

Four Models of European Citizenship¹

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It is commonly assumed that a polity possessing a legal and administrative system, representative institutions, diplomatic status and the ability to generate and allocate revenue, must have a citizenry. True to its anomalous character as a political entity having many of the attributes of a state without actually being one, the EC nonetheless did without citizens of its own for most of its history. Member states and their governments sufficed. From the 1960s onwards, however, intermittent worries that the elite driven process of economic integration might ultimately overreach popular support issued in proposals for some form of citizen involvement in Europe. The decision to establish a 'citizenship of the Union' at Maastricht aroused great expectations, therefore. A potentially momentous step of great symbolic importance, it promised much needed popular legitimation for the increasingly extensive political and social measures required to implement and stabilise the common market. In the event, the actual citizenship provisions generated a more muted response. Malcolm Anderson and his co-authors summed up the prevailing mood in an early assessment of the measure. They observed how '[i]n accepting this reform, the member states followed a Community tradition of attaching grand concepts like 'union' to the integration process, which has often tended to raise both fears and hopes that turn out to be unfounded once the substance behind the rhetoric is revealed. The same will probably be true of the new citizenship: ... in fact [it has] changed very little.'²

The dominance of rhetoric over reality continued at Amsterdam. It was supposed to place 'citizen rights at the heart of the Union'. However, the new Treaty poses more questions than it solves, even if the specific complaint of Anderson et. al. was partly addressed. They had argued that 'the most telling feature' of the original reform was not

the citizenship entitlements themselves but the fact that the related issues of common visa, immigration and asylum policy were to be handled in a completely different manner under the new pillar structure of the Union.³ This novel architectural arrangement distinguishes those matters that form part of the Community proper (the first pillar), which are decided by the established institutional mechanisms and come under the jurisdiction of the European Court of Justice, from Common Security and Foreign Policy (second pillar) and Cooperation in Justice and Home Affairs (third pillar) where intergovernmentalism prevails. Whereas Article 8 creating the new status belonged to the amended EEC Treaty and the so-called Community pillar, issues relating to border controls came under the third pillar. As a result, 'the key condition for the exercise of [European] citizenship rights', namely 'the ability to cross borders between member states unhindered' could not be enforced through the courts. 'This', they concluded, 'seems to make a mockery of the freedom of movement that is supposed to be at the core of EC citizenship.'⁴ Amsterdam rectified this situation by bringing these measures into the first pillar, although Britain, Ireland and Denmark have a derogation, with the third pillar now restricted to the clumsily designated Police and Judicial Cooperation in Criminal Matters. Yet the status of European citizenship remains profoundly ambiguous. For the EU's hybrid nature as both a supranational polity and an intergovernmental organisation has become ever more pronounced. Indeed, this ambiguity is written into the very nature of European Citizenship since access to it rests firmly via the variously defined nationality requirements of the member states.

Amsterdam confirmed the trend whereby the Union's structure has become ever more complex as its competences have grown. The pillars continue in place, reinforcing the ever greater flexibility in the speeds and degree to which core policies are adopted by member states, and the variety of actors - from NGOs and regions to governments and different tiers of bureaucrats - involved in the decision making process. The one significant change to the citizenship provisions themselves, a supposed clarification to

Article 8 (1) TEU adding the rider that 'Citizenship of the Union shall complement and not replace national citizenship', neatly captures this increasingly differentiated and flexible character of the Union, and the complex ways it tries to combine different levels of sub national, national and transnational governance. Many commentators believe such a multi-track Europe to be incoherent and see the development of a common citizenship as a way forward to a fully-fledged federal European political system. By contrast, I wish to take up the challenge and ask how such a messy polity might work, and in particular whether citizenship can be correspondingly multiple and multi-layered. Malcolm once archly remarked that political theorists do not do research in the 'real' sense - they just sit in their studies and make it all up. May be. But if so, that quality is an advantage when explaining an unprecedented event - or so at least I hope to show.

To see how such a multiple citizenship might be conceived I shall identify two ideal types of citizenship - the cosmopolitan and the communitarian, that correspond to the transnational and sub/national levels of the European Union respectively, and examine different ways in which they might be combined.⁵ Cosmopolitan citizenship is rights-based. The justification, scope and application of these rights are universal and uniform, their subjects individuals. The implications of respecting human rights may be cashed out in either interactional or institutional terms, as pertaining to either the actions of individual persons and agencies, or the rules and procedures of any schemes that might link them.⁶ Whereas the first may make it hard to assign a global responsibility for very much, and hence is favoured by libertarians, the second focuses on the justice of the practices and arrangements within which people are involved and jointly and severally responsible, and hence makes a welfarist perspective more plausible. Proponents of the institutionalist thesis argue world markets involving the globalisation of distribution, production and exchange, and the emerging system of international law, diplomacy and security, mean we all participate to some extent in such an institutional scheme, and hence have a responsibility for rights violations across the globe.⁷ There are few if any

self-contained communities, and even local rights infractions may have global macro explanations of their incidence.

Moral cosmopolitanism need not imply world government.⁸ The value of any set of political institutions depends entirely on how far it furthers human rights and welfare. Democratic participation and popular sovereignty play a purely contingent role in this argument. Even if democracy partly embodies the notion of equal rights, it cannot be counted on to uphold them. At best, it operates as a mechanism of imperfect procedural justice. It serves as an instrumental mechanism for individuals to voice and protect their interests by influencing and controlling the decisions affecting their lives, albeit indirectly through the election of the decision-makers. Should democracy fail to offer the best protection for rights, or even endangers them as a result of myopic or tyrannous majorities, then non-democratic mechanisms, such as judicial review by human rights courts or regulation by expert agencies, are to be preferred.⁹

By contrast, communitarians believe that universal human rights exert only a limited claim on our attention. We can invoke such notions in extreme situations, such as famine or genocide, when our very humanity is at stake. But the rights of human beings *per se* will always be 'basic'.¹⁰ Their fuller, everyday meanings derive from their location within a specific local culture. Since principles of rights and justice get reiterated in a variety of ways within different communities, there can be no appeal to a universal core shared across all societies. Beyond the establishment of a low base line, the 'thin' minimal humanitarian morality of exceptional circumstances has little bearing on the 'thick' maximal morality we possess as members of a given society.¹¹

Community is defined in terms of a nation state or, in the case of national minorities, a self-contained region. Nationality provides citizens with 'a common world of meanings' that are explicitly linked to a political unit capable of acting on them. When linked to a state, this common culture helps citizens identify with each other and commits

them 'to dividing, exchanging and sharing social goods' amongst themselves according to agreed principles.¹²

Communitarians believe their account fills a motivational and justificatory lacuna within the cosmopolitan theory. In practice most rights and duties have to be spelt out in detail, so we know who owes what to whom, when, where and why. They contend the answers to these questions can all be traced back to community. Rights cannot be separated from and frame the pursuit of various goods, as cosmopolitans maintain. Rights to property or to free speech, for example, belong to particular forms of life, the market and democracy respectively, that embody some good, such as prosperity and truth, that provides their justification, and hence limits their application. Likewise, conflicts of rights can only be adjudicated within the context of the goods and practices of the society concerned. For rights defend the interests not of this or that isolated individual, but of the quality of human flourishing and interaction available to all individuals living within a given community.

Community also provides the moral cement needed to facilitate human interaction. Most social, economic and political practices operate on the basis of reciprocity and trust between virtual strangers. Markets rely on fair dealing and promise keeping between traders, public goods provision assumes that beneficiaries will not free ride, welfare that I have duties to others, and so on. Respect for rights alone does not account for such moral bonds. For they entail acts of supererogation, virtue and the disinterested pursuit of excellence that go beyond those duties that are merely correlative to another's rights.

Democracy, in the guise of national self-determination, plays a pivotal role in this argument. On the one hand, a national community makes democracy possible. It defines a demos who feel bound together by a sense of a shared fate and mutual responsibility. Such sentiments lead minorities to accept majority decisions and, more importantly, motivate majorities to take into account the opinions and concerns of minorities rather

than tyrannising over them. For compromise and the avoidance of a purely self-regarding stance are far more likely amongst a people who identify reasonably strongly with each other. On the other hand, democracy enables the communal good to be debated, defined and defended. If a naturalistic ethnic nationalism is to be avoided, nationality must be seen as a political construct which allows different claims and values to be accommodated. For this reason, communitarians standardly adopt a deliberative as opposed to a purely aggregative model of democracy. Whereas the cosmopolitan citizen is a bearer of private rights and sees politics as means to defend them and pursue personal preferences, the communitarian citizen is an active participant within a collective enterprise.¹³

Aspects of the EU can be interpreted according to either model. Cosmopolitans of a libertarian hue see the four freedoms of labour, capital, goods and services as the Union's main rationale.¹⁴ Integration has a primarily negative purpose - the removal of all barriers to trade, although some positive regulation is required to ensure this occurs. Consumption, production and exchange within the market are the prime attributes of citizenship. Libertarians are distinctly luke warm about political integration. Useful to remove troublesome rulers, when uncontrolled democracy allows organised interests to inflate state expenditure for their own benefit. A European political system must incorporate mechanisms such as judicial review to keep politics in its place and protect property rights, therefore. Welfare liberals have a more positive view of rights and a correspondingly fuller picture of the EU.¹⁵ They welcome its evolving social dimension and would like much more trans-European redistribution. However, they too are cautious about the democratic aspect, and favour a monitoring role for the European Court of Justice and strengthening the position of the European Court of Human Rights. Both shades of cosmopolitanism see the EU as part of an evolving global system. Libertarians, for example, have been enthusiasts for enlargement to the East, whilst welfare liberals generally condemn the increasingly exclusionary immigration policy adopted by the

member states. Both oppose state sovereignty,¹⁶ and see policy making at the EU level as a matter of pure convenience.

Communitarians also come in different varieties. Ethnic nationalists see the EU as a geographical expression cemented by common racial and historical links. This view of Europe as a Union of Peoples has clear racist implications for the numerous non-European immigrant communities, and is largely restricted to politicians of the extreme right. Civic nationalists see Europe in more confederal terms. Co-operation at a European level may be necessary to preserve national economic interests in a globalising world economy, or for mutual defence and security. However, civic nationalists insist that any transfer of powers must be regarded as provisional, with nations retaining a residual claim to reappropriate them whenever vital national concerns are at stake.¹⁷ Notoriously, this was De Gaulle's position and lies behind the Luxembourg Accords. Although the greater use of majority voting within the Council of Ministers has undercut this agreement to a large extent, the ability of Member States to derogate from common provisions on these grounds has also increased.

If the EU displays both cosmopolitan and communitarian features, are they compatible? The present assumption appears to be that they are because the cosmopolitan principles of 'liberty, democracy, respect for human rights and fundamental freedoms and the rule of law' are 'principles which are common to the member states' (Treaty of Amsterdam (TA) F1). The Union's respect for both 'fundamental rights' (TA F2) and 'for the national identities of its member states' (TA F3) should not create tensions, therefore. This position may best be described as communitarian cosmopolitan, whereby different communities are assumed to share core cosmopolitan ideas with the EU itself operating as an all-encompassing community of communities. It fits with the principal interpretation of a federal Europe, for example, in which national political identities and institutions would feed into a European system with its own symbols of flag, passport, anthem.¹⁸

However, there are numerous difficulties with this position. Acceptance of liberal principles is compatible with a group's desire to be self-determining and distinct. Rights need interpretation when applied to concrete circumstances, and can give rise to incompatible and incommensurable views. For example, opinions can reasonably differ as to whether minority language rights promote or hinder free speech, and can conflict with the four freedoms. The European Convention accepts, for example, that many rights are conditional and subject to such limitations 'as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others' (e.g. Articles 8-11). As the German Federal Constitutional Court acknowledged in its verdict on the Brunner challenge to the Maastricht Treaty, these sorts of dilemmas cannot necessarily be resolved *a priori*.¹⁹ There may be numerous reasonable solutions on offer.²⁰ What counts is that the deciding body is recognised as a legitimate authority by the people affected. The Court's view that only German institutions have the requisite status for the German people has been taken by some commentators as an implicit attack on the integrity of the EU.²¹ Opinion polls indicate, however, that a similar perception with regard to their own political and legal institutions is widely shared by the populations of most member states, and arguably by their respective judicial systems as well.²² Certainly, there is little evidence of the EU having created a European demos or shared political culture. There are no European political parties, for example, and the Euro has had to rely on a purely abstract symbolism of imaginary bridges since real European bridges and personalities have a primarily national significance.

Is the EU a mere confederation of nations, therefore? Whilst it certainly has many features consistent with this model, we have seen that integration is evolving beyond the confederal stage and becoming far more complex. For the very forces driving states towards greater international co-operation have also encouraged sub and trans national groups to emerge. Political community may not be established at the EU level, but it no

longer so clearly resides at the national level either. Instead we have a proliferation of different communities depending on the policy or issue involved. In some areas national interests and ideals prevail, in others regional, functional, ideological or other affiliations are in play.

This emerging multilevel and multitrack polity, involving a plurality of different kinds of concern and values, requires a different approach - one I shall dub cosmopolitan communitarianism. By contrast to communitarianism *sans phrase*, this conception assumes membership of a variety of different, interacting and occasionally conflicting communities. And in contradistinction to communitarian cosmopolitanism its aim is not simply to put flesh on an assumed consensus on universal principles. Unlike cosmopolitanism, agreement on and interpretations of rights have to be constructed through the political process with such notions thickening in a variety of ways between groups and policies. The trick is to devise a political system capable of ensuring such negotiations occur in a manner that ensures equal concern and respect of those concerned. As I have argued elsewhere,²³ the answer lies in a return to the neo-roman republican tradition within which liberty was seen as a civic achievement resulting from the prevention of arbitrary domination.²⁴ This involves a different conception of constitutionalism to the liberal cosmopolitan's - one based on the form of government rather than a legal framework, that employs rather than constrains politics.²⁵ The key is to so disperse power that political decisions can be contested so as to ensure they track the interests and ideals of those affected. From this perspective, the messiness of the EU's decision making process, far from being a liability, becomes a positive advantage. European citizenship sits alongside our other political identities, becoming more or less important according to the issue under consideration, without any need to claim a superior status. To those who doubt the workability of this idea, I point to the facility with which Malcolm shifts from British to French citizenship on crossing the channel. This

ability makes him the very model of a European citizen, so conceived - a fact that surely confirms its attractiveness.

figure 1

	COMMUNITARIANISM	COSMOPOLITANISM
COSMOPOLITAN	<p>Cosmopolitan Communitarianism</p> <p>Civic Europe of multiple communities involving variable geometry</p>	<p>Cosmopolitan Globalism</p> <p>World market , international law based on human rights</p> <p>Post national federalism</p> <p>Functional parcelling out of sovereignty</p> <p>(Exists in both Social Liberal and Libertarian hues)</p>
COMMUNITARIAN	<p>Civic/Ethnic Nationalism</p> <p>Strong nationalists of various kinds, whose civic attitudes are predominantly to those of their variously described national groups.</p> <p>Range from Euro sceptics to Confederal/inter-governmentalist</p>	<p>Communitarian Cosmopolitanism</p> <p>Supranational federalism</p> <p>European Civic Nation</p>

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² M. Anderson, M. den Boer and G. Miller, 'European Citizenship and Cooperation in Justice and Home Affairs', in A. Duff, J. Pinder and R. Pryce (eds), Maastricht and Beyond: Building the European Union, (London: Routledge, 1994), p. 104.

³ Anderson et. al., 'European Citizenship', p.104.

⁴ Anderson et. al., 'European Citizenship', pp.105-6.

⁵ What follows draws on Richard Bellamy and Dario Castiglione, 'Building the Union: The Nature of Sovereignty in the Political Architecture of Europe', Law and Philosophy 16 (1997) 421-45; *idem*, 'The Normative Challenge of a European Polity: Cosmopolitan and Communitarian Models Compared, Criticised and Combined', in A. Føllesdal and P. Koslowski (eds), Democracy and the European Union, (Berlin: Springer, 1998), Ch. 12; and *idem*, 'Between Cosmopolis and Community: Three Models of Rights and Democracy within the European Union', in D. Archibugi , D. Held and M. Koheler (eds), Re-imagining Political Community , (Cambridge: Polity, forthcoming)..

⁶ e.g. T. Pogge, 'Cosmopolitanism and Sovereignty', in C. Brown (ed), Political Restructuring in Europe: Ethical Perspectives, (London: Routledge, 1994), Ch. 5

⁷ Pogge, 'Cosmopolitanism and Sovereignty', p. 92.

⁸ Pogge, 'Cosmopolitanism and Sovereignty', p. 90, and C. Beitz, 'Cosmopolitan Liberalism and the States System', in Brown (ed), Political Restructuring in Europe, p. 124.

⁹ L. Ferrajoli, 'Beyond Sovereignty and Citizenship: Towards a Global Constitutionalism', in R. Bellamy (ed), Constitutionalism, Democracy and Sovereignty: American and European Perspectives, (Aldershot: Avebury, 1996), Ch 10.

¹⁰ e.g. David Miller, On Nationality, (Oxford: OUP, 1995), pp. 74-80.

¹¹ M. Walzer, Thick and Thin: Moral Argument at Home and Abroad, (Notre Dame: University of Notre Dame Press, 1994), Ch. 1.

¹² Quotes from M. Walzer, Spheres of Justice: A Defence of Pluralism and Equality, (Oxford: Martin Robertson, 1983), pp. 28, 31.

¹³ See Miller, On Nationality, for all the above points (the argument is synthesised in his 'The Nation-State: A Modest Defence' in Brown (ed), Political Restructuring in Europe, Ch. 7)

¹⁴ For examples of this school, see the essays in J. M. Buchanan et. al., Europe's Constitutional Future, (London: IEA, 1990)

¹⁵ For this line of argument, see P. van Parijs, 'Basic Income and the Political Economy of the New Europe', in P. Lehning and A Weale (eds), Citizenship, Democracy and Justice in the New Europe, (London: Routledge, 1997), Ch. 10.

¹⁶ Although some British Eurosceptics of a libertarian nature seem confused on the issue.

¹⁷ See Miller, On Nationality, pp.156-7, 159-63.

¹⁸ For examples, see J. Goodman, 'The European Union: Reconstituting Democracy Beyond the Nation-State', in A. McGrew (ed), The Transformation of Democracy?, (Cambridge: Polity, 1997); D. Held, Democracy and the Global Order, (Cambridge: Polity, 1995), pp. 111-3; and J. Habermas, 'The European Nation State - Its Achievements and Its Limitations. On the Past and Future of Sovereignty and Citizenship', Ratio Juris, 9 (1996), pp. 125-37.

¹⁹ Brunner [1994] 1 CMLR 57

²⁰ For a full discussion of this point, see R. Bellamy, 'The Constitution of Europe: Rights or Democracy?' in R. Bellamy et. al. (eds), Democracy and Constitutional Culture in the Union of Europe, (London: Lothian Foundation, 1995), pp. 153-76.

²¹ e.g. J. Weiler, 'European Neo-Constitutionalism: In Search of Foundations for the European Constitutional Order', in R. Bellamy and D. Castiglione (eds),

Constitutionalism in Transformation: European and Theoretical Perspectives, (Oxford: Blackwell, 1996), pp. 105-21.

²² See the findings reported in N. Wilterdink, 'An Examination of European and National Identity', European Journal of Sociology, 34 (1993), pp. 119-36.

²³ In R. Bellamy and A. Warleigh, 'From an Ethics of Integration to an Ethics of Participation - Citizenship and the Future of the European Union', Millennium, forthcoming.

²⁴ For detailed descriptions of this tradition, see P. Pettit, Republicanism, (Oxford: Clarendon Press, 1997) and Q. Skinner, Liberty before Liberalism, (Cambridge: CUP, 1998).

²⁵ See R. Bellamy, 'The Political Form of the Constitution: the Separation of Powers, Rights and Representative Democracy', in Bellamy and Castiglione (eds), Constitutionalism in Transformation, pp. 25-44.