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**JHH WEILER**

**MANLEY HUDSON PROFESSOR OF LAW AND JEAN MONNET CHAIR, HARVARD  
UNIVERSITY**

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European Studies Program, International Institute,  
University of Wisconsin--Madison  
Madison, Wisconsin  
<http://polyglot.lss.wisc.edu/eur/>

## TO BE A EUROPEAN CITIZEN - EROS AND CIVILIZATION\*

JHH WEILER

MANLEY HUDSON PROFESSOR OF LAW AND JEAN MONNET CHAIR, HARVARD UNIVERSITY

### Prologue

The challenging tensions between national consciousness and multi-cultural sensibility take place not only within the classical State but also at the transnational level, of which the European Union is one of the most developed. A focal point is the recent discussion concerning European Citizenship. The 1992 Treaty of European Union (The Maastricht Treaty) introduced the concept. Its citizenship clause provided: "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union." The recent 1997 Draft Amsterdam Treaty modified the Maastricht Citizenship Clause by adding the phrase "[c]itizenship of the Union shall complement and not replace national citizenship."

This is a trite, banal phrase. But it reflects a profound anxiety and offers a literary device with which to address, analytically and normatively, some of the deepest dilemmas in constructing the ends and means of transnational integration within the framework of the European Union. One way of describing this essay is to say that in it I want to explore the anxiety and offer a normative interpretation of this provision, not what the provision means, but what it ought to mean.

But there is more to European citizenship (and to this essay). The ever growing discussion on the politics of European citizenship has an exquisite Janus like quality. For

many the concept is considered one of the least successful aspects of Maastricht, trivial and empty, and hence irrelevant. From this perspective, those who believe in it are engaged in wishful thinking and those who fear it suffer from paranoid delusion. On this view, the recent modification was another unnecessary and empty gesture placating dreamers and loonies. For others, European citizenship is an important symbol with far-reaching potential and dangers. The story of European integration is, after all, replete with ideas and policies which, at inception, seemed trivial and empty, but which later attained a life of their own. From this perspective the Powers-that-be made a Pascal-like wager. Empty and irrelevant maybe. But why take risks?

The two views are not altogether contradictory and I wish to track and explain elements of both. I have no interest in making predictions about the future of the concept and its attendant policies. But to the extent that ideas and symbols shape attitudes and, maybe even policy options, the discourse of European citizenship is important not only to the theory of European integration but also to its praxis. In this essay I build on work I have done in this field since 1995 though, in one fundamental respect - the articulation of the relationship between Member State nationality and Community citizenship - I have modified my earlier position significantly.

### **European Citizenship - Dilemmas and Contradictions**

With inimitable acerbity, Perry Anderson begins his essay "Under the Sign of the Interim" as follows:

Mathematically, the European Union today represents the largest single unit in the world economy. It has a nominal GNP of about \$6 trillion compared with \$5 trillion for the US and \$3 trillion for Japan.

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\*An earlier version of this paper appeared in the Journal of European Public Policy 495 (1997). Lecture style has been preserved and citations are given for direct quotes only. My many intellectual debts are acknowledged in the bibliography.

Its total population, now over 360 million, approaches that of the United States and Japan combined. Yet in political terms such magnitudes continue to be virtual reality. Beside Washington or Tokyo, Brussels remains a cipher. The Union is no equivalent to either the United States or Japan, since it is not a sovereign state. But what kind of formation is it? Most Europeans themselves are at a loss for an answer. The Union remains a more or less unfathomable mystery to all but a handful of those who, to their bemusement, have recently become its citizens. It is well-nigh entirely arcane to ordinary voters; a film of mist covers it even in the mirror of scholars.

And bemused they should be. It was Maastricht which bestowed the august title of "European Citizen" on Member State nationals. Even the handful for whom the Union is, perhaps, less than an unfathomable mystery, would have to admit to some perplexity at this new innovation. Citizens of the Union were to enjoy the rights conferred by the TEU Treaty and be subject to the duties imposed thereby. But the Citizenship chapter itself seemed to bestow precious few rights, hardly any that were new, and some explicitly directed at all residents and not confined to citizens. Even if we were to take the entire gamut of rights (duties are usually forgotten in most accounts of European citizenship) granted under the Treaties to European citizens we would be struck by the poverty of provisions normally considered as political and associated with citizenship. Thus, we find (unrealized) promises of true free movement and residence throughout the European Union situated uncomfortably with relatively trivial guarantees of political participation in local and European Parliament elections for those Community citizens taking advantage of those very partial freedoms. And whereas the discipline of a European Common Marketplace in which goods would circulate freely was long understood (even if resisted in practice) as necessitating a European Common External Tariff towards the rest of the world, the same logic - internal free movement and residence requiring a Common European "membership" policy - has been rejected. European Citizenship emphatically does not mean what it has come to mean in all federal States: A "communitarization" of the actual grant of citizenship or even an

harmonization of Member State conditions for such grant. The exclusive gate-keepers remain the Member States.

The question of "added value" cannot but be raised: With very few exceptions, the rights (and duties) associated with European citizenship predated Maastricht. In the past they attached to Nationals of the Member States. Given the way this saga has evolved, what if anything, we may ask, has been gained by adding a new concept, Citizenship, to a pre-existing package of rights and duties rather than, as one may (or might) have expected adding new rights and duties to a concept? And the 'What?' leads to a rather big 'Why?' If the Powers-that-be had, as is evident, no intention of substantially enlarging those rights and duties already attaching to nationals of their respective Member States; if they had no intention of making in relation to humans that critical move that was made in relation to goods, why do anything at all?

There are even deeper dilemmas than this political riddle. Citizenship and nationality are more than an element in the mechanics of political organization. We live in an era - perhaps the entire century -- obsessed with questions of individual and collective identity. The treatment of the celebrated "other" the other in our selves, in our midst, and the other clamoring at our doors or shores is an issue extremely high on the public agenda in most European societies.

Interestingly, as we slouch towards a new fin-de-siècle, after close to fifty years of European integration, the captivating idea of nation and people have retained a surprising amount of their astonishing allure and grip on our collective psyches. And I do not only refer to the new found nationalisms in the "Alt-Neu" Europe of the East. Is the European debate in Great Britain really moved by economic differences on the desirability of EMU or,

instead, by political differences concerning, identity and control of national destiny? Was the debate over Maastricht in France (which split the electorate straight down the middle) or Denmark (who voted against) not about the same thing? And is it mere teasing to suggest that Fin-de-Siècle Vienna - première edition circa 1900 boasted a far more cosmopolitan Geist than its current miserable shadow 100 years later?

The fault lines of this debate are usually not about differences in the self-understanding of the nation and the State. Typically in these debates many of the integrationists proclaim, usually in good faith, to be deeply concerned with, and committed to, national identity and national welfare and all the rest. They simply argue that the European Union will enhance these goals and values rather than threaten them.

Despite this attachment, the vocabulary of citizenship - nationality - peoplehood, the classical concepts from the armory of statecraft and political theory which address these issues, the only ones we have, seem to provoke complicated reactions. The words - nation, people, citizenry - often strike us as cynical when uttered by our political masters -- as in 'The British people do not want ...,' pernicious when employed by the far Right of Le Pen or Haider, and embarrassing when discussed in good society other than to denounce them. Who will admit to being a nationalist - the very word is pejorative. And in an environment which worships at the alter of multiculturalism, who will own up to a thick concept of peoplehood or even citizenship? And if one does own up it is only to imagine a society of "others" (How greedy and cruel of some - usually comfortably positioned - to rob the real "others" of their "otherness" by claiming that we are all "others").

This ambivalence may explain why the introduction in the Treaty of Maastricht of a European Citizenship has struck so many not simply as bemusing but as problematic. At one

level and to some it symbolized yet another bold encroachment on the National by its worst antagonist the Supranational. At a deeper level it seemed to be tinkering with one of the very foundations of European integration.

If, indeed, the traditional, classical vocabulary of citizenship is the vocabulary of the State, the Nation and Peoplehood, its very introduction into the discourse of European integration is problematic for it conflicts with one of Europe's articles of faith, encapsulated for decades in the preamble to the Treaty of Rome. Mystery, mist and mirrors notwithstanding, one thing has always seemed clear: That the Community and Union were about "... lay[ing] the foundations of an ever closer union among the peoples of Europe." Not the creation of one people, but the union of many. In that Europe was always different from all federal states which, whether in the USA, Germany, Australia and elsewhere, whilst purporting to preserve all manner of diversity, real and imaginary, always insisted on the existence of a single people at the federal level. The introduction of citizenship understood in its classical vocabulary could mean, then, a change in the very Telos of European integration from a union among the peoples of Europe to a people of Europe. With the change of the Telos, would commence - some would hope, others fear - a process which would eventually result in people thinking of themselves as European in the same way they think of themselves today as French or Italian. Citizens of Europe, would become, not only formally, but in their consciousness, European citizens.

The introduction of European citizenship to the discourse of European integration could, however, mean not that the Telos of European integration has changed, but that our understanding of national membership has changed, is changing, or ought to change - possibilities that have been discussed widely at the national and European level, most

recently in a comprehensive work by the British scholar Jo Shaw. It would be changing because of a change in our understanding of the State and the nation as well as a change in our self-understanding and our understanding of the self. If Citizenship classically postulates a Sovereign State, is it not anachronistic to introduce it in an age in which, as McCormick has shown so lucidly sovereignty itself has become fragmented, and, States constitutionally cannot even pretend to have control over their most classical functions: Provision of material welfare and personal and collective security?

Think, too, of the linguistic trio - Identity, Identical, Identify. Surely no self is identical to another. It is trite to recall that identity - in an age where for long Choice has replaced Fate as the foundation for self-understanding is, to a large extent, a political and social construct which privileges one (or one set of) characteristic(s) over all others, calls on the self to identify with that, and is then posited as identity. It is equally trite to recall that the modern self has considerable problems with the move from Identical to Identity to Identify. I may be German, or Italian or French. But is that my Identity? What about being Male or Female? Or a Stones lover or Beetles lover (Verdi or Mozart, if you wish)? As the referents of identity grow, would it not be more accurate, in relation to the Self today, to talk of my differentity?

This construct should not be confused with Multiculturalism, in some way it is its opposite. Whether in the USA or Hungary the labeling of people as black, or Whitemale, or Jew et cetera as a basis for group political entitlement is the celebration of a bureaucratically sanctioned polity of "multi-cultural" groups composed of mono-culturally identified individuals - the antithesis of individual differentity.



Constructing, then, a new concept of Citizenship around the Fragmented sovereignty of the porous State and the Fractured Self of the individuals who comprise those "States" - Citizenship as a hall mark of differentity - could have been and could still be a fitting project for Union architects. That would be the major challenge to the conceptualization of European Citizenship. Especially, since accepting and celebrating the differentity of individuals offers a new lease of life to the nation - nationality becoming a legitimate rather than oppressive bond among the individuals comprising the nation.

Such an architecture will have to explore both the shape of the construct and the technologies to sustain it. In the remainder of this lecture I will explore some of the available approaches and will offer my own variant too.

### **The Affective Crisis of European Citizenship**

As we shall see, the introduction of European citizenship is brought about by a deep sense of malaise and public disaffection with the European construct which threatened to undermine its political legitimacy. Understanding this disaffection is an important background to the subsequent unfolding saga of constitutional engineering.

The expression of the disaffection were manifest in the reaction to the Treaty of European Union - a public reaction which ranged from the hostile through the bewildered to the indifferent. The discontent was not with the Treaty itself - it was with the condition of Europe itself. What accounts for this attitude? For this change in fortune towards the idea of European integration?

There is, first, what one could term the paradox of success. In its foundational period, the European construct was perceived as part of a moral imperative in dealing with the heritage of World War II. Governments and states may have been happily pursuing their

national interest but the European construct could be cloaked with a noble mantle of a new-found idealism. Rendering war as neither possible or thinkable and restoring economic prosperity in a framework of transnational social solidarity were key elements of that idealism. But once achieved, once you remove the moral imperative and it's politics as usual with the frustrating twist that in Europe you cannot throw the scoundrels out at election time. So you try and throw the whole construct out.

Arguably, public attitudes go even deeper than that. We come here to a more sobering consideration in this regard, whereby the European Union may be seen not simply as having suffered a loss of its earlier spiritual values, but as an actual source of social resentment. Here are the highlights of what surely deserves much more than this superficial summary. In his pre-choleric days, Ernst Nolte wrote a fascinating study on the origins of fascism in its various European modes. Consider, chillingly, the turn to fascism in Italy, France and Germany at the beginning of the 20th century. In his profound comparative analysis of the cultural-political roots of the phenomenon, the common source was identified as a reaction to some of the manifestations of modernity.

At a pragmatic level, the principal manifestations of modernity were the increased bureaucratization of life, public and private; the depersonalization of the market (through mass consumerism, brand names and the like) and the commodification of values; the "abstractism" of social life, especially through competitive structures of mobility; rapid urbanization and the centralization of power.

At an epistemological level modernity was premised on, and experienced in, an attempt to group the world into intelligible concepts which had to be understood through reason and science - abstract and universal categories. On this reading, fascism was a

response to, and an exploitation of, the angst generated by these practical and cognitive challenges. So far this is a fairly well known story.

Eerily, at the end of the 20th century, European Union can be seen as replicating, in reality or in the subjective perception of individuals and societies, some of these very same features: It has come to symbolize, unjustly perhaps, the epitome of bureaucratization and, likewise, the epitome of centralization. One of its most visible policies, the Common Agriculture Policy, has had historically the purpose of "rationalizing" farm holdings which, in effect, meant urbanization. The single market, with its emphasis on competitiveness and transnational movement of goods, can be perceived as a latter day thrust at increased commodification of values (consider how the logic of the Community forces a topic such as abortion to be treated as a "service") and depersonalization of, this time round, the entire national market. Not only have local products come under pressure, even national products have lost their distinctiveness. The very transnationalism of the Community, which earlier on was celebrated as a reinvention of Enlightenment idealism, is just that: Universal, rational, transcendent, and wholly modernist.

To this sustained and never resolved angst of modernity we have new, fin de siècle added phenomena as illuminated brilliantly by Brian Fitzgerald. To capture these phenomena we can resort to what Jose Ortega y Gasset called *creencias* - the certainties of life which needed no proof - both in the physical and social world: Water falls downward, there is a difference between machines and humans, higher forms of life differentiate by gender, etc. To the sustained challenge of modernity is added a profound shattering of the most fundamental *creencias* - deeper still, a shattering of the ability to believe in anything. It is worth tracing some of the manifestations of this process.

There is first, or was, for a sustained period in this century, the assault of the reductive social sciences. Not only are things not what they seem to be, but their reality always has a cynical malevolence. Public life and its codes mask power and exploitation; private life with its codes masks domination. By an inevitable logic this assault turned on itself, whereby the illumination brought by these insights was not a vehicle for liberation but in itself for manipulation. The epistemic challenge of post-modernism deepens the shattering. For, in the old, modernist perspectives, there was at least a truth to be explored, vindicated -- even if that truth was one of power, exploitation and domination. One can find distasteful the post-modernist self-centered, ironic, sneering posturing. But, without adjudicating the philosophical validity of its epistemic claim, there is no doubt that the notion that all observations are relative to the perception of the observer, that what we have are just competing narratives, has moved from being a philosophic position to a social reality. It is part of political discourse: Multiculturalism is premised on it as are the breakdown of authority (political, scientific, social) and the ascendant culture of extreme individualism and subjectivity. Indeed, objectivity itself is considered a constraint on freedom - a strange freedom, to be sure, empty of content. Finally, the shattering of so many *creencias* (of the notion of *creencia* itself) has found a powerful manifestation in the public forum: It is dominated by television which distrusts and, by its pandering, non-judgmental transmission or cheap moralization, itself undermines *creencias*. This occurs in a vertical forum in which each viewer is isolated and addressed alone, unable to hear and join the objections of other viewers. To the angst of modernity is added the end of century fragmentation of information, and the disappearance of coherent world view, belief in belief and belief in the ability to know let alone control.

There are many social responses to these phenomena. One of them has been a turn, by many, to any force which seems to offer "meaning." Almost paradoxically, but perhaps not, the continued pull of the nation state, and the success in many societies of extreme forms of nationalism (measured not only in votes and members but in the ability of those extreme forms to shift the center of the public debate) are, in part of course, due to the fact that the nation and state are such powerful vehicles in responding to the existential craving for meaning and purpose which modernity and post-modernity seem to deny. The nation and state, with their organizing myths of fate and destiny, provide a captivating and reassuring answer to many.

Here too the failure of Europe is colossal. Just as Europe fuels the angst of modernity it also feeds the angst of post-modernity: Giant and fragmented at the same time, built as much on image as on substance, it is incomprehensible and challenges increasingly the *creencias* of national daily life. This is not to suggest that Europe is about to see a return to fascism, nor most certainly should this analysis, if it has any merit, give joy to fin-de-siècle chauvinists, whose wares today are as odious as they were at the start of the century. But it does suggest a profound change in its positioning in public life: Not, as in its founding period, as a response to a crisis of confidence, but 50 years later as one of the causes of that crisis.

In the realm of the symbolic, citizenship should reflect the ethos of the polity. If European citizenship should serve as an icon of identification, if this is what Europe has become - what is one identifying with? On this reading the collective enterprise of constructing or redefining a European citizenship is part and parcel of constructing and

redefining a European ethos. How disappointing to observe the response of the powers-that-be.

### **To be a European Citizen: The Official, Bread and Circus Vision**

There is a legend about the genesis of Article 8 according to which the issue of citizenship was far from the mind of the drafters of the TEU until the very last minutes when one Prime Minister (Felipe Gonzalez according to this legend), unhappy with the non-EMU parts of the Treaty, and conscious of the brewing legitimacy crisis in the European street, suggested that something be done about citizenship. A skeptical Intergovernmental Conference (IGC) quickly cobbled the Citizenship "Chapter" in response. It is, of course, a legend. IGCs do not happen in that way as pointed out in O'Leary's admirable new book. But it could be true to judge from the content of Article 8.

As already mentioned, as is a common place, the treatment of European Citizenship both in the TEU itself and, subsequently, by the Institutions and the Member States of the Union, is an embarrassment. The seriousness of this notion -- after all the cornerstone of our democratic polities -- and its fundamental importance to the self-understanding and legitimacy of the Union are only matched by its trivialization at the hands of the powers-that-be. One has to believe that the High Contracting Parties understood the fundamental nature of citizenship in redefining the nature of the Union -- and it is this understanding, rather than misunderstanding which lead them to the desultory Article 8 and its aftermath. Which returns us to the "Why" question. Why, indeed, open Pandora's box at all?

The recently concluded IGC offers us two clear clues. In the Commission's input to the Reflection Group we find the first: In the eyes of the Commission the two key values which make Union Citizenship most worthy and, thus, worth developing to the full are: a.

that citizenship reinforces and renders more tangible the individual's sentiment of belonging to the Union; and b. that citizenship confers on the individual citizen rights which tie him to the Union. It is endearing and telling that the Commission describes the relationship between Union and Citizens using the terminology of ownership, and that it is the citizen which belongs to the Union. When the Irish Presidency put out its mid term report on the IGC this Freudian glissage was corrected. It is Europe which belongs to citizens, we were assured this time in the very opening statement of the Document. And this was followed by "[t]he Treaties establishing the Union should address their most direct concerns. These were then listed as respect for fundamental rights, full employment et cetera. This approach is followed through in the new Amsterdam Treaty. There is, on my reading, only a semantic difference in these two official statements which is echoed in similar statements from Council and even Parliament.

What is the political culture and ethos which explain a concept of citizenship which, for example, speaks of duties but lists none? Which speaks of the rights of citizens but not of empowering them politically? Which, in a dispiriting kind of Euro NewSpeak denies to all and sundry the nation-building aspect of European citizenship whilst, at the same time, appeals to a national understandings of citizenship expecting it to provide emotional and psychological attachments which are typical of those very constructs which are denied?

Is it the discourse of civic responsibility and consequent political attachment at all? Or is it not closer to a market culture and the ethos of consumerism? Is it an unacceptable caricature to think of this discourse as giving expression to an ethos according to which the Union has become a product for which the managers, alarmed by customer dissatisfaction, are engaged in brand development. Citizenship and the "rights" associated with it are meant

to give the product a new image (since it adds very little in substance) and make the product ever more attractive to its consumers, to reestablish their attachment to their favourite brand. The Union may belong to its citizens but no more, say, than a multinational corporation belongs to its shareholders. The introduction of citizenship on this reading is little more than a decision of the Board voting for an increased dividend as a way of placating restless shareholders.

A word should be said about fundamental human rights and European citizenship. I myself will be arguing that human rights have an important place in the construction of a meaningful concept of European citizenship. But all too frequently in this discourse even human rights are commodified and represent just another goodie with which to placate a disaffected consumer of European integration. A first typical feature of most official discourse is the conflation of citizenship with (human) rights. This has become so natural that it seems both right and inevitable. I consider this conflation as part of the problem. If the problem is defined as alienation and disaffection towards the European construct by individuals and the medicine is European citizenship, an essential ingredient of this medicine becomes human rights, more rights, better rights, all in the hope of bringing the citizen "...closer to the Union."

The official view is not only problematic in the way rights are conceived but also in the impact they are expected to have on individuals. On what basis is the claim made, again and again, that rights will make people closer to the Union? Even if there is some truth to that, the picture is, at a minimum far more complex in the current European context.

I think rights do have that effect in transformative situations from, say, tyranny to emancipation. But that has long ceased to be the West European condition. Somewhat



polemically let me make three points to illustrate that the nexus rights-closeness is not nearly as simple as the IGC literature suggests.

Reflect on the following:

Take, say, an Austrian or Italian national. Their human rights are protected by their constitution and by their constitutional court. As an additional safety net they are protected by the European Convention on Human Rights and the Strasbourg organs. In the Community, they receive judicial protection from the ECJ using as its source the same Convention and the Constitutional Traditions common to the Member States. Many of the proposed European rights are similar to those which our citizen already enjoys in his or her national space. Even if we imagine that there is a lacuna of protection in the Community space, that would surely justify closing that lacuna -- but why would anyone imagine in a culture of rights saturation, not rights deprivation, that this would make the citizen any closer to the Community? Make no mistake: I do think the European human rights patrimony, national and transnational, has contributed to a sense of shared identity. But I think one has reached the point of diminishing returns. Simply adding new rights to the list, or adding lists of new rights, has little effect. Rights are taken for granted; if you managed to penetrate the general indifference towards the European construct against the exercise of power by public authority. The Rights culture, which I share, tends to think of this as positive. But, at least in part, at least psychologically, it might have the opposite effect to making the individual closer to "his" or "her" Union. After all, every time you clamor for more rights, which in this context are typically opposable against Community authorities, you are claiming that those rights are needed, in other words that the Union or Community pose a threat. You might be crying "Wolf" to score some political point, or you might be

right. Either way, if you are signaling to the individual that he or she needs the rights since they are threatened, it is not exactly the stuff which will make them closer to 'their' Union or Community

Finally, there is very little discussion of the divisive nature of rights, their "disintegration effect." Deciding on rights is often deciding on some of the deepest values of society. Even though we blithely talk about the common constitutional traditions, there are sharp differences within that common tradition. Some of the rights highest on the Christmas list of, say, the European Parliament, noble and justified as they may be, could if adopted for the Community be celebrated by the political culture in some Member States and regarded with suspicion and worse in other Member States. Remembering the *Grogan v SPUC* abortion saga, which the ECJ inelegantly, but perhaps wisely ducked, will drive home this point.

Mine is not an anti-market view, the importance of which to European prosperity is acknowledged. But it is a view which is concerned with the degradation of the political process, of image trumping substance, of deliberative governance being replaced by a commodification of the political process, of consumer replacing the citizen, of a Saatchi & Saatchi European citizenship. To conceptualize European citizenship around needs, even needs as important as employment and rights is an end of millennium version of Bread and Circus politics.

### **Towards the reconstruction of a European Ethos**

Do we need a European Citizenship at all? The importance of European citizenship is a lot more than a device for placating an alienated populace. It goes to the very foundations of political legitimacy.

The European Union enjoys powers unparalleled by any other transnational entity. It is not a State but in its powers it is pretty close.

It has, *inter alia*, the capacity

- to enact norms which create rights and obligations both for its Member States and their nationals, norms which are often directly effective and which are constitutionally supreme.
- to take decisions with major impact on the social and economic orientation of public life within the Member States and within Europe as a whole.
- to engage the Community and, consequently the Member States by international agreements with Third countries and international organizations.
- to spend significant amounts of public funds.

Europe has exercised these capacities to a very considerable degree. Whence the authority to do all this and what is the nature of a polity which has these powers?

One place to look for the answer would be -- international law: Let us discard this as artificial and formalistic. International Law can neither explain nor legitimate the reality of Community life. If not that, then what?

In Western, liberal democracies public authority requires legitimation through one principal source: The citizens of the polity. The deepest, most clearly engraved hallmark of citizenship in our democracies is that power is vested in citizens, by majority, to create binding norms, to shape the socio-economic direction of the polity, in fact, all those powers and capacities which, I suggested, the Union now has. More realistically, power is vested in citizens to enable and habilitate representative institutions which will exercise governance on behalf of, and for, the citizens.

Under our constitutional understanding of the Treaty--was that not what was achieved? I know that some believe this. Individuals as subjects? Lawyers recite dutifully that the Community constitutes a new legal order... for the benefit of which the states have

limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.

But note: Individuals are subjects only in the effect of the law. In this sense alone is it a new legal order. But you could create rights and afford judicial remedies to slaves. The ability to go to court to enjoy a right bestowed on you by pleasure of others does not emancipate you. Does not make you a citizen. Long before women or Jews were made citizens they enjoyed direct effect. Citizenship is not only about the politics of public authority. It is also about the social reality of peoplehood and the identity of the polity.

Citizens constitute the demos of the polity -- citizenship is frequently, though not necessarily, conflated with nationality. This, then, is the other, collective side, of the citizenship coin. Demos provides another way of expressing the link between citizenship and democracy. Democracy does not exist in a vacuum. It is premised on the existence of a polity with members -- the demos -- by whom and for whom democratic discourse with its many variants takes place. The authority and legitimacy of a majority to compel a minority exists only within political boundaries defined by a demos. Simply put, if there is no demos, there can be no democracy.

But this, in turn, raises the other big dilemma of citizenship: Who are to be the citizens of the European polity? How are we to define the relationships among them. A demos, a people cannot, after all be a bunch of strangers. Are we not back then to the changed Telos, to nation building and all that? How should we understand, then, and define the peoplehood of the European demos if we insist that the task remains the... ever closer union among the peoples of Europe?

We are then faced with a crucial choice: Reject European Citizenship and content yourself to living in a polity which may provide you with bread and circus a-plenty but which lacks the core of individual political dignity and public legitimation. Adopt European Citizenship and fundamentally change the very Telos of European integration from its unique concept of Community to, frankly, a more banal notion of nation building. This is an unappealing choice.

In offering a resolution I want to bring together three elements:

I first want to re-articulate my understanding of the special nature - and identity! - of the European polity as encapsulated in the term supranationalism. It is the central concept for understanding the ethos of Europe, a key in the understanding of citizenship. Mine, as will appear, is a politically conservative view since it insists not simply on the inevitability of the nation-state but on its virtues.

I will then restate the move of de-coupling nationality from citizenship a key idea which Closa, O'Leary, Ingram and others have helped explored in the context of European integration.

Finally I shall re-couple them but in a specific European geometry. This geometry reflects - as citizenship should - the unique supranational values of the polity.

In trying to explain the ways in which the Community is, or has become, supranational, most discussion over the years has tended, interestingly, to focus on its relation to the "state" rather than the "nation." This conflation of nation/state is not always helpful. Supranationalism relates in specific and discreet ways to nationhood and to statehood. To see the relationship between supranationalism, nationhood and statehood, I propose to focus in turn on nationhood and statehood and try and explore their promise and their dangers.

First, then, nationhood. I have culled here, without doing any justice to the originals from some of the old and new Masters Herder and Mazzini, Berlin, Arendt and Gelner, A.D. Smith and Tamir.

It seems to me that, at least in its 19th century liberal conception, two deep human values are said to find expression in nationhood: Belongingness and Originality. (It should immediately be stated that nationhood is not the only social form in which these values may find expression.)

Belongingness is inherent in nationhood, nationhood is a form of belonging. Nationhood is not an instrument to obtain belongingness, it is it.

What are the values embedded in belonging, in national belonging, beyond the widely shared view that belonging is pleasant, is good? We can readily understand a certain basic appeal to our human species which is, arguably, inherently social: the appeal that family and tribe have, too. Part of the appeal is, simply, the provision of a framework for social interaction. But surely one has to go beyond that: after all, much looser social constructs than nationhood, let alone tribe and family, could provide that framework. Belonging means, of course, more than that. It means a place, a social home.

The belonging of nationhood is both like and unlike the bonds of blood in family and tribe and in both this likeness and unlikeness we may find a clue to some of its underlying values.

It is like the "bonds of blood" in family and tribe in that those who are of the nation have their place, are accepted, belong, independently of their achievements -- by just being - - and herein lies the powerful appeal (and terrible danger) of belonging of this type -- it is a

shield against existential aloneness. The power of this belongingness may be understood by the drama and awesomeness of its opposites: isolation, seclusion, excommunication.

But nationhood transcends the family and tribe, and maybe here lurks an even more tantalizing value: Nationhood not only offers a place to the familyless, to the tribeless, but in transcending family and tribe it calls for loyalty -- the largest coin in the realm of national feeling -- towards others which go beyond the immediate "natural" (blood) or self-interested social unit.

And, indeed, belongingness of this type is a two way street. It is not only a passive value: to be accepted. It is also active: to accept. Loyalty is one of those virtues which, if not abused, benefits both those on the giving and receiving ends.

Ironically, the artificial belonging of nationality, once it sheds its ethnic and culturally repressive baggage, has an altogether more poignant meaning in the age of multiculturalism. Precisely in an epoch in which individuals and groups develop myriad identity referents and in which a culture of rights and entitlement invites social dislocation - its artificiality gives it its bridging potential.

This is the place to acknowledge, too, the virtues of autochthony - the nexus to place and land, the much maligned Soil. Blood and Soil have, of course, horrific associations which need no exploring here. But not only must we acknowledge the hold which the spatial has in conditioning perception, sensibility and, hence, identity. One must also realize the appeal and virtue of autochthony as an anti-dote to the fragmentation of the post-modern condition.

The other core value of nationhood, in some ways also an instrument for national demarcation, is the claim about originality. On this reading, the Tower of Babel was not a

sin against God but a sin against human potentiality; and the dispersal that came in its aftermath, not punishment, but divine blessing. In shorthand, the nation, with its endlessly rich specificities, coexisting alongside other nations, is, in this view, the vehicle for realizing human potentialities in original ways, ways which humanity as a whole would be the poorer for not cultivating.

It is here that one may turn from the nation to the modern state. It is worth remembering at the outset that national existence and even national vibrancy do not in and of themselves require statehood, though statehood can offer the nation advantages, both intrinsic as well as advantages resulting from the current organization of international life which gives such huge benefits to statehood.

I would argue that in the modern notion of the European organic-national nation-state, the state is to be seen principally as an instrument, the organizational framework within which the nation is to realize its potentialities. It is within the Statal framework that governance, with its most important functions of securing welfare and security, is situated. The well-being and integrity of the state must, thus, be secured so that these functions may be attained. That is not a meager value in itself. But to the extent that the state may claim, say, a loyalty which is more than pragmatic, it is because it is at the service of the nation with its values of belongingness and originality (this conceptualization underscores, perhaps exaggerates, the difference with the American truly radical alternative liberal project of the non-ethno-national polity, and of a state, the Republic, the organization of which, and the norms of citizenship behavior within, were central to its value system). It is evident, however, that in the European project, boundaries become a very central feature of the nation-state. There are, obviously, boundaries in the legal-geographical sense of separating



one nation-state from another. But there are also internal, cognitive boundaries by which society (the nation) and individuals come to think of themselves in the world.

At a societal level, nationhood involves the drawing of boundaries by which the nation will be defined and separated from others. The categories of boundary-drawing are myriad: linguistic, ethnic, geographic, religious etc. The drawing of the boundaries is exactly that: a constitutive act, which decides that certain boundaries are meaningful both for the sense of belonging and for the original contribution of the nation. This constitutive element is particularly apparent at the moment of "nation building" when histories are rewritten, languages revived etc. Of course, with time, the boundaries, especially the non-geographical ones, write themselves on collective and individual consciousness with such intensity that they appear as natural -- consider the virtual interchangeability of the word international with universal and global: It is hard not to think, in the social sphere, of the world as a whole without the category of nation (as in international). Finally, at an individual level, belonging implies a boundary: You belong because others do not.

As evident as the notion of boundaries is to the nation-state enterprise, so is the high potential for abuse of boundaries. The abuse may take place in relation to the three principal boundaries: The external boundary of the State, the boundary between nation and state and the internal consciousness boundary of those making up the nation. The most egregious form of abuse of the external boundary of the State would be physical or other forms of aggression towards other states.

The abuse of the boundary between nation and state is most egregious when the state comes to be seen not as instrumental for individuals and society to realize their potentials but as an end in itself. Less egregiously, the State might induce a 'laziness' in the nation -

banal Statal symbols and instrumentalities becoming a substitute for truly original national expression. This may also have consequences for the sense of belongingness whereby the apparatus of the State becomes a substitute to a meaningful sense of belonging. An allegiance to the State can replace human affinity, empathy, loyalty and sense of shared fate with the people of the State.

There can be, too, an abuse of the internal boundary which defines belongingness. The most typical abuse here is to move from a boundary which defines a sense of belonging to one which induces a sense of superiority and a concomitant sense of condescension or contempt for the other. A sense of collective national identity implies an other. It should not imply an inferior other.

In the attitude to the land, which finds legal expression in the concept of national territory, both the virtues and dangers of nationalism find powerful expression. The national land, the homeland, the fatherland, the motherland, 'belongs' to the nation - and to no one else. Ownership, whether constructed or innate, is one of the most potent modes of attachment. Cultivating the feeling of collective, symbolic, ownership over land is intended not only to enhance a sense of attachment to place and willingness to make sacrifices for it, but is also an important part of social attachment among 'co-owners.' and, thus, an important part of the special sense of national 'belongingness' (Clearly it also mediates the huge disparities in private, 'real' ownership of land). Land plays, too, an important part in national originality. So much of the culture, highbrow and low, is a reflection of geography and topography and of associated phenomena such as climate. At the same time, the role of territory in the pathologies of nationalism is a living part of the history of the European nation-states and their murderous quarrels which is so well known as to obviate discussion.

A central plank of the project of European integration may be seen, then, as an attempt to control the excesses of the modern nation-state in Europe, especially, but not only, its propensity to violent conflict and the inability of the international system to constrain that propensity. The European Community was to be an antidote to the negative features of the state and Statal intercourse and its establishment in 1951 was seen as the beginning of a process that would bring about the elimination of these excesses.

Historically there have always been those two competing visions of European Integration. Whilst no one has seriously envisioned a Jacobean type centralized Europe, it is clear that one vision, to which I have referred as the Unity vision, the United States of Europe vision, has really posited as its ideal type, as its aspiration, a Statal Europe, albeit of a federal kind. Tomorrow's Europe in this form would indeed constitute the final demise of Member State nationalism replacing or placing the hitherto warring Member States within a political union of federal governance.

It is easy to see some of the faults of this vision: It would be more than ironic if a polity set up as a means to counter the excesses of statism ended up coming round full circle and transforming itself into a (super) state. It would be equally ironic if the ethos which rejected the boundary abuse of the nation-state, gave birth to a polity with the same potential for abuse. The problem with this Unity vision is that its very realization entails its negation.

The alternative vision, the one that historically has prevailed, is the supranational vision, the community vision. At one level aspirations here are both modest compared to the Union model and reactionary: Supranationalism, the notion of community rather than unity, is about affirming the values of the liberal nation-state by policing the boundaries against abuse. Another way of saying this would be that Supranationalism aspires to keep the values

of the nation-state pure and uncorrupted by the abuses I described above. But it is still a conservative modernist vision since it does not reject boundaries: it guards them but it also guards against them.

At another level the supranational community project is far more ambitious than the Unity one and far more radical. It is more ambitious since, unlike the Unity project which simply wishes to redraw the actual political boundaries of the polity within the existing nation-state conceptual framework, albeit federal, the supranational project seeks to redefine the very notion of boundaries of the State, between the Nation and State, and within the Nation itself. It is more radical since, as I shall seek to show, it involves more complex demands and greater constraints on the actors.

How, then, does Supranationalism, expressed in the community project of European integration, affect the excesses of the nation-state, the abuse of boundaries discussed above?

At the pure Statal level supranationalism replaces the "liberal" premise of international society with a community one. The classical model of international law is a replication at the international level of a liberal theory of the state. The state is implicitly treated as the analogue, on the international level, to the individual within a domestic situation. In this conception, international legal notions such as self-determination, sovereignty, independence, and consent have their obvious analogy in theories of the individual within the state. In the supranational vision, the community as a transnational regime will not simply be a neutral arena in which states will seek to pursue the national interest and maximize their benefits but will create a tension between the state and the Community of states. Crucially, the community idea is not meant to eliminate the national state but to create a regime which seeks to tame the national interest with a new discipline.

The challenge is to control at societal level the uncontrolled reflexes of national interest in the international sphere.

Turning to the boundary between nation and state supranationalism is meant to prevent abuses here, too. The supranational project recognizes that at an inter-group level nationalism is an expression of cultural (political and/or other) specificity underscoring differentiation, the uniqueness of a group as positioned vis-à-vis other groups, calling for respect and justifying the maintenance of inter-group boundaries. At an intra-group level nationalism is an expression of cultural (political and/or other) specificity underscoring commonality, the "sharedness" of the group vis-à-vis itself, calling for loyalty and justifying elimination of intra-group boundaries.

But, crucially, nationality is not the thing itself -- it is its expression, an artifact. It is a highly stylized artifact, with an entire apparatus of norms and habits; above all it is not a spontaneous expression of that which it signifies but a code of what it is meant to give expression to, frequently even translated into legal constructs. Nationality is inextricably linked to citizenship, citizenship not simply as the code for group identity, but also as a package of legal rights and duties, and of social attitudes.

Supranationalism does not seek to negate as such the interplay of differentiation and commonality, of inclusion and exclusion and their potential value. But it is a challenge to the codified expressions in nationality. Since, in the supranational construct with its free movement provisions which do not allow exclusion through State means of other national cultural influences and with its strict prohibition on nationality/citizenship based discrimination, national differentiation can not rest so easily on the artificial boundaries provided by the State. At intergroup level then it pushes for cultural differences to express

themselves in their authentic, spontaneous form, rather than the codified Statal legal forms. At the intra-group level it attempts to strip the false consciousness which nationalism may create instead of belongingness derived from a non-formal sense of sharedness. This, perhaps, is the first Kantian strand in this conceptualization of supranationalism. Kantian moral philosophy grounds moral obligation on the ability of humans not simply to follow ethical norms, but, as rational creatures, to determine for themselves the laws of their own acting and to act out of internal choice according to these norms. Supranationalism on our view favours national culture when, indeed, it is authentic, internalized, a true part of identity.

There is another, Enlightenment, Kantian idea in this discourse. Supranationalism at the societal and individual, rather than the Statal level, embodies an ideal which diminishes the importance of the Statal aspects of nationality -- probably the most powerful contemporary expression of groupness -- as the principal referent for transnational human intercourse. That is the value side of non-discrimination on grounds of nationality, of free movement provisions and the like. Hermann Cohen, the great neo-Kantian, in his *Religion der Vernunft aus den Quellen des Judentums*, tries to explain the meaning of the Mosaic law which call for non-oppression of the stranger. In his vision, the alien is to be protected, not because he was a member of one's family, clan religious community or people, but because he was a human being. In the alien, therefore, man discovered the idea of humanity.

We see through this exquisite exegesis that in the curtailment of the totalistic claim of the nation-State and the reduction of nationality as the principle referent for human intercourse, the Community ideal of Supranationalism is evocative of, and resonates with, Enlightenment ideas, with the privileging of the individual, with a different aspect of

liberalism which has as its progeny today in liberal notions of human rights. In this respect the Community ideal is heir to Enlightenment liberalism. Supranationalism assumes a new, additional meaning which refers not to the relations among nations but to the ability of the individual to rise above his or her national closet.

And yet, at the same moment we understand that these very values, which find their legal and practical expression in, e.g., enhanced mobility, breakdown of local markets, and insertion of universal norms into domestic culture are also part of the deep modern and post-modern anxiety of European belongingness and part of the roots of European angst and alienation. This is, perhaps, the deepest paradox of European citizenship.

### **Towards a Reconstruction of European Citizenship - Three Views of Multiple Demoi**

How does this help us in the construction of European citizenship and demos and the resolution of that crucial choice? It is here that I will try and give normative meaning to the Citizenship Clause in Maastricht and Amsterdam:

Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union [Maastricht] Citizenship of the Union shall complement and not replace national citizenship [Amsterdam].

As mentioned, the introduction of citizenship to the conceptual world of the Union could be seen as just another step in the drive towards a Statal, unity vision of Europe, especially if citizenship is understood as being premised on a Statal understanding of nationality. But there is another more tantalizing and radical way of understanding the provision, namely as the very conceptual decoupling of nationality from citizenship and as the conception of a polity the demos of which, its membership, is understood in the first place in civic and political rather than ethno-cultural terms. On this view, the Union belongs

to, is composed of, citizens who by definition do not share the same nationality. The substance of membership (and thus of the demos) is in a commitment to the shared values of the Union as expressed in its constituent documents, a commitment, inter alia, to the duties and rights of a civic society covering discrete areas of public life, a commitment to membership in a polity which privileges exactly the opposites of nationalism -- those human features which transcend the differences of organic ethno-culturalism. On this reading, the conceptualization of a European demos should not be based on real or imaginary trans-European cultural affinities or shared histories nor on the construction of a European "national" myth of the type which constitutes the identity of the organic nation. European citizenship should not be thought of either as intended to create the type of emotional attachments associated with nationality based citizenship. The decoupling of nationality and citizenship opens the possibility, instead, of thinking of co-existing multiple demoi. I will present several possibilities of this, which are not necessarily mutually exclusive.

One view of multiple demoi may consist in what may be called the "concentric circles" approach. On this approach one feels simultaneously as belonging to, and being part of, say, Germany and Europe; or, even, Scotland, Britain and Europe. What characterizes this view is that the sense of identity and identification derives from the same sources of human attachment albeit at different levels of intensity. Presumably the most intense (which the nation, and State, always claims to be) would and should trump in normative conflict.

The problem with this view is that it invites us to regard European citizenship in the same way that we understand our national citizenship. This was precisely the fallacy of the German Constitutional Court in its Maastricht decision: Conceptualizing the European demos in the way that the German demos is conceptualized.



One alternative view of multiple demoi invites individuals to see themselves as belonging simultaneously to two demoi, based, critically, on different subjective factors of identification, in the way someone may regard himself or herself as being German and Catholic. I may be a German national in the in-reaching strong sense of organic-cultural identification and sense of belongingness. I am simultaneously a European citizen in terms of my European transnational affinities to shared values which transcend the ethno-national diversity.

On this view, the Union demos turns away from its antecedents and understanding in the European nation-state. But equally, it should be noted that I am suggesting here something that is different than simple American Republicanism transferred to Europe. The values one is discussing may be seen to have a special European specificity, a specificity I have explored elsewhere but one dimension of which, by simple way of example, could most certainly be that strand of mutual social responsibility embodied in the ethos of the Welfare State adopted by all European societies and by all political forces. Human rights as embodied in the European Convention of Human Rights would constitute another strand in this matrix of values as would, say, the ban on discrimination on grounds of nationality and all the rest.

But this view, too, has its problems. In the first place it is not clear how this matrix of values would be qualitatively different from the normal artifacts of constitutional democracy practiced in most European nation States. After all, all of them are signatories to the European Convention on Human Rights, all of them, to varying degrees share in those "European values." Secondly, a communities of value expressed in these terms provides a rather thin, even if laudable, content to the notion of citizenship. And as A.D. Smith

convincingly argues, without resonant fiction of relatedness through memory, and myth and history and/or real kinship, a real sense of membership is hard to come by. It is noticeable that even national polities who supposedly understand themselves as communities of values, such as France or the United States, cannot avoid in their evolution, self-understanding and even self-definition many of the features of communities of fate.

I want to offer a third version of the multiple demoi, one of true variable geometry. It is like the second version in one crucial respect: It too invites individuals to see themselves as belonging simultaneously to two demoi, based, critically, on different subjective factors of identification. And in this version too the invitation is to embrace the national in the in-reaching strong sense of organic-cultural identification and belongingness and to embrace the European in terms of European transnational affinities to shared values which transcend the ethno-national diversity.

But there are too critical differences. One can be German without being Catholic. One can be Catholic without being German. In this model of European citizenship, the concepts of Member State nationality and European citizenship are totally interdependent. One cannot, conceptually and psychologically (let alone legally) be a European citizen without being a Member State national. It is in this respect the mirror of my analysis of Supranationalism itself, which, as I was at pains to argue, had no ontological independence but was part and parcel of the national project, in some way its gate keeper.

There is a second critical difference to this model of multiple demoi: Its matrix of values is not simply the material commitment to social solidarity, to human rights and other such values which, as I argued, would hardly differentiate it from the modern constitutional, West European liberal state. It has a second important civilizatory dimension. It is the

acceptance by its members that in a range of areas of public life, one will accept the legitimacy and authority of decisions adopted by fellow European citizens in the realization that in these areas preference is given to choices made by the outreaching, non organic, demos, rather than by the inreaching one. The Treaties on this reading would have to be seen not only as an agreement among states (a Union of States) but as a "social contract" among the nationals of those states -- ratified in accordance with the constitutional requirements in all Member States -- that they will in the areas covered by the Treaty regard themselves as associating as citizens in a broader society. But crucially, this view preserves the boundaries, preserves the Self and preserves the Other. But it attempts to educate the I to reach to that Other. We can go even further. In this polity, and to this demos, one cardinal value is precisely that there will not be a drive towards, or an acceptance of, an over-arching organic-cultural national identity displacing those of the Member States. Nationals of the Member States are European Citizens, not the other way around. Europe is "not yet" a demos in the organic national-cultural sense and should never become one. The value matrix has, thus, two civilizing strands: Material and processual. One that subordinates the individual and the national society to certain values and certain decisional procedures representing a broader range of interests and sensibilities. Of course the two are connected. We are willing to submit aspects of our social ordering to a polity composed of "others" precisely because we are convinced that in some material sense they share our basic values. It is a construct which is designed to encourage certain virtues of tolerance and humanity.

One should not get carried away with this construct. Note first that the Maastricht formula does not imply a full decoupling: Member States are free to define their own conditions of membership and these may continue to be defined in national terms. But one

should not read this construct as embracing an unreconstructed notion of nationalism within each Member State. I have already argued: A nationalism which seeks to overwhelm the self has been a major source of bigotry and prejudice. A nationalism which acknowledges the multicultural self, can be a positive unifying concept. On this reading European citizenship as a reflection of Supranationalism can be regarded as part of the Liberal Nation project. That, in my view, is the greatest promise of introducing supranational citizenship into a construct the major components of which continue to be States and nations. The National and the Supranational encapsulate on this reading two of the most elemental, alluring and frightening social and psychological poles of our cultural heritage. The national is Eros: Reaching back to the pre-modern, appealing to the heart with a grasp on our emotions, and evocative of the romantic vision of creative social organization as well as responding to our existential yearning for a meaning located in time and space. The nation, through its myths, provides a past and a future. And it is always a history and a destiny in a place, in a territory, a narrative that is fluid and fixed at the same time. The dangers are self-evident. The Supranational is Civilization: Confidently modernist, appealing to the rational within us and to Enlightenment neo-classical humanism, taming that Eros. Importantly, the relationship is circular - for its very modernism and rationalism is what, as I sought to show earlier, is alienating, and would have but an ambivalent appeal if it was to represent alone the content of European identity.

Martin Heidegger is an unwitting ironic metaphor for the difficulty of negotiating between these poles earlier in this Century. His rational, impersonal critique of totalistic rationality and of modernity retain powerful lessons to this day; but equally powerful is the lesson from his fall: An irrational, personal embracing of an irrational, romantic pre-modern

nationalism run amok (not to mention a dishonorable failure to acknowledge any personal failing).

For some European citizenship is an icon signifying the hope of transcending State and national society altogether. For others it is no more than a symbol for the demise of the classical European Nation-State in the bureaucratic, globalized market. For others still it is the icon of a shrewd, Machiavelli-like scheme of self-preservation of the same Statal structure which has dominated Europe for a century and more. Finally it could be regarded as emblematic of that new liberal effort which seeks to retain the Eros of the national its demonic aspects under civilizatory constraints.

### **Democracy and European Integration - To be a Good European Citizen**

The discourse of democracy, too, takes an additional significance in this context. The primary democratic imperative is in bestowing legitimacy on a "formation" - the Union - which, want it or not, exercises manifold state functions. It was this imperative from which the search for demos and European citizenship emerged. But now we have seen that our construct of European citizenship was also seen as having a particular supranational educational, civilizing function, by submitting certain aspects of our national autonomy to a community which in significant aspects is a community of "others." But the civilizing impulse would, surely, be lost if in the Community decisional process, the individual became totally lost, and instead of a deliberative engagement across differences we had bureaucratic subordination.

The question remains then, what, if anything, can be done to operationalize and particularly empower individuals in Europe in their capacity as citizens. This is not the place to rehearse the full litany of the European democratic deficit. But clearly, on any reading, as

the Community has grown in size, in scope, in reach and despite a high rhetoric including the very creation of "European Citizenship", there has been a distinct disempowerment of the individual European citizen, the specific gravity of whom continues to decline as the Union grows. The roots of disempowerment are many but three stand out.

First is surely the inability of the Community and Union to develop structures and processes which adequately replicate at the Community level the habits of governmental control, parliamentary accountability and administrative responsibility which are practiced with different modalities in the various Member States. Further, as more and more functions move to Brussels, the democratic balances within the Member States have been disrupted by a strengthening of the Ministerial and Executive branches of government. The value of each individual in the political process has inevitably declined including the ability to play a meaningful civic role in European governance.

The second root goes even deeper and concerns the ever increasing remoteness, opaqueness, and inaccessibility of European governance. An apocryphal statement usually attributed to Jacques Delors predicts that by the end of the decade eighty percent of social regulation will issue from Brussels. We are on target. The drama lies in the fact that no accountable public authority one has a handle on these regulatory processes. Not the European Parliament, not the Commission, not even the Governments. The press and other media, a vital Estate in our democracies are equally hampered. Consider that it is even impossible to get from any of the Community Institutions an authoritative and mutually agreed statement of the mere number of committees which inhabit that world of Comitology. Once there were those who worried about the supranational features of European integration. It is time to worry about infranationalism - a complex network of

middle level national administrators, Community administrators and an array of private bodies with unequal and unfair access to a process with huge social and economic consequences to everyday life - in matters of public safety, health, and all other dimensions of socio-economic regulation. Transparency and access to documents are often invoked as a possible remedy to this issue. But if you do not know what is going on, which documents will you ask to see? Neither strengthening the European Parliament nor national Parliaments will do much to address this problem of post-modern governance which itself is but one manifestation of a general sense of political alienation in most Western democracies.

Another issue relates to the competences of the Union and Community. In one of its most celebrated cases in the early 60s the European Court of Justice described the Community as a "...new legal order for the benefit of which the States have limited their sovereign rights, albeit in limited fields." There is a widespread anxiety that these fields are limited no more. Indeed, not long ago a prominent European scholar and judge has written that there "...simply is no nucleus of sovereignty that the Member States can invoke, as such, against the Community." We should not, thus, be surprised by a continuing sense of alienation from the Union and its Institutions.

I want to conclude by discussing some proposals concerning the technology of transnational democracy. It is not, of course, my contention that such proposals would actually solve the vexed problems of the European democracy deficit. They are intended as illustrations, taken from a wide-ranging study on European governance submitted to the European Parliament, of the type of mechanisms which focus specifically on the transnational dimension of democratic governance. In my view, each one of them means a

great deal more than, say, the extension of Co-Decision in the Amsterdam Treaty hailed by some as a major achievement for democracy in Europe.

- Proposal 1: The European Legislative Ballot

The democratic tradition in most Member States is one of Representative Democracy. Our elected representatives legislate and govern in our name. If we are unsatisfied we can replace them at election time. Recourse to forms of Direct Democracy - such as referenda -- are exceptional. Given the size of the Union referenda are considered particularly inappropriate.

However, the basic condition of Representative Democracy is, indeed, that at election time the citizens "...can throw the scoundrels out" -- that is replace the Government. This basic feature of Representative Democracy does not exist in the Community and Union. The form of European Governance is - and will remain for considerable time - such that there is no "Government" to throw out. Even dismissing the Commission by Parliament (or approving the appointment of the Commission President) is not the equivalent of throwing the Government out. There is no civic act of the European citizen where he or she can influence directly the outcome of any policy choice facing the Community and Union as citizens can when choosing between parties which offer sharply distinct programmes. Neither elections to the European Parliament nor elections to national Parliaments fulfill this function in Europe. This is among the reasons why turnout to European Parliamentary elections has been traditionally low and why these elections are most commonly seen as a mid-term judgment of the Member State governments rather than a choice on European governance.



The proposal is to introduce some form of direct democracy at least until such time as one could speak of meaningful representative democracy at the European level. Our proposal is for a form of a Legislative Ballot Initiative coinciding with elections to the European Parliament. Our proposal is allow the possibility, when enough signatures are collected in, say, more than five Member States to introduce legislative initiatives to be voted on by citizens when European Elections take place (and, after a period of experimentation possibly at other intervals too.) In addition to voting for their MEPs, the electorate will be able to vote on these legislative initiatives. Results would be binding on the Community Institutions and on Member States. Initiatives would be, naturally, confined to the sphere of application of Community law -- i.e. in areas where the Community Institutions could have legislated themselves. Such legislation could be overturned by a similar procedure or by a particularly onerous legislative Community process. The Commission, Council, Parliament or a National Parliament could refer a proposed initiative to the European Court of Justice to determine - in an expedited procedure -- whether the proposed Ballot initiative is within the Competences of the Community or is in any other way contrary to the Treaty. In areas where the Treaty provides for majority voting the Ballot initiative will be considered as adopted when it wins a majority of votes in the Union as a whole as well as within a majority of Member States. (Other formulae could be explored). Where the Treaty provides for unanimity a Majority of voters in the Union would be required as well as winning in all Member States.

Apart from enhancing symbolically and tangibly the voice of individuals qua citizens, this proposal would encourage the formation of true European Parties as well as transnational mobilization of political forces. It would give a much higher European

political significance to Elections to the European Parliament. It would represent a first important step, practical and symbolic, to the notion of European Citizenship and Civic Responsibility.

- Proposal 2: Lexcalibur - The European Public Square.

This would be the single most important and far reaching proposal which would have the most dramatic impact on European governance. It does not require a Treaty amendment and can be adopted by an Inter-Institutional Agreement among Commission, Council and Parliament. It could be put in place in phases after a short period of study and experimentation and be fully operational within, I estimate, two to three years. I believe that if adopted and implemented it will, in the medium and long term, have a greater impact on the democratization and transparency of European governance than any other single proposal currently under discussion.

I am proposing that - with few exceptions - the entire decision-making process of the Community, especially but not only Comitology - be placed on the Internet.

For convenience I have baptized the proposal: Lexcalibur - The European Public Square.

I should immediately emphasize that what I have in mind is a lot more than simply making certain laws or documents such as the Official Journal more accessible through electronic data bases.

I should equally emphasize that this proposal is without prejudice to the question of confidentiality of process and secrecy of documents. As shall transpire, under our proposal documents or deliberations which are considered too sensitive to be made public at any given time could be shielded behind "fire-walls" and made inaccessible to the general

public. Whatever policy of access to documentation is adopted could be implemented on Lexcalibur.

The key organizational principle would be that each Community decision making project intended to result in the eventual adoption of a Community norms would have a "decisional web site" on the Internet within the general Lexcalibur Home-Page which would identify the scope and purpose of the legislative or regulatory measure(s); the Community and Member States persons or administrative departments or divisions responsible for the process; the proposed and actual time table of the decisional process so that one would know at any given moment the progress of the process; access and view all non-confidential documents which are part of the process; under carefully designed procedures directly submit input into the specific decisional process. But it is important to emphasize that our vision is not one of "Virtual Government" which will henceforth proceed electronically. The primary locus and mode of governance would and should remain intact: Political Institutions, meetings of elected representative and officials, Parliamentary debates, media reporting - as vigorous and active a Public Square as it is possible to maintain, and a European Civic Society of real human beings. The huge potential importance of Lexcalibur would be in its Secondary Effect: It would enhance the potential of all actors to play a much more informed, critical and involved role in the Primary Public Square. The most immediate direct beneficiaries of Euro Governance on the Internet would in fact be the media, interested pressure groups, NGO's and the like. Of course also "ordinary citizens" would have a much more direct mode to interact with their process of government. Providing a greatly improved system of information would, however, only be a first step of a larger project. It would serve as the basis for a system that allows widespread participation in

policy-making processes so that European democracy becomes an altogether through the posting of comments and the opening of a dialogue between the Community institutions and interested private actors. The Commission already now sometimes invites e-mail comments on its initiatives. Such a system obviously needs a clear structure in order to allow a meaningful and effective processing of incoming information for Community institutions. Conceivable would be, for example, a two-tier system, consisting of a forum with limited access for an interactive exchange between Community Institutions and certain private actors and an open forum where all interested actors can participate and discuss Community policies with each other. This would open the unique opportunity for deliberations of citizens and interest groups beyond the traditional frontiers of the nation state, without the burden of high entry costs for the individual actor.

Hugely important, in our view, will be the medium and long term impact on the young generation, our children. For this generation, the Internet will be - in many cases already is - as natural a medium as to older generations were radio, television and the press. European Governance on the Net will enable them to experience government at school and at home in ways which are barely imaginable to an older generation for whom this New Age "stuff" is often threatening or, in itself, alien.

The idea of using the Internet for improving the legitimacy of the European Union may seem to some revolutionary and in some respects it is. Therefore its introduction should be organic through a piecemeal process of experiment and re-evaluation but within an overall commitment towards more open and accessible government.

There are dimensions of the new Information Age which have all the scary aspects of a "Brave New World" in which individual and group autonomy and privacy are lost, in

which humanity is replaced by 'machinaty' and in which government seems ever more remote and beyond comprehension and grasp - the perfect setting for alienation captured most visibly by atomized individuals sitting in front of their screens and "surfing the net."

Ours is a vision which tries to enhance human sovereignty, demystify technology and place it firmly as servant and not master. The Internet in our vision is to serve as the true starting point for the emergence of a functioning deliberative political community, in other words a European polity cum civic society. For those who wish to see what this might look like my collaborators and I have prepared a simulation of Excalibur: <http://www.iue.it/AEL/EP/Lex/index.html>

- Proposal 3: The European Constitutional Council

The Problem of Competences is, in our view, mostly one of perception. The perception has set in that the boundaries which were meant to circumscribe the areas in which the Community could operate have been irretrievably breached. Few perceptions have been more detrimental to the legitimacy of the Community in the eyes of its citizens. And not only its citizens. Governments and even Courts, for example the German Constitutional Court, have rebelled against the Community constitutional order because, in part, of a profound dissatisfaction on this very issue. One cannot afford to sweep this issue under the carpet. The crisis is already there. The main problem, then, is not one of moving the boundary lines but of restoring faith in the inviolability of the boundaries between Community and Member State competences.

Any proposal which envisages the creation of a new Institution is doomed in the eyes of some. And yet I propose the creation of a Constitutional Council for the Community, modeled in some ways on its French namesake. The Constitutional Council would have

jurisdiction only over issues of competences (including subsidiarity) and would, like its French cousin, decide cases submitted to it after a law was adopted but before coming into force. It could be seized by any Commission, Council, any Member State or by the European Parliament acting on a Majority of its Members. I think that serious consideration should be given to allowing Member State Parliaments to bring cases before the Constitutional Council.

The composition of the Council is the key to its legitimacy. Its President would be the President of the European Court of Justice and its Members would be sitting members of the constitutional courts or their equivalents in the Member States. Within the European Constitutional Council no single Member State would have a veto power. All its decisions would be by majority.

The composition of the European Constitutional Council would, I believe, help restore confidence in the ability to have effective policing of the boundaries as well as underscore that the question of competences is fundamentally also one of national constitutional norms but still subject to a binding and uniform solution by a Union Institution. It would underscore the interlocking variable geometry of the supranational construct.

I know that this proposal might be taken as an assault on the integrity of the European Court of Justice. That attitude would, in our view, be mistaken. The question of competences has become so politicized that the European Court of Justice should welcome having this hot potato removed from its plate by an ex-ante decision of that other body with a jurisdiction limited to that preliminary issue. Yes, there is potential for conflict of jurisprudence and all the rest - nothing that competent drafting cannot deal with.

- Proposal 4: Taxation and Horizontal Human Rights

To raise the spectre of direct European taxation is to feed the worst fears of final collapse of national sovereignty. But from the perspective of citizenship the problem of the Union is, in some respect one of Representation (flawed, to be sure) with No Taxation. The subjecthood of individuals as non-citizens is no more evident in the financing of the Union. Revenues derive from levies on imports and exports and, principally, from State transfers from VAT receipts. So, like the political process itself, though it is the money of individuals which the State collects, it is the money of the State which is transferred to the Union. One speaks of the British contribution or the Danish contribution to the European Union, even if, ultimately, it is money of individuals. What if Community financing or a portion of it derived directly from income tax and that portion would be designated as such -- like social security contributions? This is a proposal which will be rejected by all concerned. The States because of the empowerment of the Union to levy direct taxation; the Union because it will fear the wrath of the taxpayers who might suddenly take an interest in the finances of the beast; The individual because they will have, directly, to shell out. But taxation, although levied on residents too, is a classical and meaningful artifact of citizenship: It instills accountability, it provokes citizen interest, it becomes an electoral issue, par excellence. It also established a duty - even an unpleasant one, towards the polity. Choosing between MEPs and parties will no longer be just an extension on local politics and national preferences.

Finally, there is one dimension where rights, in their positive law dimension, may be directly relevant to the discourse of citizenship. In the run-up to the IGC practically all Institutions and parties interested in the IGC put on their Christmas lists, their pet rights.

Parliament's Resolution, for example, requested in tantalizingly non committal language: "inclusion of an explicit reference in the Treaty to the principle of equal treatment irrespective of race, sex, age, handicap or religion (including mentioning the fundamental social rights of workers set out in the Charter, enlarging upon them and extending them to all citizens of the Union... "et cetera or, in equally ambiguous language "... the Treaty should contain a clear rejection of racism, xenophobia, sexism discrimination on grounds of a person's sexual orientation, anti-Semitism, revisionism and all forms of discrimination and guarantee adequate protection against discrimination for all individuals resident within the EU.

The Treaty of Amsterdam, in extremely guarded language, allows the Council acting unanimously and only within the powers conferred on the Community to adopt measures designed to combat various forms of discrimination. The unmentioned default position of classic non-discrimination provisions is that they give guarantees against actions of Community authorities and, in some restricted circumstances elaborated by the ECJ, against Member State acts when the Member States are acting on behalf of the Community or acting in derogation of one of the four fundamental economic freedoms. Typically, the human rights apparatus does not apply horizontally as among individuals. Rights conceived in this way give but do not take from individual citizens. But the problem of racism, xenophobia and the like do not, on the whole, derive from acts of public authorities. The proposal I am suggesting is for the Council to target some of these rights, and model them on Article 119 by introducing legislation which would prohibit certain conduct among individuals in, say, the workplace, or other zones of commercial activities such as housing or employment. In this way, the right of the individual against public authority is converted into a duty towards



other human beings. This would enrich the notion of a human right as part of citizenship (even if the duty extends to non citizens as well) by asking something tangible of European citizens as part of that status.

It is no more appropriate to end this reflection on European citizenship with the grandiose concept than with the programmatic proposal. In some respects they are equally "unrealistic", equally bombastic. To its credit, I think, in the modern evolution of European integration ideas of both types have mattered. These are mine, for what they are worth.

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I acknowledge a deep debt to the following works which contributed to the shaping of the thoughts expressed in this Lecture. I alone am responsible for weaknesses and errors of law or fact.

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