theoretically with the rejection of metaphysics and essentialism (that is, the liberal invocation of human nature or its essential attributes) without lapsing into social subjectivism.

Rights should not be viewed as 'property' of individuals or groups—as 'things to be possessed'.⁵⁴ They are discursive categories, grown out of historically specific social contexts, which encapsulate a normative ordering of social relations and practices. Such a normative ordering is essential for the flourishing of both the individual and the society.

Asserting the historicity of rights does not in any way compromise their universality.⁵⁵ For although rights have emerged within a historically specific context, they simultaneously exceed this context by setting standards that can be followed by others. In this way, rights supersede the realm of 'is' (the actualities of specific communities) and set normative standards which may be followed by others, irrespective of their particular cultural understandings. Such a conception of rights can accommodate an ethic of difference and facilitate the institutionalization of group rights—as a supplement and not a replacement of

⁵¹Michael Freeman, 'The Philosophical Foundations of Human Rights', *Human Rights Quarterly*, 16 (1994), 491–514 at pp. 491–5.

⁵²See John Locke, *Second Treatise of Government*, ed. J. W. Gough (Oxford: Blackwell, 1976), p. 5.

⁵³According to MacIntyre, belief in rights is one with belief in unicorns and witches; see *After Virtue*, p. 67.

⁵⁴Jack Donnelly, *The Concept of Human Rights* (London: Croom Helm, 1985).

⁵⁵For a different view, see Freeman, 'The Philosophical Foundations of Human Rights', at p. 512.

individual rights and liberties. In addition to the recognition of group rights for sectoral groups which are discriminated against and function as active units, the above conception shows that rights do not constitute a fixed code. The uniting of Europe, for instance, has given birth to 'new' rights of free movement, residence, establishment, non-discrimination on the grounds of nationality, local and European electoral rights in the Member state of residence and so on. In the process of their concrete application, these rights may be conceptually refined, further extended (for example, to third country nationals) and enriched (for example, statutory prohibition of discrimination on racial grounds). Unanticipated problems often accompany their concrete application, or further injustices might occur which would give rise, in turn, to new moral claims and prompt the invention of other normative principles.

An illuminating example of this is Clapham's argument for the 'privatization' of human rights, that is, the extension of international human rights law to the private sphere. Clapham favours such an extension of the protection of human dignity 'from all bodies whether they are public or private', because 'inhuman and degrading treatment can be just as damaging whether meted out by a Securicor guard or an officer in the police force'.⁵⁶ There is also a strong argument for making marital rape, child abuse and domestic violence international human rights issues. As Clapham puts it, 'putting a woman who is beaten up by her husband on an equal footing with a political detainee who is beaten up by his interrogators does not trivialize human rights; rather it enriches the whole question of human rights'.⁵⁷

So rights may be a product of human adventure, the invention of political life itself. But they are also statements of 'ought'. As such, they enjoy a quasi-transcendental status.⁵⁸ That is, in fact, the very source of their strategic force. My argument here espouses a dynamic conception of universality.⁵⁹ That is, a conception of universality which neither points towards a final end, an accessible telos; nor does it prescribe a particular form of life. Instead, it opens up and sustains a critical space which makes any final answer to the question of what is objectively Right simply inappropriate.

Proposition 4: It needs to take democracy seriously by fostering processes of democratic decision-making and encouraging participation in public discussion

⁵⁶Andrew Clapham, 'Opinion: The Privatization of Human Rights', *European Human Rights Law Journal*, 1 (#1) (1996), 20-32 at p. 29.

⁵⁷*ibid.*, p. 31.

⁵⁸Drucilla Cornell, 'Post structuralism, the ethical relation and the law', *Cardozo Law Review*, 9 (1988), 1587-628.

⁵⁹Amy Gutmann's 'deliberative universalism' is intended to apply to issues of decision-making in cases of fundamental moral conflict and not to give an account of the philosophical credentials of principles; see her 'The challenge of multiculturalism in political ethics', *Philosophy and Public Affairs*, 22 (1993), 171-206, at pp. 197-205.

by all those who 'express a will to share actively in a common experience rather than in a common life'.⁶⁰

Euro-sceptics tend to overlook the fact that the aim of the European project is not to 'abolish states or to replace old states by new states, but to devise levels of co-ordinate government'.⁶¹ The latter process creates more chances for democracy, since democracy is closer to divided powers or concurrent competences than to arrangements that prompt concentration of power on a unitary centre.

Constructive citizenship must, therefore, address the issues of decentralization of power within states and constitutional federalism in the European Union. By entailing a principled diffusion of power among different levels of government, constitutional federalism promises to enhance liberty and to advance democracy by increasing opportunities for heightened public participation. Although distribution of power strikes at the core of both principles of decentralization and federalism, the concepts themselves are, however, unable to guide us as to how competences can be distributed among different layers of government or how to resolve disputes that might arise from such distribution.

The principle of subsidiarity, which has been invoked in the context of the European Union, could be a useful guide. That principle requires that decisions should be taken as closely as possible to the citizens, and that higher authorities may intervene only when lower authorities are unable to fulfil a given task. This genuine decentralist meaning of subsidiarity has been compromised as competence belongs in principle to the Member States;⁶² and there is no reference to distribution of competences between the national and subnational levels. This—coupled with the lack of a clear demarcation of competences between the Community and the national levels as well as the problems that accompany the test of 'comparative efficiency'⁶³—prevent subsidiarity from being a meaningful instrument for devising coordinate levels of government.⁶⁴

⁶⁰Sheldon Wolin, 'Democracy, difference and re-cognition', *Political Theory*, 21 (1993), 464–83 at p. 472.

⁶¹T. Koopmans, 'Federalism: the wrong debate' (Guest Editorial), *Common Market Law Review*, 29 (1992), 1047–52 at p. 1050.

⁶²As it has been defined by the Treaty on European Union (Art. 3b) and the Edinburgh Declaration (1992).

⁶³The test of efficiency is tied with political judgements as to whether the community or the Member states can do a given task better—a political judgement that the Court of Justice will be rather reluctant to make.

⁶⁴The British government favours a minimalist interpretation of Article 3b EC based on the phrase 'in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States...' On this meaning, the Community's excessive interventionism should be avoided. This approach, which has been termed by the *Economist* as 'a market driven subsidiarity', contradicts the interpretation of subsidiarity as a means for regulating the exercise of concurrent competences. Britain is likely to invoke the minimalist interpretation of subsidiarity in order to avoid implementing Community decisions. For an examination of British objections, see Paul Taylor, 'British sovereignty and the European Community: what is at risk?', *Millennium*, 20 (1991), 73–80 at p. 78; on subsidiarity, see Jose Palacio Gonzalez, 'The principle of subsidiarity: a guide for lawyers with a particular community orientation', *European Law Review*, 20 (#4) (August 1995), 355–70 at p. 358.

From this standpoint, it can be said that there is at present a 'subsidiarity deficit' in the EU which, in a way, augments the current democratic deficit. Strengthening the Union's democratic legitimacy will be among the crucial institutional challenges facing the Union—an institutional challenge which can only be met by 'more democracy, more subsidiarity and more clarity'.⁶⁵ More subsidiarity, according to the Committee of the Regions' own initiative opinion on the revision of the Treaty, means the reformulation of the principle of subsidiarity to contain explicit reference to local and regional authorities, as well as a clear demarcation of the powers of the Union and the states.⁶⁶

The subsidiarity deficit and the accountability deficit more generally are not the only facets of the democratic deficit in the EU. There is, at present, also a 'civic inclusiveness deficit' which, as already noted, places Europe's ethnic population to the periphery of the European civil society.

Proposition 5: Political democracy has to be accompanied by social justice. Constructive citizenship must devise more egalitarian principles of distribution of socio-economic benefits, thereby enabling citizens to take advantage of opportunities for participation.

In the context of proposition 2, I suggested that a willingness to tackle the social inequalities that belie the liberal ideal of formal equality is essential for inclusion and respectful belonging. In proposition 4, I also argued that a proper democratic outcome includes the fulfilment of participatory goals which, in turn, necessitate some form of substantive redistributive action. In the EU, the 'long-term growth' of poverty, the increase in the ranks of homeless and hungry (particularly among the young), the increase in poverty among the elderly and the female-headed households and the persisting poverty of the inner cities are all major causes for concern.

New Right politicians who, following Friedman and Hayek, praise unregulated private market economies have failed to consider seriously the quality of economic life for all these affected.⁶⁷ Questions such as who might suffer, how much and for how long in such an economy have gone unexamined.⁶⁸ The New Right has never considered inequality and social exclusion has never been perceived as a problem or a cost. Instead, the orthodox paradigm of social

⁶⁵The Commission, in the report which has been submitted to the Reflection Group (Bull. EU, 5/1995, p. 92), criticizes the fact that subsidiarity has often been used for short-term ends and in order to avoid making use of all the possibilities for effective action, in a way that subverts the true spirit of the Treaty.

⁶⁶It was adopted on 21 April, Bull. EU, 4/1995, p. 93.

⁶⁷Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962); Milton and Rose Friedman, *Free to Choose* (Harmondsworth, Mddx: Penguin, 1980); Frederick Hayek, *Law, Legislation and Liberty*, vols 1 and 2 (London: Routledge, 1973); Frederick Hayek, *The Road to Serfdom* (London: Ark/RKP, 1986).

⁶⁸Philip A. Klein, 'Economic policy and the obligations of the economists', *Journal of Economic Issues*, 18 (#2) (June 1984), 537-46 at p. 541.

citizenship has been attacked, and the welfare state has been blamed for encouraging a dependency culture and promoting welfare clientism.⁶⁹ But there is no evidence to suggest that New Right policies in the 1980s have pushed people 'beyond entitlement' and promoted more responsible citizenship.⁷⁰ Instead, monetarist policies have exacerbated class inequalities and increased the ranks of the working poor and unemployed by cutting welfare benefits and reducing training programmes.⁷¹

Citizenship theory, therefore, has to address the fact that people are forced into the welfare system, owing to the lack of real job opportunities. The prospect of full-time employment is no longer a certainty, and part-time jobs do not pay enough. Certainly, there are also large macroeconomic issues at work here, but in the EU pressures for a new agenda for social policy and welfare reform also arise from the risk of 'social dumping'.⁷²

An agenda for social reform in the EU would have to include the strengthening of the cluster of social rights and a clear anti-poverty strategy. At present, EU policies in this field have concentrated on promoting social rights rather than tackling poverty directly.⁷³ An EU social action programme to combat poverty and homelessness is also needed though. Such a strategy should aim primarily at bringing people above the poverty line or helping them to avoid poverty, not just at reducing some of the hardships of poverty. Such an anti-poverty strategy should target four main areas. First, the area of employment rights and childcare provision, by devising policies aimed at ensuring that jobs pay enough to keep families above the poverty line and at providing affordable childcare to low-income working parents. Second, in the context of welfare provisions, prime targets must be health-care coverage, investment in housing, education and training. Third, in the area of labour market policies, welfare policy must be linked to job opportunity policy. Clearly, putting people back to work must be the prime target, to be achieved via the stimulation of training programmes and jobs

⁶⁹On this subject, see Desmond King, *The New Right: Politics, Markets and Citizenship* (London: Macmillan, 1987); Lawrence Mead, *Beyond Entitlement: The Social Obligations of Citizenship* (New York: Free Press, 1986). New Right theorists and politicians misconceive the symptoms of poverty (i.e., welfare dependency) for causes of poverty. They mistakenly assume that those comfortably above the poverty line would choose to reduce their income so as to become destitute enough in order to qualify for public assistance, or that people enjoy being at the bottom of the ladder because they are 'paupers at heart'; see Robert Pinker, *Social Theory and Social Policy* (London: Heinemann, 1971).

⁷⁰Mead, *Beyond Entitlement*; Geoff Mulgan, 'Citizens and responsibilities', *Citizenship*, ed. G. Andrews (London: Lawrence & Wishart, 1991), pp. 37-49.

⁷¹Raymond Plant and Norman Barry, *Citizenship and Rights in Thatcher's Britain: Two Views* (London: IEA Health & Welfare Unit, 1990).

⁷²Member states with high unemployment and low social welfare provision may export their unemployed to Member countries with lower unemployment and higher welfare provision. Similarly, firms might choose to operate in countries where social wages are low, thereby driving high cost firms out of business or forcing them to relocate elsewhere.

⁷³See the 1989 Community Charter of Fundamental Social Rights (the 'European Social Charter') and the Social Protocol of the Maastricht Treaty.

in the private sector as well as by public investment and EU finance.⁷⁴ Finally, anti-discrimination legislation and policies must accompany these measures.

The pursuit of these policies cuts against the grain of the neo-liberal agenda of strong anti-inflationary policies and deregulated labour markets. But economists do not preclude the possibility of combining tactical interventions in the labour market with a monetary and exchange policy aiming at maintaining price stability. Reducing poverty goes hand in hand with including people in the active economic sphere by giving them the opportunity to work, to earn a decent income which keeps them above the poverty line and to make contributions as both workers and consumers. Given the determination on behalf of most EU Members to develop a Union social citizenship, efforts should be made to ensure that citizenship is not denuded of meaning as a result of poverty.

Proposition 6: Constructive citizenship should not expect people to be total citizens. Nor should it aspire to offer a clinching fulfilment of their lives, for contemporary subjectivities have multiple commitments and shifting loyalties. However, constructive citizenship requires citizens to be responsible (to be concerned with justice), to show respect and sensitivity for others, and to be ready to question rather than to accept things on the basis of trust (critical citizenship).

What underpins the above theoretical agenda on constructive citizenship, and what supports the proposed institutional reforms, is the cultivation of those citizenship qualities mostly associated with critical and responsible citizenship. Proposition 1 laid the foundations for 'an ethic of the Other', and proposition 2 stressed the need for the cultivation of a civic culture of anti-discrimination in the European Union. By an ethic of the Other, I mean an ethos of responsibility to the Other and respect for the Other.

Discussions of citizenship virtues tend to be confined almost exclusively to the issue of political participation. Though political participation is important and should be encouraged (see proposition 5), it cannot in itself provide solutions to all problems of citizenship or be an antidote to the growing racism and rising xenophobia in the countries of the European Union. So—apart from the debate whether political participation is an occasional and burdensome activity, or whether it requires an all-consuming commitment by citizens⁷⁵—the issue of responsible citizenship has to be addressed. Citizens could always use their rights of participation irresponsibly by institutionalizing exclusionary citizenship laws, pushing for tougher immigration controls or even deportation of undocumented immigrants.

⁷⁴The Commission's work programme for 1995 acknowledged that job creation is a priority, thereby calling for implementation of the plan to combat unemployment adopted by the Essen European Council; Bull. EU 1/2-1995, point 1.9.4.

⁷⁵On the limits of both the levelling approach (i.e., private citizenship) and public citizenship, see Bruce Ackerman, 'The Storrs lectures: discovering the Constitution', *Yale Law Journal*, 93 (1984), 1013-72. See also Stephen Macedo, *Liberal Virtues* (Oxford: Clarendon Press, 1991).

Inclusion and respectful belonging, thus, depend heavily on the cultivation of an ethos of responsibility and respect which would place obligations on policy makers and citizens alike. In particular, it would oblige officials in public authoritative bodies, educators, legislators and persons working in the mass media to ensure that policies, laws, provisions and so on respect the equal dignity of all residents and to abstain from discriminatory, racist and xenophobic speech. The insertion of an anti-discrimination clause in Union citizenship or an EU directive which outlaws racial discrimination could aid the institutionalization of such an ethos.⁷⁶

Such an ethos, if cultivated, would also oblige citizens on three levels. On a prior level, it would require citizens to ask questions (even about the questions 'that are imposed on us or taught to us as being the "right" questions to ask'⁷⁷), to criticize official discourses and policies and to engage in rational discourse. On a second level, in the realm of commitment, it would prompt citizens to display solidarity and an active sense of fellowship towards the vulnerable and oppressed. Third, on the level of political intervention, it would oblige citizens to support policies aiming at combating discrimination and injustice as well as to resist unjust policies.

Much, however, depends on the institutionalization of a civic culture of anti-discrimination and anti-racism within which moral obligations can be discursively established and civic obligations can be actualized. Such a civic culture is more likely to foster what Young has called a spirit of openness to unassimilated otherness, or Heller and Feher's idea of radical tolerance.⁷⁸ Unlike the liberal attitude of 'letting be' of difference in the private realm, Heller and Feher's idea of radical tolerance entails the positive recognition of other forms of life—the experience of the other as other. In addition, it is more relational and concerned, in that it recognizes the relation of interdependence between identities as well as extending our concern to the well-being of our neighbour whose particular form of life we may or may not share.

The idea of virtuous citizenship based on an ethic of the Other is not total citizenship, for three main reasons. First, it does not mythologize the citizenry by invoking the romanticism of perfect public citizenship in the Greek polis. Secondly, it does not call citizens to abandon their private selves in order to engage in the public realm of citizenship. Instead, it recognizes that it is their situated selves, that is, their concrete experiences that sustain their struggle for equality and inclusion. Thirdly, it does not require citizens to invest all their energy in citizenship, that is to say, to spend all their afternoons discussing the fate of the polity and to be compelled to participate in public meetings. It requires only

⁷⁶See the proposal for a draft 'Council Directive concerning the elimination of Racial Discrimination' suggested by the Migrants' Forum (Brussels, 1993).

⁷⁷Jacques Derrida, 'The deconstruction of actuality: an interview with Jacques Derrida' (trans. Jonathan Ree), *Radical Philosophy*, 68 (1994), 28–41 at p. 40.

⁷⁸Agnes Heller and Ferenc Feher, *The Postmodern Political Condition* (Oxford: Polity Press, 1988), pp. 82–5.

their reflecting on and criticizing governmental policies and discourses (for example, on immigration and asylum); displaying an active sense of solidarity towards the vulnerable and oppressed (for example, a gay neighbour who is systematically harassed by other neighbours); responding to racist and sexist comments at work, public transport, schools and universities; instituting support groups for victims of violence and discrimination; disseminating information against racism and xenophobia; and so on. All these are forms of personal involvement which do not involve a great sacrifice of one's 'personal' interests.

This is particularly pertinent for practical politics in the European Union today. The increase in racially motivated attacks and xenophobic speech, as well as the level of institutional discrimination, show that responsible citizenship cannot appropriately be confined to the gesture, 'this is none of my business'. It should rather imply the gesture, 'I do care'.⁷⁹

Proposition 7: Constructive citizenship must avoid the temptation of positing a complete, settled and non-contestable interpretation of political life. It should resist closure and be more at ease with the infinitude of the social (that is, the 'excess of meaning') that accompanies institutionalized projects.

For this purpose, I have tried in sketching this outline to affirm an openness to the ambiguity and indeterminacy of social life—both in the sense of awareness of the conditionality of my arguments, and in the sense of allowing space for political actors themselves to test its claims, to criticize them and to redefine them. More importantly, however, instead of postulating the necessity of an overlapping consensus or pledging such consensus on values, I have sought to articulate a conception of citizenship which 'teaches dissensus'.⁸⁰ In contemporary differentiated and fragmented polities, the theory and politics of citizenship need not be embarrassed by conflict, contradictions and fundamental disagreements.⁸⁰ Instead it should make them a community. Of course, this presupposes among other things the abandonment of dogmas, a willingness on behalf of the parties concerned to engage in a process of constructive negotiation of differences and, more importantly, a commitment to protest against inequality and exclusion. But such a process also promises to affirm the openness of the future and to prepare us for the coming of democracy and justice.

⁷⁹ *ibid.*, p. 83.

⁸⁰ Dissensus is an essential ingredient of ordering of any domain of social interaction justly; Ian Shapiro, 'Three ways to be a democrat', *Political Theory*, 22 (1994), 124–51 at p. 134.