IMMIGRATION AND THE BOUNDARIES OF CITIZENSHIP

by

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Biographical Note

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... und raus bist du! Ethnische Minderheiten in der Politik. Verlag für Gesellschaftskritik, Wien 1988 (co-edited with: Bernhard Baumgartner, Bernhard Perchinig and Karin Pintér).

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Freedom, wherever it existed as a tangible reality, has always been spatially lim ited. This is especially clear for the greatest and most elementary of all negative liberties, the freedom of movement; the borders of national territory or the walls of the city-state comprehended and protected a space in which men could move freely. Treaties and international guarantees provide an extension of this territorially bound freedom for citizens outside their own country, but even under these modern conditions the elementary coincidence of freedom and a limited space remains manifest. What is true for freedom of movement is, to a large extent, valid for freedom in general. Freedom in a positive sense is possible only among equals, and equality itself is by no means a universally valid principle but, again, applicable only with limitations and even within spatial limits. If we equate these spaces of freedom . . . with the political realm itself, we shall be inclined to think of them as islands in a sea or as oases in a desert. This image, I believe, is suggested to us not merely by the consistency of the metaphor but by the record of history as well.
(Hannah Arendt: *On Revolution*, London 1963:279)

INTRODUCTION

This booklet intends to challenge the view expressed in the above quotation.[1] Hannah Arendt's statement, that freedom can only survive within boundaries and that its maintenance restricts freedom of movement, is certainly a widely shared belief among political thinkers of the past and the present. In Arendt's writings freedom is based on citizenship, i.e. equality of rights within a political community. Such communities appear to be doubly bounded: in their membership and in their territories. My objections can be summed up as follows:
(1) Citizenship should not be identified with formal membership only, but must rather be seen as a bundle of rights that can transcend the

boundaries of the political and territorial entities in whose political institutions these rights are embodied.

(2) In many ways, modern nation-states are relatively open, compared with earlier communities of citizenship. Rights of emigration, of internal migration and of remigration have been included in national and international forms of citizenship. Rights of immigration are less universal, but they correlate with the residential status of immigrants within receiving states and can therefore be seen as an element of differential citizenship. Extending such rights beyond previous borders is an essential feature of fusion processes, in which new and larger communities of citizenship are formed.

(3) International migration creates a context in which the basic principles of citizenship substantiate demands for the equalisation of existing rights, and for establishing rights of transition between different territories as well as between different levels of membership.

In what is certainly the most influential contemporary text on citizenship, T.H. Marshall (1949/1964) sees the main achievement of this century in the evolution of social rights, which add to previously established civil and political ones. Marshall and his followers as well as his critics largely ignore a second and equally significant development: the emergence of rudimentary norms of transnational, or even universal, citizenship in international law, mainly formulated in conventions on human rights which have accumulated since the end of the Second World War. Among the most obvious limitations of this process is that it has been largely confined to civil rights and that its institutional guarantees are still strongly restricted by the norms of national sovereignty, which have become simultaneously universalised through decolonisation. From Marshall's evolutionary perspective one could argue that the present state of universal human rights resembles that of civil rights in some Western European nations in the late 18th century: they have become widely accepted as norms and, though still frequently violated in practice, some institutional arrangements guarantee respect for them. Will Marshall's evolutionary scheme of citizenship be repeated on an international scale? Can we expect that the contradiction between internal equality of citizenship and freedom of transnational movement will be finally resolved by making not only civil rights, but also political and social ones transferable across national boundaries?

Affirming this could only be based on teleological speculation. The 20th-century achievements of social rights in contemporary 'welfare states' and of international guarantees for human rights appear not only as inherently fragile, but also as opposed to each other as far as migration is concerned. The more substance internal rights of citizenship acquire, the more important it seems to police the frontiers of states. Borders of industrially developing states were relatively open for immigration as long as political and social rights for the internal population were little developed. They have become more closed with the evolution of citizenship. Restricting freedom of immigration, subordinating it to the need to stabilise a capitalist economy by state intervention, has become one of the hallmarks of the 'welfare state'.

This development can also be reversed. According to Marshall, the breakthrough in national civil rights during the industrial and democratic revolutions was instrumental in the abolishing of previous social rights, embodied in the pre-modern institutions of feudal, religious and communal welfare. In a similar way the extension of international migration rights could contribute to an erosion of social rights in contemporary societies. This raises the question whether existing national forms of social protection within a capitalist economy will not become increasingly obsolete when labour markets become truly international. The structural contradictions between civil and social rights, as well as between national and international citizenship, imply that any progress along this path will meet numerous obstacles and will probably only come about through social conflict rather than peaceful evolution. Therefore the following analysis does not conclude in a plain rejection of Arendt's argument. Global freedom of movement, which has been largely established for money, goods and information, is much more difficult to achieve for human beings.

My text is part of an ongoing project exploring the impact of migration on citizenship and the impact of nationalism on the formation of new ethnic minorities among immigrants. The aspect of ethnicity is beyond the scope of this presentation; and the relation between nationalism and citizenship will be stated as a premise, rather than developed as a hypothesis. The underlying idea is that nationalism is a social discourse that has provided legitimacy for territorial, ethnic and racial boundaries of citizenship while delegitimizing others based on class and gender. While

nationalism and citizenship have been seen as mutually supportive, or even inseparable, features of modern political systems by some authors, they have become increasingly opposed and irreconcilable with regard to the inclusion of migrants in political communities. This highlights another parallel with T.H. Marshall, who explained that citizenship in its early stages supported and legitimated the emergence of the capitalist class structure but in its later evolution has been at war with it. Just as social citizenship does not resolve class conflict, but can only be developed within it, transnational citizenship will not simply replace nationalism, but will arise as an opposing principle from confrontations foreshadowed by the current nationalist revivals in both East and West Europe.

Readers who look for a historical and comparative analysis of citizen rights of migrants will certainly be disappointed. I do not want to pretend that my empirical observations about migration-related policies of sending and receiving states are in any way original contributions based on new research: they serve merely to illustrate the general argument. My analysis is broadly theoretical; it explores the implications of citizenship as a political norm when applied to a context of transnational migration.

Notes

1 Arendt repeated and elaborated this idea on several other occasions (cf. Arendt 1958:63f., :191 ff., Arendt 1970:81f.).

CHAPTER ONE

BASIC FEATURES OF CITIZENSHIP

Citizenship is presently very much in vogue. In Britain all major political currents have recently endorsed the concept and put forward their own versions of citizenship. The main impetus has undoubtedly come from Charter 88, a movement in favour of proportional representation and a written constitution as a safeguard for individual rights and liberties. The current Conservative government proposes a 'Citizens Charter', which focuses on the accountability of public service providers to their costumers. When he was Home Secretary, Douglas Hurd promoted the concept of the 'active citizen', stressing voluntary and local initiative. The leader of the Liberal Party, Paddy Ashdown, has published a programme for 'Citizen's Britain'; the Labour Party has presented its own charter of rights and has recently changed its policy and now supports the idea of a British Bill of Rights.

In the tradition of T.H. Marshall's classical essay, I will argue for a broad notion of citizenship beyond its purely nominal meaning of formal affiliation of individuals to states. The clear-cut distinction between members and non-members of a state is too narrow, and even the legal position of immigrants cannot be neatly divided along this line. On the other hand, the current fashion of overcharging the concept of citizenship with everything that seems desirable from totally different political points of view can only contribute to existing confusions and might eventually lead to abandoning the notion itself as yet another political illusion.

Like 'modernity', citizenship seems to be one of those ideas which easily fall prey to conceptual inflation. They are rarely used as analytical tools and more often serve to promote mutually incompatible programmes under a common heading. Only when the next ebb in the debate sets in will we be able to see what were the essential dividing lines in the discourse and whether there was a common core of shared convictions.

Perhaps all we can do in the meantime is to try and explain in which way one's own concept of citizenship differs from others. This is the purpose of the first chapter. I would like to propose a strategy of clarification, which follows an inventive analysis of another essentially contested concept, that of ethnicity. In his introduction to *Ethnic Groups and Boundaries*, Fredrik

Barth (1969) suggested that ethnicity should not be analysed by looking at cultural identity and difference between ethnic groups, but by focusing on the boundaries between such groups and how they are maintained in spite of contacts and transitions. In a similar way we could clarify our notions of citizenship by focusing on its institutional boundaries. Who is a citizen? Who is not? And who is something in between? What are the rules for transition from one status of citizenship to another? These questions can tell us more about the concept than arguments over whether citizenship is primarily about rights or about duties, whether it is a property of the individual or of the political collectivity, or the adding of further adjectives to Marshall's list of rights of citizenship (civil, political, social, economic, cultural, ecological . . .). Before we can apply the concept we shall have to adopt a preliminary position on all these questions, which dominate the present discourse. However, the analysis of boundaries may be the best, and is probably the only, way to validate our preconceived notions.

The issue of migration is essential for this strategy of clarification, because it forces us to address the boundary question. Differences and inequalities of positions of citizenship often only become evident in movements across boundaries separating these positions. An immigrant who crosses the territorial borders of a nation-state, and often also the cultural boundaries between sending and receiving society, can still be excluded from the political community of citizenship in various ways. His or her experience of lack of rights is a litmus test for the concept of citizenship, vested in the institutions of the receiving state.

Immigration, which leads to final settlement, might be regarded as a problem which can and will be solved by allowing for a period of adaptation. Cultural difference will be overcome in future generations, and legal equality can be achieved by naturalisation. However, the challenges raised by migration can be more fundamental, if we do not see it as a finite process which has a single direction, a beginning and an end, but as a continuous, multidirectional and increasingly global process. This is the image that many recent developments of migration present, even if we still perceive them within the traditional analytical scheme. Recognizing these new features would force us to go beyond the assumptions of settlement and assimilation that have legitimated previous efforts to extend citizenship to immigrants. We would have to consider the right of immigration itself and collective rights of immigrants to protection against

ethnic and racial discrimination as potential elements of citizenship. Both these rights do exist in rudimentary forms for some populations in some countries of immigration but their generalisation would jeopardise present concepts of national citizenship. There is not yet a simple answer to the question. How can equality and universality of rights be maintained in societies open for immigration and internal multiculturalism? The formidable problems involved in this openness remind us how strongly the Western liberal concept of citizenship has been rooted in national closure, in the double meaning of limited access from outside and cultural homogenisation inside.

1.1 Some notes on terminology and translations

The term 'citizenship' has different meanings when translated into different languages. 'Staatsbürgerschaft' in German stands for a purely nominal relationship between an individual and the state, without reference to specific rights. The concept of 'citoyenneté' in French stresses a content of citizenship, consisting in a bundle of rights. In English and French the notions of 'nationality' and 'nationalité' are often used as equivalents to 'Staatsbürgerschaft' and could help to distinguish the nominal relationship and its specific content. However, these words refer to the concept of 'nationhood', which in my opinion should be deliberately separated from the concept of 'citizenship' for political and analytical reasons. A more practical concern arises when we deal with multinational states, where it is not conceivable to use this term in the same way: until mid 1991 one could be a 'Soviet or Yugoslav citizen', but certainly not a 'Soviet or Yugoslav national'. The British notion of a 'subject' might serve as an alternative term in these cases. However, it does not express the neutrality of 'Staatsbürgerschaft', but refers to the idea that sovereignty ultimately lies with the crown, and not with the people.[1]

For lack of a better solution I will use the word 'citizenship' generally in its broader meaning of 'citoyenneté'. In those contexts, where the text refers to 'Staatsbürgerschaft', this will be translated as 'nominal citizenship'.

Many recent contributions to the subject are fully aware of this double meaning, but make a different choice of terminology. The most elaborate one has been proposed by Tomas Hammar (1990), who distinguishes

citizens (referring to nominal citizens only) and denizens (permanent settlers or long-term immigrants enjoying a specific bundle of rights that distinguishes them from aliens). I would like to propose a German translation of this term: 'denizen' could be translated as 'Wohnbürger' and the rights that she or he legally enjoys could be called 'Wohnbürgerschaft'. This emphasises the criterion of residence ('Wohnsitz') for these rights, as opposed to formal state membership in the German concept of 'Staatsbürgerschaft'. It could also serve as an alternative to the hypocritical notion of 'Mitbürger' ('co-citizen'), which was introduced into official political jargon expressly to designate Jewish citizens and aliens, and has a strong connotation of paternalism towards minorities, which are thus not accepted as equals. The *Mitbürger* needs the *Staatsbürger* as his/her counterpart, whereas the *Wohnbürger* includes both the nominal and alien citizen on equal terms of residence. I shall also use Hammar's terminology in later chapters of the paper, but only after a broader notion of citizenship, which encompasses denizens and to some extent even aliens, has been introduced. In this paper denizenship is not an alternative status to citizenship, but a specific status of citizenship. The principal reasons for this will become clear later, but there are some very pragmatic ones too:

(1) The relation between citizens and denizens does not correspond to the relation between citizenship and denizenship. While nominal citizens are a completely separate category from aliens and denizens, denizen rights are generally only a subset of citizen rights. If we are primarily concerned with the nature of rights and not with the classification of persons, nominal citizenship and denizenship are only different expressions of a single phenomenon.

(2) There are few conceptual problems in separating nominal citizens from denizens, but it is less easy to distinguish denizens and aliens, as in most countries the status of denizen is not clearly defined and can be attained only gradually and according to different criteria for different sets of rights. As Layton-Henry points out: 'There is no sharp distinction between the rights enjoyed by citizens and those of non-citizens . . . there is something like a continuum of rights between members of European states, from those with almost no rights to those with all the rights and privileges of citizenship' (1990:189).

(3) Nominal citizenship in some cases is not equivalent to full citizen rights. Naturalised immigrants may still be excluded from some rights

restricted to persons who are nominal citizens by birth. (In France such rules of incapacitation and ineligibility were in force until 1983; in the United States only a citizen born in the USA can become president; in the UK there are three different categories of citizens, according to the 1981 Nationality Act, which are mainly distinguished by different immigration rights.)

1.2 Citizenship and nationalism

William Rogers Brubaker (1989a) points out that citizenship is not only a formal status but also implies a normative model, which is strongly modified in its applications in real politics. As this is a similar approach as the one that I would like to propose, it is important to stress the points where I do not agree with his exposition. Brubaker thinks of citizenship in terms of social and political membership and gives the normative model six criteria. Membership should be:

a) egalitarian
b) sacred
c) national
d) democratic
e) unique
f) socially consequential.

These criteria are explained in the following way: a) gradations of membership status are inadmissible; b) citizens should be prepared to make sacrifices, and their attitude towards membership should not be 'profane' and calculating; c) the political community should be simultaneously a cultural community; d) full membership should carry with it significant participation in the business of rule, and, in the long run, residence and membership must coincide; e) every person should belong to one and only one state; f) membership should be expressed in a community of well-being - it should be objectively valuable and subjectively valued (Brubaker 1989a: 3f.).

I would like to maintain that only three of these criteria, namely a, d, and f, relate to citizenship, and the rest is implied in the concept of nationhood and in the ideals of nationalism rather than those of citizenship. While Brubaker himself points out contradictions between some of these principles, and deviations from each of them in the case of immigrants, he

fails to see that there could be one fundamental underlying contradiction between principles of citizenship and of nationalism.

In Tomas Hammar (1990) this contradiction between nationalism and citizenship is the central issue, and my own thinking has been strongly influenced by his ideas. As I see it, the limitations of Hammar's approach lie in his neglect of the way nationalism confers almost unquestionable legitimacy to external boundaries of citizenship and thus denies the possibility of an extended citizen right of immigration. My questioning of external boundaries also has an empirical background. Denizenship seems to evolve only after West European immigration stopped (except for family reunification and asylum seekers) after 1973. However, more recent waves of immigration from the South and East have challenged established forms of immigration regulation. This new situation should urge us to look for a novel approach to rights of migrants that does not take for granted the capacity of states to police their borders effectively.

The basic difference between the two sets among the six criteria is that whereas egalitarianism, democracy and social rights may always be limited to members of a community, these principles themselves do not define limits to membership, but only refer to rights that are implicit in citizenship. Sacredness, cultural homogeneity and uniqueness of membership, however, are not about rights, but about limitations of membership. Persons who are not committed to the community, who are culturally different, or who are already members of another community, may be legitimately excluded from membership.

Criteria b, c, and e are not relevant to nationalism alone but have been important in different degrees for pre-national forms of citizenship (e.g. Roman, Greek) as well. Sacredness is probably the quality most universally ascribed to citizenship in very different political systems. However, sacredness quickly erodes once choices between different positions of citizenship are opened. In modern societies profane and rational attitudes towards citizenship, in which benefits are weighed against losses, are confronted with attempts to maintain or revive the sacred nature of the bond between individual and nation-state.

Uniqueness of membership has been of varying importance, too. In the past, plural citizenship was mostly ordered in concentric circles. One could be a citizen of a local community and of a larger empire. Such forms of membership often had very different contents, and the affiliation to the

larger political entity was not always the stronger one. A second form of plural citizenship emerged from the weakness of citizen rights and the instability of state borders. In a world of strict territorial rule, determining the formal state membership of subjects was often seen as neither possible nor particularly important. Uniqueness of citizenship has been a special concern for modern nation-states in their attempts to subordinate internal local and regional affiliations to the national, and to exclude allegiances with more than one state. In the present we can observe attempted revivals of regional citizenships, which are closely connected to processes of transnational economic and political integration, and a strong increase in dual nominal citizenship.

The main variation is, however, in the relevance of cultural homogeneity, as Ernest Gellner has convincingly argued (1983). Before the industrial revolution larger states mostly presented a pattern of extreme internal cultural diversity, which was often consciously reinforced by policies assigning different statuses to corporate groups in an extended cultural division of labour. The depth and geographical extension of cultural homogenisation within modern nation-states is unprecedented in history. The contemporary discourse on multi-culturalism indicates that the attachment of citizen rights to cultural closure is increasingly being challenged. But it has still remained the most important criterion for legitimate exclusion from citizenship, while others relating to class, gender, and race have been gradually delegitimised. Class, gender and race still constitute the strongest boundaries within modern societies, but in most states they cannot be used any longer to confer legitimacy to distinctions of rights. This does not imply that there is effective equal citizenship beyond these dividing lines, nor that equal citizen rights must necessarily ignore such social boundaries. I shall argue later that citizenship can also establish claims for collective rights against social discrimination.

The difference can be expressed in a formidable paradox: While the immanent principle of citizenship is universalism, citizenship has so far only been realised in a very particularistic way; while the basic principles of nationalism are particularistic, nationalism is truly universal in the global political system. Virtually all large political entities representing a sovereign state, or claiming to be capable of forming sovereign states, conceive of themselves as nations or federations of nations, but among

these many nations only a few formally embrace principles of citizenship, and even in those their application is severely restricted.

Whereas most writers on the subject say that citizenship is inherently limited by its own principles, I contend that nationalism provides the basic legitimation for the internal and external exclusiveness of the modern, liberal Western type of citizenship. That does not imply that such limitations can never be justified, but justification always has to rely on criteria external to those legitimizing citizenship itself.

1.3 Citizenship as membership? The communitarian and the egalitarian concept

Many authors think of citizenship in terms of membership. There are two different notions involved in this: membership of a state, and membership of a society. My contention is that neither captures the essential features of citizenship.

Each of the two forms of membership can again be split into two different connotations. Membership of a society can be either defined in ascriptive or non-ascriptive terms; similarly, membership of a state can be seen as either voluntary or involuntary.

In an anthropological sense, membership of a society usually refers to criteria like birth within a society, descent from other members of society, or cultural assimilation to the values of a particular society. A member is someone who is recognised by others as sharing with them some essential features of biography and culture. In modern societies there also emerges a different and much looser idea of membership, based on participation. A member is a person who predominantly interacts with other members of the same society and is tied to this society by his or her interests. Neither of these two meanings in any way refers to specific rights an individual enjoys as a member. One can obviously be a member in both respects without being a citizen.[2]

Michael Walzer analyses membership of a state by exploring the analogies of neighborhoods, clubs and families (1983:35-42). His argument for the right of states to control immigration is based on the analogy with clubs. However, the right of clubs to restrict admissions can only be justified by the voluntary nature of membership, which does not apply to the state. 'The state is not and cannot be a voluntary association'

(Brubaker 1989b:102). This is also true for the right of clubs to decide on their own internal rules. They may decide to set up hierarchies, in which internal rights of members are highly unequal, as long as membership is voluntary and the aims and actions of the club comply with general legal norms. Clubs are even relatively free to decide on expulsions of their members while democratic states are not.

Freedom of association is itself an important civil right, guaranteed and limited by the state. But it only applies within societies governed by states and not to states themselves. It is a right to non-interference by the state in civil society. Ideally, freedom of association rests on the assumptions that nobody can be forced to become a member of an association, that every member is free to leave an association, and that everybody is entitled to join with others and set up a new association. The first and the third assumption are obviously not true for membership of a state. Apart from some forms of naturalisation, most people do not acquire this membership voluntarily, and setting up a new state is neither a right nor a practical possibility for most individuals or groups. The second element (the right to emigrate) has been frequently violated by many states, but even where it is guaranteed it is hardly sufficient reason to conceive state membership as voluntary. Individuals can have much stronger interests to stay within a state than within a voluntary association. This gives them a more substantial claim to internal equality of rights. Individuals can also have strong interests to immigrate into a state (e.g. asylum-seekers or dependants of earlier immigrants)[3] and this must restrict the right of exclusion. Walzer's analogy may be useful for empirical observations - states often do impose restrictions on membership similar to those imposed by voluntary associations - but it cannot be applied to the normative question of justification.

So membership of a state is involuntary in most respects, even in those states claiming to be liberal democracies. However, citizenship in its broader sense is certainly not forced upon those who enjoy it. This is why membership of a state is not an adequate translation for citizenship, once we go beyond its nominal meaning.

This conceptual discrepancy becomes obvious in the case of immigrants who have not been naturalised. They may be granted many citizen rights without being members of the state which concedes these rights to them.[4] This might lead us back to defining citizenship as non-ascriptive

membership of a society. But citizenship is a specific feature of the political sphere and not of society in general. It must be embodied in political institutions, which do not exist in all societies.

Most disagreements about the content of citizenship seem to boil down to two different approaches. One starts with a pre-defined political community and assumes that citizenship is the cement of cohesion; the second begins with a notion of equality and asks how this idea is endorsed, constrained or violated within existing political communities. An egalitarian concept of citizenship provides a yardstick against which actual inequalities can be measured. This approach enables us to discover clear-cut distinctions between groups that enjoy different sets of rights, and to analyse rules of transition between positions of citizenship, without defining any boundary as a definitely external one.

The main disagreements between a communitarian concept, based on a definition of membership, and an egalitarian one can be summed up diagrammatically.

Diagram 1: Communitarian and egalitarian visions of citizenship

	communitarian	egalitarian
conceptual character	social fact	contested guideline in social conflicts
perception of:		
external boundaries	pre-defined and fixed	problematic and expanding
internal boundaries	imaginary dissolution	de-legitimization
inclusion/ exclusion	dichotomy	thresholds
main benefit	social integration by affiliation to a community	enlarging potentials for legitimate action through institutionalization of rights

Communitarian concepts usually see citizenship as socially given in an unequivocal manner. The focus of analysis is not on who is a member, but which rights and duties are attached to membership status. For an

egalitarian concept the primary questions are: Who can be regarded as a citizen? Which boundaries separate citizens from those partially or wholly excluded from citizenship? Thus citizenship is not only seen as changing and evolving over time, but as a contested concept, which can at any stage of social development be invoked by those excluded, if the rights of citizens come to be seen as merely privileges lacking legitimation.

From this basic difference follow some others. First, a membership notion of citizenship logically presupposes that the external boundaries are well defined and relatively stable (at least for short periods of time). The egalitarian drive, however, emphasises that external boundaries are always problematic if there is intensive social interaction with outsiders, so that they can be ultimately seen as participating within the same society. In the egalitarian perspective the movement of external boundaries is (or should be) an expansive one. Secondly, internal boundaries tend to become invisible in an approach stressing the community aspect of citizenship. However, this does not imply their actual disappearance. In Benedict Anderson's words, all large-scale communities within complex societies are necessarily imagined ones (Anderson 1983). What characterises them is the imaginary dissolution of internal boundaries separating different categories of members from each other, by invoking the communality of shared values and culture, of a historical past, and sometimes even of biological heritage. An egalitarian approach, on the other hand, sharpens social awareness of internal difference. It does not necessarily imply the utopian or totalitarian demand for eliminating social and cultural distinctions, but it delegitimises status distinctions within the polity attached to them.

The emphasis on external and the blindness to internal boundaries, which characterise communitarian approaches, lead to seeing citizenship as a dichotomous category. An individual can either be a member or a non-member. Brubaker claims: 'Citizenship is a neat category . . . membership, in contrast is a messy category' (Brubaker 1989a:15). In my understanding, just the opposite is true. If citizenship is not restricted to its nominal content, this is the 'messy category', and that is its advantage as an analytical concept over the all-too-neat category of membership. Joseph Carens captures the essential characteristics of citizenship much better, when he refers to it as a threshold concept (Carens 1989:42). There can be even more thresholds than the two connected with territorial boundary

and with nominal citizenship. What is essential is the ascending order of statuses separated by these thresholds, the discontinuous shape of the path and its culmination in full citizenship. Thresholds of citizenship are expressions of the difference between the normative egalitarian content of the concept and its partial and imperfect institutionalisation in past and present societies.

Before attempting a dual definition of citizenship focused on this distinction, which is frequently blurred in communitarian accounts, I want to point to what are seen as the essential virtues of citizenship in both approaches. The preoccupation with social integration, so characteristic of much of the sociological tradition from Durkheim to Parsons, seems to lie behind the current conservative interest in citizenship. Parsons himself refers to citizenship as a foundation of national solidarity, which holds together a 'late modern', differentiated society such as the USA, with large religious, ethnic and territorial diversity (Parsons 1971:20 ff.). Egalitarian and liberal approaches are more concerned with the relation between institutionalised rights and the potentialities of human action. Citizenship in this view is seen as the condition of equal chances of action within a political system through the institutionalisation of rights. In this way citizenship widens the range of legitimate human actions and the number of legitimate actors.

1.4 A normative and analytical definition

Leaving aside some of the more controversial claims, presented in the previous sections, citizenship could be defined as follows:

> *As a normative concept citizenship is a set of rights, exercised by the individuals who hold the rights, equal for all citizens, and universally distributed within a political community, as well as a corresponding set of institutions guaranteeing these rights.*

Thus citizenship designates a political status of individuals as well as a particular quality of a political system. This definition is very similar to T.H. Marshall's in his classic account of the evolution of citizenship (Marshall 1964:78). There are two differences between Marshall's approach and mine, which should be mentioned. The first is almost purely thematic in nature. Marshall was concerned with the different types of

rights included in citizenship, and I will use his distinction between civil, social, and political rights in this paper. However, the focus of the present paper is not on these distinctions, but on different statuses of citizenship for different categories of individuals. The shapes of external boundaries, which are central for my present subject, are almost totally absent in Marshall's text. This deficiency of the analysis is much more serious in a later application of Marshall's ideas by Reinhard Bendix and Stein Rokkan, who explicitly tried to link the evolution of citizenship to the process of nation-building in Europe (Bendix 1964). The second difference is more theoretical. Marshall's account is too evolutionary for my taste. Citizenship seems to develop almost logically from civil over political to social rights. While the spread of nation-building over the globe in a way really resembles an irresistible progress of a new species of political community, citizenship was and is dependent on political struggles between collective actors, and foremost between economic classes. There is no automatism and many chances of retrogression in this process.[5]

For the rest of this paper I will not be strongly concerned with the second part of the definition, referring to political institutions. The problems involved in this aspect are the democratic quality of political representation, the effects and guarantees of an institutional division of power, the real possibilities of access to a legal system to obtain a certain guaranteed right: in a word, the institutional distortions of political equality in a society of socially unequal members. This is what much of theoretical political science is about. Leftist criticism of liberal democracy has increasingly focused on this aspect, having implicitly accepted that formal equality for individuals within these political systems is no longer the problem, since workers and women have become enfranchised. While I do not dispute that the institutional aspect of citizenship might be the one where its present limitations are most obvious, I want to maintain that equality of rights is far from being fully accomplished. Abandoning the critique of liberal democracy on this level implicitly accepts a nationalistic legitimation of internal and external boundaries of citizenship.

The two most fundamental principles mentioned in the definition are egalitarianism and universalism. It is easy to show that both are grossly violated in all present and past political systems we know. If we do not seek a normative definition but an analytical one that can be applied to the real world, we have to recognise that some systems have embraced these

principles, while still severely limiting their application, while others did not even adopt them as guidelines.

The two principles have also been put juxtaposed. Extension of the universality of citizenship in a broadening of the community has been used as a justification for restricting the range and equality of individual rights (take the Roman or the British empires as examples). And, even more often, the demand for equality has been used as a justification for limiting universality: most obviously in the maintenance of external boundaries, but also in denying internal members full citizenship. Historically, the most common justification for excluding parts of society from (full) citizenship is that some populations are either dependent or undeserving. Dependent members of society would have to be represented by those on whom they depended, or else equality would be only a fiction, and representation seriously distorted; equality could only exist between economically and politically independent individuals. Such was the basic argument for excluding women and propertyless classes. A second category of persons could be excluded for the reason of being not respectable and worthy of the honours of citizenship. This was true for slaves in ancient societies (remember the remarkable explanation given by Plato in his *Republic* that slaves could not be citizens because they had preferred serfdom to suicide) and for paupers in early industrial capitalism.

We either stick to our normative definition, with the consequence that there will not have been any community of citizenship previous to very recent examples, and the high probability that even these might be discarded by future generations as not having been democratic, or we modify it so that it fits at least some examples in the real world, with the danger of thereby eliminating the dynamic set into motion by the normative content. My proposal for an analytical definition tries to avoid this dilemma by shifting the issue from citizenship to the political community. While citizenship is always a normative principle, communities may adopt only a weak version of this norm, which still allows them to refer to themselves as democratic polities.

> *In the real world communities of citizenship are those which have explicitly committed themselves to both egalitarianism and universalism of citizen rights, and developed a set of justifications for whatever limitations of these principles might occur.*

Again, this idea has already been put forward by T.H. Marshall: '... societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievements can be measured and towards which aspirations can be directed' (Marshall 1964:92).

This differentiation allows for an expansion of citizenship beyond previous limits without taking such progress for granted. What makes it possible is a combination of shifts in the relationship of forces that gives previously excluded or disadvantaged groups a challenging power, and cracks in the established legitimation of constraints to citizenship. It is only after such an expansion has taken place that it becomes generally accepted that the limitation had not been inherent in the principles of citizenship, or necessary for their maintenance. The exclusion of women from citizen status seemed perfectly legitimate within the established belief that only heads of households could be independent and responsible political actors. Without the cracking up of the household as an economically self-sufficient unit by the recruitment of female labour for industrial production, women would not have gained a position within civil society from which to attack the patriarchal monopoly of citizenship.

A look at the history of the last 200 years should encourage us to consider present limitations of citizenship along national lines as obvious only in a very short-sighted view. While we cannot yet see the social forces that could mount a decisive attack on these constraints, we can see migrants as those who are most strongly affected by them; we also can observe increasing fissures in the established legitimation of their exclusion.

1.5 Individual, collective and corporate rights

In the normative definition of the previous section I mentioned individuals as holding and exercising citizen rights. However, that does not totally exclude collective rights from the concept of citizenship.

I would argue that three types of rights can be distinguished in this respect:

(1) Rights according to which the assumption of equal status of all individuals rules out consideration of actual social differences between categories of individuals. This is the main characteristic of civil liberties.

(2) Rights that only individuals can hold and exercise but that take into consideration differences in the social position of these individuals as members of groups within society. Most social rights are in fact of this type.[6] But even political rights are often in this category (e.g. rights tied to federal entities or local constituencies of a state).
(3) Rights held by a collectivity and exercised by individuals only as legitimated representatives of this collectivity. I will label these corporate rights and distinguish them form collective rights of the second type.

Inherent contradictions between collective and corporate rights and the individual equality of civil rights have been much explored in political theory, and they are also T.H. Marshall's main concern in his essay. This conflict may be seen as a profound dilemma for individualistic liberalism. However, modern capitalist societies have found many pragmatic, and often surprisingly stable, solutions that accept the distinctly collective positions of individuals, concerning their local residence, class, income, or profession, as a starting point for collective rights of citizenship. It was one of the main innovations in Marshall's approach to citizenship that he went beyond classical liberal theory in recognizing the emergence of collective rights as an element of citizenship (Barbalet 1988:9).[7]

Generally speaking, corporate rights cannot be conceived as rights of citizenship. They are neither directly attributed to, nor exercised, by the citizen. However, empowering a collective and its representatives with corporative rights can be a substantial contribution towards creating more equal conditions of participation for individuals and achieving the institutionalisation of wider citizen rights in struggles within the political system. For T.H. Marshall the corporative right of collective bargaining in industrial relations was a transitional stage that paved the way for the introduction of basic social rights.[8] The struggle for corporate rights for exploited, discriminated, or disadvantaged categories of the population can be essential to achieving individual equality, as well as collective rights of the second type.

In modern nation-states, racial, ethnic and more broadly cultural differences seem to be especially difficult to accept as legitimate grounds for rights of the second type. Oppressed racial, ethnic and religious minorities have often been excluded from all three aspects of citizenship. After having won equal civil and political rights, many such groups find that continuing social discrimination legitimates their demand for

collective rights. However, this is often seen as an unacceptable challenge to basic liberal values. The reason given is that race and ethnicity are ascriptive markers and the only differentiations of rights tolerable are those based on non-ascriptive distinctions. There is some truth in this argument. In a society that promotes a high degree of individual mobility and is achievement-oriented in its dominant ideology, special rights tied to unalterable characteristics of categories of individuals can have the reverse effect of strengthening stigmatisation. The help offered by such rights often defines the individual as inferior by virtue of his or her categorisation into a discriminated collective. But this is not the whole truth. The same argument would also exclude special rights for women legitimated by gender discrimination. The racial and ethnic conflict seems to be a much more explosive one in this regard. It appears that the demand for collective rights of culturally and racially discriminated groups violates not only general principles of liberalism, but also vital interests of nation-states.

Collective rights can be combined with different degrees of autonomy. The classical social right of the provision of income for the needy, the sick and the aged can be granted without giving any autonomy to the social collective benefiting from this right. Many of the social rights won by the workers' movement were different in this respect because they involved the issue of autonomy. The earliest schemes of social insurance, introduced by Bismarck in Germany and von Taaffe in Austria in the 1880s, had the intended effect of replacing forms of self-organisation at the shop-floor level with state-controlled bodies, which, however, still retained some formal autonomy. Women's movements have generally shown an even stronger concern for autonomy, not only in setting up their own organisations but also in the provision of benefits from specific rights (e.g. shelters for battered women). But all these demands do not really restrict the sovereign powers of the state. Class and gender movements may demand autonomy, but they are not separatist. Racial and ethnic groups, however, once they put forward specific political demands, nearly always struggle for a high degree of autonomy and self-determination in the provision of benefits to which they are entitled. Thus, ethnicity frequently collides frontally with the central prerogative of the nation-state, its sovereignty and its own claims to represent a homogeneous pseudo-ethnic community, the nation (Bauböck 1991a). In this conflict

the possible solution of adding collective rights to equal civil, political and social rights rarely leads to a stable equilibrium: State authorities will be afraid lest such rights only foster demands for even greater autonomy; minorities will feel that they should not only have rights as individuals but also be represented corporatively as a collective within the political system itself. Thus, any escalation will lead both sides of the conflict away from the collective rights solution. The possible results are:

* political suppression and internal segregation of the minority;
* strict limitation of equality to individual rights combined with forced assimilation;
* separation of the minority, which forms its own nation or joins an ethnically related one;
* a system of internal power-sharing between different ethnic and national groups based on corporate rights.

These considerations show that collective rights are not inherently in contradiction with equal citizenship, but the stability of their inclusion in citizen rights depends on a large consensus about the legitimacy of distinctions and the justness of complaints about collective disadvantages. Collective rights seem to be incompatible with an egalitarian concept of citizenship because they create a structure of inequality within citizenship. Many collective rights in modern states are in fact corporate rights of socially privileged groups, which reinforce their dominant position in society by institutionalizing them in the political sphere (take as examples the privileged position of dominant religious congregations enshrined in state law, or the special social rights for higher ranking civil servants in many Western states). Alternatively, however, collective rights may also have the opposite effect of compensating for social discrimination.

Whether a collective right enhances or diminishes equal citizenship will depend on its contribution to the equalisation of opportunities for social action within a highly unequal structure of class, gender, ethnic and other collective differences. Once these are articulated by social movements there arises 'the request for citizenship rights that are at the same time of equal weight but different in substance' (Zincone 1991:37). The notion of equality, which is needed as a benchmark to determine what counts as equal weight, can never be determined ahistorically, but emerges from social struggles and discourses which articulate the concept of citizenship within a given society.

The equalisation of opportunities for action not only implies that social inequalities should be compensated rather than replicated in collective citizen rights. It also demands that boundaries between collectives should be kept as open as possible. This means firstly that access to universal and individual rights does not depend on membership of any collective, and secondly that transitions of individuals between collectives, where they are possible, should be permitted or even formulated as citizen rights. Collective rights which do not meet these conditions lead to what has become known under the Dutch term *verzuiling* (pillarisation), i.e. a corporate structure of citizenship itself.

Within a community of citizenship, rights of transition are essential not only with regard to freedom of territorial movement, but also concerning the freedom of multiple and changing affiliation to any group that enjoys specific collective rights. While this is perfectly conceivable, even for ascriptively defined collectives such as ethnic groups, there are obvious limits to this principle: male citizens cannot claim specific women's rights, and Whites cannot demand specific rights of racially oppressed minorities. In such cases, the first condition will provide the essential linkage to individual rights: differential collective rights should add to a basic structure of equal individual rights, and not diminish them by tying their enjoyment to membership of a specific category of citizens.

1.6 Rights, duties and prohibitions

Many authors agree that citizenship is about equal rights, but add that it is also about equal duties. Why does our definition emphasise rights and not mention duties?

T.H. Marshall noted as a descriptive account of the historical evolution of citizenship that 'there is a changing balance between rights and duties. Rights have been multiplied, and they are precise.' He goes on to mention paying taxes, education and military service as compulsory duties of citizenship. 'The other duties are vague, and are included in the general obligation to live the life of a good citizen, giving such service as one can to promote the welfare of the community. But the community is so large that the obligation appears remote and unreal' (Marshall 1964:129). I want to suggest that the dissociation between rights and duties is an essential feature of the development of citizenship in modern societies, the reasons

for which have been insufficiently analysed so far. Secondly, I contend that arguments emphasizing the link between equal rights and duties that turn the latter into a condition of the former primarily serve to justify exclusions from citizenship, and can be refuted both on theoretical and on empirical grounds.

Heisler and Schmitter-Heisler can be quoted as an example: 'Citizenship has become increasingly unidirectional: it emphasises rights or entitlements deriving from the state and no longer stresses the obligations or duties traditionally expected of individuals.' The authors would not like to concede the 'inevitability, irreversibility or normative justifiability of this trend' (Heisler & Schmitter-Heisler 1990:7). This has implications for their discussion of immigration and citizenship. While they deliberately play down the differences of rights between aliens and nominal citizens, they enhance at the same time the differences of duties in a way that is hardly plausible. 'Minimally, the formal distinction between citizens and non-citizens may impede the latter's integration along various dimensions of social relations - although there is no clear evidence that it does. On the other hand, non-citizens have fewer obligations to the political community in which they reside than citizens.' Among these lesser obligations the authors count not only military service, but also that 'immigrants are not parties to the accretion of compacts among members and their antecedents that underlie the regime and the social order.' (Heisler & Schmitter-Heisler 1990:11). The idea of a trans-generational social contract, from which immigrants can be legitimately excluded because their forefathers did not take part in building the political and social order, is strongly reminiscent of Edmund Burke's conservative critique of the human rights proclaimed by the French Revolution: 'He reinterpreted the social contract as an organic partnership between the dead, the living and those yet to be born' (Freeden 1991:17).

My theoretical point is that rights, duties and prohibitions refer to human action in very different ways. What is common to all three is that they generally concern not only specific individuals and their actions, but are about institutional rules, which regulate many different interactions by attributing legitimacy to certain kinds and stigmatizing others as illegitimate. Duties are legitimately enforced actions, while prohibitions are restrictions on the legitimacy of actions. These two concepts explicitly tell us what we should or should not do. Rights, however, only open up a

space for human action. They are different from duties in that the action itself is not prescribed. And, while a right may be (and will be in most cases) limited, it is not the right itself that spells out its limits: it is the prohibition, and the threat of sanctions that accompanies it, which defines the boundaries of a right.

Human action is unbounded in its very nature.[9] We always have the capability to act differently from how our partners in interaction would have expected or wanted. The fabric of society is built on institutions, whose rules are attempts to define a range of legitimacy for social action. Human action cannot be programmed, and therefore the 'software' of social institutions mostly sets boundaries to action rather than prescribing and controlling it directly. Duties come closest to such programmes, and this is why they are the strongest restrictions on the liberty of action. Prohibitions are institutional inhibitions of actions: they define a space of permitted action negatively, without referring to the actor's capacity to use this space. Only rights transfer a symbolic social resource to the actor and give him or her a capacity to act legitimately within society. Much sociological theory rests on the assumption that institutions are restraints on human action. But this is a biased view that is only true for duties and prohibitions; in those rules that are formulated as rights, institutions are enabling rather than restraining. While the equalisation of duties and prohibitions necessarily restricts plurality within society, the equalisation of rights allows for differences between human beings, and between their actions. T.H. Marshall stresses this when discussing the entitlement to public education: 'The right of the citizen in this process of selection and mobility is the right to equality of opportunity. Its aim is to eliminate hereditary privilege. In essence it is the right to display and develop differences, or inequalities; the equal right to be recognised as unequal' (Marshall, 1950:65).

The restrictiveness which duties impose on human action makes it necessary that they take into account different capabilities and resources. *Ultra possibilia nemo tenetur*: nobody can be obliged to act beyond reasonable expectations of what he or she is able to do. A right does not primarily take into account different capabilities and resources, but equalises these symbolically within its range by adding to all individual differences the resource of social legitimacy, which is equally distributed to all holding the right. Collective rights of citizenship go further than that by

also redistributing non-symbolical resources of action, in order to equalise capabilities and opportunities of action. But the aim is still to widen the space for indeterminate action, whereas duties must refer to unequal resources because they are about determining actions.

My conclusion is that, in a concept of citizenship, rights can remain equal while becoming more universal; whereas, for duties, equality and universality are fundamentally contradictory requirements. For the same type of action, a duty prescribes what must be done, and has to take into account what can be done; while a right enables a person to do something, and enables all holders of the right in the same way, opening a space for action that is only limited by prohibitions.

If the argument 'equal rights imply equal duties' were true, then it would also be true that unequal duties imply unequal rights. In a second step, we can now consider whether this statement is true in an empirical and historical sense. Looking at those duties mentioned by T.H. Marshall that are specifically connected to nominal citizenship, we find many confirmations that unequal duties can be, and are in fact, increasingly combined with equal rights. The most elementary of these duties are: to be drafted for military service, to pay taxes, and to respect the general legal norms of a polity. I shall briefly consider each of these in turn:

(1) Without any doubt, conscription to national armies has been an important element of early modern citizenship. It represented the strongest possible obligation – to risk one's life for the political community – which helped to foster a sense of equal belonging and rights within the emerging nations. As has been frequently noted, mobilisations for war have often been the starting points for subsequent advances in the definition of citizenship. However, there is a long way between contemporary armies and the citizens' armies of democratic or socialist revolutions. Armies have been more and more transformed into technical machineries of destruction, in which the human element remains still a necessary, but also a notoriously unreliable, ingredient. This strongly erodes the sense of 'sacredness' in defending one's country, which served as the decisive link between this duty and the honour of citizenship in the past.

Secondly, there is a decreasing correlation between the population drafted into military service and the total number of citizens. Many political systems claiming to be based on citizen rights entertain only a

professional military, rather than armies based on general conscription. So there can be no general rule making citizen rights conditional on military service. Where there is general conscription, there may still be the possibility of conscientious objection without exclusion from citizen rights. In even more states women are not drafted for military service. It is quite illuminating that until 1918 the exclusion of women from the army was used as an argument against their full citizenship in the very same way that objections to citizen rights for alien residents are put forward today. However, in some states resident aliens have been drafted into the army, e.g. in the USA before general conscription was abolished in the early 1970s (see Schuck 1989:58). And where they are excluded, it is not they who refuse military service and thereby forfeit citizenship, but rather the state authorities which distrust their loyalty and refuse to impose the duty on them. Resident aliens are often obliged to do military service in the state whose nominal citizens they are. This makes it unacceptable to impose the same duty on them in their country of residence, but it also serves as a pretext to question their loyalty. In case of military conflict between sending and receiving countries this argument will be convincing for both sides. But if rules and rights in international migration were determined by the assumption of potential wars, there would be little reason in tolerating or stimulating immigration in the first place.

(2) In taxation we see a development similar to the transformation of modern armies. It has become a complex technical instrument, geared to state intervention into the economic system, but certainly not to promote equality between tax-payers. The duty to pay taxes is disconnected from concerns about equality not only in the aims of economic policies, but also in what it demands from the individual. Whereas equal and universal social benefits seem perfectly reasonable in many areas of social policy, equal taxation would be rightly seen as unjust, as different incomes have to be taken into account. In the case of military service, unequal duties are invoked as a reason for unequal rights, while taxation is often used as a counter-argument, pleading for equal rights where there are equal duties. In the struggle for voting rights for immigrants the slogan of the North American Revolution 'No taxation without representation!' is frequently quoted. Using a similar argument, demands for equal social benefits are often supported by calculations of immigrants' contributions to the funds for social security. If we want to be consistent, this linkage should be

avoided; it can easily backfire. Western electoral systems are no longer based on criteria of income and it would be wrong to reintroduce them for immigrants. Regarding social benefits, labour immigrants will be net contributors in most systems related to work, such as sickness and unemployment benefits and old age pensions, but they may well be net beneficiaries in family allowances.[10] The whole idea of relating contributions to benefits can be legitimately used only in those insurance-type systems where this is an explicit rule, but it generally runs counter to what social rights are all about.

The vigorous rejection and final abolition of the local community charge, popularly called poll-tax, which was introduced by the Thatcher administration in Great Britain, was mainly sparkled by its blatant disregard for inequalities of income.

(3) Respect for general legal norms might be the only duty that seems to be as universal as citizen rights. But in this area too the technical aspects of state intervention in society are increasingly important and weaken concerns for substantive equality. The sheer amount of legislation makes it impossible for most citizens to be well informed, and the observance of those rules that are equal for all, and should be equally known by all, no longer confers a strong sense of belonging to a community of citizens (as an example, we could mention traffic rules).

I do not think that nowadays there are fewer duties and prohibitions than before. Quite the contrary, there has been a proliferation of these forms of rules, resulting from attempts to maintain state control over processes of social differentiation. Nor have duties and prohibitions lost their potential force. Even the capacity of modern nation-states to impose the threat of death on their citizens is almost unbroken. It can be unleashed either in the duty to risk one's life in a war or in the sanction of capital punishment. But the very multiplication of prohibitions and differentiation of duties makes them increasingly irrelevant for the justification of equal and universal citizenship.

There is, however, one civic duty in which the link to citizenship seems to be a straightforward one. This is compulsory education. In contrast to the three duties just mentioned above, it exists only in modern forms of citizenship. T.H. Marshall has pointed out that in its importance for citizenship, compulsory schooling is not so much a duty for children and adolescents, but the most elementary of all social rights: the right of the

adult to have been educated (Marshall 1964:89; Bendix 1964:87 ff.). It is 'a personal right combined with a public duty to exercise the right' (Marshall 1964:90). Public education is an equalisation of basic cognitive resources for action within a community. Of course there is a strong class-bias and a hierarchical structure in most education systems of capitalist societies, which undermines equality of this right, but the foundations of these structures are certainly more equal and universal than any previous form of social education and learning. Common education is also of crucial importance for claims of immigrants to be citizens of the societies in which they live. As far as I know, there is no industrialised nation in the world that systematically excludes children of long-term immigrants from public schooling. (There are, however, frequent exceptions for children of illegal immigrants and undocumented workers, who cannot exercise this right because this would mean detection and deportation for their parents.)

However, public education is not only a social right disguised as a civic duty, but also the strongest instrument for the cultural homogenisation of society by the modern state, and thus for the building of nations as imagined communities of common culture (Anderson 1983, Gellner 1983). This is why the social right of immigrants to be educated in the country of immigration so often goes along with a denial or violation of their right to education in their particular languages and cultures (Bauböck 1991b).

1.7 Volume, density and weight of citizenship

Boundaries of citizenship are not simply identical with state borders, nor to the dualistic distinction between nominal citizens and aliens. They can refer to three different but interrelated aspects. In order to explain what is meant by these aspects, I shall use a rather crude analogy. A closed physical system consisting of molecules of a certain chemical structure interspersed with other molecules in a solid container could be characterised by the following descriptive elements: the volume of the container, the specific molecular weight of the chemical substance we are interested in, and the frequency of these molecules in relation to the others in the container. Similarly we could talk about a specific volume or extension of citizenship, the weight of the bundle of rights conferred by full citizen status, and the density of citizenship, meaning the internal

differentiation within a society between its full citizens and other member in lesser statuses of citizenship.

It might seem necessary to split the last one of these aspects into two. The notion of density could be reserved for those differences that arise between citizens and members of society excluded from citizenship, while the inequalities of rights between categories of citizens could be labelled as weight differences. However, this mostly boils down to one single dimension, because citizenship always includes a *bundle* of rights and any person who is not completely excluded from all rights of citizenship can be regarded as a citizen in at least some respects. For all such cases, density and weight difference are descriptions of the same phenomenon. None but the most extreme cases of inclusion in society with simultaneous total exclusion from citizenship can be described only in terms of density. Examples of this will be either close to slavery or to pariah castes. As this consideration shows that density is the more general term, we will use it to cover both aspects.

If we do not limit our analysis to only one political community, all three aspects characterise boundaries of citizenship; density refers to internal and volume to external boundaries of one community, while weight is the essential aspect in comparing differences between externally bounded communities.

The analogy enables us also to distinguish three different forms of progress in citizenship: enrichment of the bundle of rights enjoyed by those who are already full citizens (increase in weight); extension of rights for those who are not full citizens, or their inclusion in full citizenship (increase in density); widening or opening of external boundaries of citizenship to let new members into society (increase in volume).

Frequently these three paths along which citizenship can progress are seen as alternative routes leading to different goals. An increase in one aspect may be used to justify a decrease in another.[11] If we modify the original definition to include changes over time, the normative formulation should demand that increases in one of the three aspects shall never be outweighed by losses in another. The analytical definition would have to take into account that some of these trade-offs seem to be legitimate in the eyes of communities that think of themselves as being egalitarian.

An example that illustrates this point is the close correlation between the extension of social rights to the working class and immigration controls.

Workers had only become full political citizens after the introduction of universal male and female suffrage. Social rights connected with the development of the welfare state can be seen as the next decisive increase in the weight of citizenship. But in most cases they were tightly bound with increasing state control of immigration, which meant a sealing of external boundaries. Inversely, where borders remained relatively open for immigration, state intervention into the labour market was substantially weaker and there was less universality of welfare benefits. A third type of development has been a splitting of social rights to exclude illegal and short-term immigrants. In the first case weight was increased while restricting volume; in the second volume was increased while restricting weight; and in the third weight was increased at the expense of density.

As a brief summary of the first chapter I would like to point out once more what I see as the essential features of a dynamic and egalitarian concept of citizenship: (1) Such a concept should retain rather than obscure the tension between normative principles and institutionalised forms of citizenship. (2) One should start by examining different rights of citizen and the range of their distributions. This will show that existing political communities such as nation-states can no longer be regarded as closed and exclusive communities of citizenship. (3) Contemporary citizenship is not a purely individualistic idea focussing on negative liberties but increasingly includes collective rights as well. (4) In modern societies rights and duties of citizenship are not strictly correlative; equality and universality are characteristic of rights rather than of obligations. (5) The boundaries of citizenship are not only the external ones of the political community but also internal distinctions between different categories of citizens which reemerge or become visible with the enrichment of citizen rights.

Notes

1 In German 'subject' literally translates as 'Untertan' which expresses the submission of citizens to a higher state authority and would normally not be used for constitutional democracies.

2 In an unpublished paper, Heisler and Schmitter-Heisler propose a broader notion of citizenship that goes beyond the formal, legalistic elements. (Heisler & Schmitter-Heisler 1990:4f.) Although there is

no precise definition of this broader citizenship in their paper, it seems to refer primarily to effects of state policies on society, on the one hand, and to channels of participation in policy-making, on the other. This approach is halfway between a broad notion of social membership and a narrow one of nominal state membership, but it deliberately plays down the crucial issue of equal rights and largely replaces it with a vague notion of representation of interests. The authors specifically refer to the position of immigrants, who are excluded from formal citizenship but nevertheless have different ways to articulate their interests. Such possibilities of extra-electoral political participation for immigrants are also stressed by M.J. Miller (1982, 1989). Even if Miller's account were not overstated, the basic flaw in the Heisler & Schmitter-Heisler argument remains the confusion of channels of influence with citizenship. If the exclusion of immigrants from voting rights is justified in this way, one should be aware that the same argument would also have applied to other previously disenfranchised groups, like women or workers.

3 This is also recognized by Walzer, who later argues that the 'control of territory opens the state to the claim [by aliens] of necessity' (Walzer 1983:44) and that the right to control the admission of strangers must be modified by a principle of mutual aid.

4 '. . . immigration has rendered obsolete the accepted definitions of membership in, and citizenship of, a modern state.' (Layton-Henry 1990:186.)

5 This point is raised in many critiques of Marshall's essay. As Maurice Roche notes, Marshall's text shows 'general tendencies to underplay the political dimensions and to want to read the historical record mainly as a story of social evolution and progress rather than political struggle.' (Roche 1987:384). (See also: Mishra 1977:29 ff.; Giddens 1982:171; Turner 1986:44 ff.)

6 A basic citizen income scheme, however, would be have to be registered among the first type.

7 In an interesting essay, Ralf Dahrendorf accepts this as historically true, but tries to vindicate liberalism by warning that the resulting 'decline of diversity', the emergence of 'sectoral citizenship' and of 'participatory democracy' may destroy the very foundations of the idea itself (Dahrendorf 1974).

8 'Trade unionism created a sort of secondary industrial citizenship, which naturally became imbued with the spirit appropriate to an institution of citizenship. Collective civil rights could be used, not merely for bargaining in the true sense of the term, but for the assertion of basic rights. The position was an impossible one and could only be transitional. Rights are not a proper matter for bargaining.' (Marshall 1965:122.)

9 See Arendt 1958:190 ff.

10 This has been one of Le Pen's favourite points in his anti-immigrant campaign in France.

11 'The various properties of human rights ... - such as strength, the range of rights-bearers and irrevocability - cannot all be maximized simultaneously...The strength of a right, for example, may be obtained at the expense of the size of the rights-bearing population and vice versa' (Freeden 1991:42). I would nevertheless argue that under certain conditions simultaneous increases in these dimension are possible.

CHAPTER TWO

IMMIGRATION AND CITIZEN STATUS OF IMMIGRANTS

The main concern of this text is to explore two issues and to relate them to each other: migration rights and the rights of immigrants. The underlying questions are first, whether rights of territorial movement are or can be part of the bundle of citizenship rights and second, how the status of immigrants within communities of citizenship is defined. The present chapter will present a very simple conceptualisation of both questions and focus on their combination. My hypothesis is that the conditions of entry for immigrants are closely related to their position of citizenship after immigration. The mode of analysis will be rather descriptive, which means looking for categorical distinctions covering a broad range of immigration policies. In later chapters I will move towards exploring the normative implications of the idea of citizenship and present more detailed conceptualisations of each of the two questions separately. The third chapter will focus on migration rights, the fourth, fifth and sixth on the citizen status of migrants.

The main purpose of the second and third chapters is to question the general assumption that communities of citizenship are necessarily closed at their external boundaries, which was expressed in the initial quotation by Hannah Arendt. In many ways historical and present communities have been relatively open, and in some cases (such as the German and Israeli ones) they have even granted a citizen right of immigration to populations which had never before been part of the community.

The usual assumption is that receiving communities hold a right to control immigration (which does not imply restricting it), by denying immigrants a right of entry and settlement. Regarding the position of immigrants after entry, most analyses assume also that access to internal rights of citizenship is gradual and can be granted or denied at the discretion of the receiving state, but not demanded by immigrants in their own right. The following considerations mean to show that both statements are over-generalised. They are generally true if we look at the minimum level of rights for immigrants enshrined in international law. However, any typology that goes beyond that to include a comparative

analysis of policies of receiving countries, as well as different categories of immigration, will have to develop a more complex picture.

Deviations from a situation of equal rights can take two directions. If we define a right as the legitimation of potential actions, there can be either selective restrictions that prevent some populations from carrying out actions that are legitimate for the rest of society, or there can be populations that enforce their right of action as a privilege denied to other members of society. Immigration rights can be granted to immigrants, they can be denied, or they can be enforced by the immigrants themselves. In a similar way we can distinguish three different internal statuses of immigrants: full, reduced and exclusive citizenship. What emerges from a cross-tabulation of both dimensions are three characteristic combinations which form the diagonal of the following diagram.

Diagram 2: Citizen status and immigration rights

Citizen status after immigration		Immigration rights: denied a	granted b	enforced c
reduced	a	dependent immigration	ba	(ca)
full	b	ab	citizen immigration	cb
exclusive	c	(ac)	bc	colonizing immigration

a) **Dependent immigration**

In most cases immigrants themselves do not hold a right to immigrate. We shall briefly consider several examples. The first is immigrants who illegally cross the border. Some might argue that these people force their entry and thus should be listed under *c*. But do they hold a *right* to do this? According to our definition, rights must be enshrined in institutions of a political community. By definition, the receiving country does not offer a right for *illegal* immigration. In general the country of emigration cannot offer such a right either, as this would mean imposing a severe restriction on the sovereignty of the country of immigration.

The second example is immigrants showing up at the border and possessing valid travel documents which give them a specified right to enter the territory. This is balanced by rights of the receiving state to restrict entry for certain categories of persons (generally those who are seen as a potential risk to public order, security or health). But what is essential here is that we are not primarily concerned with the right to cross borders but the right to immigrate, which includes the right to settle in the country for a longer period and to take up employment. This may be granted under certain conditions to persons attempting to enter the country legally, but in most cases these persons do not hold a right to do so.

As a third example we can mention guest worker policies. If an employer obtains permission to recruit workers abroad, or if a governmental agency is doing that on an employer's behalf, then that person holds a right to take in immigrants. Unless we are talking about slavery, there must be a corresponding right on the side of the immigrants themselves, but their right of entry is dependent on the right of the employer to recruit and employ them. What all these situations have in common is that any right to immigrate which might be conceded is dependent on decisions by the authorities, or on rights held by members of the country of immigration, that cannot be seen as acting on behalf of the immigrant. If somebody still wants to call this a right of immigration, it is certainly not a citizen right as we have defined it.

The hypothesis expressed in the cross-tabulation is that immigrants who have not held an autonomous right of immigration when entering the receiving state generally find themselves afterwards in a reduced status of citizenship within the legal and political system of that country.

b) **Citizen immigration**

I will use this term for forms of immigration in which individuals hold an independent right to immigrate and this right is institutionally anchored within the society of immigration. There can be a strong and a weak expression of such an immigration right: it can be guaranteed; or it can be merely conceded, which means that it can be withdrawn again by a legislative decision. The label 'granted' in the diagram should be understood to include both possibilities.

The most obvious example of the guaranteed form applies to nominal citizens who have been abroad and hold an unconditional right to re-enter their country at any time. This is generally considered to be one of the basic rights incorporated in nominal citizenship. A more specific example of entry rights is provided by several states that grant a citizen right of immigration even to persons who have not been formally registered as citizens before immigration. The best-known cases are those of Germany and Israel, which grant such a right to populations of assumed common ethnic origins.

In West Germany prior to unification there were basically two different categories of citizen immigrants. The first were those from East Germany (Übersiedler), who were considered as having been German citizens already when living there. The second were ethnic Germans from other Eastern European states, mainly Poland and the Soviet Union (Aussiedler), seen as descendants of the German Reich in its borders of 1938, who were granted the right of immediate naturalisation on immigrating. The Israeli determination of Jewish origin, which entitles to free immigration, emerges from religious definitions, but goes beyond them. Religious definitions are themselves rooted in the idea of an ethnic rather than purely confessional transmission of Jewishness.

Although the Israeli policy is clearly different from the German one, in its religious foundations of the concept of the people, it is justifiable to include Israel in the category of ethnic (and not religious) citizen immigration. Nevertheless, the differences have important consequences for selectivity in immigration policies. Whereas in the German case the inclusion of large numbers of non-German speaking descendants of German settlers in Eastern Europe seems a rather unintended and ironic consequence, the Israeli state has explicitly welcomed a very broad range of ethnically diverse Jews from all over the world. The most spectacular and also controversial move was the active transplantation of a group of black Jews from Ethiopia, the Falashas, in 1984 and 1991.

A third and very different example is provided by post-colonial immigration. Since the beginning of decolonisation there have existed diverse forms of immigration rights for certain populations of former colonies. In some cases these immigrants were regarded as full citizens already when living abroad (e.g. inhabitants of the French overseas departments and territories, and Algerians before liberation); in others the

definition of nominal citizenship was ambiguous and included originally native citizens of the colonial power (Britain) as well as former colonial subjects after their countries had gained independence. The right of immigration can be abruptly suspended with independence (migration from Dutch Guyana to the Netherlands), or be maintained as a confirmation of a special semi-colonial status (Puerto-Ricans in the USA), or gradually restricted during a long period of redefining relations within a former colonial empire. After World War II British subjecthood gave Commonwealth citizens a right of immigration, which was narrowed in several policy changes thereafter. Many analyses have highlighted the strong racial bias in the selectivity of immigration laws after 1962. One of the anomalies of the British case is that many holders of British passports outside the UK are now not entitled to immigrate. Even if the right of immigration has thus been substantially restricted, there has been no parallel curtailment of internal citizen rights for those who are allowed to enter and to become permanent residents. Another very special case is that of citizens of the Republic of Ireland in the UK, who still enjoy both virtually full internal citizenship (e.g. active and passive voting rights in national elections) and the right to enter and leave. 'The Irish in the country are in effect quasi-citizens of the United Kingdom while remaining citizens of another nation at the same time' (Peters and Davis 1986:130). This privileged status is not legitimated by assumptions of common ethnicity or nationality, but has emerged from the legacy of a colonial relationship combined with specific lobbying by the Labour Party for maintaining the rights of Irish immigrants, who form one of its traditional constituencies, including the right of free migration.

In spite of these important distinctions, the main difference between ethnic citizen immigration and post-colonial immigration is not in the specific form of rights, but in the social status of immigrants. While immigration in both cases puts strains on the regulation of labour markets and social rights, these are made socially acceptable in the German and Israeli examples by the nationalist imagery of common descent, while they are exacerbated in post-colonial immigration by racism.

If immigration is based on a citizen right then it almost invariably leads to citizen status immediately after immigration. There may be some minor exceptions to this rule when immigrants are thought to need special provisions, which other citizens cannot enjoy, e.g. social rights like the so-

called *Begrüßungsgeld* (welcome benefit) for immigrants from Eastern Germany before unification, or there may be certain restrictions, as for example in access to public office. Israel even restricts the freedom of immigrants to go abroad for several years after their arrival, because it wants to stop remigration of Jews from the Soviet Union, who have been increasingly denied the choice of other countries of destination. Generally speaking, however, the cases of Germany and Israel show that arguments against immediate and full citizenship for immigrants often use different measures. Many if not most of these immigrants do not meet the criteria of cultural and linguistic assimilation, of economic independence, or of proven loyalty to the country of immigration that are imposed on other immigrants before citizen status is granted to them.[1]

c) **Colonizing immigration**[2]

In a third type of immigration the right to immigrate is institutionally anchored not in the country of immigration, but either in the country of emigration or in an exclusive settler colony. As I mentioned above, this means that the sovereignty of the country of immigration is severely restricted by the country of emigration, and in this respect the immigration can be called enforced, even without involving open violence. The typical case is European colonisation of America, sub-Saharan Africa, Southern Asia and Australia. One could well argue that there is no citizen right whatsoever involved in this process. However, if we stick to our analytical definition of citizenship, we have to take into account cases in which white European invaders, conquerors and settlers thought they had a legitimate right to enter these territories, linked to notions of citizenship evolving in their home countries at the time, just as ancient Athenians and Romans considered the right to possess slaves a basic element of their citizenship. In cases where white enclaves were limited to small repressive forces, bureaucratic authorities and tradesmen, colonisers did not really hold and use a citizen right of their country of origin, but acted simply as representatives of their states, or as a part of their ruling classes. This was what mostly happened in black Africa or Southern Asia. But where there was a process of extended white settlement, as in both parts of America, in Southern Africa and in Australia, immigration into the colony was certainly a specific and important right. In significant cases this exit option to the colonies was in fact a remaining citizen right for ethnic and religious

minority populations of the home country that had been deprived of essential elements of citizenship there.

Although the right to immigrate to a colony is mostly embodied within institutions of the country of emigration, this is not necessarily always so. In the case of dissident emigration, leaving the home country was already an act of abandoning its citizenship. In other instances settler colonies considered their original citizenship insufficient for their interests and staged successful revolts against the European metropolitan powers. Both processes led to a situation where the institutions guaranteeing the citizen rights enjoyed by the settlers were no longer those of the country of emigration, but ones that the settlers themselves had set up in the country of immigration. The essential reason for distinguishing even this type of immigration from illegal immigration into industrialised states of the West is that only the former is typically combined with exclusive citizenship for immigrants. Colonised populations were not granted citizen status. This is not only true for those whose ancestors had already lived in the territories before colonisation, but also for those who had been brought there to serve as slaves or forced labourers. Even after some of these forced or dependent immigrants in the colonies managed to establish themselves as middlemen minorities in trade and small business (as, for example, many Indian immigrants in Eastern Africa did), under the colonial regimes they remained excluded from white European citizenship.

Having characterised the three dominant combinations of immigration rights and citizen status, we can now investigate some cases that could fit into the other cells. Summing up the main results of my considerations in advance, I think that the combinations labelled (*ac*) and (*ca*) are very improbable and can only be illustrated in hypothetical cases. This is why they were put into brackets in diagram 2. It is heuristically important, however, that we should not exclude them a priori as this would weaken the argument. If (*ac*) and (*ca*) are theoretically possible but we do not find empirical cases that fit into these boxes, then we have a strong indicator of a positive correlation between the two variables forming the rows and columns of the table. If we exclude on theoretical grounds, however, the very possibility of any combinations outside the diagonal, we arrive at the trivial case in which both variables are actually measuring the same thing. I have also indicated the presumed correlation by placing the inscriptions for the remaining four combinations (*ab*, *ba*, *bc*, *cb*) not in the centre of

their cells, but close to those fields of the diagonal to which they seem strongly related. Most of the examples I can think of appear to be deviations from the three main combinations outlined above rather than separate types of their own. This will be explained in a moment.

I first want to consider briefly how a correlation of this sort could be interpreted. Because of the egalitarian and universalistic principles it can be expected that most citizen rights will correlate strongly, i.e. that persons enjoying one specific right of citizenship should be entitled to most other rights of citizenship as well. In a simplified representation of this general structure we would always find more cases in the downward-pointing diagonal (*a,d*) of the following diagram than in the upward-pointing one (*c,b*), no matter which rights we choose for the two axes.

Diagram 3: Correlation among different rights of citizenship

		Citizen right X: no	Citizen right X: yes
Citizen right Y	no	a	b
	yes	c	d

Category *a* exhibits the limits to universalism and egalitarianism imposed by external boundaries of citizenship. Anyone who is not accepted as a member of a community will usually be excluded from most rights of citizenship institutionalised within this community. Categories *b* and *c*, however, exemplify violations of both principles within such communities. If a person is granted a citizen right *X* but denied another such right *Y*, that means that he or she must be a citizen of the community in at least some respects (referring to *X*). So any such case refers to second-class citizenship and less than full density. If cells *b* and *c* are not empty, we can either say that full citizenship is not universally distributed within the community, or that it is unequal for different categories of citizens. There is obviously no reason to dismiss *a priori* the possibility of *c* or *b*, if our analysis takes into account the features of a real political world with internal boundaries of communities of citizenship. However, if cases *c* and

b are more important than examples of *a* and *d*, we face a problem wit our definition: it would indicate a state in a political system that coul hardly be called citizenship in the first place. It would be either a strongl hierarchical political community in which full citizens only represen society as a very privileged layer, or a system including severa communities with mutually incompatible sets of citizenship rights. W must, however, remember that 'importance' does not refer to the numbe of individuals in each of the four boxes, but rather to the observabl combinations of rights. It would be unwise to determine the importance o a right in a society numerically by counting the individuals who enjoy it All we can say is that the image a community of citizenship has of itself i always such that there is a broad category of full citizens representin society as a whole, and all people excluded from that group are seen a being less involved in society itself.

Applying these general considerations to our previous table, it seems tha a right of immigration has the qualities of a citizen right if the picture tha emerges from our cross-tabulation is very similar to what we would ge from the combination of two citizen rights. Of course, this is not a empirical proof that immigration rights are actually part of the bundle o citizenship, but only a theoretical justification that they could be treated a citizen rights, despite their transgression of external boundaries, and that a lack of this right could be seen as a deficiency in a broader concept o citizenship.

Returning to diagram 2, I would like to give a few, certainly no exhaustive, examples of the remaining four combinations (*ba*, *ab*, *cb*, *bc*).

Immigration rights granted – reduced citizen status (ba)

Asylum-seekers in countries that have signed the Geneva Convention o other international treaties on the status of refugees could be located i this field. They certainly do not hold a right to immigrate comparable t the right of re-entry for nominal citizens, but on the other hand thei claims are stronger than those of labour migrants. Generally speaking, i international law the right of asylum is not regarded as a subjective right held by the refugee, but as a right of states to grant asylum to those persecuted within another state. The Geneva Convention, however, already enlarges this narrow concept by defining who is to be regarded as

refugees (persons outside their country because of well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion). In the internal legislation of some states (e.g. Germany),[3] the right of asylum is stated in much more categorical terms. What is important for our present concern is that their right, however restricted or violated in law or in practice, is based on their own situation. Signatory states of the convention reserve for themselves extended rights to evaluate this situation, but pretend at least that there is a fair procedure which will not lead to the rejection of genuine refugees. Thus, admission is not conceived as dependent on someone else's rights, or on the arbitrary decision of the country of immigration, as in dependent immigration. The basic idea of the right of asylum is the recognition of an urgent need to immigrate, which restricts states' power of exclusion.

Having said this, we must acknowledge that in its present form this right is mostly limited to a very small range of motives for emigration, and where this range is much broader, as in the African Convention, it is not combined with sufficient rights to gain access to means of survival in the country of immigration. Governments of Western receiving states have always tended to ignore even the low standards set by the Geneva Convention. During periods of high demand for immigrant labour, refugees were often accepted without any individual screening, and clear preference was given to those of supposedly less culturally distant countries (mainly from Eastern Europe), who are now often just as summarily excluded only because of their national origins. On balance, the right of asylum thus comes quite close to dependent immigration, even if its underlying principles are clearly different.

In most countries the citizen status of asylum-seekers is severely restricted. In Europe, as a general rule, they enjoy even fewer rights than immigrant workers unless granted the status of refugees according to the Geneva Convention. Some people argue that social spending on housing, food and education for asylum-seekers gives them unjustified advantages over legal immigrants, but this type of benefit is quite far from a genuine social right as it is mostly tied to restrictions on their liberty (especially in free movement and in access to the labour market). In many countries it is only after official recognition as political refugees that their citizen status is raised above that of other legal immigrants (e.g. concerning equal rights to social benefits, or access to naturalisation).

A second category that could be located in the same field is fam members of legally settled immigrants, who enjoy a special right immigrate. One could object that this is a typical case of depende immigration and restricted rights. The right to bring in one's family rarely unconditional: it depends mostly on means of financial support a sufficient accommodation. For naturalised immigrants this right becom much stronger, but it usually remains restricted to what is defined as nuclear family in Western cultures. Additionally, the right can attributed to those persons who have already settled in the country immigration, rather than to the new immigrants themselves coming under a family-reunification scheme. On the other hand, their situation still quite different from that of employers who are allowed to recru migrant workers abroad. The family is a close-knit social unit and in way the right is held and exercised by the family as a whole, whi individual members settled in the country of immigration hold this right representatives of the family. However we interpret this, there certain exists a special form of immigration right based on family ties that can als be derived from international conventions on human rights.[4]

Its difference from citizen immigration is even more obvious in th vertical dimension of diagram 2. The legal status of those who come under a family reunification scheme is usually better than that of oth new immigrants. But it can also be considerably worse than the position "denizenship" enjoyed by their relatives. In several countries fami immigrants have to pass long waiting periods for access to the labou market, to some social benefits, or even before naturalisation if the relatives are already naturalised citizens.[5]

Immigration rights denied – full citizen status after immigration (ab)

Considering liberal justifications for external boundaries of citizenship, w would expect to find many cases of this combination, as the legitimation for restricting immigration are much stronger than those for restrictin access to citizenship for those who have immigrated.[6] But, strangel enough, most countries of immigration have been very reluctant t guarantee legal immigrants full citizenship if they are not full citizen already at the time of immigration. The exceptional case of Ne Commonwealth immigration in Britain before 1962, mentioned above,

clearly explained by the specific form of British subjecthood and the attempts to create a post-colonial Commonwealth, rather than by liberal ideas about equal chances for those legally admitted into a country.

We will be able to find more examples fitting the corresponding cell of diagram 2 if we modify the strict requirements that citizenship should be granted immediately and fully. Allowing for a certain temporal lapse between immigration and full citizenship, that combination *ab* is represented by countries that give immigrants an unconditional right to naturalisation after a short period of settlement. However, all states impose additional conditions on naturalisation beyond the mere time of residence. No criminal record and sufficient income are among those criteria employed almost generally. It is an interesting asymmetry that states usually do not expatriate their criminal or impoverished citizens. An unconditional right of naturalisation for immigrants is very rare indeed. In some states it exists in the form of automatic attribution of citizenship not for immigrants but for their children in the second or third generation (second generation in USA, Canada, Australia, third generation in France). Generally, countries with a long history of immigration, intimately linked to the process of nation-building itself, and basing naturalisation on *jus soli* rather than on *jus sanguinis*, generally come much closer to this type. The second possible modification for *ab* is to include cases in which immigrants enjoy almost all citizen rights without becoming nominal citizens. Although it is not a traditional country of immigration, Sweden after 1975 represents an example that naturalisation can be made easier simultaneously with granting more rights to non-naturalised immigrants.

In order to fill the cell in diagram 2 with empirical cases, we had to modify either the requirements of temporal coincidence of immigration and citizenship, or of access to the full bundle of rights. This indicates that in the horizontal row this combination comes closer to dependent immigration than to citizen immigration. However, the main difference with the latter is in the columns; in the lack of a right to immigrate in the first place. This is very obvious in the Swedish case and somewhat less in the traditional immigrant nations. But there too, we find quite strict limitations on immigration in the form of quota regulations since the beginning of this century, which show that it is not the immigrant who

holds a right of immigration, even though he or she may be granted easy access to full citizenship after having been admitted and settling down.

Immigration rights enforced – full citizen status after immigration (cb)

This particular combination would indicate a situation in which immigrants force entry into a society but after that fully integrate themselves into a community and are fully accepted by it. The community in question ought not to conceive of itself as an exclusive political class or caste but should claim to represent the whole society of the country of immigration. It is certainly difficult to think of any cases where both these conditions are met simultaneously. Additionally we have to keep in mind that polities that do not in some way embrace principles of citizenship are generally excluded from our discussion.

This points to a difference between mere invaders and colonisers: the former turn into the latter by establishing their exclusive form of citizenship. In history we could certainly find many examples of invaders who quickly assimilated to the culture of the invaded populations. Much rarer are those cases where they also integrated into an established political system. Perhaps one could mention the Mongolian emperors of China. But that still does not meet all our requirements. It is much easier to take over and leave intact a rigid hierarchical structure, in which the resident populations had already been powerless before the invasion. But how should we imagine a community based on equal rights for the conquered as well as the conquerors? We could, if we allowed again for time intervals between events in a longer historical process. Successive processes of invasion, colonizing settlement and decolonisation would fit such a category. Zimbabwe and Namibia might be quoted as the most recent examples in which former colonisers had finally to accept being equal citizens with those whom they had violently oppressed for so many generations.

For emerging communities of citizenship in former colonies this transition raises acute and painful dilemmas. Which rights should be given to those who previously saw any democratic right as their exclusive privilege? Is it legitimate to maintain and only gradually reduce special prerogatives for these settler populations during a transition period?

Should a liberated colony bow to external pressure from the former colonial powers in such matters?

On the other hand, the time interval between immigration and full citizenship is extremely long in all these cases, and this should make it clear that even if we want to see this combination as a significant one, it is certainly more closely related to colonizing immigration than to citizen immigration.

Immigration rights granted – exclusive citizenship after immigration (bc)

At first glance this seems the most unlikely of the four combinations we are discussing. We must remember that in this case the right to immigrate should not have been enforced by the immigrants themselves, or by their home country, but should have been voluntarily conceded by the community into which they immigrate. However, which polity would allow immigrants to set up a separate and exclusive political community of their own? There are two possible cases: one, in which the inviting community is betrayed by immigrants who are powerful enough to set up their own rule; and a second, in which the inviting community already is a 'plural society', consisting of several politically separated entities. I shall briefly discuss the second case only.

In most accounts of plural societies emerging from colonial rule, we do not find structures of a political system with separated communities of citizenship. If we combine the two main theories of such plural societies (Furnivall 1939, 1948, M.G.Smith 1965) the overall picture is a pattern of rigidly separated ethnic communities, a cultural division of labour in production with extensive exchange between communities in the market, and a single hierarchical political system imposed on all the communities, either by the colonial power or by a dominant ethnic group. However, the term plural society has also been applied to Western industrialised societies like Canada, Belgium, or Switzerland. In these cases we do find internal differentiations of the national political structures along linguistic, ethnic, or national lines. But these certainly do not go as far as establishing different communities of citizenship. Short of a possible breakup of such 'plurinational' or 'pluriethnic' states, the dominant structure is always the centralized, national one.

There is another reason why these examples do not fit into our case: the plural structure of these political systems means some extent of power-sharing between ethnically or nationally defined communities. Special rights for immigrants similar to those enjoyed by autochthonous groups are perceived as a threat to a fragile balance of power and are strongly resented by well-established ethnic minorities. The Canadian case might be quoted as an exception to the rule, but it is illustrative of the dilemma involved. Programmes of multiculturalism and special rights for immigrants as ethnic minorities were seen by many French Canadians as a vicious plot to put them in the position of just one ethnic minority among many others.

This is not to say that any cultural pluralism that is tolerated, or even promoted, by state policies goes together with exclusive forms of citizenship. On the contrary, the extension of citizenship to specific rights for ethnic minorities of both autochthonous and immigrant origins can help to create a larger and common political structure of equality within which different cultural communities can survive and evolve without having to close their boundaries and mobilise their constituencies as separate political communities.

An example that comes closer to the requirements of our analytical scheme would be the early North American settlement, provided we do not focus on the relation of European immigrants to the indigenous populations, but rather on the types of political communities created in this settlement. During this period a right of immigration emerged, which was anchored in the political structure of the colonies. The dispersed pattern of political authority, which emerged from the competition between three colonial powers (England, France and Spain) and the separate communities set up by religious and political dissenters, continued even after the War of Independence in the high degree of autonomy of the individual states. Only after protracted political struggles and finally armed conflict could the predominance of the federal authorities be definitely asserted. The history of the USA before the Civil War could be characterised as a long period of coexistence of different political communities within an emerging nation-state. Most importantly for our categorisation, these separate communities had in some cases emerged from immigration of distinct religious, ethnic and national groups, who intended, and were initially able, to set up their own forms of

citizenship. However, North America was no unpopulated territory, and establishing new communities of citizenship went hand in hand with a policy of colonizing, or rather extinguishing, the native population. The rights of immigration that had been largely granted for white newcomers were thus based upon previous colonisation and conceded either by representatives of the colonial power or by established settler communities. This is why we should locate this example much closer to colonizing immigration than to citizen immigration.

To sum up the main findings from this exploration of different examples, we get a picture of two clusters around the types that we have called *dependent immigration* and *colonizing immigration*, while the category of citizen immigration stands rather on its own. The whole structure of the table thus suggests a strong correlation, although not a total correspondence, between forms of immigration rights and the citizen status of immigrants within receiving societies.

Notes

1 'In the course of time, the problems of integration of either group [ethnic Germans and other Eastern European immigrants] have become more and more similar: within the group of emigrants [ethnic Germans], too, the utility of their basic occupational qualifications and their language proficiency has been decreasing' (Hönekopp 1991:8).

2 Colonizing immigration will be generally excluded from consideration in later chapters of this paper because it represents a complete reversal of the characteristic patterns of modern mass migrations, which I am mainly concerned with.

3 The German Basic Law says 'politically persecuted persons are entitled to asylum'. However, over the last few years there have been strong demands from conservative politicians to modify this article of the constitution and adapt its wording to the much more restrictive current practices.

4 See Article 8 of the European Convention on Human Rights.

5 Among major receiving countries Germany has set up some of the strongest restrictions to admission and equal status for family

members. In the new Aliens Act, which went into force on 1 January 1991, there are quite substantial modifications in this respect.

6 See Walzer 1983:52–61 and the excellent accounts of liberal principles in both publications by Joseph H. Carens (Carens 1987 and 1989).

CHAPTER THREE

MIGRATION RIGHTS AND THE FUSION OF COMMUNITIES

The evolution of citizenship 'involved a double process, of fusion and of separation. The fusion was geographical, the separation functional' (Marshall 1964:79). In his essay Marshall is primarily concerned with the functional differentiation of civil, political and social rights, and only briefly mentions the accompanying process of territorial expansion and unification. However, this latter development provides an important argument for considering the external boundaries of communities of citizenship as historically variable. While the last chapter dealt with forms of immigration that do not immediately modify these boundaries, but strongly correlate with internal differentiations of citizenship, the following one will consider how geographical fusion can eliminate previous boundaries. Rights of migration are important in this process, too; in an ongoing fusion they can work as an accelerating device and after its completion they become transformed into a central element of internal citizenship.

To start with, I will show that migration rights are highly differentiated within the international system of nation-states and that certain forms are stronger and more universal than others. This underpins my point that the assumption of the necessary external closure and internal openness of communities of citizenship to migration is too simplistic to cope either with the real world or with the normative implications of citizenship. The transformation of external into internal migration rights in a process of fusion will be considered in a second step.

3.1 Universal and particular migration rights

A simple typology of migration rights can be developed by distinguishing emigration, immigration and internal migration. Asking which of these rights is more general quickly leads to the insight that their universality strongly depends on the categorisation of migrants. The most basic distinction relevant here is that between nominal citizens and aliens. This gives us a table with six different forms of migration rights, and it seems

possible to suggest a general rank order of universality of these rights within the international political system.

Diagram 4: The universality of migration rights for nominal citizens and aliens

	rights of		
	emigration	immigration	internal migration
nominal citizens	4.	1.	3.
alien citizens	2.	6.	5.

(Note: the numbers signify the presumed rank order on a scale of universality.)

Comparing international standards in migration rights we find that the right of citizen remigration is the most universal, followed closely by the right of emigration for non-citizens (which is sometimes denied to specific categories of alien citizens, a trivial example being those serving prison sentences). Rights of internal migration, which are often taken for granted as an essential element of modern citizenship, will probably come in third place only. One of the best known examples of their restriction has been the system of internal passports in the Soviet Union. The right of emigration for nominal citizens – entitlement to an internationally valid passport, which enables a person to leave her or his country of citizenship – is more frequently restricted. Rights of internal free movement for alien citizens are generally much weaker. In some regulations of immigrant seasonal labour and 'guest-worker' systems immigrants are explicitly confined to live in certain areas.[1] In other cases the freedom of spatial movement is restricted indirectly by denying immigrants free movement in the internal labour market (by tying work permits to an employer, or even a specific place of work by fixing regional quotas for the employment of alien citizens, etc.). Finally, rights of immigration for non-citizens would clearly rank at the bottom of this scale.

No fewer than five of these rights of migration have been proclaimed as universal human rights by the United Nations in the Universal

Declaration of Human Rights of 1948. Article 13 of this document reads as follows:

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

The first paragraph includes rights placed in ranks 3 and 5, while the second refers to rights ranked 1, 2 and 4. The text of this declaration suggests that any form of migration in our table apart from immigration of alien citizens corresponds to a basic human right which should not be restricted by state policies. Nevertheless, compliance with this norm is obviously quite different, not only between individual states, but also with regard to different forms of migration. The rank order that I have suggested thus shows strong discrepancies between a norm of universal citizenship, which has been established in the international arena for almost half a century, and actual citizen rights in institutions and policies of nation-states.

Even the immigration of aliens is not a matter that is entirely left to the discretion of national policies. It is at least partially covered by international norms, which can be seen as elements of universal citizen rights. The most important of these concern refugees and the family reunification of immigrants. Even though they are distinguished from other forms of migration by having become the subject of international conventions, governments have generally regarded their policies of asylum and family reunification as issues over which they have a vital interest in keeping internal control. Thus international norms have remained less binding and largely declarative, and asylum-seekers, or family members of immigrants, generally do not take precedence over any of the other forms of migration in our table.

This does not imply that decisions on a national level are necessarily discretionary. Rights of immigration for aliens may be formulated as relatively strong norms, so that decisions of administrations can be contested before the courts. Apart from the rights of asylum and of family reunification, there is another right of immigration for aliens, which has only lately been recognised. Second-generation youths of alien citizenship who have had to return to their parents' country of origin have

experienced tremendous difficulties in integrating into a society that they did not choose themselves and that is profoundly alien to them. Recently there have been strenuous calls to facilitate their remigration. The new German Law on Alien Citizens includes an 'option of return' (*Wiederkehroption*) for alien youths aged fifteen to twenty-one who have previously lived in West Germany for eight years and gone to school for six years, provided they find a source of independent income in Germany (*Ausländergesetz* 14.07.1990:16). From the point of view of state authorities, this is not only a humanitarian gesture, but also a chance to regain 'human capital', i.e. saving on training costs by selecting those would-be immigrants already educated.

Diagram 4 categorises rights of territorial movement with reference to states that grant or deny these rights according to their territorial sovereignty. This does not yet tell us much about the positions of the migrants who hold or are refused such rights. Only the position of internal migrants follows immediately from diagram 4, as it remains the same during their movement. In international migration, however, there are two boundaries to be crossed, those of the sending and those of the receiving countries; and migrants may be nominal citizens at one border and aliens at the other. The following table categorises migrants with regards to their rights of migration, leaving out internal migrations.

Diagram 5: Migrants with regards to their position of nominal citizenship in emigration and immigration

immigration \ emigration	alien	nominal citizen
alien	third country immigrant	alien immigrant
nominal citizen	citizen immigrant	dual citizen immigrant

Applying the assumptions of the previous table to these categories of migrants and adding the rank numbers for emigration and immigration rights would lead to the following conclusions: that alien immigrants

generally meet the strongest obstacles, followed by immigrants from third countries; persons with the dual citizenship of both the sending and receiving countries find it considerably easier to move in either direction, and nominal citizens returning to their countries experience fewest restrictions.

However, before drawing these conclusions we should remind ourselves that boundaries of citizenship are not identical to state borders. Furthermore, the question of whether structures of citizenship facilitate or impede migration cannot be confined to a mere consideration of migration rights. Keeping in mind that rights of citizenship are about enlarging spaces of legitimate action within society, we have to evaluate barriers to migration within the larger context of other citizenship rights, which are affected by a territorial movement across national borders. The following chapter will present a more detailed discussion of these changes. For the present purpose I will simply assume: (1) that in each state involved nominal citizens enjoy a substantially better form of 'residential citizenships' than aliens; and (2) that the levels of citizenship are broadly comparable between sending and receiving societies. Both assumptions are very simplistic and will be modified in later discussions.

This means that a change from the position of an alien in one society to that of a nominal citizen in another represents a gain in citizenship rights, while the reverse implies a loss. Of course, moving from one state to another but remaining either a nominal citizen or an alien can involve very substantial changes in one's rights, due to differences in content and weight of citizenship between the states. However, without adding information on specific states we cannot determine generally whether the balance represents a loss or a gain. For the following table I will also simplify the assumptions of diagram 4 even further by reducing the rank numbers to a dichotomous variable, and presuppose the ideal world of the UN Declaration, in which only immigration rights of aliens are generally denied. This table suggests that alien immigrants generally meet the strongest obstacles, followed by immigrants from third countries; persons with the dual citizenship of both the sending and receiving countries find it considerably easier to move in either direction, and nominal citizens returning to their countries experience least restriction of all the categories in this diagram.

Diagram 6: Migration rights and changes of citizenship in different types of migration

	emigration rights	immigration rights	gain/loss in citizenship
third country immigrants	+	-	±0
alien immigrants	+	-	-
citizens immigrants	+	+	+
dual citizen immigrants	+	+	±0

One has to be careful not to misinterpret this as indicating incentives and disincentives to migration. In this text I am neither concerned with individual motives of migrants nor with structural push-factors and pull-factors. Although gaining social rights may work as an incentive to immigration to Western 'welfare states' and access to civil and political rights certainly influences the choices of political refugees, such features of political systems seem to be much less important in migration flows than chances of employment. Similarly, the sanctions that accompany denial of migration rights, or of residential rights for immigrants - such as the policing of borders, the refusal of legal employment, enforced repatriation, etc. - may to some extent redirect migration flows. However, the mass phenomena of illegal immigration and undocumented labour show the strength of other, mainly economic factors. Also, state control is relatively inefficient; and alternative, draconian measures have been rightly seen as jeopardizing existing levels of democracy and citizenship for the larger society. The granting or denial of migration and citizen rights in itself neither induces nor directs territorial movements, but attributes or withdraws legitimacy for such actions. In a rational-choice approach: gaining legitimacy will hardly determine one's choice of action, but it may reinforce an option; loosing legitimacy will not deter from an action if the risk of sanctions is weaker than the probability of gains from the action itself.

The intention of this text is not to build such a model. My argument is not that citizenship should be taken into account as one among many variables that can help to explain migration flows between different

territories. Instead it tries to reverse this established goal of mainstream migration research. I want to see quantities and types of migration, on the one hand, and policies of sending and receiving societies, on the other, as independent variables that serve to explain changes in the weight, density and volume of citizenship.

Our tentative ranking of migrants according to the obstacles of citizenship that they meet can only claim validity for general cases. One of the most conspicuous exceptions is ethnic-citizen immigration. Just as the process of fusion, which we will discuss later in this chapter, this type of migration is characterised by the radical weakening of immigration barriers. While in international migration this lowering of external boundaries is restricted to special categories of presumed ethnic co-citizens, in a process of fusion it becomes generalised for the populations of all territories involved.

Generally, there is no contradiction between the idea of closed communities of citizenship and a citizen right of immigration if the incomers have already been citizens of the receiving community before entering its territory. This is fairly obvious in the case of remigrations of nominal citizens. In the special case of East Germany before unification that assumption was maintained as a legal fiction by one state against another (West Germany refused to recognise a separate East German citizenship). However, this does not apply to ethnic Germans in Eastern Europe or to Jewish populations outside Israel. Before emigration they have only one nominal citizenship: that of the state they live in. Somebody might argue that our broader notion of citizenship could be applied to these cases too. Perhaps ethnic co-nationals can be said to enjoy some kind of informal citizen status in their prospective states of immigration? However, potential Israeli or German citizenship entitles these populations to no other right than the one to enter these countries: not even the right of emigration, which may be denied by the states in which they live (as was the case for Jews in the Soviet Union for so many years). There may be special links between ethnic communities scattered around the globe, which find their expression in an emotional relationship to an ethnic mother country. This mother country can even help to maintain the ethnic identities of those communities by exercising pressure on the states concerned and may thus help to guarantee certain collective rights for them. But it is hard to see what sort of *citizen right* could tie them directly

to the external community of this mother country before immigration to its territory. We shall discuss in the next chapter the general form of external citizenship which is always tied to being a nominal citizen of another state. That is not the case in the examples of ethnic Germans or Jews.

The condition of ethnic–citizen immigrants presents a strange case: while there may exist significant boundaries of citizenship in the country they are leaving, somehow there is no real boundary to cross when entering the country of immigration. The importance of the boundaries in the country of emigration can either manifest itself in loss of rights when emigrants have to abandon citizenship, or it can show itself more brutally when they do not possess many rights and even have difficulties obtaining a passport entitling them to emigrate. In spite of their alien citizenship before immigration, their situation resembles that of dual citizens, except that both affiliations cannot become relevant simultaneously for them: what determines their emigration rights is their nominal citizenship of the country they come from, and what counts at their entry into the receiving state is their prospective citizenship of this country.

Both ethnic–citizen immigrants and dual–citizen migrants are odd cases in international migration. While the former category is obviously limited by definitions of national identities that include an ethnic diaspora, the latter could be applied to a much broader range of migrants. One of the policy implications of my argument is that the increasing inequalities of citizenship resulting from continuous flows of migration between two or more states could find an adequate response in a liberalisation of dual citizenship, including the right of free movement across national borders in either direction.

3.2 Migration as a catalyst for fusion

My second point in this chapter is that what appears as the exception in international migration has been the rule in the process of building national communities of citizenship. The process of geographical fusion to which T.H. Marshall referred involved in many cases both the symbolic attribution of a common 'ethnic' identity to previously heterogeneous communities and the merging of multiple pre–national citizenships into a single one. This development finds both its stimulus and its expression in

the accompanying change of migration rights, which redefines previously external immigration as internal and removes legal obstacles to it.

This is rarely achieved in a single decision, but more often involves a long process before as well as after the actual foundation date of an independent state. The contribution of internal migration rights to the formation of modern national citizenship seems to be rarely considered [2] and it is conspicuously absent in discussions of international migration. However, free movement (i.e. the unconditional right of migration within the nation) was of utmost importance in the emergence of nation–states and the extension of citizenship from the late medieval city to the modern nation.

Whereas the forms of immigration discussed in the previous chapter increase the volume of a community without immediately changing its boundaries, fusions do the same by erasing them. One of the main arguments that I want to put forward is that in the long term, and taking into account present developments of international migration, the two processes cannot be separated neatly. If mass immigration remains overwhelmingly dependent and immigrants are excluded from basic citizen rights, this means a lowering of the internal density of citizenship and must be seen as jeopardizing basic democratic achievements. If, however, the structure of citizenship becomes dynamically adjusted and immigrants are included in it so that density can be maintained, it will turn out that external boundaries have to be gradually relaxed as well. A continuing expansion of citizenship through such a process could eventually lead to 'slow fusions' between sending and receiving communities. To put it more simply, in a period of increasing international migration, the democratic quality of citizenship can only be upheld by simultaneously making borders more open and granting immigrants more internal rights. The weakening of external boundaries itself constitutes a major enrichment of the bundle of citizen rights through a strengthening of migration rights and the establishing of internationally transferable citizen rights.

Let us briefly examine some examples of fusions. Before the emergence of modern nation–states, citizenship in Europe was only significant at the level indicated in its etymological origin: in the city. The territories of the large European empires and of the small principalities truly resembled the image of Hannah Arendt's quotation: 'small islands of citizenship interspersed in an ocean of rural feudal relationships'. National unification

did not automatically entail an extension of citizen rights to the national level by embodying them in centralised institutions of democracy, but it did establish a basic civil right of internal migration that had not existed before. In this process the strictly limited rights of immigration into cities became transformed into an unconditional right of settlement within the national territory. In some aspects this process too was a slow rather than a quick fusion. Social rights were restricted in many states to local citizenship for a long time after national unification and independence. A good example is the so-called *Heimatrecht* in 19th century Germany and Austria, which restricted the right to social assistance from local authorities to the municipality of one's birth and was only gradually extended to include long-term local residents.

The right of internal migration is a necessary condition, but not a sufficient one, for the fusion of communities. The second condition that has to be met is fusion of the political institutions of citizenship. This can be illustrated by the present process of integration within the EC, in which limitations on transnational internal migration are to be eliminated, but the authority of the European Parliament and of the European Court will still be weaker than that of the corresponding national institutions for a long time to come. This should not deny the fact that there will be a decisive shift of decision-making powers to EC institutions after 1992, which has been gradually prepared for over several years. However, the institutional arrangements legitimating these decisions will express rather a delegation of sovereignty from national bodies to EC level than direct control of EC citizens over these decisions. The combination of the right of internal migration and the lack of institutional fusion will lead to a situation in which exercising this right can still lead to significant changes in one's citizen status. Although EC citizens might be allowed to take part in European and local elections in all community countries, this certainly would not compensate for exclusion from national voting rights as long as the European Parliament is not seen as a more powerful body than national legislative assemblies. There may also be some gains in rights when EC citizens immigrate into a state that grants more extensive social citizen rights than the one they came from. What I want to point out is that, in contrast to national fusions, there will still be quite important changes in citizen rights resulting from internal migration, which can serve as an indicator for incomplete fusions.

The final example is a recent process of fusion in which both conditions were met, and this is of course German unification. It is a showcase illustration of the importance of migration rights in such an event. For twenty-eight years after the building of the Berlin Wall, the Pan-German citizenship enshrined in the West German constitution was only a legal fiction. It did not help to guarantee free migration and even worked as an incentive for the East German regime to seal the border and prevent migration by the armed forces. However, once this regime was profoundly shaken, the mass emigration stimulated by automatic citizenship in West Germany was a decisive factor in accelerating unification. This is not to say that unification was inevitable because of a dynamic based on common citizenship. But after the dismantling of the Wall, independence and sovereignty of East Germany would have only been legitimate had there evolved a new political community with its own features of citizenship, distinct from the Federal Republic. This was the political programme of the November 1989 movement, which wanted to keep open the option of slow fusion based on institutional separation. It failed because the existing nationalist legitimation of German unity, which had been kept alive for decades in the West German political system, was boosted by the economic collapse in the East. So in this case the right of migration worked as a decisive catalyst for a process of institutional fusion – or, rather, institutional takeover.

As a general hypothesis drawn from these different examples, we could expect that the more universal rights of migration between two or more states become, the more pressures will build up to weaken previous external boundaries of citizenship, to equalise differences in citizen rights, and to initiate a process of institutional political fusion. The speed and range of these processes will be largely determined not by the imperatives of citizenship itself, but by the brakes put on this dynamic in the new definition of external boundaries. Nationalism helped to legitimate and to accelerate the struggle for equal citizenship within the nation, but also set a strict limit to it where it tended to transcend national boundaries. We shall probably experience a similar dialectic with regard to European integration. The emergence of a transnational European citizenship may well be accompanied by a distinctive brand of Euro-chauvinism, legitimating the exclusion of non-European aliens from newly established rights.

Incomplete fusions can also be seen as increasing the volume of citizenship at the expense of lowering its density. If one loses some of one's citizen rights when moving within the new community, that expresses an internal territorial differentiation of citizenship. In order to illustrate this, suppose that a larger community has been combined from only two different regional communities, A and B. The fusion superimposes a new national bundle of citizen rights on the existing regional citizenships. However, a number of such rights remain tied to regional membership and incorporated in regional political institutions. Because of their different traditions, these regional citizenships are not equivalent: the level of social-assistance benefits is much higher in A than in B; but there is no cheap local authority housing programme in A, whereas there is in B. Let us further assume that there is a residence requirement for access to both forms of social rights. What we get then are at least four categories of citizens with different rights: regional citizens of A living in A; regional citizens of B living in B; non-regional citizens living in A; and non-regional citizens living in B. This multiplication of categories represents what I have called a lowering of the internal density of citizen rights.

I do not want to generalise this as an argument against internal federalism and regionalism, because, on the other hand, institutional fusion can also reduce the weight of citizenship. If political decisions relevant to local communities are taken only at a central, national level, the basic political citizen right to participate in decisions that concern one's own affairs will be neglected, or even violated. In recent years processes of devolution in administratively overcentralised states like Spain and France have tried to redress this balance in favour of regional citizenship. It is, however, important not to think of this as a zero sum game. Certainly centralisation and decentralisation can be combined in ways indicating an overall increase or an overall loss in citizenship.

As a general rule, we can suggest that with reference to inherent principles of citizenship only such regional differences are justifiable that: add to centrally established rights and do not replace or diminish them; do not represent different levels of citizenship, but only a regional breakdown of institutions incorporating identical citizen rights; are unconditionally transferable in internal migration.

Some readers might object to the second and third demand that they may be valid for civil and political rights, but that regional differences have to

be taken into account in social rights. If region A is rural and region B urban, then the type of social benefits needed by both populations will be different. However, we should defend the principle that social rights ought to be formulated in as universalistic terms as possible. What is the problem with having a special form of assistance for poor farmers that is equally accessible in the whole territory but has a take-up rate of 25 per cent in A and only 1 per cent in B? There might be some administrative advantages gained by making it exclusively available in A, but this would clearly constitute a discrimination for 1 per cent of the population of B, which is not justifiable in terms of equal citizenship.

Collective ethnic rights seem to be an even more obvious exception to this rule. However, seen in the perspective of citizenship, it is always preferable to make such rights accessible in the whole territory, even if a minority is heavily concentrated in one region only. This will not always be feasible (e.g. in bilingual school education), but only maintaining this principle as far as possible can guarantee that members of an ethnic minority do not automatically lose all their collective rights when they settle outside their original territory. As an example I want to mention the rights of the autochthonous Slovene minority in Austria, which were formulated in the State Treaty of 1955, signed by the Allied powers of World War II. Until recently, a highly discriminating policy of the federal and provincial authorities confined the right to education in the Slovene language in elementary school to a small territory in the province of Carinthia along the Yugoslav border. Members of the minority who have moved to the provincial capital of Klagenfurt in large numbers in recent decades therefore lost this right for their children. In 1990 the Constitutional High Court ruled that such restrictions did not conform to the provisions of the State Treaty.

In most federal states these basic requirements for resolving the conflict between regional and central citizenship are rarely met, and in this case federalism can have the effect of reducing the density of citizenship, whereas in certain highly centralised states citizens may rightly feel that a lack of regional checks on the accumulation of power at the centre reduces the effective weight of their rights within the political system.

Notes

1 From 1975 to 1977 some West German cities even adopted quota regulations for the settlement of alien citizens in certain areas with already high percentages of immigrant populations (Castles 1984:78f).

2 T.H. Marshall mentions the freedom of internal migration only in connection with the right to work (Marshall 1964:82), while A. Giddens interprets this passage more broadly as referring to the abandonment of restrictions on the movement of the population (Giddens 1982:168).

CHAPTER FOUR

AN INTERNATIONAL TOPOGRAPHY OF CITIZENSHIP

The example just used to discuss internal differences of regional citizenship will now be applied to migration in a wider international context. I call this a topographical analysis because the basic question is, which bundles of rights are tied to certain locations in a structure defined by external and internal boundaries of citizenship? In this chapter we shall try first to identify the actual differences of rights. In a second step, we can then ask how the imperatives of citizenship could serve as guidelines to overcome such inequality. Both types of questions, the descriptive and the normative, will be only dealt with in a very abstract manner in this paper. However, these ideas partially emerged from my interpretation of already existing political research (esp. Hammar 1985, 1990; Layton–Henry 1990). I hope that they will also prove useful to further comparative studies of immigration policies and rights of immigrants. These could either focus on different forms of allocation of rights and rules of transitions between legal statuses or show in which way the normative idea of expanding citizenship for immigrants is actually taken up by collective political actors in specific national settings.

In order to identify the different statuses of citizenship relevant to migratory transitions, I will now reintroduce the terminology suggested by Tomas Hammar and combine it with the broader notion of citizenship proposed in the first chapter. Citizenship in the context of international migration in this still very simplified outline can take four or five different forms, which depend on two variables: nominal citizenship on the one hand, and residence on the other.[1] Our starting point is the question, Which citizen rights are dependent on these criteria?

Diagram 7: Dependence of rights on residence and nominal citizenship

		nominal citizenship of a country: yes	nominal citizenship of a country: no
residence in a country	yes	internal citizenship	denizenship / alien rights
	no	external citizenship	universal human rights

Full citizenship is generally only available for persons who are not only nominal citizens of a country, but also residents of the same country. However, this citizen status will not be completely lost when the person leaves the country. As long as he or she remains a nominal citizen there is a bundle of rights connected with this status, which Brubaker and Hammar have proposed to label 'external citizenship' (Hammar 1990:33f). As we have already mentioned, external citizenship includes as its most basic and universal element the right to return to the country of nominal citizenship. But there is more in it than that. Under international law, an external citizen may ask the representatives of his home country for diplomatic assistance and protection. Thirdly, there are rights that the person can exercise in his or her home country even when living abroad. Among this bundle may be rights to inherit, to own property, or even to take part in elections. A fourth type of right included in external citizenship comprises those established by bilateral or multilateral agreements, involving the state of nominal citizenship and the state of residence (e.g. social benefits granted according to a principle of reciprocity). This already blurs to some extent the boundary between the two communities of citizenship, as it is hard to decide whether such reciprocal rights are granted to a person because he or she is a citizen of country A, or because country B recognises him or her as having legitimate citizen rights as an alien resident in B. In the following chapter this interpretation will be discussed as one strategy of equalizing citizenship between two states. So external citizenship is important in many cases and, as has often been explained, its full weight is recognised only when it is absent, as in the case of expatriates, stateless persons, or

political refugees being denied exercise of these rights. On the other hand, it is obvious that there is also a significant gap between full internal citizenship and the rights available after leaving one's country.

While external citizenship represents a weakening of the impact of nominal citizenship due to a change of residence, this residence can in itself confer some rights irrespective of nominal citizenship. What Tomas Hammar calls denizenship is a special status of this type: a bundle of rights that depend on long-term residence in a state. Residence can have two different meanings: just being physically present in a certain country, or being an inhabitant on a long-term basis. There are some fundamental citizen rights that depend on merely being in a country and can even be enjoyed by short-term residents like tourists. We shall call these alien rights. Many other rights are only granted after a person has been registered as a member of a private household, has taken up education or employment, or has spent several years in the territory of the state. I have indicated already in section 1.1 that the boundaries between alien rights and denizenship are quite fluid in most countries of immigration, vary broadly between different states and do not depend only on length of residence as the distinguishing criterion. There is frequently immediate or quicker access to certain rights of denizenship for citizens of other member-states within supranational regional organisations (e.g. EC, Nordic Treaty), or for specific categories such as recognised refugees. In diagram 7 this indeterminacy of boundary between alien and denizen rights is symbolised by the dotted line.

As a last category of citizen rights we can mention those that neither depend on nominal citizenship nor on residence. These are basically what we call universal human rights. Some people might object to using the term 'citizenship' for such rights as are, at least theoretically, available for every human being.[2] But the essential features of any definition of human rights are identical with the definition of citizenship in section 1.4, which I have deliberately worded in order that this similarity should emerge. Human rights are generally conceived as equal for all human beings, (apart from those which are inherently specified for a particular category of persons, e.g. children or women), they are universal in a much stronger sense than nominal citizenship, and, most importantly, they too have to be vested in institutions guaranteeing their validity and exercise. Declarations of human rights constitute only a very weak form of

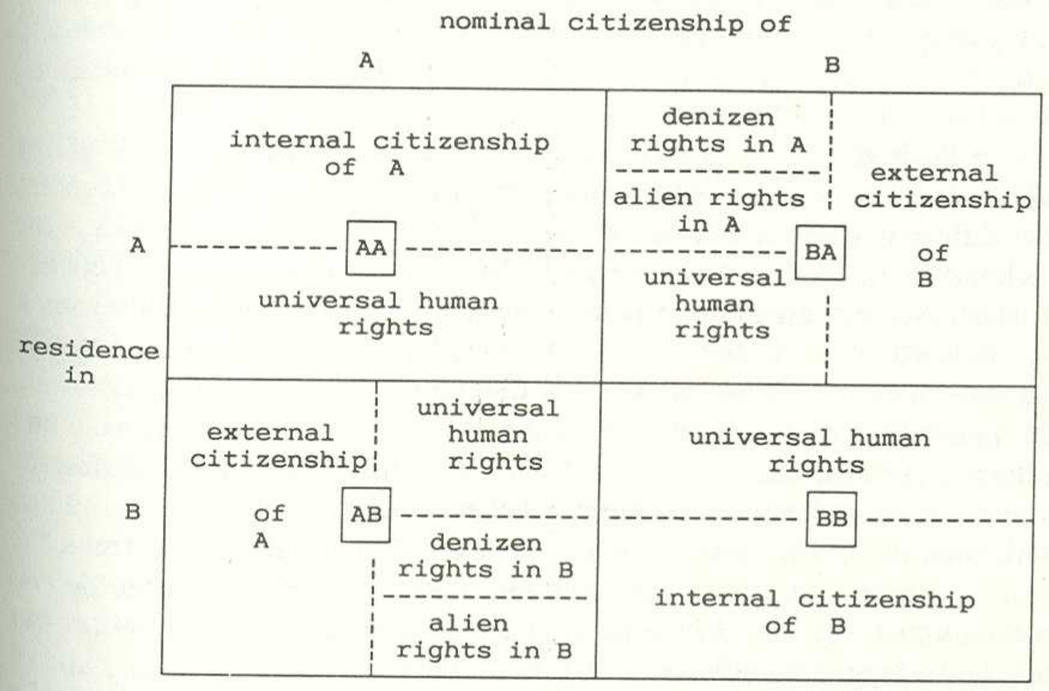
universal citizenship. In this century there has been an important development of establishing human rights, not only within the constitutions of individual states, but also within international law. Until not so long ago international law was almost exclusively concerned with the relations between sovereign states and the regulation of those international areas lying outside the effective jurisdiction of states. Since 1945 universal obligations of states towards individuals and universal rights of individuals within the territory of states have become a substantial and rapidly increasing part of international law. While this development has undoubtedly marked a progress in the formulation of human rights as norms, there is still a lack of corresponding institutions powerful enough to secure compliance with these norms.

In many respects human rights might seem to be no more than the residual set of rights common to the other three categories of internal, external and alien citizenship. But they can also substantially transcend these rights. Internal citizenship frequently does not offer sufficient guarantees against violations of basic rights by political authorities and repressive forces of the state. In these cases international arrangements for the protection of human rights can be of utmost importance. The frequency of convictions of Western parliamentary states in international courts of human rights and subsequent changes in national legislation demonstrate this. The same is even more true for foreign citizens and alien rights. Neither the guarantee of non-extradition of foreign citizens for political offences, nor the interdiction to return refugees to a country where they are likely to suffer political persecution, torture, or capital punishment, are universally observed human rights; but the first has been laid down in a number of bilateral and multilateral treaties, and the second has been elevated to the rank of a general principle of international law (Grahl-Madsen 1980:34 ff). These rights involve neither internal nor external citizenship, and though they can only be exercised in the country of present residence, they are not really dependent on being in and staying in this country. Theoretically, these rights should be guaranteed in just the same way, in case the person decides to take up residence in a third country. While the exercise of every right at its most basic level is always tied to specific states and their institutions, the special character of human rights, as opposed to what we have called alien rights, is that they should be theoretically transferable across national borders without any

restrictions and should not be subject to large variations of national legislation. This can only be guaranteed by supranational institutions limiting the sovereignty of states.

In a next step we shall now extend diagram 7 so that it no longer categorises citizen rights, but persons enjoying these rights. Just as we shifted, in the previous chapter, from migration rights in diagram 4 to a categorisation of migrants themselves in diagram 5, we will now try a similar move concerning positions of citizenship. For the sake of simplicity, I will merely consider the context of migration between two states, A and B, and the total set of persons will be limited to nominal citizens of both states; third countries as well as stateless persons and dual citizens will not be included in this diagram. Illegal immigrants would constitute a specific group among *BA*s and *AB*s of the following diagram, excluded from alien and denizen rights, but still entitled to human rights and elements of external citizenship.

Diagram 8: Citizen rights in two states depending on residence and nominal citizenship



Note: Persons are categorised AA, AB, BA, and BB; the first letter refers to the country of nominal citizenship, the second to the country of residence.

Only now we can see how differences between categories of citizen rights are related to differences in citizen status of individuals. This topography of citizenship can also be conceived of as an 'opportunity structure' for immigrants as individuals or collectives. At this level of analysis persons of equal positions emerge as having similar interests based on their structural location, and thus can be seen as potential actors in a process of expanding citizenship. Basically, there are two possibilities of action: either persons can change their individual positions according to the rules embedded in the structure, or they can try and change the structure itself by collective action. As I have already pointed out before, this present paper will be largely confined to the more general aspects of the structure itself, i.e. the contradictions between boundary maintenance and equalisation of citizenship within this configuration. The aspect of collective action is beyond the scope of this analysis, although I am fully aware that it is essential for spelling out all its political implications. However, I also want to defend my method of developing the argument. I feel that many authors inspired by the rational-choice approach are so eager to break down a social structure into options for individual actors that they fail to grasp the complexity and inherent tensions of the structure itself. I would prefer to introduce the actors only at a later stage, after the basic rules of the game have been sufficiently explained.

The decisive step in my argument is that we should now look at the whole diagram as one single community of citizenship, in which there are two different kinds of internal boundaries: a first which runs between the societies of residence, and a second which marks the difference between internal citizens, on the one hand, and denizens and aliens, on the other, within each of these societies. Both boundaries can be seen as internal because there are strong ties keeping together the parts that they separate: the first one is reconnected by common membership status of internal and external citizens, the second by common rights based on residence for internal citizens and aliens. The two boundaries are also intimately linked with each other: the second one can be seen as emerging from turning the first one inside out. If there were no migration we would just have the two communities, *AA* and *BB*, separated by state borderlines. Migration has the dual effect of modifying the external character of this boundary and of redoubling it within the societies of residence as the boundary between nominal citizens and aliens.

The four categories of persons in diagram 8 all enjoy different bundles of rights (assuming that the relevant traditions and current legislations in A and B are not identical). Any such difference can then be interpreted as a deviation from, or even violation of, the basic egalitarian and universalistic principles of citizenship.

In our presentation differences between internal and external citizenship, alien rights, denizenship and human rights can be compensated to some extent within each of the four categories of persons. However, if we take a closer look at some examples, we shall find that in most cases there can never be full compensation, which would bring an equalisation of citizenship between the four categories. Suppose that in state A there is little effective constitutional guarantee against police harassment of suspects and prisoners, but A is a signatory of an international convention on human rights under which everybody has the right to institute proceedings against his or her government in an international court. In our terminology, that would mean that in state A internal citizenship has less weight, which increases the relative weight of the human-rights element in their citizenship. But however important such international guarantees might be, they would rather make deficits in internal citizenship visible than ever be able to fill them.

The same is true for *AB*s and *BA*s with the modification that for some immigrants their external citizenship might have such importance that they are not really interested either in denizen rights or in gaining the nominal citizenship of their country of residence. External citizenship for *AB*s can outweigh the elements of citizenship granted by country of residence B in the following situations: the intended residence is only temporary; state A can grant its citizens abroad very effective protection; *AB*s enjoy a privileged social position in B, which makes them less dependent on explicit rights; there are little or no denizen rights in B and access to naturalisation is denied. I do not think that these conditions generally apply to post-war labour immigration in most European states, or in North America. Still, it seems that external citizenship has much weight for many of these immigrants, as naturalisation rates are often very low and immigrant movements demanding extensions of denizenship are rather limited in scale. If we see immigrants as actors trying to optimise their citizenship position, this attitude is not rational. But there are other elements that help to explain this: most important among them the

symbolic weight of nominal citizenship, enhanced by nationalism, and the formation of ethnic communities among immigrants in the country of residence. This will be explained in more detail in chapter 6.

Notes

1 A dualistic distinction, based only on the criterion of nomimal citizenship, has been proposed by J.P. Gardner (1990). He labels internal and external citizen rights as 'nationality citizenship' and alien rights, denizenship and universal human rights as 'new citizenship', because these are the elements which were legally developped on a large scale after 1945.

2 The argument for including denizenship and human rights in a broader concept of citizenship is supported by the conclusions of a British Commission on Citizenship: 'Citizenship exists currently on three levels: the limited level of legal nationality; the level of entitlements stemming from residence in an area, which accrue regardless of nationality; and the level of human rights guaranteed to all individuals irrespective of their nationality or residence status' (Report 1990:17).

CHAPTER FIVE

THE EQUALISATION OF CITIZENSHIP

We have assumed that there are substantial differences between the citizen statuses enjoyed by the four categories of persons in diagram 8, which cannot be fully compensated by the combination of different bundles of rights within each of the categories. From a normative point of view, any such difference should be seen as illegitimate. There are two different but, as we shall see later, broadly overlapping approaches to how to change this structure of unequal citizenship. The first one is to modify the rights attached to certain positions and to raise these towards higher levels, usually set by internal citizenship. The underlying principle can be identified as the equalisation of citizenship. The second approach is to modify the boundaries between categories so that changing positions becomes easier. This follows a liberal paradigm according to which it is not equality of final positions within the political community (or society) that is important for democracy, but equal opportunities of upward mobility. If applied consistently, this argument must demand rights of transition between the categories of our diagram. While this chapter will focus on the first of these propositions, the following one will take into account the liberal one as well.

Using the categorical frame provided by diagram 8 we could attempt to calculate an overall discrepancy of citizenship for any two states connected by migration movements of the categories AB and BA. But this still would not provide a guide-line for political action, as this overall discrepancy can be reduced in many different ways. Citizen rights cannot be represented as points in mathematical space, whose distance can be expressed in a single numerical measure. What we are looking for are qualitative changes, which bring closer the position of each category of persons to the others. The simplest way to operationalise this seems to form pairs of categories and to count each unilateral adjustment of citizen rights within such a pair as one strategy. This gives us twelve logically possible strategies for the whole diagram.

Half of these seem to have some significance from the point of view of specific populations, but there are strong inhibitions to state authorities

accepting changes along these lines. In a formal notation we can identify these six as:

$$AA \rightarrow AB,\ BB \rightarrow BA,\ AB \rightarrow AA,\ BA \rightarrow BB,\ AA \rightarrow BA,\ BB \rightarrow AB.$$

We shall first briefly consider each of these strategies in turn. In a strategy of equalizing citizenship without lowering it adjusting the position of AA to AB (or of BB to BA) would only make sense if internal citizenship in A were generally less valuable than denizenship in B. That can certainly be the case. Democratic experiences of exiles and emigrants in a state B may well inspire struggles for citizenship in their home country A. However, authorities in A will strongly resist such an import of democracy from outside unless they can be forced by a strong internal movement.

The reverse change occurs when AB is adjusted to AA (or BA to BB). There are two possible motives for that move. Either external citizens feel they are unjustifiably excluded from rights of internal citizens – the most frequent case is the demand for participation in national elections of the home country – or deficiencies of denizenship in B can be measured against the full range of internal citizenship in A. While the first demand is quite often accepted once it is raised by an exile community,[1] this is rarely effected by the substantially reduced political power of those who live abroad, but mostly depends on corresponding political interests at home. Political parties will press this demand if they can assume that their share of the vote would be larger among citizens abroad than in the country. The second argument is much less acceptable for any sovereign state B, which will in most cases insist on its own internal citizenship being the only acceptable benchmark for the rights of aliens within it. The rapprochement between an external citizenship of one country and the internal citizenship of another is also one of the features of a political fusion, in which state B is assimilated to A. However, it is rather the result of this fusion than a feasible strategy towards it. As I have mentioned above, West Germany pretended for several decades that citizens of East Germany were actually citizens of the Federal Republic. This awarding of an additional external citizenship had little practical effect except on those who managed to escape from the East. Only after the whole of Germany had been set on the road towards unification was the separate form of East German citizenship abandoned.

Finally, adjusting AA to BA (or BB to AB) would only be desirable if external citizenship for *BA*s were much more attractive than internal citizenship of their country of residence, under which conditions the nominal citizens would demand that their status be raised to that of the alien population. We have discussed this as a possibility in decolonisation, when former colonists' privileges are extended as citizen rights to the general population. This can be done either by raising the level of internal citizenship or by giving internal citizens access to the previously exclusive citizenship of the colonisers. With certain reservations, the 1948 British Nationality Act could be quoted as an example for the latter process. It was prompted by the decision of the Canadian government to adopt its own exclusive nationality law. London responded by redefining British nationality so that it would become compatible with that of its colonies and dominions in the process of gaining independence. Although this development was initiated by the white dominions, this example could later be emulated when most colonies became independent. The addition of a British Commonwealth nationality did not really change the content of citizenship in the new independent states. What it meant was that their population enjoyed a right of immigration to Britain and of treatment as British citizens after immigration.[2] So this historic example represents rather a form of dual citizenship, as we discussed it in chapter 3, than a rapprochement of internal citizenship towards an external one.

This leaves us with six strategies, which should be considered in more detail as they will turn out to be of more general significance than the ones just mentioned. We can sum them up into three pairs.

(1) A reciprocal adjustment of BA and AB
(2) A reciprocal adjustment of AA and BB
(3) An adjustment of BA to AA (or of AB to BB).

In order to decide which of these strategies serves best the aim of reducing the overall discrepancy of citizenship, we will have to introduce additional normative postulates and empirical assumptions. The normative postulates should help us to evaluate the relative importance of deviations from the fundamental principles of citizenship in each pair of comparisons; the empirical assumptions should tell us something about the likelihood that these comparisons actually are made by actors in the structure themselves. Thus we shall obtain a link between the normative and the political level of analysis.

As a starting point I shall propose the following postulates:
(1) Discrepancy of citizenship between different categories of persons living within the same society weighs more heavily than that between persons living in different societies.
(2) Discrepancy of citizenship between positions that can be held successively by one and the same person weighs more heavily than that occurring simultaneously between different persons.

The first postulate gives more weight to 'membership in a society' than to 'membership of a state'. The reason for this is that the density of interactions and the communality of interests are usually stronger between residents of the same territory than between individuals spatially separated but linked by common nominal citizenship. An increase in the density of citizenship within state territories became an urgent demand with the increase in the internal density of interaction brought about by the transition to industrial society. Of course, the frequency and intimacy of interactions are still very uneven within the large territories of nation-states, ranging from daily contacts within families to ephemeral encounters in public spaces. What is decisive for my argument is that class of interactions from which perceptions of common interests can arise. Where there are shared interests, persistent inequalities of rights need special legitimation.

In the case of immigrants this legitimation is provided by the belief that full citizenship must be confined to co-nationals and that access for foreign citizens presupposes some extent of assimilation into the nation as a cultural community. Nationalism not only makes it perfectly legitimate to give different rights to groups with identical interests, but it can actually help to create a difference of interest that confirms the legitimacy of unequal rights. It reinforces social segregation and thus works to reduce the density of interaction between groups of different ethnic and national origins, and it turns ethnic solidarity into an especially valuable resource for disadvantaged groups that have lesser chances of success. Market structures that enhance competition for scarce resources in most cases do not promote colour-blindness, but encourage the formation of alliances along ethnic lines as a rational strategy. Thus, a preconceived ideological distinction that is completely alien to principles of citizenship can be turned into real differences of interest. What I propose is to disentangle this quid pro quo by sticking to the rule that living together in one society

should entitle everybody to equal rights, and that additionally there should be certain collective rights for disadvantaged groups to undo discrimination, which cannot be justified with reference to citizenship.

Having established the validity of the first postulate for societies governed by national states, we can also apply it to smaller communal forms of social life. Discrepancies of citizenship within a small community may spark even stronger tensions than those within a larger, anonymous society. Different positions of citizenship within a single family household should be seen as especially intolerable. Priority should be given to equal access to either denizenship or naturalisation for members of such households, overriding other criteria like general waiting periods.

But what about families separated by migration? If we stick to the criterion of already established common residence as entitling to equal citizenship, would this justify restricting family reunification? That is certainly a problematic view; refuting it urges us to drop the purely topographical perspective, in which all persons are already located somewhere in the structure, and to look at the dynamic aspect of transitions between different positions. Generally speaking, this is what migration as a process is all about. It leads not only from one territorial location to another, but also from one status of citizenship to another.

Transition between positions of citizenship is where the second postulate applies. In its simple form it stresses subjective experiences of such changes, as opposed to those arising from outside observations of other persons. But we could extend it to include the relevant experiences of others with whom the person concerned has strong social ties. Migrations or changes of legal statuses of close relatives, friends, or neighbours will often be used as a relevant yardstick to evaluate one's own situation and perspectives.

This postulate has two obvious implications. The first is that a deterioration in the personal status of citizenship weighs especially heavily according to that criterion. In migration there are many forms of such deteriorations. By emigrating migrants lose the internal citizenship of their country and find themselves in the position of aliens at their destination. In many countries of immigration they are in constant danger of losing acquired denizen rights when they fail to meet certain requirements, such as continuous employment, uninterrupted residence, no criminal record, etc. And, finally, they are under threat of losing their residence permits, or

even being deported, as long as they are not naturalised. This would mean an involuntary exchange of denizenship for the old internal citizenship, and is certainly a deterioration, not because of the relative content of both bundles of rights, but because of the forceful character of the change.

The second implication is that an amelioration expected in the future might make a present lack of citizenship more tolerable. This obviously needs some temporal restraints: the longer obligatory waiting periods are before better citizen status can be reached, the less justifiable is the discrepancy (cf. Carens 1989). Additionally, we need some objective criterion of tolerability and should not accept expressions of personal dissatisfaction as a reliable indicator. The fable of the fox and the sour grapes can be quoted to illustrate the case when citizenship is subjectively devalued because it is so difficult to obtain.[3] The fact that immigrants are not always personally interested in a better position of citizenship in no way legitimises confining them to their present status, if a better one could be easily made available to them.

The acceptable trade-off between present grievances and future benefits must be strictly limited by another consideration. The second postulate does not only refer to changes that have actually taken place, but to potential transitions. Thus it is not merely an effective deterioration of status that violates our principle, but any unjustifiable obstacle to full citizenship. Removing such obstacles in a radical way means changing transitions from a bare possibility into a right. This is the subject of the following chapter.

If the second postulate had to be defended just on its own, we would run into difficulties. Why should personal experience of inequality establish stronger claims than simultaneous inequality between cohabitants? If we do not give a clear priority to the first postulate we would hardly ever arrive at proposals for fundamental changes in citizenship. All that should be done, according to the second principle alone, is to remove some stumbling blocks on those paths to improvement already established. Only if the first postulate has already been firmly established is the second one reasonable and important. In some cases it just gives additional weight to arguments based on the first postulate. But in others it stretches the imperative of equal citizenship beyond the boundaries of common residence.

In order to apply the second postulate, we should also know something about the relative frequency of transitions from one position to another, and we should give more political urgency to discrepancies that occur in frequent transitions than in rare ones. The following is an assumption about numbers of nominal citizens of A changing over time their position in our diagram. This hypothesis illustrates a general case and can be modified to apply to concrete examples for which data are available:

$$n_1(AA \rightarrow AB) > n_2(AB \rightarrow AA) > n_3(AB \rightarrow BB) > \\ > n_4(AA \rightarrow BA) > n_5(AA \rightarrow BB) > n_6(AB \rightarrow BA).$$

n stands for the number of persons and → symbolises the transition of a person from one category to another. As diagram 8 is symmetrical, we get a second analogous formula if we exchange A for B and B for A in the above.

Our assumption says that the most frequent change of position will be for a citizen of A to enter country B (adding tourists and immigrants). Next in frequency is return migration of citizens of A to their country (tourists and temporary migrants coming back, while emigrants stay in B). Already much less frequent will be naturalisations of citizens of A in country B. Fourth comes a transition in which citizens of A living in their country change their nominal citizenship (e.g. by getting married to a citizen of B, or by choosing the citizenship of their parents at their majority, while they had been attributed citizenship of A before under *jus soli* legislation). Fifthly, there may also be some parallel changes of nominal citizenship and residence (this could result from short term naturalisations of immigrants in B, or from ethnic citizen immigration into this country). Least frequent according to our assumption, but not completely excluded if we extend the time interval, is an inverse change of citizenship and residence (think of a person of immigrant origin and foreign citizenship in B who naturalises but then decides rather to live in the country of his or her origin).

If we illustrate this with a numerical example, we could assume that populations *AA* and *BB* at time t_1 are 1,000,000 each, and *AB* and *BA* 100,000 each. Suppose that the numbers of transitions are identical for citizens of A and of B and that we count the following frequencies: n_1 =

1,000, n_2 = 900, n_3 = 100, n_4 = 10, n_5 = 5, and n_6 = 1. Then the overall change in the distribution at time t_2 would be minimal: there is a slight decrease in *AA*s and *BB*s to 999,990 and a corresponding increase in alien residents *AB* and *BA* to 100,010. But the number of persons who have experienced a change in their citizenship is quite substantial: it adds up to 4,032. Now the bulk of them might have been tourists or short-term migrants who were not deeply affected by this change. But even if we exclude all those who first left their country of citizenship and then returned to it within the chosen time interval, there remain 432 persons for whom the transition must have marked an important experience in their life.

If we now turn back to the three strategies for reducing discrepancies of citizenship in our model, and apply the normative principles and the empirical assumption, we shall find that strategy 1, bringing AB and BA closer to each other, should certainly not be at the top of our agenda. Transitions between AB and BA are the most unlikely ones, concerning only two persons in our example. The first postulate, giving priority to equalizing citizenship among common residents, does not apply in this case. Strategy 2, which mutually approaches the positions of AA and BB, can only claim to be slightly more important because of the second normative postulate, as it involves a somewhat larger number of persons (ten in our example). There is, however, little reason for the bulk of residents in A and B, separated by a territorial border, to be strongly interested in setting their standards of citizenship according to the model provided by the other state. Strategy 3, however, bringing alien residents and denizens closer to internal citizenship, concerns the largest number of persons (200 in the numerical assumption), and it follows the first and overriding postulate that common residence is the foundation of the strongest claim to equal citizenship. The remaining 3,820 transitions are related to the six other possible adjustments of citizenship positions, which we have discussed earlier and discarded as having less significance as political strategies. The common residence criterion would apply to only twenty among them.

Thus we should certainly give priority to the third strategy in general cases and put the second one in second place. It is important to remember at this point how we have arrived at that ranking. First, we excluded half of all possible strategies as only applying to special cases and being not

very convincing as arguments in a struggle involving populations interested in change on the one hand, and state authorities on the other. Secondly, we introduced two normative rules that should apply from the point of view of the populations concerned. Thirdly, we calculated how many persons are likely to be affected by the different changes. This can either be seen as part of the normative argument (grievances of larger numbers should be treated first)[4] or of the political one (struggle for changes in which larger numbers have stakes are more likely to be successful).

The introduction of numerical calculation at this point of the argument might seem to contradict my earlier statement in chapter 2 that the number of persons enjoying a particular combination of rights should not be taken as an indicator of the importance of these rights in a structure of citizenship. The difference is that we are now comparing categories of persons, whereas in the previous chapter we tried to correlate rights. I can illustrate the distinctive viewpoints with an extreme example. Suppose that there is in a society a general right of life, with a single exception for one person only, the king, who is killed in ritual regicide after ten years of rule. The person chosen to become king can always refuse his appointment. For many, however, the honour of ruling is more important than the certainty of being killed at a later date. Establishing the universality of the right of life might not seem an urgent priority in this society, because virtually no one is in a position in which he can consistently claim to be harmed by a denial of this right (the king having chosen his own fate). If we see the polity as a community of political actors sharing common institutions and sets of rights, numbers within positions representing common interests will be important. However, we could hardly say that the right of life is universal in this society: one single exception is enough to violate the principle of universality and changes the quality and nature of the right itself.

What we have not included in the sequence of arguments for equalisation of citizenship is a proper assessment of the point of view of state authorities, and possible changes that could be seen in their interest. A reformist strategy would certainly try to find out which changes are most likely to be successful because state authorities might be inclined to concede them more willingly. I use the term state authority to characterise actors with specific interests embodied in state bureaucracies. The real picture is more complicated, of course, involving also different classes and

political currents among the general population, some of whom oppose an extension of citizen rights because they see them as their legitimate and exclusive privilege. However, including this third type of actors should not lead to different results. If there were just two groups of actors, one strongly interested in expanding citizenship (in most cases including immigrants and 'nationals'), the other strongly opposed because it wants to maintain the exclusivity of certain citizen rights, the fight would be decided by the relative power resources and means of mobilisation of the two. There may be room for either compromise or defeat, but there is no possible coalition of interests. The situation becomes only more complex if the state is introduced as a third actor that shares some interests with each of the two groups and could engage in coalitions with either of them. There is no doubt for me that present governments in most countries of immigration are largely dependent on coalitions with groups firmly opposed to the extension of citizenship for immigrants. However, many developments cannot easily be explained if specific interests of governing bureaucracies are ignored.

A detailed analysis of such specific state interests in relation to citizenship is beyond the scope of this text. So for the present purpose I would suggest accepting ongoing legal evolutions of citizenship that have not been forced upon governments by popular movements as an indication of these interests. What emerges from empirical observations of this kind is, interestingly enough, a reversal of the list of priorities that we have just established.

The most common development on an international scale has been a rapprochement of citizen rights along the lines of AB → BA. This is generally called the 'reciprocity principle'. If a state B is willing to concede a certain right to nominal citizens of A, then state A should also give a similar right to citizens of B in its territory. This principle has been mainly applied to social rights, but to some extent also to political rights. It has less importance for civil rights for the simple reason that most of these are now seen as human rights that should be granted by every state to everybody. In a number of agreements local or even national voting rights for aliens have been conceded to those groups in whose countries of origin a citizen of their present country of residence would also be allowed to vote. Among others, Portugal and Brazil, Finland and the Scandinavian countries, the UK and the Irish Republic, as well as some other

Commonwealth countries have adopted such arrangements. In some cases, one of the states introduced general local voting rights for denizens, while the other restricted these rights to citizens of the first country only; reciprocity was a motive only for the second of the partners. This is true for Finland, and the same type of solution was intended in the German province of Schleswig-Holstein before the Constitutional High Court decided in 1990 to abolish local voting rights for aliens there and in Hamburg. The reciprocity principle has found much wider application in social rights, where it led to the formation of a 'welfare-state cartel' excluding resident aliens who had immigrated from poorer countries (Bauböck 1988).

Reciprocal adjustment of AB and BA is a strategy to enrich external citizenship with elements of the internal citizenship of the country of residence. The very exercise of external citizen rights depends on a fundamental reciprocal agreement enshrined in international law: that a state A shall allow the representatives of another state B to operate with relative freedom within its territory in taking care of citizens of B who are present in A. The policy that we are discussing here goes beyond external citizenship because it involves not only mutual respect for external citizen rights, but also mutual rapprochement. This principle demands that the receiving state shall not only tolerate immigrants' external citizenship, but should accept active obligations towards them. The provision of benefits is shifted from the state of nominal citizenship to the state of residence. However, entitlement is ultimately still founded upon nominal citizenship and not upon being a resident. This becomes especially obvious in cases where social rights are immediately accessible to citizens of a particular country, whereas persons of other origins have to comply with criteria for denizenship – like long waiting periods, or continuous employment – before obtaining similar rights.

Existing forms of supranational citizenship such as the status of EC citizens are primarily expressions of a communality of external national citizenships, and have not yet been transformed into a true internal citizenship of a wider community. Whereas in the economic system markets will be transformed after 1992 from common into single ones, there will be no parallel unification of political systems. As I have pointed out previously, the common EC citizenship will primarily enhance the rights enjoyed by external citizens, but will still remain only residual

compared to the more substantial national forms of internal citizenship. This homogenisation of *external* citizenship characterises the process of slow fusion on a (Western) European scale, compared to the quick fusion between the two German states, which extended *internal* West German citizenship from the Western to the Eastern state.

It is easy to see why the reciprocal adjustment of external citizenship can be of special interest to state authorities. While it does not generally strengthen ties between the *populations* of both political communities, it creates a network of mutual engagements and obligations between *states* that can enhance the overall stability of the international political system, and further the interests of all governments involved.

The second strategy involving a mutual adjustment of internal citizenship between two states has a wide range of applications in international politics too. This is not a principle of reciprocity, but of convergence. It can only relate to internal citizenship and human rights, but not to the special position of citizenship of immigrants and alien residents. We can certainly observe a process of gradual convergence in this respect, at least among European states of immigration, since World War II. This is not only true for the content of internal citizenship, but also for access to it. The wide differences between naturalisation principles based exclusively on *jus soli* or *jus sanguinis* have been gradually eroded by the introduction of mixtures of both in most states, and by the strengthening of a third principle, referring to residence, which Tomas Hammar aptly proposes to call *jus domicili* (See Brubaker 1989b, de Rham 1990, Hammar 1990). Even more significant than the gradual convergence of purely internal citizenship has been a process of extensive human-rights legislation on an international scale, the European Convention on Human Rights being its most salient contribution as it restrains government interference with these rights more effectively than other treaties and declarations.

While the convergence of internal citizenship is of little immediate concern for immigrants who are resident aliens either of their own will or because they are denied naturalisation, they have a strong interest in the extension of human rights. As human rights are common to all four categories of diagram 8, any progress in this matter will have positive side-effects on immigrants in positions AB and BA. From the point of view of state authorities, the same process involves more problems than rapprochement based on reciprocity, because it is a much stronger

restriction on sovereignty. I have contended earlier in this paper that human-rights legislation can be effective only if there are international institutions embodying and guaranteeing rights against abuse by national governments. For governments to agree to this there must be a positive balance in the trade-off between losses in sovereignty and gains from membership of international coalitions. The gradual convergence of internal citizenship can be partially explained rather as a side-effect of international co-operation than as a strategy consciously employed by governments. But accelerating this convergence can also be of strategic value in the building of permanent coalitions, and in processes of 'slow fusion' like the present one within the EC.

Why should the strategy of extending human rights not be the most valuable one from the migrants' point of view? Some people would certainly argue that the best way to equalise and universalise citizenship in the world is to transform citizen rights into human rights. While I completely agree with the normative foundations of this view, I have some reservations about its feasibility as a political strategy. If we exclusively rely on progress along this line, it will be very slow. This is because effective human-rights legislation needs a consensus of a large number of states and governments, and generally speaking the weight of human rights will be less than that of either external citizenship or denizenship. By strengthening the intermediary positions between human rights and full citizenship we can substantially increase the overall weight of the package and improve the position of specific populations. In a world of nation-states it is, for example, rather utopian to hope for universal voting rights that are transferable across borders, just like human rights. But demanding voting rights for aliens who meet a given residence criterion makes sense and has already had some success.

How do state bureaucracies evaluate this third strategy of adjusting alien and denizen rights to internal citizenship, which has turned out to be the most important, even if not exclusively relevant, strategy, from the point of view of migrants? Governments can pursue unilateral, bilateral, or multilateral changes of policy along this line.

Unilateral changes involve only the country of residence. Their advantage as a strategy is that they cannot be inhibited or delayed by external sovereign parties. There may be some consultations with representatives of the sending states, but in many cases these have not

really influenced decisions. The substantial extension of denizenship which took place in Sweden in 1975 could serve as an example. Other Nordic countries followed only at a later stage. Leaving aside the general norms of citizenship, which state administrations or political parties may share to some extent, what sort of governmental self-interest can be involved in such decisions? They may hope to gain support from immigrant populations who are seen as a future electorate (especially when local voting rights are granted, but also when they expect that most denizens will later become naturalised citizens). A second incentive could be fear of internal disruption by a large population that lives at the margin of society and cannot voice its grievances through channels open to citizens. Extending citizenship can also be seen as a vehicle to 'integration' of this sort. A third reason might exist in some countries that were colonial powers. By giving immigrants from ex-colonies the status of nearly full citizens, governments may hope to keep up valuable political and economic ties with these countries and to be able to act as protecting powers in the international arena. Fourthly, if a government encourages immigration for demographical or economic reasons, it will be more inclined to grant citizen rights, as these may work as an additional pull factor. Finally, long-term settlement of immigrants will strengthen all these governmental interests, while short-term or fluctuating migration will weaken them.

In most cases such arguments are outweighed by other interests. The basic reason why internal legal discrimination against immigrants as alien citizens is in the self-interest of state bureaucracies is that is widens their space of action. A lower level of rights for aliens enhances the possibilities of legitimate regulation and intervention by the receiving state (Lenhardt 1990:203). This general interest manifests itself in more specific policy goals such as: keeping access to full citizenship restricted to a population whose loyalty is based on cultural assimilation into a national community; using restrictions of rights of resident aliens to import, allocate internally and export labour-power according to economic needs of employers; keeping immigrants socially segregated from the national population in housing areas and in the education system.[5] Since 1973 West European states have been rather engaged in a competition of fighting immigration than of attracting it. Adding to that the pressure exercised by groups of the population and parties that want to restrict immigration and equality for

immigrants, it will turn out that unilateral ameliorations of denizenship need either a favourable political conjuncture or strong internal pressure. The slow increase of denizenship that has nevertheless taken place can be attributed mainly to the fact that so-called guestworkers turned out to be long-term immigrants and that their settlement was actually reinforced by attempts to stop new immigration. Few observers have yet fully taken into account how this older immigration will be affected by more recent flows, which are now on top of the political agenda and have quite often pushed aside concerns about denizen rights.

Bilaterally agreed changes merely cover nominal citizens of a single state of emigration. Thus they are relevant in cases where most immigrants come from the same country, or one of a few countries, and relations between sending and receiving states are stable and friendly. Michael Walzer proposes such agreements for 'guest workers' as one way 'to set immigrants on the road to citizenship'.

> The host countries might undertake to negotiate formal treaties with the home countries, setting out in authoritative form a list of 'guest rights' – the same rights, roughly, that the workers might win for themselves as union members and political activists . . . Then, even when they were not living at home, the original citizenship of the guests would work for them . . . and they would, in some sense, be represented in local decision making (Walzer 1983:60).

Bilateral arrangements do not necessarily involve reciprocity. There can be an exchange of interests, in which the granting of denizen rights to alien residents is only one element in a larger package. In many cases, however, sending countries are very reluctant to press such demands. Even if the oft proclaimed policy of encouraging return migration is sometimes just propaganda, governments of sending countries are mostly interested in strengthening the ties of emigrants to their home countries, not least because they hope that this will keep remittances flowing. Denizen rights, and easy naturalisation especially, are therefore often seen to run counter to the interest of sending countries. Additionally there may be political fears that emigrants enjoying democratic rights will escape the control of the regimes to which they are bound by nominal citizenship, or that they might incite resistance after returning home.

Some regulations arranged according to a principle of reciprocity can also be listed among the changes we are discussing here. Reciprocity of rights will largely be a fiction if migration between two countries flows only into one direction. The adjustment of rights is *de facto* unidirectional in these cases. When there are many BAs but almost no ABs then an agreement to grant BAs some rights under the pretense that ABs will enjoy the same rights in country B only conceals the fact that such measures are aimed at bridging the gap between aliens and internal citizens in A. Such fictional reciprocity can, however, considerably narrow the margins for change, as it presupposes comparability of internal citizen rights in sending and receiving countries.

As an alternative to reciprocity we could suggest a principle of *complementarity* of interests. This assumes that interests between sending and receiving governments can and will often be contradictory, but need not be so in every respect. There can be interests that complement each other so that migration and citizenship for migrants emerge as mutually beneficial. If we take an example that leads us beyond the frame of our diagram, we could assume that there are many reasons for the state of residence to encourage naturalisation of long-term immigrants. But there may be other reasons for a sending state to be reluctant to release its citizens from their nominal adherence. If the guide-line is reciprocity then both states will agree procedures for changing nominal citizenship that will not make it easy for immigrants in their territories. If the receiving state decides to act unilaterally, it will grant citizenship according to its own criteria and probably has to reckon that there will be a large number of informal dual citizens, who have not been released by their former state. However, if both governments see their interests as not mutually exclusive, they might well decide to introduce a form of dual citizenship that is recognised in both countries.

It will be rarely just their own interests that urges them to do so, but a pressure to take into account those of immigrants as well. Migrants are continuously forced by circumstance to reconcile conflicting interests between orientations towards the home country and the state of residence. The best solutions to these subjective conflicts will be those in which they do not have to decide for one interest against the other, but find a way of combining them. The extended acceptance of dual citizenship could be

such an innovation in the international political system, generated by immigrants' refusal of national assimilation.

Multilateral changes, finally, offer greater chance of including a large number of immigrants of several countries. If they are guaranteed by international institutions, they are also less dependent on conjunctures of interstate relations. Additionally, they can include provisions for aliens of states other than the signatory states. A governmental motive for entering such agreements could be, for example, an equalizing of conditions for economic competition, which are often biased by different access to reserves of immigrant labour and different legal standards for the employment of aliens.

Going further along this path one would arrive at a specific corpus of alien rights as part of universal or continental conventions on human rights. This must still be classified among strategy 3, and not 2, in my notation: it involves the specific difference between resident aliens and internal citizens, and would allow for special rights applying to the former, but not to all human beings. The right of asylum can be mentioned as the most important among the very few rights formulated in this way. However, multinational co-operation can have its drawbacks too, as this example demonstrates. In the last decade we have witnessed a process of infringement on this right by Western European governments, in which the most restrictive practices of each member-state were taken as a yardstick for adjustments by the others (cf. Cohen/Joly 1989). This development proves that institutional guarantees of the right of asylum, mainly incorporated in the UNHCR, presently are much too weak to maintain, against mounting pressures, a basic level of universal citizenship, which this right proclaims. A second field in which international institutionalisation and coordination of alien and denizen rights seem urgent is the right of family reunification. It should be specified in what way Article 8 of the European Convention on Human Rights applies to immigrant families.

My argument in this chapter has tried to substantiate strategies for extending present forms of nationally bounded citizen rights by starting from a transnational concept of citizenship. What diagram 8 would suggest is that there is an intermediate level between a global society and societies within states. We could analyse this phenomenon as the slow emergence of transnational societies. Migration is just one, but seen from the

perspective of citizenship, a decisive contribution to this development. It forces consideration of the institutional embedding of citizenship rights, not only within national legislation or on the global level of international law, but also in relation to several sovereign states. Citizenship rights of migrants could become the political expression of multiple societal membership.

Whereas the boundaries of states are defined by laws, enforced by bureaucratic practices and backed up by the state monopoly of legitimate violence, the boundaries of societies are much more fluid and emerge only from social discourse. The limitation of citizenship to populations within a state presupposes a discourse of nationalism, which defines societies as coinciding with sovereign nations. Extending citizenship not only beyond state membership, but also beyond residential membership of national societies will only become possible if a wider notion of society itself becomes more acceptable.

The idea of multiple membership gives priority to modifying positions of citizenship for those who have already established social ties within several states. Such ties are not only strong for immigrants and remigrants, but also for their family members who have not had the experience of migration, because they were separated from their husbands, wives or parents, or because they were born in the country of immigration. Multiple membership establishes a claim that goes beyond the imperative of equal citizenship based on common residence: it claims additionally the right to choose one's society of residence. Rights of migration formulated from this perspective transcend those already included in present forms of citizenship (see Chapters 2 and 3) or substantiated by exceptional circumstances, such as those of refugees. However, the equalisation of residential citizenship and the extension of migration rights can also become contradictory demands under certain circumstances. This will be the focus of Chapter 7.

Notes

1 In Austria, voting rights were granted to citizens abroad only recently after intensive lobbying by some Austrians living abroad. Participation among these external citizens was, however, very low in the general election of autumn 1990.

2 Immigration rights have been gradually restricted since then and British nationality was newly defined in 1981 so that *jus sanguinis* elements became more dominant (cf. Macdonald 1987).

3 This constellation is exactly the reverse of the one analysed by Peter Schuck as a 'devaluation of American citizenship' (Schuck 1989). It seems that citizenship can either be devalued subjectively by making access too difficult (our present example), or objectively by making access too easy (Schuck's point). The sour grapes paradox, which helps to illustrate the first case, is explored by Jon Elster (1984).

4 See the long controversy sparked by John M. Taurek's article, 'Should the Numbers Count?' (Taurek 1977).

5 Certainly, social and economic segregation is not primarily determined by an inequality of rights. Immigration states in which the largest and most discriminated groups enjoy internal citizen rights (such as the UK, the USA, Canada and Australia) prove that racism cannot be uprooted through purely individual equality of rights. However, in those countries with a long and ongoing tradition of legal discrimination of immigrants, governmental policies do reinforce and legitimate such segregation. Establishing formal equality of citizenship will therefore be a necessary condition for moving beyond it towards collective rights against ethnic and racial oppression.

CHAPTER SIX

EGALITARIAN AND LIBERAL APPROACHES, AND RIGHTS OF TRANSITION

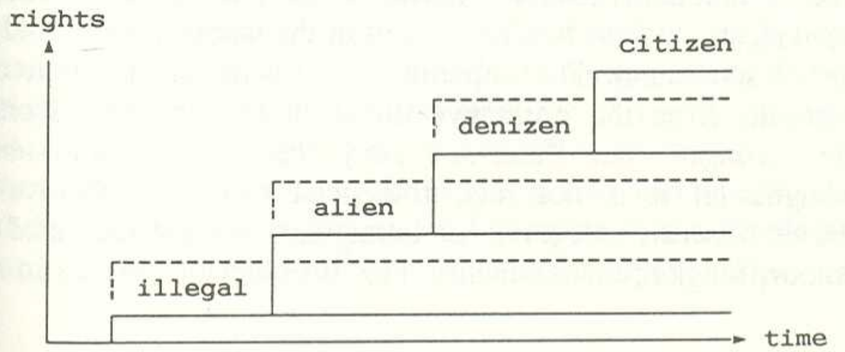
In the last chapter we discussed strategies for a gradual equalisation of citizenship between different categories of nominal citizens and residents within communities larger than nation-states. My main argument was that continuous movements of mass migration in several regions of the globe created such new types of communities by multiplying social ties across national boundaries. The economic and social foundations of this process were outlined by Robin Cohen (1987), who analysed the formation of regional political economies and supranational labour markets, within both of which migration becomes an almost permanent feature. In present capitalist states, a fundamental mismatch between these economic developments and political ones has led to an erosion of citizenship. It raises the question whether societies in which up to 20 per cent of the adult population is disenfranchised are really more democratic than before the abolition of property restrictions and male exclusiveness in voting rights. This mismatch becomes especially obvious in the ongoing West European integration. Present immigrant populations, as well as likely future migration flows, mainly come from outside those states intending to establish a limited form of common transnational citizenship.

This chapter will explore further the strategy of raising the rights of immigrants towards the standard set by internal citizenship. Should this approach develop denizenship, or promote easier naturalisation? Some complexity will be added to the analysis by considering the previously excluded categories of illegal immigrants and dual citizens. I will also take into account the fact that the egalitarian approach advocated so far is not the only possible answer to the emergence of inequalities of citizenship through immigration. A liberal argument could insist that a choice of opting for a different position of citizenship would compensate for such inequalities.

6.1 Transitions in a hierarchy of citizenship

In order to illustrate the difference between the egalitarian and the liberal approach, I will reduce the context of citizenship to the receiving state only, and assume that there is a clear hierarchy of positions of citizenship: from the lowest level, occupied by illegal immigrants, to that of nominal citizens. In the following diagram this original hierarchy is represented by the straight lines. Generally there is no guaranteed access to a higher position; those who are excluded from naturalisation, denizenship or regularisation of their illegal status, or who for some reason do not aspire to a higher position, often stay indefinitely on a level beneath full internal citizenship. This is indicated by the vertical continuation of the lines beyond the point of access to a higher status. Two qualifications are important. Firstly, not all immigrants start in the lowest position: many of them enter legally as registered aliens; others such as EC citizens within other EC member-states, get immediate access to a position of denizenship; and some groups are even offered the status of full internal citizens at the point of entry (remigrants who have not abandoned their original citizenship, or 'ethnic citizens', such as Jews in Israel and Germans from Eastern European countries in West Germany). Secondly, conditions for access to higher position are not equal for all immigrants. These conditions are represented in the following diagram by the single dimension of time of residence. However, there are other criteria, such as marriage with a nominal citizen, employment and housing situations, criminal record, proof of loyalty and assimilation, besides special conditions for immigrants from certain countries.

Diagram 9: The egalitarian approach – raising positions of citizenship



Note: The dotted line in the diagram represents modifications of the original structure according to egalitarian guidelines, which follow the strategy 3 as explained in the previous chapter.

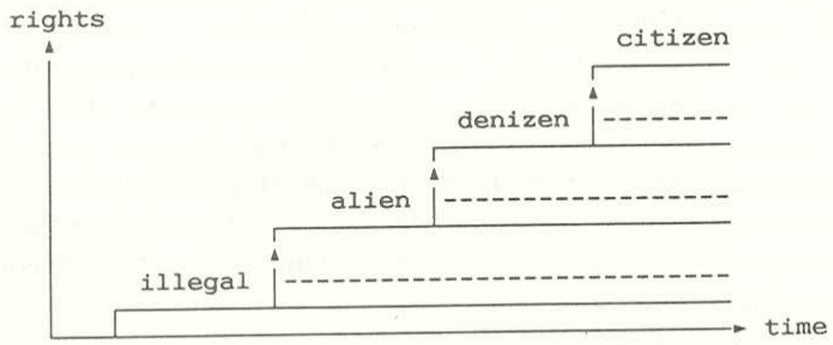
This argument would run as follows:
(1) Illegal immigrants, or undocumented workers, have offended against national legislation. Their situation has been exploited in order to undermine social rights and standards in the labour and housing markets. Nevertheless, this does not give the receiving state unlimited rights and powers in dealing with these groups. Apart from universal human rights, which must be respected, there are also certain rights that can be deduced from actual membership of the receiving society.[1] The most important of these rights would be protection against arbitrary deportation regardless of length of residence, family situation, or possibilities of safe return to country of origin. Furthermore, employers and house owners have been themain beneficiaries from breaking the law. Thus sanctions should be directed mainly against these persons, and not against the immigrants themselves. Although all these arguments are obviously primarily aimed at making access to regular status as legal aliens easier, there would be necessarily side-effects which raise the position of undocumented immigrants themselves.
(2) Alien citizens whose residence and employment conform to legal standards are nonetheless excluded from many social and political rights. However, paradoxically, their most important grievance concerns civil rights, which are usually assumed to be fully granted to them. The exercise of civil rights depends fundamentally on the right of residence, which is strongly limited for those who have not obtained the position of denizen. Short-term residence permits render their status in society fundamentally insecure. Additionally, in many countries there are severe restrictions on basic civil rights, such as free movement in the labour market and freedom of internal settlement. The imperative of raising the position of aliens, which results from the normative thrust of the concept of citizenship, becomes stronger when there are many denizens enjoying substantially better rights. If it is not met, this need can draw divisive internal boundaries between categories of immigrants mainly identified by their skin colour, religion, or nationality. This is especially obvious in some EC

countries. In Europe raising alien rights has also become a more important issue recently because of rising numbers of new immigrants from the Southern and Eastern hemispheres. A policy of 'integration' that concentrates exclusively on furthering denizen rights and naturalisations, could well mean ignoring the emergence of a new underclass (Rex 1989). In contrast to denizen rights, alien rights must also take into account short-term and pendulum migration. There are currently moves in Germany and Austria to imitate the especially harsh Swiss policy towards these groups, which confines employment permits to seasonal labour and denies them elementary civil and social rights such as family reunification and unemployment benefits.
(3) The argument in favour of raising denizen rights has been extensively developed in recent literature on the subject; there is no need to repeat it here (Among many others: Castles 1984, Hammar 1990, Layton-Henry 1990). It has strongly focused on political rights such as voting rights or access to public office. However, we should bear in mind that in many countries of immigration even the basic requirements of denizenship are still missing. These are: entitlement to permanent residence that is not subject to the discretion of authorities; the right to take up employment or set up a business under the same conditions as nominal citizens; and an equal position in all social rights.

The main concern of what I have called the liberal approach is not with these demands to raise lower positions of citizenship, but with the possibilities of transition and upward mobility. This is indicated by the upward-pointing arrows in diagram 10. The argument is basically that there is nothing wrong with discriminating against illegal immigrants as compared to legal ones, against short term resident aliens as compared to permanent residents, and against denizens as compared to nominal citizens. These forms of discrimination might be considered necessary from the point of view of state authorities, or native populations. What is required in order to meet liberal standards of justice is a fair chance for immigrants to opt for a better position. Fair chances can be defined in our context as demanding a certain effort from the part of the immigrant who benefits from a change, but excluding unfair or excessively restrictive procedures for access to a higher position. We can operationalise this concept by reducing the requirements for access to the simple and single criterion of length of residence (cf. Carens 1989). Thus an illegal

immigrant, or undocumented worker, could be deported or face other legal sanctions within a certain period after his or her arrival, but would be granted amnesty on providing proof of long-term residence.[2] Legal alien residents may have to pass the test of a few years of uncertainty and strong restrictions of their rights, but they should be reassured to get into the better position of denizen if they decide and manage to stay. Finally, denizens should not worry about remaining discrimination, such as denial of voting rights or public office, as they know that they can gain access to all that if they naturalise after a certain period of residence.

Diagram 10: The liberal approach – establishing rights of transition



I would like to dispute whether this liberal argument is really compatible with the egalitarian imperatives of citizenship. Internal boundaries between positions of citizenship create a non-egalitarian structure, even when they can be crossed by individuals with relative ease. As long as the lower positions are continuously filled up by new immigrants, the structure of inequality can remain stable in spite of upward mobility.

However, the liberal argument adds an important point to the egalitarian one. Even the policy outlined above does not assume that positions of citizenship can be made completely equal (i.e. that illegal immigrants can enjoy the same rights as nominal citizens). As long as the overall structure remains hierarchical, the possibility of transition will be essential for the interests of the ones in lower positions. The crucial qualification needed to incorporate the liberal emphasis on mobility into the egalitarian model is to conceive of transitions not just as possibilities, but as rights.

If the authorities of the receiving state can make discretionary decisions about granting a higher status, the position of those denied access remains

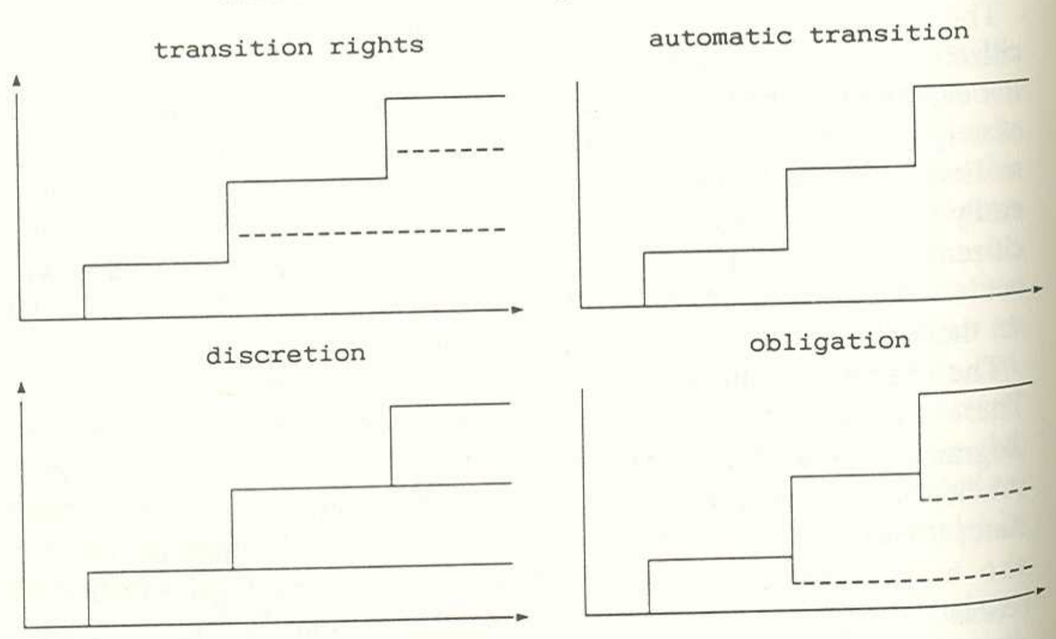
just as before. They might even feel subjectively that it has deteriorated because they can now compare themselves with others in similar starting conditions who 'made it'. Secondly, not all immigrants are necessarily interested in upward mobility within the structure; but those who actually aspire to get into the higher position have a different level of expectation, and thus they are specifically aggrieved if denied access. Taking the power of decision from the authorities and handing it over to the immigrants changes the structure of citizenship itself. It adds an important right to the bundle incorporated in the lower positions. If an illegal immigrant achieves a right of regularizing his or her status, this modifies the original position substantially even if this right is not exercised immediately (provided that it is not an amnesty offer, expiring after a certain date). The same is true for alien citizens who are entitled to permanent resident status, but do not apply for it because of plans of return migration: knowing that they can apply at a later date if circumstances change makes their position much better than it was before they met the requirements for denizenship. Finally, most important in this respect is a right of naturalisation. This would indicate a quite fundamental change in many countries of immigration that have maintained that naturalisation is an issue for the receiving state exclusively.

The idea that establishing rights of transition actually raises positions of citizenship is expressed by the dotted lines in diagram 10. It turns out that the egalitarian and liberal approaches are very different in their perception of original positions, but they come quite close to each other with regard to final ones. Still, the egalitarian model has the advantage that it can easily incorporate rights of transition as a further element of equalizing citizenship; but it also goes beyond that by adding other rights, which could reduce discrepancies between the original levels. This is why I have set the dotted lines at a higher level in diagram 9 compared to diagram 10.

The egalitarian and the liberal approaches differ in one further aspect. There are more modes of transition from a lower to a higher status in diagrams 5 and 6 than the two just discussed: a transition can be conditional on discretionary decisions by the authorities of the receiving state; it can be a right based on entitlements of the immigrant; but it can also be automatic, or even an obligation, entailing legal sanctions for refusal. Turning a transition into an obligation is the opposite of establishing rights of transition: it diminishes the bundles of rights

attached to the lower status. Liberals and egalitarians should generally agree to reject this (with the possible exception of the transition from illegal to legal alien status). Automatic upward transition differs from discretionary decisions by guaranteeing access to a higher status; but it also differs from transition rights by denying an immigrant the option of staying in the previous position; and finally it differs from obligatory transitions by not threatening a person remaining in the previous status. In automatic attribution a possible lack of uptake among entitled persons cannot be regarded as their fault, but the authorities'. Automatic transition is quite frequent in access to denizenship [3] and there have also been some important national debates about automatic attribution of nominal citizenship, the implications of which we will discuss later. Obviously, a true liberal concerned with widening individual choices would strongly argue against this mode of transition. For an egalitarian, however, the decisive criterion is the overall extension of rights, and not the multiplication of choices under all circumstances.

Diagram 11: Transition rights, automatic, obligatory and discretionary transitions and their effects on hierarchies of citizenship



Note: Optional alternatives to higher statuses are marked by a dotted line, prescribed ones by a continuous line. The vertical axis represents rights, the horizontal time.

Diagrams 9 and 10 assume that the statuses of citizenship form an ascending rank order. However, seen in a wider context including the sending country, remaining in a lower status may seem preferable for some groups of immigrants, even if they have the right to a higher one. Thus many immigrants decide against naturalisation, and many illegal immigrants do not register in regularisation programmes for which they are eligible. The former group is frequently concerned about losing external citizenship rights; the latter is often deterred by the prospect of losing a job and becoming unemployed after registration. Whenever upward transition within the receiving community involves abandoning rights tied to the previous status, the egalitarian approach must agree with the liberal one that establishing a right of transition is clearly preferable to automatic attribution of the higher position. This is certainly the case with naturalisation.

With regard to illegal statuses, it is much less obvious how the specific benefits of this position could be formulated as rights. A right of staying in an illegal position is a contradiction in terms; thus regularisation cannot imply an explicit option to stay illegal. In practical terms, however, automatic regularisation of illegal immigrants and undocumented workers is hardly feasible. The main problem is, of course, detection. Legalisation programmes depend on immigrants' willingness to register and therefore must be formulated as an offer, that is as a right. Effectiveness will largely depend on the attractiveness of this offer and on simultaneously strengthening its character as an obligation by imposing additional sanctions for staying illegal. Regularisation of status that leads to a loss of wage income or accommodation jeopardises both conditions of success. The true motive of such programmes will often be not to regularise the status of large numbers, but to prepare public opinion for a clamp-down on illegal immigrants. On the other hand, the state authorities might well develop a real interest in successful regularisation campaigns as a lesser evil compared to either tolerating illegal status or risking a public outcry over deportations. Ineffective or deceptive regularisation programmes can also be criticised from the point of view of equalisation of citizenship: the

rights of legal aliens are void if the main material conditions for their exercise (i.e. employment and housing) are made inaccessible. Such policies do not raise citizenship in the transition from illegal to legal immigrant. Thus the bureaucratic argument about feasibility and the egalitarian one about increasing rights converge in this specific issue.

The transition from legal alien to denizen differs from regularisation and naturalisation as it can hardly involve a worsening of positions or a loss of rights. It is here that the egalitarian approach could disagree with the liberal one. If access to permanent resident status is a right, but not automatic, it will depend on formal applications. Application procedures are mostly a formal expression of the view that transition to the better status is seen as in the interest of the individual immigrant only, not of the authorities themselves. This view materialises in deterrence by various bureaucratic filters, such as financial fees, inaccessible offices, waiting periods before decisions, difficulties for immigrants in formulating requests, etc. Under these circumstances a mere right of transition might substantially reduce the numbers climbing up the status ladder, while automatic attribution would guarantee that nearly all those entitled actually accede to the position of denizenship. For the egalitarian approach, therefore, automatic transition is preferable to a right to choose, provided no loss of other rights is involved in the transition.

A defender of the liberal view will now pick up my earlier argument that some aliens do not apply for denizenship for a different reason: because they see it as a symbolic abandoning of the 'myth of return'. However, this transition will carry much less symbolic weight if it is automatic. Only when the immigrant is confronted with the necessity of taking an individual decision and of the effort to approach the authorities can he or she perceive this step as an act of cutting ties to a community of origin. In naturalisation the symbolic value of the old citizenship is reinforced by its legal value; whatever symbolic value there might be in alien status as opposed to denizenship, it will certainly be very light and outweighed by the extension of rights in the society of residence.

6.2 Naturalisation as a right, or as a duty?

Turning now to naturalisation rights, which are at the focus of many present debates about immigration policies. The most interesting controversy in Brubaker's book (1989b) is the one between Joseph Carens, favouring a right of naturalisation conditional only on a brief period of residence,[4] and Kay Hailbronner, who claims that naturalisation is a political prerogative of the nation-state and should not be submitted to moral considerations. I shall not repeat their arguments here, as Hailbronner's approach is not concerned with an extension of citizenship anyhow, and thus is clearly different from mine. I agree with Hailbronner that the issue is not only a normative, but also a political one; but strangely enough he counts as 'political' in his article exclusively interests of a state to retain sovereignty and to control its relations towards other states, excluding from that category the desire of immigrants, and the resident population as a whole, to live in communities of equal citizens, rather than in a society of several classes of political status. (Hailbronner 1989:74f.)

Obviously the principles of citizenship outlined in this paper would give strong support to Carens' proposal. The more interesting question is: Should a right of naturalisation be seen as an alternative to denizenship? This ongoing debate is fuelled by two related developments. The initial wave of expanding denizen rights after 1975 seems to have come to a temporary halt. I can see two categories of reasons for that.

First is the fact that the political pressures and incentives for state authorities to extend rights of resident non-citizens have diminished. Governmental and opposition parties in Germany, Belgium, Austria and other countries have cited constitutional barriers to giving local voting rights to alien residents (Rath 1990:128f.); racist and anti-immigrant movements have lead to withdrawals from previous commitments on this issue (as Mitterand's in France); and the priority of internal integration within the EC generally has reinforced attempts to curb new immigration, weakening the reform impetus in favour of social and other collective rights for immigrant populations. Also, in recent waves of immigration into Western Europe, oscillating or pendulum migration has become much more frequent and even long-term migrants are now again often defined as aliens rather than as integral members of the residential population.

The second reason for a stagnation of denizen rights is that liberal naturalisation policies are often seen as the better alternative today. The number of alien residents has been steadily growing yet naturalisation rates have remained very low in most countries, even after 1973, when new immigration was strongly restricted to family reunification. Simultaneously, return migration of 'guest-workers' has been much lower than expected. There is now growing concern among politicians about the dangers of permanently settled populations whose legal status as aliens is an expression of their political, social and cultural alienation. Some factions - even of conservative parties in Germany and Switzerland, which have been most restrictive in their naturalisation policies - now advocate liberalisation. Naturalisation is seen as an instrument to defuse tensions created by long-term immigration. Many liberal and left-wing currents support this political move, because they perceive it as beneficial for immigrants (Leggewie 1990:61f, 120f).

Remedies for low naturalisation rates depend on the diagnosis of the phenomenon. If we return to the wider frame of diagram 8, which takes into account the weight of external citizen rights, the following explanations emerge.

(1) Naturalisation is attractive, but access is too costly, or too difficult.

(2) Naturalisation is not attractive enough when compared to the previous status. This explanation can be split into two:

(2.1) External citizenship is more attractive than internal. The costs of losing external citizenship outweigh the benefits of naturalisation.

(2.2) Denizenship and internal citizenship are almost equally attractive. Even minimal costs of transition can outweigh the marginal benefits of naturalisation.

There can be large variations in the relative importance of these three aspects between different states and immigrant populations. We shall need more empirical research in this matter. Tomas Hammar's contribution may be the most instructive one so far, as he takes into account not only the rules for access to internal citizenship, but also the immigrants' propensity for naturalisation (Hammar 1990:71-105). However, my hypothesis for further research is that these three explanations are still insufficient. The symbolic ties between citizenship and national identity may decisively restrict the availability of options.

(3.1) Immigration states in which nationhood has been historically conceived in terms of closed cultural communities discourage naturalisation, not only in their formal rules but also in their political culture.

(3.2) Refusing the nominal citizenship of the country of immigration can be seen as a symptom of the transformation of immigrants into ethnic minorities that do not adopt the national identity of the country of immigration.

In these explanations low naturalisation rates might not only result from rational choices of immigrants within the opportunity structure of citizen rights, but also indicate a much more fundamental change: the slow and strongly resisted disintegration of old patterns of national assimilation (Bauböck 1991a).

Different combinations of all these possibilities should sufficiently explain the empirical variations between countries of immigration and between immigrant populations. Exploring this must be the task of further comparative research. But each of these explanations also has normative and political implications, which are relevant for my present theoretical concerns. If we want to establish naturalisation as a right, the task is to remove obstacles. We shall demand: (1) easy access; (2.1) agreements with sending countries about the maintenance of certain elements of external citizenship (such as the possibility to inherit from family members abroad or to own property there); and, (3.1) the defeat of nationalist discourses and practices of ethnic and racial discrimination. We cannot rule out the possibility that all this will not substantially increase naturalisation rates, but that is not our primary target: we want to guarantee the right of transition into internal citizenship.

However, if the political priority is higher quotas of naturalisation among immigrants, it is quite rational to argue for increasing pressure by: (2.1) depriving them of certain rights of external citizenship; (2.2) strictly limiting their rights as denizens;[5] and (3.2) promoting cultural assimilation. Each of these strategies will have the effect of curtailing citizenship for non-naturalised immigrants (enforced assimilation violates collective rights of ethnic minorities) and thus can be immediately rejected as offending against the normative premises outlined. Making naturalisation a right is a valuable contribution to an equalisation of citizenship, because it enriches denizenship with an important additional

element. Promoting naturalisation by the policies just mentioned has the opposite effect of increasing discrepancies between different categories of citizens. We should be fully aware that naturalisation programmes, as they are presently discussed in many immigration countries, are frequently not about changing naturalisation from a matter of discretionary bureaucratic decision into a right, but about turning it into an obligation. Some might argue that naturalisation is a civic duty for long-term immigrants, just as taking part in elections is one for adult citizens. But when there is no choice in elections this latter duty turns from a support of political liberty into its suppression. In a similar manner obligating immigrants to naturalise is not increasing their freedom, but restraining their choices in an unacceptable way.

In the debate about a reform of French naturalisation rules, which started in 1986, some voices stressed a right to choose, but opposed automatic attribution of nominal citizenship to second-generation adolescents[6] as an infringement of this right. Automatic attribution was criticised as a denial of maturity for youths from immigrants families and as a symbolic devaluation of French citizenship (Costa-Lascoux 1988:116 ff). While I agree with the first part of the argument, I disagree with the latter. Naturalisation of immigrants should not be seen as an act of transition from 'une société traditionelle à une société développée et démocratique' (Costa-Lascoux 1988:121), or as 'une adhésion à un système de valeurs qui définirait des droits et des devoirs constitutifs de l'ordre public' (p.117). If a community of citizenship is not defined as one of equal rights, but as one of common values, how can one draw the line between political integration and cultural assimilation? Can nominal citizenship only be valuable if allegiances to previous communities are abandoned and devaluated in this way? Must there really be rites of passage before obtaining full citizenship? If one answers these questions affirmatively, there is one indisputable implication: naturalisation will be made more difficult for many of those who want it because of their interest in full citizen rights. Thus the range of choice will be restricted and involuntary inequality of rights will persist. I contend that these rites of passage are not a way of promoting commitment to democracy, but of maintaining its present exclusiveness. They indicate that citizenship has not yet become separated from its ascriptive, nationalist connotations.

On the other hand Costa-Lascoux's first point is perfectly in line with my argument: young adults should be given more options in matters of nominal citizenship, transferred automatically either by descent or by birth in a territory. However, this choice should be open in both directions. Children of immigrants who have automatically been made nominal citizens of the country of residence should be given a chance to opt for the citizenship of their parents, and those who have been turned into aliens under *jus sanguinis* regulations should have the opportunity to choose naturalisation. There is little doubt that the second option will be more important than the first, but a fundamental right of choosing one's nominal citizenship must include both.

Considering whether such a choice could itself become a right of citizenship, we can analyse two possible extensions beyond the limited issues of the French debate. Firstly, should not the right to choose be extended to the citizenship of children before they become adults? Secondly, can this right be conceived as a universal one, or should it only apply to certain populations?

To the first question I would answer yes. Present regulations regarding automatic attribution of citizenship at birth seem to me both unnecessarily rigid and unjustifiably different between states. Most *jus sanguinis* regulations especially, which perpetuate the alien status of immigrants over more than one generation, are clearly incompatible with a principle of common residence as the basic entitlement to equal citizenship. On the other hand, certain *jus soli* rules may also deny a legitimate interest in obtaining a different citizenship from that of the country in which one happens to be born. (The most extreme cases of *jus soli* legislation are those under which anybody born in the territory, even on board a ship or an aeroplane, is automatically registered as a citizen.) A fair procedure could give parents of mixed citizenship a right to choose either one for their child, and extend to parents who are both alien citizens the right to choose for their child the citizenship of their state of residence. When parents who have completed a minimum period of residence do not use this opportunity, and future prolonged residence of the child can be assumed, the citizenship of the child could be determined by the state of birth according to *jus soli*. Only if neither of these conditions are met should *jus sanguinis* determine the child's citizenship. Parents should enjoy an additional right to change their child's citizenship in altered

circumstances such as emigration or remigration, provided consent is given of children above a certain age.

Doubtless this simple proposal is unrealistic. It would presuppose international regulations that would strongly restrain policies of states in a sphere that is still regarded as a hallmark of sovereignty. Nevertheless, the slow international convergence of naturalisation procedures would be speeded up and oriented towards a target if such a programme could be adopted on an international level. It would also reduce the considerable difficulties arising for state bureaucracies from the incompatibility of rules between many sending and receiving countries of migration. Under present rules the naturalisation of immigrants has necessarily become a bone of contention between governments: sending states accuse receiving states with *jus soli* legislation of robbing them of their citizens, and immigration states complain about the subversion of their efforts of 'integration' by countries of origin that refuse openly or covertly to release their citizens. Shifting the decision from state authorities to immigrant families themselves could be seen as both a way to defuse this conflict and an advance in democratic citizen rights.

The second question is more difficult to answer. Should any internal citizen of a state enjoy the right to opt for a different citizenship? Should even all citizens of country A living in country B be entitled to become citizens of any country C? Such a universality of the right to choose one's citizenship seems just as hard to imagine as a universal right of migration. However, both rights do exist in certain forms and for specific populations. What is at stake presently is their extension to those who are in urgent need of these rights, or can be seen as having established legitimate claims to enjoy them.

Article 15 of the UN Declaration of Universal Human Rights says: '1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.' The last part of the second sentence has been mostly understood as paralleling the universal right of emigration, i.e. as the right to be released from one's citizenship, but not to gain access to a new one.

Just as in a world of nation-states a right of immigration can only become more universal by specifying the categories of persons to whom it should apply, a right of choosing one's nominal citizenship will still have to be formulated in a particularistic way in order to apply it more widely. It

pertains primarily to those who, if they are denied this right suffer real losses in their overall position as citizens of one or several states.

6.3 Dual citizenship

There is one way of substantially enlarging the range of this right that can help to circumvent some of the obstacles to free choice of nominal citizenship: the acceptance of dual citizenship. This text as a whole is essentially about multiple citizenship, i.e. the institutionalisation of citizen rights in two or more political communities tied to each other by migration. The present European debate on dual citizenship is about a formal ratification of this development.

As Tomas Hammar shows, the number of dual citizens is steadily increasing, in spite of a 1963 European convention attempting to restrict it drastically (Hammar 1989:81f; Hammar 1990:107f). The main reasons for this are the combined effect of *jus soli* legislation in countries of immigration and *jus sanguinis* in emigration states, for children; the transfer of a second citizenship by marriage, for spouses; and the reluctance of many sending countries to release their nominal citizens when they apply for naturalisation in the country of immigration. Nominal dual citizenship which is not mutually recognised by the states involved, leads to a situation in which conflicts of duties and rights can be hard to resolve (e.g. dual obligations for military service). Formal recognition, from the point of view of sending and receiving states in bilateral or multilateral agreements, would contribute to tackling the problems involved. There may also still be some unresolved problems in formal dual citizenship, as for example the loss of external citizenship in relation to the second state, which leaves migrants who return only temporarily to their country of origin without the protection of their state of permanent residence. Another set of problems arises from the indeterminacy of legal rights of spouses and children where laws differ strongly between both countries (Hammar 1990:114f; Costa-Lascoux 1989:139). As I see it, these are not arguments against the principle of dual citizenship itself, but against present unsatisfactory international regulations in this matter.

Some authors strongly oppose formal recognition of dual citizenship, not only with reference to interests of state authorities afraid of losing control over their citizens, but also because they see it as detrimental for

immigrants themselves and their integration into society. This argument is again derived from concerns about the symbolic devaluation of nominal citizenship:

> Dual citizenship is not likely to solve the problem of inclusion in the political community. For the native citizen dual citizenship still spells non-commitment. . .The absence of a sense of shared fates will persist (Heisler & Schmitter-Heisler 1990:26).
>
> La revendication de la double nationalité s'inscrit, en vérité, dans une conception classique de la nationalité 'lien d'allégeance': la double appartenance est imposée par l'histoire, elle implique le constat d'un pluralisme plus qu'elle n'exprime des responsabilités dans un pays déterminé, ni la conception d'une nationalité 'engagement civique' (Costa-Lascoux 1988:115).

Both contributions fail to see how principles of citizenship can transcend those of ethnicity and nationalism. The boundaries of such communities based on perceptions of shared fate are always strictly limited, and this sense can only be maintained by continuously asserting the sacred nature of the distinction between 'us' and 'them'. However, there is no implicit need for a shared sense of fate in communities based on equal rights, and this is what gives citizenship its universalistic and expansive drive. Shared interests, common residence, or – as in the case of human rights – shared recognition of human qualities, is perfectly sufficient for legitimizing equal citizenship. Costa-Lascoux insists on the difference between voluntary and involuntary allegiances. A voluntaristic concept of nationhood, such as the one that has emerged from the French revolution, is certainly less restrictive than the notion of shared fate. Nevertheless, by implicitly denying a plurality of citizenship, Costa-Lascoux's argument still expresses the demand for national allegiances. It implies that immigrants have to be forced to choose and those who decide against French citizenship also deny thereby their responsibilities and civic engagement in that country. As I pointed out in section 1.2, one of the most salient features of national allegiances is that they have to be unique. A policy of encouraging dual citizenship does not follow this traditional approach. It takes note of an emerging pluralism of allegiances within national societies and tries to counter the resulting inequality of rights by equalizing

positions of citizenship. The symbolic devaluation of nominal citizenship, which finds its strongest expression in formal dual allegiances, concerns not its content of rights, but its national boundaries.

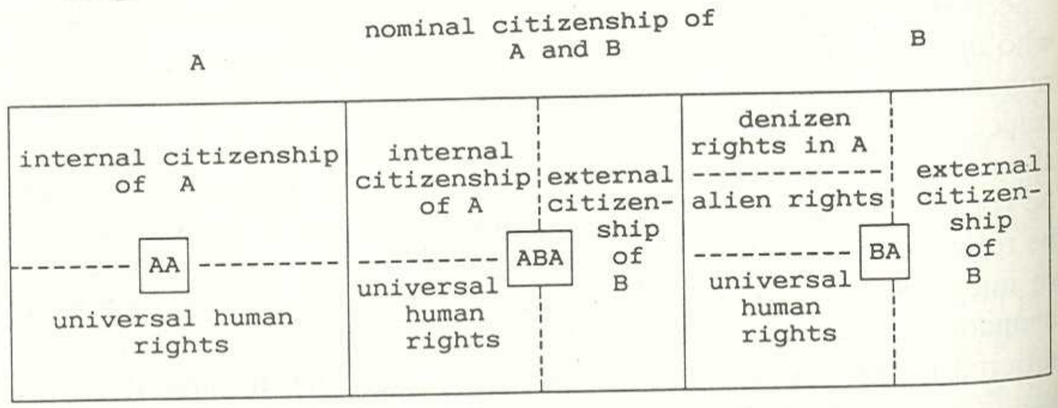
However, there are two reasons why dual citizenship should not be seen as a panacea. Firstly, as with naturalisation rights, dual citizenship is no remedy for the most urgent present and future dilemmas of migration, which do not emerge from the continued presence of non-naturalised residents, but from increasing new immigration. In spite of its obvious attractiveness for long-term residents, it is therefore highly unlikely that a large majority of immigrants will become dual citizens. Even if acquiring a second nominal citizenship required nothing more than a certain period of residence, the number of aliens would not necessarily decrease. While the current debate on citizenship still focuses on inequalities between nominal citizens and settled immigrants, new waves of short-term migrations oscillate between different countries of residence and employment, and between legal and illegal positions. They refill positions at the very bottom of the labour and housing markets, from which the earlier migrants have just started to escape. This reintroduces 'unfree labour' (Cohen 1987) and unfree citizens into Western societies on a massive scale. Therefore policies will also have to address the task of raising alien rights to standards set by the demand for a higher density of citizenship; they will also have to offer illegal immigrants and undocumented workers chances of regularizing their situation, i.e. access to alien rights.

Secondly, even among those who meet all criteria for naturalisation and who are offered this possibility without having to abandon their previous nominal citizenship, many could still not be interested. Reasons for such reluctance have been given above under (3.1) and (3.2). Although it should optimise the legal position of most aliens,[7] dual citizenship might be considered unacceptable. In nationalist and xenophobic societies it will be regarded by many as requiring only half the allegiance and commitment of integration; and within ethnic communities it may still be seen as an abandonment of national identities. There is, however, a profound difference between recognizing this as a fact and turning it into a justification for denying access to internal citizenship, as Heisler and Schmiffer-Heisler (1990) appear to do. Establishing dual citizenship as a right for all immigrants concerned, and not as a privilege for only a few, would help gradually to remove these obstacles.

In the present debate, naturalisation rights and dual citizenship are too often seen as the best alternative to an extension of denizen rights, where these are blocked by constitutional laws or political pressures (e.g. Leggewie 1990:142). As it seems highly unlikely, at present, that denizenship will ultimately be raised towards full citizen rights, could not dual citizenship become a legal status that is both more attractive for immigrants and more acceptable within the legal systems of receiving states? There is yet little empirical evidence that a majority of immigrants who presently qualify as denizens would actually opt for dual citizenship if it were formally acknowleged.[8] If such evidence is collected through opinion polls, one ought to be very cautious to accept the percentage of respondents who say they would opt for dual citizenship as a reliable indicator for future rates of naturalisation. We should not repeat an older error in migration research, which mistook proclaimed intentions of remigration for a prognosis of real numbers of returns. Assuming high potential rates of naturalisation may be based on unrealistic expectations, but it serves as a good excuse for the continued legal discrimination against aliens and denizens.

For all these reasons we have to see nominal dual citizenship as a further category, adding to those outlined in diagram 8, rather than as replacing denizenship or alien rights.

Diagram 12: Plural forms of citizenship in one state of residence



One argument of its opponents is that dual citizenship constitutes an unjustified advantage for immigrants over other internal citizens. However, dual citizenship does not confer double the rights of an internal citizen,

but in its most comprehensive forms combines the internal citizenship of the country of residence with the external citizenship of the country of emigration. In most respects these two bundles of rights will not be simultaneously relevant, and generally internal citizenship will be more important than the added external one. The main benefit of external citizenship is the right of re-entry into the state of emigration. This feature is consciously reinforced in models of 'dormant external citizenship', which have been proposed in Germany and some other countries in order to make dual citizenship more acceptable for the states involved. Such arrangements already exist today between Spain (and Portugal) and some Latin American states. The idea is that external citizenship of B would be practically suspended during residence in A, and after returning to B the migrant would also no longer enjoy external citizen rights of A. In terms of my conceptualisation, what this model is really about is a new form of citizen migration. It would give extended rights of migration between two political communities to a group of internal citizens. This proposal, which today finds support also among conservative parties, illustrates that modern forms of international migration not only challenge internal boundaries of citizenship between aliens and nominal members of a state, but also inevitably pose the question of introducing extended forms of immigration rights, which perforate the external boundaries of citizenship.

Introducing a more substantial form of dual citizenship as shown in diagram 12 in no way devaluates our previous arguments for raising the lower statuses of immigrants. Far from rendering denizenship superfluous, it may under certain conditions even give additional weight to the demand for increasing rights of non-naturalised residents (if we apply the normative criteria outlined in Chapter 5). The position of dual citizens is a highly relevant bench-mark for denizens evaluating their own situation: both groups are cohabitants and there are potential transitions between them. We can assume that these transitions are blocked, for some parts of immigrant communities, for both objective and subjective reasons: criteria for access are always selective; and the grapes of dual citizenship will also go sour for those who cannot reach them. Dual citizens, then, might occupy an ambiguous position within tightly knit ethnic communities. On the one hand, they can act as mediators with the surrounding national society, on whom less fortunate immigrants depend. On the other hand,

they might also be seen as having traded their birthright for the cheap benefits of dual citizenship.

As a conclusion, I suggest that naturalisation rights and easier access, as well as formal recognition of dual citizenship, can be very valuable contributions to an equalisation of citizenship, provided that:

- they are not combined with increasing pressure to turn rights into duties,
- they are not seen as an alternative to denizenship, but as an enrichment of it,
- and they are not promoted in the illusion that this will dispense immigration states from concerns about the citizen status of new immigrants.

Most objections to these extensions of rights either implicitly support axioms of nationalism or proceed more indirectly from worries about nationalist reaction against such a policy. The latter argument has to be taken into account, but it has also a long tradition as a ready-made excuse against any legal improvement for immigrants. Politicians who use majority opinion as a justification against equal rights for minorities do not thereby demonstrate their compliance with democratic principles, but actively encourage their violation.[9]

Notes

1 Joseph Carens (1989:43 f.) points out that pressures for amnesties or 'regularisations' of undocumented aliens in most Western states of immigration indicate an implicit recognition of a right of residence, based on *de facto* membership of societies.

2 Regularisations usually take a very different form. A date is set after which the amnesty expires and newcomers are generally excluded, unless there is a later decision to have a second amnesty. From the perspective of state authorities this might be the only feasible way of implementing legalisation programmes without establishing a strong incentive for enterprises to continue illegal employment. However, this policy hardly meets criteria of justice and equality: it privileges certain immigrants over others in equal positions and retrospectively exempts employers from legal sanctions, which are upheld or in many instances even made harsher for future illegal employment.

3 Sweden and Switzerland are countries that have made transition of aliens to denizenship more or less automatic and Germany and Austria provide examples for making access to denizen rights, such as permanent residence permits and free movement in the labour market, conditional on applications by the immigrant (which are frequently combined with quite substantial fees). Permanent residence permits in Austria are not even formulated as a right depending on certain conditions, but as an discretionary decision by the authorities (Rogers 1986, Bauböck/Wimmer 1987).

4 Carens derives his argument from Michael Walzer (1983:60f.) but radicalizes it, admitting only time as a legitimate restraint on a right of naturalisation.

5 '*Ad hoc* enlargements of migrants' rights may obstruct rather than clear the path to full membership, trapping large numbers of migrants-turned-immigrants in an intermediary status' (Brubaker 1989:6). Brubaker sees denizenship as extrapolitical membership, which 'diminishes the incentive to naturalize. Paradoxically inclusion in the social and political community may facilitate (self)exclusion from the political community ... As a way station on the road to citizenship, denizenship is desirable. But in the long run, denizenship is no substitute for citizenship' (Brubaker 1989c:162). The same argument is put forward by Heisler & Schmitter-Heisler (1990:25).

6 At their majority, French citizenship is automatically attributed to children born in France to parents of other citizenship if they have been resident in the country for the last five years and have not explicitly refused it.

7 Exceptions are the above-mentioned disadvantages caused by absent or imperfect bilateral regulations concerning conflicting obligations for military service, or loss of external citizenship.

8 Among a small sample of Finnish citizens in Stockholm, only one-third of those who were not interested in naturalisation under present conditions said they would opt for Swedish citizenship if they could also keep their Finnish citizenship (Hammar 1990:96).

9 Examples like the Swedish move towards denizenship in 1975 show that policies in this issue need not be determined by regard for public opinion only, but inversely that skilled and determined policy changes can also bring about changes in public opinion.

CHAPTER SEVEN

CONCLUSION: RIGHTS OF IMMIGRATION AND RIGHTS OF EXCLUSION

Rather than give the impression that the approach presented in this text is sufficient for formulating and implementing normative policy guidelines on all issues of citizenship and immigration, I would like to conclude by mentioning difficulties and unresolved questions. Before that, I want to sum up once again the main arguments of the previous chapters:

(1) The traditional image of democratic citizenship is one of homogeneous communities with equal rights for all their members inside and external boundaries, which are closed, or at least strictly controlled only by the community itself. This concept distorts historical developments in two ways. Firstly, in the real world of politics, citizenship has never been equally distributed within political communities. Internal boundaries have marked substantial differences of status between full citizens, populations only partially included, and those formally denied the status of citizens despite being members of society. Secondly, external boundaries have rarely been impermeable; in many cases immigrants have even held a right of entry into the community. The extension of citizenship from local communities to large nation-states was accompanied by the establishing of rights of free movement and settlement, which transformed external into internal migration.

(2) In the present age, the incompatibility of international mass migration with the traditional concept of closed communities of citizenship becomes even more obvious. Denying immigrants vital citizen rights (including respect for cultural difference and political support against social discrimination) means decay of citizenship for the community as a whole. Once immigrants are granted access to citizen rights, an at least partial recognition of immigration rights is implied, and consequently external borders cannot be kept totally closed to future immigration.

(3) The best way to address this issue is to look at societies tied together by continuous flows of migration, as if forming a single community of citizenship with different statuses for internal and external citizens, for aliens and for long-term resident immigrants. The egalitarian and universalistic thrust of citizen rights provides us with a guideline for

policies of equalizing unjustifiable differences. Establishing rights of transition between unequal statuses can itself be an important contribution to such equalisation. Resistance to denizenship, naturalisation rights and dual citizenship finds its legitimation in nationalist, rather than democratic, principles.

There remains one issue that poses an intricate normative, as well as political, dilemma. In the last chapter I pleaded for rights of transition between the statuses of illegal immigrants, legal aliens, denizens and internal citizens *within* the society of residence. Could this argument not be extended to transitions *between* societies as well, in other words support a general right of immigration? As I have shown in Chapters 2 and 3, the logic of citizenship implies that in ongoing migrations certain forms of immigration rights will have to be established and extended. Return migration to one's country of origin must be guaranteed for nominal citizens; and there are recent policy developments to facilitate it also for those who have lost or never possessed the nominal citizenship of the country where they grew up. Additionally, the separation of families by migration establishes claims to a right of immigration for dependants. These forms of immigration rights can be easily deduced from the normative principles for the extension of citizenship proposed in this text.

The right of asylum is a more complex issue. Basically it is a right of immigration that is not based on previously established links with the receiving society, but on universal human rights. However, as I mentioned in Chapter 2, the right of asylum is not generally recognised as a subjective right of asylum-seekers to enter any territory where they might find protection. Thus it is a human right with severe deficiencies, not only in its institutional protection (the UNHCR has generally a very weak position with regards to national legislations and procedures), but also in its present content: it does not oblige states to provide the basic conditions for its exercise, that is the right of entry. The right of asylum could and should be substantially extended to victims of civil wars, famines, ecological disasters, etc. The African Convention on Refugees has recognised these circumstances as reasons for receiving asylum, whereas the Geneva Convention, which was a product of the Cold War, is limited to the case of individually persecuted refugees. The underlying principle of such an extension could be formulated as a universal obligation for states

to accept entry of, and provide protection for, persons whose human rights would be endangered by denial of access to the territory.

These are the basic immigration rights presently recognised, or at least recognisable, as citizen rights – even if they are frequently restricted or ignored in national immigration policies. Additionally, there exist also specific rights for ethnic-citizen immigration in certain nation-states. Specific occupational groups of alien citizens are also usually granted better conditions regarding entry, residence and employment activities (diplomatic staff, performing artists, scientific personnel, business managers of multinational corporations, etc.). But all this does not add up to a foundation for establishing a universal and unconditional right of immigration. On the contrary, policy developments since the last century show a long-term trend of restricting immigration rights, parallel to the expansion of international migration. While a universal right of emigration has been established in the UN Charter of Human Rights, there is no similar formulation of a right of immigration, on the level of either declarations or implemented policies.

For nation-states and their governments there are obvious and strong reasons to keep control over immigration. I will not analyse these here. In the context of the present text the essential question is: Is it possible to legitimate the general exclusion of immigration rights from the rights of citizenship, with reference to principles of citizenship? So far, I have only tried to dismiss claims that denying access to citizenship can be justified in the cases of immigrants connected to the community by present or past residence, by close personal ties, or those whose human rights are violated by denying them entry. What about those who have a desire or even a need to immigrate, that cannot be included under these motives? Once they are admitted, for whatever reason, there is no justification for excluding them from access to internal citizenship. However, is there a basic legitimation for the community of citizens to exclude them from entering their society in the first place? This question might seem trivial; all modern-day nation-states, in different forms, claim to represent their citizens' interest when they deny entry rights to aliens without specific entitlements. On a theoretical level it is not trivial at all. Joseph Carens has shown that a strong case for open borders can be developed from mainstream theories of justice, such as John Rawls's, Robert Nozick's, or the utilitarian one. He goes on to argue that even a communitarian

approach such as Michael Walzer's could lend support to this claim (Carens 1987). While I broadly agree with Carens, I think there is one flaw in his argument. He does not distinguish clearly enough between the obligation of any community of equal citizens to admit immigrants residing in its territory to full citizenship, on the one hand, and the case for open borders, i.e. a universal right of immigration, on the other. A liberal communitarian theory such as Walzer's gives strong support to the former, but not necessarily to the latter demand. Only if the notion of the community is stretched beyond national frontiers can there be a convincing substantiation of a right of immigration as an element of equal and universal citizenship.

On the level of empirical and comparative analysis, we have to take notice of emerging transnational forms of immigration rights (such as within the EC, or the Nordic Free Labour Market), and ask what justification there is for giving such entitlements to aliens of specified national origins only, while denying it to populations outside these communities.

My suggestion is that we should be cautious both in attributing to communities of citizenship a general right of exclusion, and to immigrants a general right of immigration. Both of these approaches provide only ready-made answers of little value before even the question has been properly put. Just as we have previously asked for motives of immigrants, which could give them a right of immigration, we should now consider motives of communities of citizenship, which could legitimate restrictions on immigration.

A possibly not exhaustive list of justifications for excluding immigrants includes political, cultural, ecological and economic reasons. In the present paper there is not enough space to deal with each of the claims that immigration can threaten the cultural identity of resident populations, the political stability of their states, the sustainability of ecological systems in the receiving territory, or economic wealth and growth. My general contention is that while large-scale immigration undoubtedly has impacts in all these spheres, it is far from obvious that the effects for Western industrialised states are on balance negative ones:

(1) Of the political and cultural arguments it has to be asked whether they are primarily concerned with stability, or with the maintenance of citizenship, which necessarily includes cultural as well as political

pluralism. Maintaining internal security is of course one of the main preoccupations of modern state bureaucracies. Free migration certainly makes it more difficult for the police to trace criminals. However, the security argument is just as strong against emigration as against immigration rights[1] and it applies almost equally to returning nominal citizens, co-ethnic citizen immigrants and aliens. Nevertheless, this argument has only been used against immigration rights for the latter of these groups. Immigration by citizens of another country has also often been seen as threatening political stability because of their alleged loyalties to foreign powers. If this is no longer convincing or acceptable with regard to voting rights for aliens (see Hammar 1990:185f.), why should it still justify general restrictions on immigration? The security-and-stability argument becomes directly opposed to norms of citizenship when it pretends to be directed against a specified threat by individual immigrants, but serves in fact as a pretext for introducing a generalised ban on entries for larger groups. As an example, the reintroduction of visa requirements for Polish citizens in Austria in 1990 was politically legitimated by presenting Poles as shoplifters and black marketeers.

(2) Identifying the principle of citizenship with a unique Western or European cultural tradition means in effect denying its universality. Regarding a right of exclusion, there may be a case for oppressed ethnic minorities who demand restrictions of majoritarian immigration into their territories as an ultimate resort to maintain their collective cultural rights (take as an example the specific rights of North American aboriginal populations in Indian reserves), but this certainly does not apply to the mainstream forms of international labour migration. Cultural conflicts between immigrants and majoritarian populations might affect rights of citizenship in extreme cases (e.g. the practice of female circumcision among some immigrant groups), but these are almost invariably as much conflicts within, as between, ethnic cultures. If such incompatibilities between individual rights and cultural traditions are used as a pretext for campaigns against entire communities, the effect will be a reaffirmation of the symbolic value of such practices within the community, rather than internal differentiation. Successfully promoting the general norms of citizenship among immigrants will depend on two preconditions: easy access to the rights of citizenship and a cultural neutralisation of these norms so that they are not perceived as symbols of the specific identity of

the national population. Under these conditions cultural and religious compliance with general norms of citizenship might also become acceptable as a duty for immigrant minorities, but this does not justify selecting newcomers according to their cultures of origin. Firstly, it is rejecting *groups* because of their assumed cultural dispositions and means discriminating against *individuals* on a purely ascriptive basis without any individual judgement. Secondly, establishing rules of cultural (or even racial) discrimination in immigration policies contributes actively to internal ethnic and racial segregation against all those who belong to groups declared undesirable at the point of entry.[2] Thirdly, basing immigration procedures on assumptions about inherent cultural dispositions to integration into a political community works as a self-fulfilling prophecy: those who are kept out by law can only enter as illegals and do this also in large numbers if there is enough demand for their labour force. Thus exclusion from citizenship is rather an effect of this policy itself than of the immigrants' cultural dispositions.

(3) The ecological argument may seem more justified, as large-scale immigration undoubtedly can reduce the ecological sustainability of an area, and environmental quality certainly must be seen as one of the most precious material resources for social citizenship. However, as far as population movements are concerned the main problem is internal migration and the continued trends of urbanisation, especially in the 'Third World', rather than external immigration into those Western states imposing the tightest immigration controls. In this part of the world, with its declining population figures, it is certainly not immigration which has caused ecological crises, but the dominant technologies of industrial production and consumption. Finally, if we look at ecological effects of migration in a perspective of equalizing rights and conditions of citizenship, we would have to take into account not only the situation in receiving countries, but in sending ones as well.

(4) Economic arguments for denying immigration rights to aliens are generally self-defeating within a free-market paradigm. In liberal economic theory, free labour migration is a condition for optimizing the allocation of capital, labour and purchasing power of consumers. The pull-factor of expanding demand for labour is decisive for the bulk of immigrations and even determines governmental policies towards refugees and other non-economic migrants. The burden of large-scale refugee

movements which put real strains on economic resources is largely confined or shifted to the less industrialised countries. Rather than increasing strains on the economy, labour immigration into the Western world transfers a valuable, and often scarce, resource. In the ideal world of classical economic theory there is also no danger that migrants not needed for the economy will overcrowd the labour market, as they will leave again once their chances of income from employment have become sufficiently small. Only if we focus on social classes as actors within the economy, rather than on presumed gains and losses for a national economy as a whole, does the contradiction between free immigration and social rights of citizenship become obvious.

Frequently the social-rights argument against free immigration runs as follows: the welfare states of the industrialised West are seen as some kind of machinery for the distribution of wealth and life chances. It is assumed that immigration is mainly attracted by this richness and high standards of social equality, but that allowing it will automatically give the immigrants an equal share and thus reduce everybody's assets. Humanitarian groups and many church leaders often share these assumptions implicitly but draw the opposite conclusion: they point out that what the rich nations defend in keeping immigrants out is not any ethical or democratic principle at all, but merely the exclusiveness of their wealth.

The real dilemma arises from the interplay between the economic structures of capitalism and welfare policies. In a society in which there are generalised markets for labour power on the one hand, and for basic necessities for the reproduction of labour power on the other hand, labour immigration always puts specific pressure on only one side of the exchange relation, while the other one profits from it; it increases the supply of labour and the demand for basic items like housing. This is why free immigration has always found its most ardent defender in economic liberalism and has often been opposed by an uncomfortable coalition of nationalists, conservatives and labour movements.

Social rights are entitlements which arise from restrictions on free markets by state intervention. However, their range and progress has been tied to the success of capitalist accumulation. Social rights have also remained strongly dependent on conjunctures in the relationship of forces between classes and political actors. Whereas it takes often fundamental national or international crises to revert basic civil and political rights,[3]

social rights can be more easily eroded through a decline of trade-union strength, or through mere changes of the parties in government. All this explains why a weakening of the economic power of wage earners in labour and consumer markets by new immigration can immediately entail a dismantling of social rights.

Of course, labour immigration will also increase the potential for expanding social rights by contributing to economic growth. But especially in the last decade we have witnessed periods of strong economic growth without a reduction in unemployment and without an extension of social rights. The transformation of economic growth into social rights depends crucially on the will and capacity of trade unions and governments to intervene into labour markets. It is this capacity of regulation which can be undermined by unrestricted immigration.

This dilemma has often lead to policies that tried not only to control new immigration, but either to encourage or enforce remigration of immigrants already settled, or to protect the position of indigenous workers by intentionally splitting labour and housing markets and excluding immigrants from essential social rights. Such policies, which have gained widespread support from labour movements and in some cases were even spearheaded by them, obviously jeopardise the democratic quality of citizenship and should therefore be rejected. Secondly, a set of immigration rights for groups with established links with the society of immigration (especially family members of earlier immigrants) and for those whose human rights will be violated by denying them entry (a broader category of refugees) should be firmly established. Thirdly, the emergence of supranational regional labour markets points to regional priorities for policies of further extending immigration rights and of equalizing citizenship between different states.

The ultimate question – whether the trade-off between social rights and immigration rights justifies a general restriction of immigration beyond the categories just mentioned – will not be answered in this text. We shall hardly be able to find solutions for this dilemma if we do not shed preconceived notions about natural rights of states and nations to exclude non-members. However, we can also not adopt without any reservation the opposite principle of an unconditional right of immigrants to enter any community of welfare. The conflicting claims for a right of free immigration and of protecting social rights by keeping access to national

labour markets limited cannot yet be decided or settled within a common frame. Both demands are legitimated by reference to different, and not fully reconcilable, concepts of citizenship. The call for open borders and free immigration can be substantiated by the idea of transnational citizenship. However, it goes so far beyond the segmentation of the global political system into nation-states that it is difficult to see how it could be realised without jeopardizing present levels of citizenship, which have been established within this segmented structure and remain tied to it. On the other hand, the idea of a collective right to control and exclude immigration has to assume an undisputable identity and closure of the resident community, which has already become largely illusory for many states with experience of previous or ongoing population movements. Only within the ideologies of nationalism can present societies still imagine themselves as islands of free citizens, whose freedom depends on their sovereign right to exclude outsiders.

Within Western industrialised states the internal extension of citizenship to social rights has given new credibility to this idea. The only conceivable resolution of the conflict between social rights and rights of immigration would be that social rights should travel with the migrant and be protected by institutions that are authoritative within a wider regional context including sending and receiving countries. In spite of Western European economic and political homogenisation after 1992 and the probably imminent formation of a free trade zone in the three states of Northern America, there is yet little sign that historical evolution is going this way.

Notes

1 Police authorities will disagree, as they often think enforced emigration of potential or actual criminal offenders will ease their workload. This is why they are usually so eager to deport immigrants for minimal offences. However, for the judicial system as a whole the main point is securing adequate punishment for the breaking of laws; the possibility of easy evasion over open frontiers must be highly undesirable from this point of view.

2 The gradual restriction of British immigration laws to limit entry rights of New Commonwealth citizens has probably reinforced the internal racial discrimination of those who had already come to the UK.

3 Generally speaking, the erosion of citizenship rights can take two very different forms: an explicit renouncement of their legal codification, or a change in the conditions of their exercise. Civil and political rights in most parliamentary democracies (with the notable exception of the United Kingdom) are enshrined in a written constitution which expresses and reinforces their relative stability, while social rights are exposed to frequent legal modifications. However, civil and political rights can also be eroded via the conditions of their exercise. To mention just one example, everybody may enjoy the right to bring a case to court, but access to the law may be effectively denied for those who cannot afford professional legal advice and aid. Whereas in social rights it is the established forms of social protection which have come under attack, in civil rights challenges raised by powerful information and surveillance technologies, artificial biological reproduction and similar new developments have not yet found adequate responses in terms of new rights protecting individual liberties.

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