

Appendix II

Citizenship and National Identity (1990)

Until the mid eighties, history seemed to be entering that crystal-line state known as *posthistoire*. This was Arnold Gehlen's term for the strange feeling that the more things change, the more they remain the same. *Rien ne va plus*—nothing really surprising can happen anymore. Locked in by systemic constraints, all the possibilities seemed to have been exhausted, all the alternatives frozen, and any remaining options drained of meaning. Since then this mood has completely changed. History is once again on the move, accelerating, even overheating. New problems are shifting the old perspectives. What is more important, new perspectives are opening up for the future, points of view that restore our ability to perceive alternative courses of action.

Three historical movements of our contemporary period, once again in flux, affect the relation between citizenship and national identity: (1) In the wake of German unification, the liberation of the East Central European states from Soviet tutelage, and the nationality conflicts breaking out across Eastern Europe, the question concerning the future of the nation-state has taken on an unexpected topicality. (2) The fact that the states of the European Community are gradually growing together, especially with the caesura that will be created when a common market is introduced in 1993, sheds light on the relation between the nation-state and democracy: the democratic processes constituted at the level of the nation-state lag hopelessly behind the economic integration taking place at a supranational level. (3) The tremendous tide of immigra-

tion from the poor regions of the East and South, with which Europe will be increasingly confronted in the coming years, lends the problem of asylum a new significance and urgency. This process exacerbates the conflict between the universalistic principles of constitutional democracy, on the one hand, and the particularistic claims to preserve the integrity of established forms of life, on the other.

These three topics offer an occasion for the conceptual clarification of some normative perspectives from which we can gain a better understanding of the complex relation between citizenship and national identity.

1 The Past and Future of the Nation-State

The events in Germany and the Eastern European states have given a new twist to a long-standing discussion in the Federal Republic about the path to a "postnational society."¹ Many German intellectuals have complained, for example, about the democratic deficits of a unification process that is implemented at the administrative and economic levels without the participation of citizens; they now find themselves accused of "postnational arrogance." This controversy over the form and tempo of political unification is fueled not only by the contrary feelings of the disputing parties but also by conceptual unclarity. One side sees the accession of the five new Länder to the Federal Republic as restoring the unity of a nation-state torn apart four decades ago. From this viewpoint, the nation represents the prepolitical unity of a community with a shared historical destiny (*Schicksalsgemeinschaft*). The other side sees political unification as restoring democracy and the rule of law in a territory where civil rights have been suspended in one form or another since 1933. From this viewpoint, what used to be West Germany was no less a nation of enfranchised citizens than is the new Federal Republic. This republican usage strips the term "nation-state" of precisely those prepolitical and ethnic-cultural connotations that have accompanied the expression in modern Europe. Dissolving the semantic connections between state citizenship and national identity honors the fact that today the classic form of the nation-state is, with the transition of the European

Community to a political union, disintegrating. This is confirmed by a glance back at its genesis in early modernity.

In modern Europe, the premodern form of *empire* that used to unite numerous peoples remained rather unstable, as shown in the cases of the Holy Roman Empire or the Russian and Ottoman empires.² A second, federal form of state emerged from the belt of Central European cities. It was above all in Switzerland that a *federation* developed that was strong enough to balance the ethnic tensions within a multicultural association of citizens. But it was only the third form, the centrally administered *territorial state*, that came to have a lasting formative effect on the structure of the European system of states. It first emerged—as in Portugal, Spain, France, England, and Sweden—from kingdoms. Later, as democratization proceeded along the lines of the French example, it developed into the *nation-state*. This state formation secured the boundary conditions under which the capitalist economic system could develop worldwide. That is, the nation-state provided the infrastructure for an administration disciplined by the rule of law, and it guaranteed a realm of individual and collective action free of state interference. Moreover—and this is what primarily interests us here—it laid the foundation for the ethnic and cultural homogeneity that made it possible, beginning in the late eighteenth century, to forge ahead with the democratization of government, albeit at the cost of excluding and oppressing minorities. Nation-state and democracy are twins born of the French Revolution. From a cultural point of view, they both stand under the shadow of nationalism.

This national consciousness is a specifically modern manifestation of cultural integration. The political consciousness of national membership arises from a dynamic that first took hold of the population after processes of economic and social modernization had torn people from their places in the social hierarchy, simultaneously mobilizing and isolating them as individuals. Nationalism is a form of consciousness that presupposes an appropriation, filtered by historiography and reflection, of cultural traditions. Originating in an educated bourgeois public, it spreads through the channels of modern mass communication. Both elements, its literary mediation and its dissemination through public media,

lend to nationalism its artificial features; its somewhat constructed character makes it naturally susceptible to manipulative misuse by political elites.

The history of the term “nation” reflects the historical genesis of the nation-state.³ For the Romans, *Natio* was the goddess of birth and origin. *Natio* refers, like *gens* and *populus* but unlike *civitas*, to peoples and tribes who were not yet organized in political associations; indeed, the Romans often used it to refer to “savage,” “barbaric,” or “pagan” peoples. In this classical usage, then, nations are communities of people of the same descent, who are integrated geographically, in the form of settlements or neighborhoods, and culturally by their common language, customs, and traditions, but who are not yet politically integrated through the organizational form of the state. This meaning of “nation” persisted through the Middle Ages and worked its way into the vernacular languages in the fifteenth century. Even Kant still wrote that “those inhabitants . . . which recognize themselves as being united into a civil whole through common descent, are called a nation (*gens*).”⁴ However, in the early-modern period a competing usage arose: the nation is the bearer of sovereignty. The estates represented the “nation” over against the “king.” Since the middle of the eighteenth century, these two meanings of “nation”—community of descent and “people of a state”—have intertwined. With the French Revolution, the “nation” became the source of state sovereignty, for example, in the thought of Emmanuel Sieyès. Each nation is now supposed to be granted the right to political self-determination. The intentional democratic community (*Willensgemeinschaft*) takes the place of the ethnic complex.

With the French Revolution, then, the meaning of “nation” was transformed from a prepolitical quantity into a constitutive feature of the political identity of the citizens of a democratic polity. At the end of the nineteenth century, the conditional relation between ascribed national identity and acquired democratic citizenship could even be reversed. Thus the gist of Ernest Renan’s famous saying, “the existence of a nation is . . . a daily plebiscite,” was already directed *against* nationalism. After 1871, Renan could rebut Germany’s claims to the Alsace by referring to the inhabitants’ French nationality only because he thought of the “nation” as a nation of citizens, and not as a community of descent. The nation

of citizens finds its identity not in ethnic and cultural commonalities but in the practice of citizens who actively exercise their rights to participation and communication. At this juncture, the republican strand of citizenship completely parts company with the idea of belonging to a prepolitical community integrated on the basis of descent, shared tradition, and common language. Viewed from this end, the initial fusion of national consciousness with republican conviction only functioned as a catalyst.

The nationalism mediated by the works of historians and romantic writers, hence by scholarship and literature, grounded a collective identity that played a *functional* role for the notion of citizenship that originated in the French Revolution. In the melting pot of national consciousness, the ascriptive features of one's origin were transformed into just so many results of a conscious appropriation of tradition. Ascribed nationality gave way to an achieved nationalism, that is, to a conscious product of one's own efforts. This nationalism was able to foster people's identification with a role that demanded a high degree of personal commitment, even to the point of self-sacrifice; in this respect, general conscription was simply the flip side of civil rights. National consciousness and republican conviction in a sense proved themselves in the willingness to fight and die for one's country. This explains the complementary relation that originally obtained between nationalism and republicanism: one became the vehicle for the emergence of the other.

However, this social-psychological connection does not mean that the two are linked at the conceptual level. National independence and collective self-assertion against foreign nations can be understood as a collective form of freedom. This national freedom does not coincide with the genuinely political freedom that citizens enjoy within a country. For this reason, the modern understanding of this republican freedom can, at a later point, cut its umbilical links to the womb of the national consciousness of freedom that originally gave it birth. The nation-state sustained a close connection between "demos" and "ethos" only briefly.⁵ Citizenship was never conceptually tied to national identity.

The concept of citizenship developed out of Rousseau's concept of self-determination. "Popular sovereignty" was initially understood as a delimitation or reversal of royal sovereignty and was

judged to rest on a contract between a people and its government. Rousseau and Kant, by contrast, did not conceive of popular sovereignty as the transfer of ruling authority from above to below or as its distribution between two contracting parties. For them, popular sovereignty signified rather the transformation of authority into *self-legislation*. A historical pact, the civil contract, is replaced here by the social contract, which functions as an abstract model for the way in which an authority legitimated only through the implementation of democratic self-legislation is *constituted*. Political authority thereby loses its character of quasi-natural violence: the *auctoritas* of the state should be purged of the remaining elements of *violentia*. According to this idea, “only the united and consenting Will of all— . . . by which each decides the same for all and all decide the same for each—can legislate.”⁶

This idea does not refer to the substantive generality of a popular will that would owe its unity to a prior homogeneity of descent or form of life. The consensus fought for and achieved in an association of free and equal persons ultimately rests only on the unity of a *procedure* to which all consent. This procedure of democratic opinion- and will-formation assumes a differentiated form in constitutions based on the rule of law. In a pluralistic society, the constitution expresses a formal consensus. The citizens want to regulate their living together according to principles that are in the equal interest of each and thus can meet with the justified assent of all. Such an association is structured by relations of mutual recognition in which each person can expect to be respected by all as free and equal. Each and every person should receive a three-fold recognition: they should receive equal protection and equal respect in their integrity as irreplaceable individuals, as members of ethnic or cultural groups, and as citizens, that is, as members of the political community. This idea of a self-determining political community has assumed a variety of concrete legal forms in the different constitutions and political systems of Western Europe and the United States.

In the language of law, though, “*Staatsbürgerschaft*,” “*citoyenneté*,” or “citizenship” referred for a long time only to nationality or membership in a state; only recently has the concept been enlarged to cover the status of citizens defined in terms of civil rights.⁷

Membership in a state assigns a particular person to a particular nation whose existence is recognized in terms of international law. Regardless of the internal organization of state authority, this definition of membership, together with the territorial demarcation of the country's borders, serves to delimit the state in social terms. In the democratic constitutional state, which understands itself as an association of free and equal persons, state membership depends on the principle of voluntariness. Here, the conventional ascriptive characteristics of domicile and birth (*jus soli* and *jus sanguinis*) by no means justify a person's being irrevocably subjected to that government's sovereign authority. These characteristics function merely as administrative criteria for attributing to citizens an assumed, implicit consent, to which the right to emigrate or to renounce one's citizenship corresponds.⁸

Today, though, the expressions "*Staatsbürgerschaft*" or "citizenship" are used not only to denote organizational membership in a state but also for the status materially defined by civil rights and duties. The Basic Law of the Federal Republic has no explicit parallel to the Swiss notion of active citizenship.⁹ However, taking Article 33, section 1, of the Basic Law as its starting point, German legal thought has expanded the package of civil rights and duties, especially the basic rights, to generate an overall status of a similar kind.¹⁰ In the republican view, citizenship has its point of reference in the problem of the legal community's self-organization, whereas its core consists in the rights of political participation and communication. Rolf Grawert, for example, conceives citizenship as "the legal institution through which the individual member of a state is given a collaborative role in the concrete matrix of state actions."¹¹ The status of citizen fixes in particular the democratic rights to which the individual can reflexively lay claim in order to *change* his material legal status.

In the philosophy of law, two contrary interpretations of this active citizenship vie with each other for pride of place. The role of the citizen is given an individualist and instrumentalist reading in the liberal tradition of natural law starting with John Locke, whereas a communitarian and ethical understanding of this role has emerged in the republican tradition of political philosophy going back to Aristotle. In the first case, citizenship is conceived

along the lines of an organizational membership that grounds a legal status. In the second case, it is modeled after a self-determining ethnic-cultural community. In the first interpretation, individuals remain outside the state. In exchange for organizational services and benefits, they make specific contributions, such as voting inputs and tax payments, to the reproduction of the state. In the second interpretation, citizens are integrated into the political community like the parts of a whole, in such a way that they can develop their personal and social identity only within the horizon of shared traditions and recognized political institutions. On the liberal reading, citizens do not differ essentially from private persons who bring their prepolitical interests to bear vis-à-vis the state apparatus. On the republican reading, citizenship is actualized solely in the collective practice of self-determination. Charles Taylor describes these two competing concepts of citizen as follows:

One [model] focuses mainly on individual rights and equal treatment, as well as a government performance which takes account of the citizen's preferences. This is what has to be secured. Citizen capacity consists mainly in the power to retrieve these rights and ensure equal treatment, as well as to influence the effective decisionmakers. . . . [T]hese institutions have an entirely instrumental significance. . . . [N]o value is put on participation in rule for its own sake. . . .

The other model, by contrast, defines participation in self-rule as of the essence of freedom, as part of what must be secured. This is . . . an essential component of citizen capacity. . . . Full participation in self-rule is seen as being able, at least part of the time, to have some part in the forming of a ruling consensus, with which one can identify along with others. To rule and be ruled in turn means that at least some of the time the governors can be "us," and not always "them."¹²

The holistic model of a community that incorporates its citizens in every aspect of their lives is in many respects inadequate for modern politics. Nevertheless, it has an advantage over the organizational model, in which isolated individuals confront a state apparatus to which they are only functionally connected by membership: the holistic model makes it clear that political autonomy is an end in itself that can be realized not by the single individual privately pursuing his own interests but only by all together in an intersubjectively shared practice. The citizen's legal status is constituted by a network of egalitarian relations of mutual recognition.

It assumes that each person can adopt the participant perspective of the first-person plural—and not just the perspective of an observer or actor oriented to his own success.

Legally guaranteed relations of recognition do not, however, reproduce themselves of their own accord. Rather, they require the cooperative efforts of a civic practice that no one can be compelled to enter into by legal norms. It is for good reason that modern coercive law does not extend to the motives and basic attitudes of its addressees. A legal duty, say, to make active use of democratic rights has something totalitarian about it. Thus the legally constituted status of citizen depends on the *supportive spirit* of a consonant background of legally noncoercible motives and attitudes of a citizenry oriented toward the common good. The republican model of citizenship reminds us that constitutionally protected institutions of freedom are worth only what a population *accustomed* to political freedom and settled in the “we” perspective of active self-determination makes of them. The legally institutionalized role of citizen must be embedded in the context of a liberal political culture. This is why the communitarians insist that citizens must “patriotically” identify with their form of life. Taylor, too, postulates a shared consciousness that arises from the identification with the consciously accepted traditions of one’s own political and cultural community: “The issue is, can our patriotism survive the marginalization of participatory self-rule? As we have seen, a patriotism is a common identification with an historical community founded on certain values. . . . But it must be one whose core values incorporate freedom.”¹³

With this, Taylor seems to contradict my thesis that there is only a historically contingent and not a conceptual connection between republicanism and nationalism. Studied more closely, however, Taylor’s remarks boil down to the statement that the universalist principles of constitutional democracy need to be somehow anchored in the political culture of each country. Constitutional principles can neither take shape in social practices nor become the driving force for the dynamic project of creating an association of free and equal persons until they are situated in the historical context of a nation of citizens in such a way that they link up with those citizens’ motives and attitudes.

As the examples of multicultural societies like Switzerland and the United States demonstrate, a political culture in which constitutional principles can take root need by no means depend on all citizens' sharing the same language or the same ethnic and cultural origins. A liberal political culture is only the common denominator for a *constitutional* patriotism (*Verfassungspatriotismus*) that heightens an awareness of both the diversity and the integrity of the different forms of life coexisting in a multicultural society. In a future Federal Republic of European States, the *same* legal principles would also have to be interpreted from the perspectives of *different* national traditions and histories. One's own tradition must in each case be appropriated from a vantage point relativized by the perspectives of other traditions, and appropriated in such a manner that it can be brought into a transnational, Western European constitutional culture. A particularist anchoring of *this kind* would not do away with one iota of the universalist meaning of popular sovereignty and human rights. The original thesis stands: democratic citizenship need not be rooted in the national identity of a people. However, regardless of the diversity of different cultural forms of life, it does require that every citizen be socialized into a common political culture.

2 Nation-State and Democracy in a Unified Europe

The political future of the European Community sheds light on the relation between citizenship and national identity in yet another respect. The concept of citizenship developed by Aristotle was, after all, originally tailored for the size of cities or city-states. The transformation of populations into nations that formed states occurred, as we have seen, under the banner of a nationalism that seemed to reconcile republican ideas with the larger dimensions of modern territorial states. It was in the political forms created by the nation-state that modern trade and commerce arose. And, like the bureaucratic state, the capitalist economy, too, developed a systemic logic of its own. The markets for goods, capital, and labor obey their own logic, independent of the intentions of human subjects. Alongside the administrative power incorporated in government bureaucracies, money has become an anonymous me-

dium of societal integration operating above the participants' heads. This *system integration* competes with the form of integration mediated by the actors' consciousnesses, that is, the *social integration* taking place through values, norms, and mutual understanding. The *political integration* that occurs through democratic citizenship represents one aspect of this general social integration. For this reason, the relation between capitalism and democracy is fraught with tension, something liberal theories often deny.

Examples from the developing countries show that the relation between the development of the democratic constitutional state and capitalist modernization is by no means linear. Nor did the social-welfare compromise, operative in Western democracies since the end of the Second World War, come about automatically. The development of the European Community manifests this same tension between democracy and capitalism in another way. Here it is expressed in the vertical divide between the systemic integration of economy and administration that emerges at the supranational level and the political integration effected only at the level of the nation-state. Hence, the technocratic shape of the European Community reinforces doubts that were already associated with the normative expectations linked with the role of the democratic citizen. Were not these expectations always largely illusory, even within the borders of the nation-state? Did not the temporary symbiosis of republicanism and nationalism merely mask the fact that the concept of the citizen is, at best, suited for the less complex relations of an ethnically homogenous and surveyable polity still integrated by tradition and custom?

Today the "European Economic Community" has become a "European Community" that proclaims the political will to form a "European Political Union." Aside from India, the United States provides the only example for a governmental structure of this sort (which at present would encompass 320 million inhabitants). The United States, though, is a multicultural society united by the same political culture and (at least for now) a single language, whereas the European Union would represent a multilingual state of different nationalities. Even if such an association were to resemble more of a Federal Republic than a federation of semisovereign individual states—a question that is still a matter of controversy—it would

have to retain certain features of de Gaulle's "Europe of Fatherlands." The nation-states as we know them would, even in such a Europe, *continue to have* a strong structuring effect.

However, nation-states present a problem along the thorny path to European Union not so much on account of their insuperable claims to sovereignty but because democratic processes have hitherto functioned, imperfectly to be sure, only inside national boundaries. To put it briefly, up to the present the political public sphere has been fragmented into national units. Hence we cannot avoid the question whether a European citizenship can even exist at all. By this I do not mean the possibility of collective political action across national boundaries but the consciousness "of an obligation toward the European common good."¹⁴ As late as 1974, Raymond Aron answered this question with a decisive "No." At the supra-national steering level, an extensive European market will soon be set up with legal-administrative instruments. This contrasts with the very limited powers of the European Parliament, a body that will probably be scarcely visible in the political public spheres of the member states. To date, rights of political participation do not effectively extend beyond national boundaries.

The administration of justice by the European Court takes the "Five Freedoms of the Common Market" as its point of orientation and interprets as basic rights the free movement of goods, the free movement of labor, the freedom of entrepreneurial establishment, the freedom to provide services, and the free movement of capital and payments. This corresponds to the powers the Treaty of Rome conferred on the Council of Ministers and the High Commission in Article 3. These in turn are explained in terms of the goal set out in Article 9: "The Community shall be based upon a customs union which shall cover all trade in goods." The internal market and the planned establishment of an autonomous central bank serve the same end. The new level of economic interdependence should give rise to a growing need for coordination in other policy fields as well, such as environmental policy, fiscal and social policy, and educational policy. This need for regulation will again be assessed primarily from the standpoint of economic rationality, according to standards of fair competition. Thus far these tasks are accomplished by European organizations that have intermeshed to form

a dense administrative network. The new functional elites are, formally speaking, still accountable to the governments and institutions in their respective countries of origin; in reality, however, they have already outgrown their national contexts. Professional civil servants form a bureaucracy that is aloof from democratic processes.

For the citizen, this translates into an ever greater gap between being passively affected and actively participating. An increasing number of measures decided at a supranational level affect the lives of more and more citizens to an ever greater extent. Given that the role of citizen has hitherto been effectively institutionalized only at the level of the nation-state, however, citizens have no promising opportunities to bring up issues and influence European decisions. M. R. Lepsius tersely states, "There is no European public opinion."¹⁵ Does this disparity represent merely a passing imbalance that can be set right by the parliamentarization of the Brussels expertocracy? Or do these bureaucracies, oriented as they are by economic criteria of rationality, merely highlight developments already long under way and inexorably advancing even within nation-states? I allude here to the fact that economic imperatives have become independent of everything else and that politics has been absorbed into the state (*Verstaatlichung*). These developments undermine the status of citizen and contradict the republican claim associated with this status.

Taking England as his example, T. H. Marshall has studied the expansion of citizen rights and duties in connection with capitalist modernization.¹⁶ Marshall's division of such rights into "civil," "political," and "social rights" follows a well-known legal classification. Here, liberal negative rights protect the private legal subject against illegal government infringements of freedom and property; rights of political participation enable the active citizen to take part in democratic processes of opinion- and will-formation; social rights grant clients of the welfare state a minimum income and social security. Marshall advances the thesis that the status of the citizen in modern societies has been expanded and consolidated in a succession of steps. On his analysis, negative liberty rights were first supplemented by democratic rights, and then these two classical types of rights were followed by social rights. Through this

process, ever greater sections of the population have acquired their full rights of membership step by step.

Even leaving the historical details aside, this suggestion of a more or less linear development only holds for what sociologists designate by the general term “inclusion.” In a society increasingly differentiated along functional lines, an ever greater number of persons acquire an ever larger number of rights of access to, and participation in, an ever greater number of subsystems. Such subsystems include markets, factories, and places of work; government offices, courts, and the military; schools, hospitals, theaters, and museums; political associations and public communications media; political parties, self-governing institutions, and parliaments. For the individual, the number of memberships therewith multiplies, and the range of options expands. However, this image of linear progress emerges from a description that remains neutral toward increases or losses in autonomy. This description is blind to the actual use made of an active citizenship status that allows individuals to play a role in democratically changing their own status. Indeed, only rights of political participation ground the citizen’s reflexive, self-referential legal standing. Negative liberties and social rights can, by contrast, be conferred by a paternalistic authority. In principle, the constitutional state and the welfare state are possible without democracy. Even in countries in which all three categories of rights are institutionalized, as in the “democratic and social federal state” defined by the Basic Law, article 20, these negative and social rights are still Janus-faced.

Historically speaking, liberal rights crystallized around the social position of the private-property owner. From a *functionalist* viewpoint, one can conceive them as institutionalizing a market economy, whereas, from a *normative* viewpoint, they guarantee individual freedoms. Social rights signify, from a *functionalist* viewpoint, the installation of welfare bureaucracies, whereas, from a *normative* viewpoint, they grant compensatory claims to a just share of social wealth. It is true that both individual freedom and welfare guarantees can also be viewed as the legal basis for the social independence that first makes it possible to put political rights into effect. But these are empirical, and not conceptually necessary, relationships. Negative liberties and social rights can just as well facilitate

the privatistic retreat from a citizen's role. In that case, citizenship is reduced to a client's relationships to administrations that provide services and benefits.

The syndrome of civil privatism and the exercise of citizenship from the standpoint of client interests become all the more probable the more the economy and state—which have been institutionalized through the same rights—develop their own internal systemic logics and push the citizen into the peripheral role of mere organization member. As self-regulating systems, economy and administration tend to close themselves off from their environments and obey only their internal imperatives of money and power. They explode the model of a polity that determines itself through the shared practice of the citizens themselves. The fundamental republican idea of the self-conscious political integration of a “community” of free and equal persons is obviously too concrete and simple for modern conditions. This is true, at least, if one is still thinking of a nation; the republican idea is still more problematic if one's model is an ethnically homogeneous “community of shared destiny” held together by common traditions.

Fortunately, law is a medium that allows for a much more abstract notion of civic, or public, autonomy. Today, the public sovereignty of the people has withdrawn into legally institutionalized procedures and the informal, more or less discursive opinion- and will-formation made possible by basic rights. I am assuming here a network of different communicative forms, which, however, must be organized in such a way that one can presume they bind public administration to rational premises. In so doing, they also impose social and ecological limits on the economic system, yet without impinging on its inner logic. This provides a *model of deliberative politics*. This model no longer starts with the macrosubject of a communal whole but with anonymously intermeshing discourses. It shifts the brunt of normative expectations over to democratic procedures and the infrastructure of a political public sphere fueled by spontaneous sources. Today, the mass of the population can exercise rights of political participation only in the sense of being integrated into, and having an influence on, an informal circuit of public communication that cannot be organized as a whole but is rather carried by a liberal and egalitarian political

culture. At the same time, deliberations in decision-making bodies must remain porous to the influx of issues, value orientations, contributions, and programs originating from a political public sphere unsubverted by power. Only if such an interplay were to materialize between institutionalized opinion- and will-formation and informal public communications could citizenship mean more today than the aggregation of prepolitical individual interests and the passive enjoyment of rights bestowed by a paternalistic authority.

I cannot go into this model in any further detail here.¹⁷ Yet, when we assess the chances for a future European citizenship, we can glean some empirical clues, at least, from the history of the institutionalization of civil rights (in the broad sense) in the nation-state. Clearly, the schema that presents civil rights essentially as the product of class struggle is too narrow.¹⁸ Other types of social movements, above all migrations and wars, have also driven the development of a full-fledged citizenship status. In addition, factors that prompted the juridification of new forms of inclusion also had an impact on the political mobilization of the population, thus contributing to the activation of already existing rights of citizenship.¹⁹ These and similar findings permit a cautiously optimistic extrapolation of the course that European development could take, so that we are not condemned to resignation from the outset.

The European market will set in motion a greater horizontal mobility and multiply the contacts among members of different nationalities. In addition to this, immigration from Eastern Europe and the poverty-stricken regions of the Third World will heighten the multicultural diversity of society. This will no doubt give rise to social tensions. But if those tensions are dealt with productively, they can foster a political mobilization that will give additional impetus to the new endogenous social movements already emergent within nation-states—I am thinking of the peace, environmental, and women's movements. These tendencies would strengthen the relevance that public issues have for the lifeworld. At the same time, there is a growing pressure of problems that can be solved only at a coordinated European level. Under these conditions, communication complexes could develop in Europe-wide public spheres. These publics would provide a favorable context both for

new parliamentary bodies of regions that are now in the process of merging and for a European Parliament furnished with greater authority.

To date, in the member states the policy of the European Community is not yet an object of a legitimating public debate. By and large, national public spheres are still culturally isolated from one another. That is, they are rooted in contexts in which political questions become significant only against the background of each nation's own history. In the future, however, a common *political* culture could differentiate itself from the various *national* cultures. A differentiation could appear between a Europe-wide *political* culture and the various *national* traditions in art and literature, historiography, philosophy, and so on, which have been branching out since early modernity. Cultural elites and the mass media would have an important role to play in this process. Unlike the American variant, a European constitutional patriotism would have to grow together from various nationally specific interpretations of the same universalist principles of law. Switzerland provides an example for how a common politicocultural self-understanding can emerge by differentiation from the cultural orientations of different nationalities.

In this context, our task is less to reassure ourselves of our common origins in the European Middle Ages than to develop a new political self-consciousness commensurate with the role of Europe in the world of the twenty-first century. Hitherto, history has granted the empires that have come and gone but *one* appearance on the world stage. This is just as true of the modern states—Portugal, Spain, England, France, and Russia—as it was for the empires of antiquity. By way of exception, Europe as a whole is now being given a *second* chance. But it will be able to make use of this opportunity not on the terms of its old-style power politics but only under the changed premises of a nonimperialist process of reaching understanding with, and learning from, other cultures.

3 Immigration and the Chauvinism of Affluence: A Debate

Hannah Arendt's diagnosis—that stateless persons, refugees, and those deprived of rights would come to symbolize this century—has

proved frighteningly accurate. The “displaced persons” that the Second World War left in a devastated Europe have long since been replaced by asylum seekers and immigrants flooding into a peaceful and prosperous Europe from the South and the East. The old refugee camps can no longer accommodate the flood of new immigrants. Statisticians anticipate that in coming years twenty to thirty million immigrants will come from eastern Europe alone. This problem can be solved only by the joint action of the European states involved. In the process, a dialectic that has already taken place on a smaller scale during the process of German unification would repeat itself. The transnational movements of immigrants function as sanctions that compel western Europe to fulfill a responsibility that has fallen on it with the bankruptcy of state socialism. Either Europe must make the utmost effort to quickly improve conditions in the poorer regions of central and eastern Europe or it will be flooded by asylum seekers and immigrants.

Experts are debating the capacity of the economic system to absorb these groups of people. But the readiness to politically integrate immigrants seeking economic betterment also depends on how the indigenous populations *perceive* the social and economic problems posed by immigration. This should be the sole matter for discussion. Throughout Europe, right-wing xenophobic reactions against the “corrupting influence of foreigners” has increased. The relatively deprived classes, whether they feel endangered by social decline or have already slipped into segmented marginal groups, identify quite openly with the ideologized supremacy of their own collectivity and reject everything foreign. This is the underside of a chauvinism of affluence that is on the rise everywhere. Thus the “asylum problem” also brings to light the latent tension between citizenship and national identity.

One example is the nationalistic and anti-Polish sentiments in the new German Länder. There the newly acquired status of citizenship in the Federal Republic was coupled with the hope that the Republic’s frontier of affluence would move straightaway toward the Oder and Neisse Rivers. Their newly gained citizenship also gives many of them the ethnocentric satisfaction that they will no longer be treated as second-class Germans. They forget that the rights of the citizen guarantee liberty because they contain univer-

sal human rights. Article 4 of the Revolutionary Constitution of 1793, which defined "The Status of Citizen," was already quite consistent in granting *every* adult foreigner who lived for one year in France not just the right to remain within the country but also active citizenship rights.

In the Federal Republic, as in most Western legal systems, the legal status of aliens, homeless foreigners, and stateless persons has at least become more like the status of citizens. Because the architectonic of the Basic Law is defined by the idea of human rights, *every* inhabitant enjoys the protection of the Constitution. Foreigners have the same duties, entitlements, and legal protections as do native citizens; with few exceptions, they also receive equal treatment with regard to economic status. The large number of statutes that are indifferent to membership status relativizes the real significance of its absence. The human-rights component of citizenship will be strengthened through supranational rights, and especially through European Civil Rights, which might even affect the core opportunities for exercising political influence. The Federal Constitutional Court's decision of October 31, 1990, is notable in this context. Though it declared unconstitutional the right of foreigners to vote in municipal and district elections (i.e., the local voting right of foreigners), its justification at least acknowledged the principles raised by the petitioners: "Behind this view obviously stands the notion that the idea of democracy, and especially the idea of liberty contained in it, implies that a congruence should be established between the possessors of democratic political rights and those who are permanently subject to a specific government. This is the proper starting point."²⁰

These trends simply mean that the normative content of a citizenship largely dissociated from national identity does not provide arguments for restrictive or obstructionist asylum and immigration policies. However, it remains an open question whether the European Community of today, in expectation of large streams of immigrants, can and ought to pursue foreigner and immigration policies as liberal as those of the Jacobins in their day. The pertinent *discussion in moral theory*, to which I restrict myself here, turns on the concept of "special duties," those special obligations that exist only within the social boundaries of a community. The

state, too, forms a concrete legal community that imposes special obligations on its members. Economic immigrants, more than asylum seekers, confront members of the European states with the problem of whether one can justify the priority of special membership-based duties over universal obligations that transcend state boundaries. I will recapitulate this recent topic of philosophical discussion in five steps.

(a) *Special obligations* are owed by specific persons to other specific persons who “are close” to them as “members,” such as members of one’s own family, friends and neighbors, and fellow citizens of one’s political community or nation. Parents have special obligations toward their children, and vice versa; consulates in foreign countries have special obligations toward their own citizens in need of protection, and these in turn have obligations toward the institutions and laws of their own land. In this context, we think primarily of positive duties, which are indeterminate insofar as they demand acts of solidarity, care, and commitment in ways that cannot be fixed in exact terms. One cannot reasonably expect that everyone should provide help on every occasion. Special obligations, which arise from the fact that one belongs to particular communities, can be understood as socially ascribing, and substantively specifying, such naturally indeterminate duties.

Utilitarians have attempted to ground special duties in the mutual benefit that members of a polity gain from one another through their reciprocal services. Even nations and states are conceived as such “mutual-benefit societies.”²¹ According to this model, each member can expect that the long-term profit gained through exchange relationships with the other members is proportional to the services he himself contributes in his interactions with others. On this basis, one can justify a reciprocity of special duties and rights, which prohibits, for example, the underprivileging of guest workers. Of course, this model cannot ground any duties toward members who cannot contribute as much (e.g., the handicapped, the ill, and the elderly) or toward those in need of help (e.g., foreigners seeking asylum). The instrumental ethnocentrism of reciprocal benefit expectations would suggest an immigration policy that granted entry to foreigners only if there were reasonable prospects that they would not burden the existing balance of

contributions and claims (e.g., in a social-security or national-insurance system).

(b) This counterintuitive result is a reason to abandon the utilitarian approach in favor of a model that explains special duties not in terms of the reciprocal benefits of an exchange of services among those belonging to a collectivity but in terms of the coordinating capacities of a centrally established, moral division of labor.²² For special obligations do not vary in direct proportion to the social distance between individuals, as though the claims of those who are near to us should always have priority over those who are far. This intuition applies only within the close confines of family and neighborhood. But it is misleading insofar as all those persons beyond these intimate circles are equally close and distant. Normally, we perceive these “strangers” under the category of the “other,” whether they are fellow citizens of our own nation or not. Special obligations toward “others” do not result primarily from belonging to a concrete community. They issue rather from the abstract action coordination effected by *legal* institutions. By assigning particular obligations to particular categories of persons or agents, these institutions socially and substantively specify and make binding those positive duties that otherwise remain indeterminate. On this view, special duties issue from the institutionally mediated assignment of specific responsibilities to particular addressees active in a moral division of labor. In the framework of such a legally regulated moral division of labor, the social boundaries of a legal community have only the function of regulating the distribution of responsibilities. This does not mean that our obligations in general end at these boundaries. Rather, national governments also have to see to it that citizens fulfill their positive duties toward nonmembers, such as asylum seekers. Naturally, this does not yet tell us what these duties consist in.

(c) The moral point of view obligates us to assess this problem impartially, and thus not just from the one-sided perspective of an inhabitant of an affluent region but also from the perspective of immigrants who are seeking their well-being there. In other words, they seek a free and dignified existence and not just political asylum. In John Rawls’s well-known thought experiment of the original position, individuals behind a “veil of ignorance” do not

know the society into which they were born or their position in that society. If one applies this moral test to our problem, then the outcome for a world society is obvious:

Behind the “veil of ignorance,” in considering possible restrictions on freedom, one adopts the perspective of the one who would be most disadvantaged by the restrictions, in this case the perspective of the alien who wants to immigrate. In the original position, then, one would insist that the right to migrate be included in the system of basic liberties for the same reasons that one would insist that the right to religious freedom be included: it might prove essential to one’s plan of life.²³

Legitimate restrictions of immigration rights could at most be justified in the light of competing considerations, for example, the need to avoid social conflicts and burdens on a scale that would seriously endanger the public order or economic reproduction of society. Criteria of ethnic descent, language, or education—or even an “attestation of belonging to the cultural community” of the land of immigration, as in the case of *Statusdeutschen* (“Germans by status”)—could not justify privileges in the process of immigration and naturalization.

(d) The communitarians, by contrast, point to a fact that the above-mentioned individualistic approaches overlook. Contrary to what the model of the legally regulated moral division of labor suggests, the social boundaries of a political community do not have just a *functional* meaning. Rather, they regulate one’s belonging to a historical community of shared destiny and a political form of life that is constitutive for the citizens’ very identity: “Citizenship is an answer to the question, ‘Who am I?’ and ‘What should I do?’ when posed in the public sphere.”²⁴ Membership in a political community grounds special duties, behind which stands a patriotic identification. This kind of loyalty reaches beyond the validity of institutionally prescribed legal duties: “Each member recognizes a loyalty to the community, expressed in a willingness to sacrifice personal gain to advance its interests.”²⁵ The misgivings about an exclusively moral and legal view of the problem draw support from the communitarian concept of citizenship, which we have already encountered. Such conceptions are no longer appropriate for the conditions of complex societies, but they do highlight an *ethical* component that should not be ignored.

The modern state, too, represents a political form of life that cannot be translated without remainder into the abstract form of institutions designed according to general legal principles. This form of life comprises the *politicocultural* context in which universalistic constitutional principles must be implemented, for only a population *accustomed* to freedom can keep the institutions of freedom alive. For that reason, Michael Walzer is of the opinion that the right of immigration is limited by the right of a political community to preserve the integrity of its form of life. In his view, the right of citizens to self-determination includes the right of self-assertion for each particular form of life.²⁶

(e) This argument, of course, can be read in two opposed ways. On the communitarian reading, additional normative restrictions should be imposed on liberal immigration rights. In addition to the functional restrictions that result from the conditions for the reproduction of the socioeconomic system, there are restrictions that secure the ethnic-cultural substance of the particular form of life. With this the argument takes on a *particularistic* meaning, wherein citizenship is intertwined, not with a national identity, but with historically specific cultural identities. Thus Herman R. van Gunsteren, fully in the spirit of Arendt, formulates the following condition for admission to citizenship in a democratic polity:

The prospective citizen must be capable and willing to be a member of this particular historical community, its past and future, its forms of life and institutions within which its members think and act. In a community that values autonomy and judgment of its members, this is obviously not a requirement of pure conformity. But it is a requirement of knowledge of the language and the culture and of acknowledgement of those institutions that foster the reproduction of citizens who are capable of autonomous and responsible judgment.²⁷

Nonetheless, the requisite “competence to act as a member of *this* particular polity”²⁸ must be understood in another sense completely, namely, a *universalistic* one, as soon as the political community itself implements universalistic constitutional principles. The identity of the political community, which also must not be violated by immigration, depends primarily on the legal principles anchored in the *political culture* and not on an *ethical-cultural* form of life as a whole. It follows that one must expect only that immigrants

willingly engage in the political culture of their new home, without necessarily abandoning the cultural life specific to their country of origin. The *political acculturation* demanded of them does not extend to the whole of their socialization. Rather, by importing new forms of life, immigrants can expand or multiply the perspectives from which the shared political constitution must be interpreted: "People live in communities with bonds and bounds, but these may be of different kinds. In a liberal society, the bonds and bounds should be compatible with liberal principles. Open immigration would change the character of the community, but it would not leave the community without any character."²⁹

The discussion we have traced through steps (a) through (e) finally yields the following normative conclusion: the European states should agree on a liberal immigration policy. They must not circle their wagons and use a chauvinism of affluence as cover against the onrush of immigrants and asylum seekers. Certainly the democratic right to self-determination includes the right to preserve one's own *political* culture, which forms a concrete context for rights of citizenship, but it does not include the right to self-assertion of a privileged *cultural* form of life. Within the constitutional framework of the democratic rule of law, diverse forms of life can coexist equally. These must, however, overlap in a common political culture that in turn is open to impulses from new forms of life.

Only a democratic citizenship that does not close itself off in a particularistic fashion can pave the way for a *world citizenship*, which is already taking shape today in worldwide political communications. The Vietnam War, the revolutionary changes in eastern and central Europe, as well as the Gulf War, are the first *world-political* events in the strict sense. Through the electronic mass media, these events were brought instantaneously before a ubiquitous public sphere. In the context of the French Revolution, Kant made reference to the reactions of a participating public. At that time, he identified the phenomenon of a world public sphere, which today is becoming political reality for the first time in a cosmopolitan matrix of communication. Even the superpowers cannot ignore the reality of worldwide protests. The ongoing state of nature between bellicose states that have already forfeited their sover-

eignty has at least begun to appear obsolescent. Even if we still have a long way to go before fully achieving it, the cosmopolitan condition is no longer merely a mirage. State citizenship and world citizenship form a continuum whose contours, at least, are already becoming visible.